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5 Etan Mark (admitted *pro hac*)  
6 etan@markmigd.com  
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9 80 SW 8<sup>th</sup> Street, Suite 1999  
Miami, Florida 33130  
10 Telephone: (305) 374-0440

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14  
15 MICHAEL LAVIGNE, *et al.*,  
16 Plaintiffs,  
17 vs.  
18 HERBALIFE LTD., *et al.*,  
19 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)  
[Related Case 2:13-cv-02488-BRO-RZ]

**DECLARATION OF ETAN MARK  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Assigned to Hon. John A. Kronstadt,  
Courtroom 10B

1 I, Etan Mark, declare:

2 1. I have personal knowledge of the facts set forth in this declaration and,  
3 if called as a witness, I could and would testify competently about these facts.

4 2. I am a member of the State Bars of New York and Florida and am  
5 admitted *pro hac vice* to practice before the Court. I am counsel for Plaintiffs in this  
6 matter.

7 3. I am the co-founder of Mark Migdal & Hayden (“MMH”), and I oversee  
8 MMH’s litigation efforts in this case.

9 4. MMH only practices in the area of complex litigation and regularly acts  
10 as lead counsel in all manner of complex litigation matters.

11 5. MMH is approximately five years old. Its partners have participated in  
12 multiple class-action cases (for both plaintiffs and defendants) over the years. These  
13 include, but are not limited to:

- 14 • Represented target defendant in the Chinese Manufactured Drywall Litigation,  
15 which involved hundreds of national class actions consolidated in a multi-  
16 district proceeding in the federal court in New Orleans. Knauf Plasterboard,  
17 one of the world’s largest privately-held building materials manufacturers was  
18 the primary defendant in litigation involving over 30,000 impacted found  
19 primarily throughout the Southeastern U.S.
- 20 • Interim class counsel to class of EB-5 investors in *Daccache v. Raymond James*  
21 *& Associates, Inc., et al.*, Case No. 16-cv-21575-FAM/JJO (S.D. Fla.), a  
22 multimillion dollar Ponzi scheme involving sales to EB-5 investors at the Jay  
23 Peak ski resort in Vermont, resulting in a \$150 million settlement.
- 24 • Represented putative class of EB-5 investors adverse to bank and law firm for  
25 aiding and abetting Ponzi scheme. *Qureshi et al v. People’s United Financial,*  
26 *Inc. et al.*, 2:18-cv-00163 (D. Vt.).
- 27 • Proposed as lead counsel to prospective class of consumers adverse to company  
28 engaged in high-pressure sales tactics relating to credit card processing  
machines sold to small business owners. *Chorba v. Northern Leasing Systems,*  
*Inc.*, Case No. 19-CV-08731-GBD (S.D.N.Y.).

- 1 • *Eric Breines and Andrew Perrong v. Pro Custom Solar LLC, D/B/A/Momentum Solar*, 19-cv-0353 (M.D. Fla.) representing the defendant in a case brought on  
2 behalf of a class of people who were purportedly harmed by violation of  
3 Telephone Consumer Protection Act, 47 U.S.C. §227.
- 4 • *Sydnee Gottlieb v. Pro Custom Solar LLC, D/B/A/ Momentum Solar*, 19-cv-  
5 80692 (S.D. Fla.) representing the defendant in a case brought on behalf of a  
6 class of people Twho were purportedly harmed by violation of Telephone  
7 Consumer Protection Act, 47 U.S.C. §227.
- 8 • *Perry Becker v. Pro Custom Solar LLC, D/B/A/ Momentum Solar*, 19-cv-00535  
9 (M.D. Fla.) representing the defendant in a case brought on behalf of a class of  
10 people who were purportedly harmed by violation of Telephone Consumer  
11 Protection Act, 47 U.S.C. §227.
- 12 • *Cori Ann Ginsberg et al., v. Vitamins Because LLC, et al.* 19-cv-22702 (S.D.  
13 Fla.) representing the defendant in a case brought on behalf of a class of people  
14 who were purportedly harmed due to an unfair trade practice by We Like  
15 Vitamins, LLC in the sale of SAME supplement.
- 16 • *Oneeb Rehman, v. Dania Entertainment Center*, 18-cv-003760 (17<sup>th</sup> Judicial  
17 Circuit Broward County Florida) represented the defendant in a case brought  
18 on behalf of a class of people who were purportedly harmed due to a violation  
19 of the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq.

20 6. I also have experience litigating matters brought under the Racketeer  
21 Influenced and Corrupt Organizations Act (“RICO”). These matters include:

- 22 • *Consejo De Defensa Del Estado De La Republica De Chile v. Espirito Santo*  
23 *Bank*, Case No. 09-CV-20613 (S. D. Fla.);
- 24 • *U.S. ex rel. Sanchez v. Abuabara, et al.*, Case No. 10-CV-61673 (S.D. Fla.);
- 25 • *Solaris at Brickell Bay Condo. Assoc’n v. LM Funding, LLC*, Case No. 2014-  
26 020043-CA-01 (Eleventh Judicial Circuit Court in and for Miami-Dade County  
27 Florida)
- 28 • *Town of Gulf Stream et al. v. O’Boyle, et al.*, Case No. 2015-CV-80182 (S.D.  
Fla.); and
- *Ephuno Global Services, LLC v. Bluhorne, LLC, et al.*, Case No. 22-cv-20043-  
KMM (S.D. Fla).

1           7.       Prior to forming MMH, I was head of the litigation practice at Berger  
2 Singerman, LLP, a mid-size regional Florida law firm with an extensive commercial  
3 litigation practice. I started my career at Weil, Gotshal & Manges in New York as a  
4 securities litigator, after which I clerked for Chief Judge K. Michael Moore of the  
5 United States District Court for the Southern District of Florida.

6           8.       The MMH attorneys assisting me on this case include Don Hayden, Lara  
7 O'Donnell Grillo, Yaniv Adar and Maia Aron. Summaries of their (and my)  
8 biographies are attached as **Composite Exhibit 1** to this Declaration.

9           9.       MMH is committed to litigating this case vigorously on behalf of the  
10 Plaintiff class and has the resources required to litigate this matter in a thorough  
11 manner as evidenced by our work to date.

12           10.      To my knowledge, MMH has no conflicts of interest that would prevent  
13 the firm from providing zealous representation of the named Plaintiffs and the  
14 proposed class.

15           11.      Plaintiffs allege that they and the Settlement Class Members<sup>1</sup> attended a  
16 series of events because they wanted to learn how to succeed with the Herbalife  
17 business opportunity and they were told that attending events was a necessary and  
18 critical component of that success.

19           12.      Each of the Plaintiffs has remained committed to representing the  
20 proposed Class in this litigation since 2017, remaining available to and in touch with  
21 Class Counsel, and submitting information, declarations, and other evidence,  
22 including electronic devices for forensic imaging and sitting for depositions.

23           13.      MMH has committed all necessary time, expertise, and resources to  
24 vigorously litigate this action for more than four years.

25           14.      Plaintiffs expended thousands of hours and hundreds of thousands of  
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27 <sup>1</sup> Capitalized terms used herein are defined with reference to the Settlement  
28 Agreement.

1 dollars engaging in discovery in the California and Florida Actions. In the California  
2 Action alone, Plaintiffs had seven separate discovery hearings before Magistrate  
3 Judge Michael R. Wilner (ECF Nos. 176, 190, 191, 206, 221, 253, and 288), took  
4 thirteen separate full-day fact depositions, an additional four expert depositions, and  
5 defended an additional eight depositions. Still just in the California Action, Plaintiffs  
6 have reviewed hundreds of thousands of pages of discovery, drafted correspondence  
7 related to discovery disputes, and have met and conferred with parties and non-parties  
8 to try and narrow discovery disputes to avoid judicial intervention. The parties also  
9 engaged in extensive expert discovery. Both sides collectively designated eight  
10 experts. Each prepared an expert report and each was deposed. Among other things,  
11 Herbalife presented expert survey evidence showing that 88.7% of Herbalife  
12 distributors found “value” in Herbalife Event attendance, and expert correlation  
13 evidence showing that there is a positive, statistically significant relationship between  
14 attending Herbalife Events and distributor earnings. Plaintiffs presented rebuttal  
15 experts opining, among other things, that there is no such correlation and that event  
16 attendance does not lead to “success” in the Herbalife business opportunity. Plaintiffs  
17 separately and additionally engaged in extensive discovery in the Florida Action  
18 including taking eight party depositions, defending three depositions, and participated  
19 in seven separate discovery hearings before Magistrate Judge Goodman in the  
20 Southern District of Florida. Plaintiffs also reviewed hundreds of thousands of  
21 additional pages of documents produced in the Florida Action by parties and non-  
22 parties.

23 15. The Parties engaged in extensive arm’s length settlement negotiations,  
24 included two mediation sessions before two separate respected and skilled mediators,  
25 the latter of which extended over several months under the direction of a retired judge  
26 of this District and ultimately culminated in a mediator’s proposal that both sides  
27 accepted.

28

1           16. The Settlement Agreement does not create a “clear sailing” arrangement,  
2 as reasonable attorneys’ fees will be paid only upon Court approval of Plaintiffs’  
3 petition and no mention is made of Herbalife acquiescing or agreeing not to dispute  
4 Plaintiffs’ petition.

5           17. On January 3, 2022, all active parties in the case styled *Lavigne, et al.*,  
6 *v. Herbalife, Ltd.*, Case No. 1:17-23429-MGC (S.D. Fla.) (the “Florida Action”) filed  
7 a Joint Motion to Stay Action, a true and correct copy of which is attached hereto as  
8 **Exhibit 2** (the “Joint Motion to Stay”).

9           18. On January 6, 2022, the Honorable Marcia G. Cooke granted the Joint  
10 Motion to Stay and administratively closed the Florida Action. A true and correct  
11 copy of that Order is attached hereto as **Exhibit 3**.

12           I declare under penalty of perjury under the laws of the United States of  
13 America that the foregoing is true and correct. Executed on May 27, 2022, at Miami,  
14 Florida.

15 

16  
17 \_\_\_\_\_  
Etan Mark

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# COMPOSITE EXHIBIT 1



## CULTURE EATS STRATEGY FOR BREAKFAST

PETER DRUCKER

E: don@markmigdal.com T: (305) 374-6620

### DON HAYDEN

NOTRE DAME, 82 | LOYOLA, 85



*Don is very analytical, knowledgeable of the law and very good at finding unconventional solutions."*

Chambers USA, 2019

#### AWARDS



Donald J Hayden

Chambers and Partners, America's Leading Business Lawyers, Commercial Litigation, 2009-Present | Best Lawyers in America, Commercial Litigation and International Arbitration, 2012-Present | Legal 500, International Arbitration, 2012-2015 | Law 360 Editorial Advisory Board – International Arbitration, 2016- Present | Florida's Super Lawyers, Business Litigation, 2001 – Present | Florida Trend Magazine's "Legal Elite" and "Top Commercial Litigator," 2009- Present | South Florida Legal Guide, "Top Lawyer", 2015- Present | Martindale-Hubbell "AV-1 Preeminent" ranking 2000- Present

#### LIST OF SPEAKING ENGAGEMENTS & PUBLISHED ARTICLES

<https://www.markmigdal.com/don-hayden/>

Although age is just a state of mind at MM&H, with thirty-two years of experience as a commercial litigator and a reputation as a seasoned practitioner in the international arbitration arena, Don has been around the block (and the globe) a few times during his career. Don prides himself as being a trusted advisor who can evaluate complex claims, especially for those clients who find themselves in multiple jurisdictions given today's global economy.

Don has been ranked in Chambers & Partners since 2009 for commercial litigation, and has been regularly recognized as a top attorney by Best Lawyers in America, South Florida Legal Guide, Florida's Super Lawyers, Florida Trend Legal Elite and the Legal 500 for either litigation or international arbitration. In 2010, he was inducted as a Fellow of the Litigation Counsel of America.

Over the years, Don has represented AT&T, Knauf Plasterboard, Borg Warner, Banco do Brasil, Travelers Insurance, Google, and SAP to name a few.

Throughout his career, Don has been committed to pro bono representation. He served as the Chair of the widely recognized Pro Bono Program of Baker & McKenzie in North America for over seven years. He co-counseled with Lambda Legal in *Langbehn v. Jackson Memorial Hospital*, a high-profile case that led to an executive order by President Obama requiring all health care facilities receiving federal funds to have equal visitation rights for same sex families. In addition, he was involved in the drafting of an amicus brief on behalf of leading juvenile rights organizations, in *Gill v. State*, which led to Florida courts overturning the state's prohibition against homosexuals adopting, and in *Windsor v. the Internal Revenue Service*, he assisted in drafting an amicus brief on behalf of Fortune 500 companies in favor of marriage equality. He also was awarded for his work in the areas of foster care and juvenile justice by Lawyers for Children America and the Miami-Dade Public Defender's Office.

#### ASSOCIATIONS

- Chartered Institute of Arbitrators (CI Arb) – Fellow
- Miami International Arbitration Society – Founding Member, Board of Directors, 2013-Present
- Miami International Arbitration Foundation – Secretary, 2015-Present
- American Bar Association, Litigation Counsel of America – Fellow, 2010-Present
- American Bar Association, Section of Litigation – Co-chair, International Litigation Committee, 2002-2006
- American Bar Association, Section of International Law & Practice, 2014-Present
- International Council for Commercial Arbitration, 2014-Present
- Law360 International Arbitration Editorial Advisory Board, 2015-Present
- Member of the Florida Bar's Civil Rules Committee, 2016-Present
- Federal Bar Association – Member
- Lexis Legal Advisory Board – Member, 2009-Present
- Lambda Legal – National Leadership Council, 2008-Present
- Catalyst Miami – Board of Directors, 2014-2016
- The Miami Foundation – Chairman of GLBT Fund Grants Committee, 2014-Present

#### EXPERIENCE

Berger Singerman, Florida  
Baker & McKenzie, Chicago and Miami Offices





SUCCESS... DEPENDS ON THE  
ATTENTION PAID TO DETAIL

DAVID SELZNICK

## LARA O'DONNELL GRILLO

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EMORY, 02 | HARVARD LAW, 05



*"I've worked with many attorneys over my career. I had the pleasure of working with Lara on a long-shot claim. She achieved a remarkable result, and distinguished herself with her professionalism, meticulousness and tenacity."*

**CEO, Florida broker-dealer and investment banking firm**

### AWARDS

Florida's Super Lawyers, Rising Star, Business Litigation, Appellate, 2014-2017

### ASSOCIATIONS

- International Association of Defense Counsel (IADC)
- Cuban American Bar Association
- Dade County Bar Association
- American Bar Association, Section of Litigation
  - Member, Class Action and Derivative Suits Committee (2017-present)
  - Co-Chair, Website and Social Media, Appellate Practice Committee (2015-present)
  - Chair, Professional and Social Networking, Appellate Practice Committee (2012-2015)
  - Case Notes Editor for the United States Supreme Court, Appellate Practice Committee (2011-2014)
  - Case Notes Editor for the United States Court of Appeals for the Fifth Circuit, ABA Appellate Practice Committee (2008-2011)
- Member, Class Action and Derivative Suits Committee
- Nyah Project, Advisory Committee Member (2014-present)
- Miami Dade College Law Center, Adjunct Professor, Legal Writing (2012)

Lara O'Donnell Grillo concentrates her practice in complex business litigation and arbitration, and appeals. Her experience includes the areas of fraud and securities, insurance and annuities, consumer finance and banking, environmental law, Indian law, criminal defense, and special investigations. She represents businesses, sovereign entities, and individuals in a range of complex matters, including extensive experience in appeals and class action defense. Lara has appellate experience in courts throughout the United States. She handles state and federal appeals primarily in the Florida District Courts of Appeal, the Eleventh Circuit Court of Appeals, the Florida Supreme Court, and the United States Supreme Court. Lara's appellate practice includes merits and jurisdictional briefing, appellate petitions, extraordinary writs, interlocutory appeals, appeals related motions, and appellate mediation. She also submits amicus curiae briefs on behalf of clients and frequently handles court appointed appeals. Lara is fluent in Spanish.

Prior to joining Mark, Migdal & Hayden, Lara was of counsel at Berger Singerman, an associate at Carlton Fields Jordan Burt, and clerked for the Honorable Peter T. Fay in the United States Court of Appeals for the Eleventh Circuit. She also served as a legal intern in the Appellate division of the United States Attorney's Office for the Southern District of Florida.

### EXPERIENCE

Associate/Of Counsel, Berger Singerman LLP

Associate, Carlton Fields Jordan Burt LLP

Judicial Clerk to the Honorable Peter T. Fay, United States Court of Appeals for the Eleventh Circuit

Intern, Appellate Division of the United States Attorney's Office for the Southern District of Florida

### LIST OF PUBLISHED ARTICLES

Visit <https://www.markmigdal.com/lara-odonnell-grillo/>



IF A THING IS WORTH DOING, IT IS  
WORTH DOING WELL. IF IT IS WORTH  
HAVING, IT IS WORTH WAITING FOR.  
IF IT IS WORTH ATTAINING, IT IS  
WORTH FIGHTING FOR.

OSCAR WILDE

**YANIV ADAR** E: yaniv@markmigdal.com T: (305) 374-6623

UNIVERSITY OF FLORIDA, 05 | DUKE UNIVERSITY (JD, MPP), 08



*“Yaniv is a trusted advisor and problem solver. He has the unique ability to find creative solutions to complicated problems. If litigation is necessary, Yaniv is an experienced, efficient, and ferocious litigator.”*

**Chief Operative Officer,  
Element E-Liquid, LLC**

**AWARDS**

Duke Journal of Gender Law & Policy,  
Executive Editor

Duke University School of Law Moot Court  
Board, Member

Duke University School of Law Jessup Cup,  
Finalist

Recipient of D.R. “Billy Ray Matthews”  
Scholarship

**ASSOCIATIONS**

- South Florida Chapter of the Federal Bar Association
  - Treasurer (2018-present)
  - Secretary (2017-2018)
  - Board Member (2015-present)
  - Law School Committee Chair (2015-2018)
  - FBA Luncheon Committee (2013-present)
- Greater Miami Jewish Federation (Under 45 Division)
  - Campaign Co-Chair (2017-present)
  - Board Member (2015-present)
  - Leadership Development Institute Graduate (2014)

Yaniv Adar is an aggressive commercial litigator with significant experience in federal and state courts throughout the country, as well as various arbitral forums. Yaniv has a diverse practice that includes representing clients in shareholder and partner disputes, consumer class actions, education-related matters, enforcement of restrictive covenants, professional negligence cases, trade secret disputes, regulatory matters, insurance coverage disputes, securities litigation, consumer dispute resolution, real estate litigation, data breaches, and employment-related disputes.

Yaniv leverages his experience as a former federal clerk, advising his clients on a variety of matters that are commonly filed in federal court. Yaniv specializes in defending lawsuits brought under the TCPA, FDCPA, and ADA, having handled matters in Florida, California, Illinois, Maryland, Georgia, Texas, Michigan, and Indiana. Yaniv also serves as local counsel to law firms for matters filed in the state and federal courts of Florida.

Yaniv serves as outside counsel to numerous corporate entities, providing support on a variety of litigation, employment, corporate, and regulatory matters. Yaniv counsels clients on how to avoid litigation, recommending the implementation of policies focused on compliance with state, local, and federal regulations, and positioning the client to have a strong defense in the event of litigation. If a dispute ultimately arises, Yaniv works with the client to zealously and efficiently see the matter through until it is fully resolved.

**EXPERIENCE**

Homer Bonner Jacobs (2012-2019)

Judicial Clerkship, Honorable Kenneth A. Marra, United States District Court for the Southern District of Florida (2011-2012)

Judicial Clerkship, Justice R. Fred Lewis, Supreme Court of Florida (2009-2011)



**MAIA ARON**

WE CANNOT SOLVE OUR PROBLEMS WITH  
THE SAME THINKING WE USED TO  
CREATE THEM.

ALBERT EINSTEIN

E: [maia@markmigdal.com](mailto:maia@markmigdal.com) T: (305) 374-6616

UNIVERSITY OF MIAMI, 02 | UNIVERSITY OF MIAMI GRADUATE SCHOOL OF  
BUSINESS, 04 & UNIVERSITY OF MIAMI SCHOOL OF LAW, 05



*I rarely work with counsel who so effectively combines efficiency, thoroughness, and value, while moving the case forward towards a successful resolution."*

General Counsel, Florida company

Maia focuses her practice on complex, high-stakes litigation, including financial fraud, contract disputes, and other business torts. Maia has successfully represented investors in Ponzi scheme litigation. Maia also focuses her practice on disputes involving Latin American businesses and investors. As a native Spanish speaker, she understands not only the language, but also the business culture. Maia is also conversational in Hebrew and Portuguese

Maia is a proud "Triple Cane" with three degrees from the University of Miami. She received her J.D. degree from the University of Miami School of Law in May of 2005. Maia also obtained a Masters in Business Administration in Finance from the University of Miami Graduate School of Business, and a B.B.A., cum laude, in Entrepreneurship and Business Management.

Maia gives back to the community. She serves as the President of the Miami Chapter of the Jewish National Fund. Maia also served as the chair of Access Miami, the young leadership arm of American Jewish Committee (AJC) and as a member of AJC Miami's Executive Committee. In 2017, the Cystic Fibrosis Foundation honored Maia as a 40 under 40 Outstanding Lawyer of South Florida.

**AWARDS**

2017, Cystic Fibrosis Foundation 40 under 40 Outstanding Lawyer of South Florida. This award recognizes not only legal achievements, but also commitment to service and leadership in the community.

**ASSOCIATIONS**

- President of the Miami Chapter of the Jewish National Fund (JNF), 2018-present
- Member of JNF's national Lawyers for Israel group, 2015-present
- Chair of Women for Israel (JNF's Women's Society) in Miami, 2017-2018
- Founder and President of JNF's Miami Young Leadership chapter, 2015-2017
- Chair of Access Miami, the young leadership arm of American Jewish Committee (AJC), 2016-October 2019
- Member of AJC Miami's Executive Committee 2017-October 2019
- Member of the Access Miami Steering Committee, 2016-present

**EXPERIENCE**

Kozyak Tropin & Throckmorton, Of Counsel  
Kozyak Tropin & Throckmorton, Associate  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, Associate  
Pertnoy Solowsky & Allen, Associate

**FOR FULL LIST OF SPEAKING ENGAGEMENTS  
& PUBLISHED ARTICLES**

[www.markmigdal.com/maia-aron/](http://www.markmigdal.com/maia-aron/)





# THINGS DO NOT HAPPEN THINGS ARE MADE TO HAPPEN

JOHN F KENNEDY  
(AND MORE RECENTLY PETYR BAELESH)

## ETAN MARK

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*My company has more than \$1.5B in assets under management and works with a half-dozen different attorneys every quarter. Etan is not just our lawyer – he is our company’s consigliere. His responsiveness, counsel and advocacy skills are true differentiators.”*

**Managing Principal, Florida real estate development company**

MICHIGAN, 00 | GEORGE WASHINGTON LAW, 03

Etan is a Chambers-ranked litigator with a fondness for darts, history and Game of Thrones. He readily combines strategic thinking with action and often advises clients on what they should and (often) should not do when presented with the unique challenges of a business in (or near) litigation.

Etan has been ranked by Chambers & Partners USA in commercial litigation. Sources interviewed by Chambers have said that “He’s absolutely fantastic; a very smart, strategic litigator. His ability to present in court is outstanding.” Others were not so complimentary: his mother was quoted as saying: “He is a good boy but he should’ve been a cardiologist.” His twin brother complained as well, calling him “a pain in the ass.”

Many of Etan’s cases touch either real estate or allegations of fraud; often both. He also serves as an “inside-outside” counsel, helping clients avoid or mitigate risk in the day-to-day operations of their businesses. His representative clients include public and private companies, real estate developers, investors and owners, tech entrepreneurs, family offices, hotels and banks. For some strange reason, Etan is particularly enamored with the ins and outs of the Racketeer Influenced and Corrupt Organizations Act (RICO) and has written and read extensively on the subject. The rest of the time, he can be seen asking his son to please stop watching videos of other people playing Fortnite and stressing out about climate change.

Etan began his legal career working as a business and securities litigator at a top 10 American Lawyer “Big Law” firm in New York. Since leaving New York for more . . . challenging sea levels, Etan has become a devotee of alternative value propositions focused on efficiency, collaboration and bespoke service (that are sometimes hard to come by in “Big Law”). Etan worked as a law clerk to a federal district court judge in Miami, where he gained an insider’s view on effective advocacy. Following his clerkship, Etan owned and was the CEO of a company that leveraged the global marketplace by outsourcing certain legal services to top attorneys and other legal service providers in India. Prior to founding MM&H, Etan was a partner at Berger Singerman’s Miami office, and was manager of the firm’s Dispute Resolution team.

### AWARDS



Etan Mark

Chambers & Partners USA: America’s Leading Business Lawyers, 2019, General Commercial Litigation || South Florida Legal Guide: Top Up and Comer, 2016-2018; Top Lawyer, 2019 || Best Lawyers in America: Litigation - Real Estate, 2021 || Florida’s Super Lawyers: Rising Star, 2009-2018; Super Lawyer, 2020 || Florida Trend, Legal Elite: 2018, Commercial Litigation || Florida Trend, Legal Elite: Top Up and Comer, 2013, 2016, 2017 || Martindale-Hubbell, AV® Preeminent™ rated || South Florida Business Journal: Top 40 Under 40, 2015 || Daily Business Review: Rising Stars 40 Under 40, 2013

### ASSOCIATIONS & BOARDS, PUBLISHED ARTICLES & SPEAKING ENGAGEMENTS

Please visit [www.markmigdal.com/etan-mark/](http://www.markmigdal.com/etan-mark/)

### EXPERIENCE

Berger Singerman – Partner  
iDiligence – CEO  
Law Clerk to the Honorable K. Michael Moore,  
U.S. District Court Judge, Southern District of Florida  
Weil Gotshal & Manges – Associate (NY)



# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 1:17-cv-23429-MGC

PATRICIA RODGERS, et al.,  
individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

MARK ADDY, et al.

Defendants.

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**JOINT MOTION TO STAY ACTION**

Plaintiffs Patricia Rodgers, Cody Pyle, Jennifer Ribalta, Izaar Valdez, and Joanna Kirby and Defendants Mark Addy, Jillian Addy, Cody Morrow, Suzanne Morrow, Gabriel Sandoval, John Tartol, Leslie Stanford, Danielle Grace, Alcides Mejia Jr., Paulina Riveros, Carol Rosenau, Amber Wick, Jorge de la Concepcion, Disney Di Martinez, Ryan Baker, Daniel Waldron, Susan Peterson, Michael Katz, Alan Rodriguez, and Mary Holloway (collectively, the “Parties”) jointly request that the Court stay this action pending final approval of a class-wide settlement of the related class action pending in the Central District of California, *Lavigne v. Herbalife Ltd.*, Case No. 2:18-cv-07480-JAK (MRWx) (the “California Action”).

1. On December 14, 2021, the Court granted the Parties’ Joint Motion to extend the deadline for Plaintiffs to file their Second Amended Complaint, which is currently due on January 7, 2022. (*See* ECF Nos. 233, 234.)

2. On December 21, 2021, the parties in the California Action submitted a joint stipulation (attached hereto as **Exhibit A**) stating that they had reached a settlement in principle, and requesting an extension of various deadlines to allow the parties in that action time to finalize and jointly move for preliminary approval of a class action settlement. That stipulation was granted on December 22, 2021 (attached hereto as **Exhibit B**).

3. The California Action and the instant action were originally brought here as a single action and involve the same claims, regarding the same conduct, brought by many of the same named plaintiffs on behalf of the same putative class. The Parties anticipate that upon final approval of the class action settlement in the California Action, Plaintiffs will voluntarily dismiss this action.

4. Accordingly, the Parties respectfully request that the Court enter an order staying this action pending final approval of a class-wide settlement of the California Action.

**CONSENT OF COUNSEL**

Pursuant to Rule 3J(3) of the Administrative Procedures of the United States District Court for the Southern District of Florida, the undersigned counsel represents to the Court that opposing counsel has authorized his electronic signature to be affixed to this Joint Motion.

Dated: January 3, 2022

/s/ Etan Mark

Yaniv Adar, Esq.  
Florida Bar No. 063804  
yaniv@markmigdal.com  
Etan Mark, Esq.  
Florida Bar No. 720852  
etan@markmigdal.com  
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MARK MIGDAL & HAYDEN  
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*Counsel for Plaintiffs*

/s/ Zachary S. Foster

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QUARLES & BRADY, LLP  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on the 3rd day of January 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and served via email through the CM/ECF system on:

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18

19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

21 MICHAEL LAVIGNE, *et al.*,  
22 Plaintiffs,

23 vs.

24 HERBALIFE LTD., *et al.*,  
25 Defendants.

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CASE NO. 2:18-cv-07480-JAK (MRWx)  
[Related Case 2:13-cv-02488-BRO-RZ]

**JOINT STIPULATION TO  
CONTINUE HEARING ON  
PLAINTIFFS’ MOTION FOR  
REVIEW OF NON-DISPOSITIVE  
RULINGS, HERBALIFE’S MOTION  
FOR SUMMARY JUDGMENT, THE  
PARTIES’ DAUBERT MOTIONS,  
AND PLAINTIFFS’ MOTION TO  
STRIKE**

Assigned to Hon. John A. Kronstadt,  
Courtroom 10B

1 Pursuant to Local Rule 7.1, Defendant Herbalife International of America,  
2 Inc. (“Herbalife”), and Plaintiffs Patricia Rodgers, Jennifer Ribalta, and Izaar  
3 Valdez (“Plaintiffs”), by and through their respective counsel of record, hereby  
4 stipulate as follows:

5 WHEREAS, the parties have several motions scheduled to be heard on  
6 January 10, 2022, namely Plaintiffs’ Motion for Review of Non-Dispositive Rulings  
7 (Dkt. No. 309), Herbalife’s Motion for Summary Judgment (Dkt. No. 322), the  
8 parties’ *Daubert* motions (Dkt. Nos. 323, 324, 325, 326, 327, 328, 329, 330), and  
9 Plaintiffs’ Motion to Strike Defendant’s Affirmative Defenses (Dkt. No. 359) (the  
10 “Outstanding Motions”);

11 WHEREAS, no trial date has been set, and there are no other dates on  
12 calendar;

13 WHEREAS, the Court previously continued the November 15, 2021 hearing  
14 on the Outstanding Motions to January 10, 2022 (Dkt. No. 375), pursuant to the  
15 parties’ stipulation (Dkt. No. 374) and in light of the parties’ settlement discussions  
16 facilitated by Hon. S. James Otero (Ret.);

17 WHEREAS, the parties’ ensuing settlement discussions with Judge Otero  
18 were productive, and the parties have reached a settlement in principle;

19 WHEREAS, to allow the parties time to submit a stipulation of settlement and  
20 to move for preliminary approval of a class action settlement of this action, the  
21 parties respectfully request that the January 10, 2022 hearing on the Outstanding  
22 Motions be continued to March 14, 2022, or the Court’s next available hearing date.

23 **IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

24 The parties jointly request that the Court continue the hearing on Plaintiffs’  
25 Motion for Review of Non-Dispositive Rulings (Dkt. No. 309), Herbalife’s Motion  
26 for Summary Judgment (Dkt. No. 322), the parties’ *Daubert* motions (Dkt.  
27 Nos. 323, 324, 325, 326, 327, 328, 329, 330), and Plaintiffs’ Motion to Strike  
28 Defendant’s Affirmative Defenses (Dkt. No. 359) to March 14, 2022, or the Court’s



## Stipulation

[2:18-cv-07480-JAK-MRW Michael Lavigne et al v. Herbalife, LTD et al](#)

(MRWx),DISCOVERY,MANADR,PROTORD

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

### Notice of Electronic Filing

The following transaction was entered by Chan, Paul on 12/21/2021 at 11:27 AM PST and filed on 12/21/2021

**Case Name:** Michael Lavigne et al v. Herbalife, LTD et al

**Case Number:** [2:18-cv-07480-JAK-MRW](#)

**Filer:** Herbalife International of America Inc

**Document Number:** [376](#)

#### Docket Text:

**Joint STIPULATION to Continue Plaintiffs' Motion For Review of Non-Dispositive Rulings, Herbalife's Motion for Summary Judgment, the Parties' Daubert Motions and Plaintiffs' Motion to Strike from January 10, 2022 to Mach 14, 2022 Re: NOTICE OF MOTION AND MOTION to Exclude Testimony of Defendant's Expert Robert W. Crandall [328], NOTICE OF MOTION AND MOTION to Exclude Testimony of Plaintiffs' Expert Rhonda Harper [323], MOTION for Review of NON-DISPOSITIVE RULINGS [309], NOTICE OF MOTION AND MOTION to Exclude Exclude Testimony of Defendant's Expert Robert A. Peterson [330], NOTICE OF MOTION AND MOTION to Exclude Testimony of Defendant's Expert Stephen M. Nowlis [327], NOTICE OF MOTION AND MOTION to Exclude Testimony of Plaintiffs' Expert Dr. William W. Keep [324], NOTICE OF MOTION AND MOTION to Exclude Testimony of Plaintiffs' Expert Christian Tregillis [326], NOTICE OF MOTION AND MOTION to Strike Affirmative Defenses Answer to Complaint (Discovery)[352] [359], NOTICE OF MOTION AND MOTION to Exclude Testimony of Plaintiffs' Expert Dr. Janja Lalich [325], NOTICE OF MOTION AND MOTION to Exclude Testimony of Defendant's Expert Jonathan T. Tomlin [329], NOTICE OF MOTION AND MOTION for Summary Judgment [322] filed by Defendant Herbalife International of America Inc. (Attachments: # (1) Proposed Order)(Chan, Paul)**

#### 2:18-cv-07480-JAK-MRW Notice has been electronically mailed to:

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**2:18-cv-07480-JAK-MRW Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\fakepath\2021.12.07 - Joint Stip to Continue Motions Hearing.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=12/21/2021] [FileNumber=33145643-0] [038916cb6834e243633b2ff851b7e516deeb125795c2020dc3d3dbc04b9259e0b12031e0101e71acc2069cff5310aec48afa8e5a9f320c3e4260a3c5640514a]]

**Document description:**Proposed Order

**Original filename:**C:\fakepath\Proposed Order re Jt. Stip to Continue Hearing.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=12/21/2021] [FileNumber=33145643-1] [7c7695b4a47da2cded49d77d3fa4577265371e24b7f869b6529a70fc2060581878e4c7f8a94a41afcdd3c96ca8063695e91884fd2b586c94c3df966fc1aefd3c]]

## EXHIBIT B

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

MICHAEL LAVIGNE, *et al.*,  
Plaintiffs,  
v.  
HERBALIFE LTD., *et al.*,  
Defendants.

No. 2:18-cv-07480-JAK (MRWx)

**ORDER RE JOINT STIPULATION  
TO CONTINUE HEARING ON  
PLAINTIFFS’ MOTION FOR  
REVIEW OF NON-DISPOSITIVE  
RULINGS, HERBALIFE’S MOTION  
FOR SUMMARY JUDGMENT, THE  
PARTIES’ DAUBERT MOTIONS,  
AND PLAINTIFFS’ MOTION TO  
STRIKE (DKT. 376)**

1           Based on a review of the parties’ Joint Stipulation to Continue Hearing on  
2 Plaintiffs’ Motion for Review of Non-Dispositive Rulings, Herbalife’s Motion for  
3 Summary Judgment, the Parties’ *Daubert* Motions, and Plaintiffs’ Motion to Strike  
4 (the “Stipulation” (Dkt. 376)), sufficient good cause has been shown for the  
5 requested relief. Therefore, the Stipulation is **APPROVED**. The hearings on  
6 Plaintiffs’ Motion for Review of Non-Dispositive Rulings (Dkt. 309), Herbalife’s  
7 Motion for Summary Judgment (Dkt. 322), the parties’ *Daubert* motions (Dkts. 323,  
8 324, 325, 326, 327, 328, 329, 330), and Plaintiffs’ Motion to Strike Defendant’s  
9 Affirmative Defenses (Dkt. 359) are continued from January 10, 2022 to March 14,  
10 2022.

11           If the parties finalize a settlement agreement through the ongoing discussions,  
12 they shall file a notice of settlement within 7 days of reaching that agreement. If  
13 none is filed, the parties shall file a joint report as to the status of settlement on or  
14 before March 7, 2022.

15  
16 **IT IS SO ORDERED.**

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18 DATED: December 22, 2021

  
\_\_\_\_\_  
John A. Kronstadt  
United States District Judge

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# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-cv-23429-COOKE/GOODMAN

PATRICIA RODGERS, *et. al.*, individually  
and on behalf of all others similarly situated,

Plaintiffs,

vs.

MARK ADDY, *et. al.*,

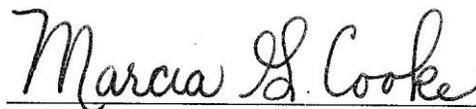
Defendants.

ORDER GRANTING MOTION TO STAY

THIS MATTER comes before me on the parties' joint motion to stay this action, ECF No. 235. The parties have requested a stay of this action, pending final approval of a class-wide settlement of the related class action pending in the Central District of California, *Lavigne v. Herbalife Ltd.*, Case No. 2:18-cv-07480-JAK ("the California action"). The parties state that they have reached a settlement in principle, and will shortly be moving for preliminary approval of a class action settlement. The Court hereby **ORDERS and ADJUDGES** as follows:

1. The Court **GRANTS** the motion to stay, and **STAYS** this action pending settlement in the California action. The Clerk shall administratively **CLOSE** this case.
2. Within 30 days of approval of the class action settlement, the parties shall file a joint status report advising the Court as to how the parties plan to proceed, including whether they intend to dismiss this action.

**DONE and ORDERED** in chambers at Miami, Florida, this 5<sup>th</sup> day of January 2022.



MARCIA G. COOKE

United States District Judge

Copies furnished to:  
*Jonathan Goodman, U.S. Magistrate Judge*  
*Counsel of record*