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19  
20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
22

23 MICHAEL LAVIGNE, *et al.*,  
24 Plaintiffs,  
25 vs.  
26 HERBALIFE LTD., *et al.*,  
27 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)  
[Related Case 2:13-cv-02488-BRO-RZ]  
**STIPULATION OF SETTLEMENT**  
Assigned to Hon. John A. Kronstadt,  
Courtroom 10B

1 This Stipulation of Settlement and attached exhibits (the “Settlement  
2 Agreement” or “Settlement”) dated as of May 27, 2022, is made by and among the  
3 following Settling Parties (as defined below): on the one hand, Plaintiffs Patricia  
4 Rodgers, Jennifer Ribalta, and Izaar Valdez on behalf of themselves, and on behalf of  
5 each of the Settlement Class Members (as defined herein), by and through Plaintiffs’  
6 Counsel; and on the other, Defendant Herbalife International of America, Inc.  
7 (“Herbalife”), by and through its counsel. This Settlement Agreement is intended by  
8 the Settling Parties to resolve, discharge, and settle the Released Claims (as defined  
9 herein), upon and subject to the terms and conditions of this Settlement Agreement.

10 **1. DEFINITIONS**

11 In addition to the foregoing defined terms, the following terms shall have the  
12 meanings as set forth below:

13 1.1 “Action” means the action filed in the United States District Court for  
14 the Central District of California entitled *Lavigne, et al. v. Herbalife Ltd., et al.*, Case  
15 No. 2:18-cv-07480-JAK (MRWx), including all pleadings on file in that action.

16 1.2 “Authorized Claimant” means a Settlement Class Member who submits  
17 a timely and valid Claim Form to the Claims Administrator or is otherwise authorized  
18 to receive benefits under this Settlement Agreement.

19 1.3 “Claims Administrator” means A.B. Data, who shall be subject to and  
20 comply with this Settlement Agreement.

21 1.4 “Plaintiffs’ Counsel” means the law firms Mark Migdal & Hayden and  
22 Mortgage Recovery Law Group, LLP.

23 1.5 “Class Period” means the period beginning January 1, 2009, through and  
24 including the date the Preliminary Approval Order is entered.

25 1.6 “Court” means the United States District Court for the Central District  
26 of California.

27 1.7 “Effective Date” means the first date after which all of the following  
28 events and conditions have been met or have occurred:

1           1.7.1 The Settlement Agreement is executed and delivered by/to all  
2 Parties and approved by the Court;

3           1.7.2 Entry of the Final Judgment and Order Approving Settlement  
4 (“Final Judgment”);

5           1.7.3 The Final Judgment becomes “Final.” “Final” means the  
6 occurrence of any of the following: (a) final affirmance on an appeal of the Final  
7 Judgment, the expiration of the time for a petition for review of the Final Judgment,  
8 and, if the petition is granted, final affirmance of the Final Judgment following review  
9 pursuant to that grant; (b) final dismissal of any appeal from the Final Judgment or  
10 the final dismissal of any proceeding to review the Final Judgment; or (c) if no appeal  
11 is filed, the expiration of the time for the filing or noticing of any appeal from the  
12 Court’s Final Judgment. If the Final Judgment is set aside, materially modified,  
13 vacated, or reversed by the Court or by an appellate court, and is not fully reinstated  
14 on further appeal, then the Final Judgment does not become “Final” and the Effective  
15 Date cannot occur.

16           1.7.4 Plaintiffs and Herbalife shall have the option to elect to waive the  
17 failure, in whole or in part, of any of the conditions set forth in Subsections 1.7.1-  
18 1.7.3. If Plaintiffs or Herbalife elect to waive the failure, in whole or in part, of such  
19 condition, Plaintiffs or Herbalife shall file a written notice of waiver with the Court  
20 within ten (10) days after they become aware of the failure of such condition. If  
21 Plaintiffs and Herbalife both waive the failure, in whole or in part, of any condition  
22 in Subsections 1.7.1-1.7.3, then the Effective Date will occur without satisfaction of  
23 that condition.

24           1.8 “Escrow Agent” means A.B. Data.

25           1.9 “Herbalife Corporate Event” means any U.S.-based Herbalife Event with  
26 respect to which Herbalife directly sells tickets.

27           1.10 “Herbalife Event” means any U.S.-based Herbalife Event (inclusive of  
28 Herbalife Corporate Events) including: Extravaganza, Leadership Development

1 Weekend (LDW), Future President’s Team Retreat, Kickoff, Spectacular(s), January  
2 Kickoff (JKO), January Spectacular, Herbalife Honors, African American Recruiting  
3 Tour, Herbalife Summit, Building Your Business Workshop, Future Millionaire  
4 Team Event (FMTE), RSM LA Experience, Galaxy Rally, Success Training Seminar  
5 (STS), Herbalife Opportunity Meeting (HOM), Scale to Success, and any Latin  
6 market equivalent of these events, including, but not limited to, FSL, Fin de Semana  
7 de Liderazgo, Mega Escuela, Latin Recruit Tours, Latin Market Extravaganza, Latin  
8 Market LDW, and Latin Market Future President’s Team Retreat.

9 1.11 “Named Plaintiffs” refers to Patricia Rodgers, Jennifer Ribalta, and Izaar  
10 Valdez.

11 1.12 “Notice” means the notice provided for in Section 6 and substantially in  
12 the form attached hereto as Exhibit A.

13 1.13 “Person” means an Herbalife member or distributor in his or her  
14 individual capacity; any corporation, limited liability company, partnership, limited  
15 partnership, association, joint stock company, estate, legal representative, trust,  
16 unincorporated association, or any business or legal entity through which he or she  
17 has conducted or conducts an Herbalife distributorship; and their spouses, heirs,  
18 predecessors, successors, representatives, alter egos, or assigns.

19 1.14 “Preliminary Approval Order” means the order to be entered by the  
20 Court preliminarily approving the Settlement Agreement, certifying the Settlement  
21 Class for settlement purposes only, approving the Notice of Proposed Settlement,  
22 approving the Summary Notice, and setting the Settlement Hearing, as provided for  
23 in Section 6.

24 1.15 “Settlement Agreement” means this Stipulation of Settlement, including  
25 all attached exhibits.

26 1.16 “Settlement Class” means all U.S. Herbalife distributors who purchased  
27 tickets to at least two Herbalife Events during the Class Period.

28 1.16.1 Excluded from the Settlement Class are past and present

1 members of Herbalife’s President’s Team or above (including past and present  
2 members of Herbalife’s Chairman’s Club and Founder’s Circle) to the extent those  
3 individuals were members of Herbalife’s President’s Team or above throughout the  
4 Class Period, including their spouses, heirs, predecessors, successors, representatives,  
5 alter egos, or assigns. Also excluded are any U.S. Herbalife distributors who have  
6 previously executed a release of the claims that are the subject matter of this litigation.

7 1.17 “Settlement Class Member” means a Person who fits within the  
8 definition of the Settlement Class and who has not validly and timely requested  
9 exclusion from the Settlement Class, as provided in Section 9.

10 1.18 “Settlement Hearing” means the hearing to determine whether this  
11 Settlement Agreement should be finally approved by the Court, as provided for in  
12 Section 6.

13 1.19 “Settling Parties” means Herbalife and each of the Plaintiffs on behalf of  
14 themselves and each of the Settlement Class Members.

15 1.20 “Summary Notice” means the written notice provided for in Section 6  
16 and substantially in the form attached hereto as Exhibit B.

17 1.21 The word “or” means and/or.

18 1.22 The plural includes the singular and vice-versa.

19 **2. LITIGATION BACKGROUND**

20 2.1 Original Complaint. On September 18, 2017, Plaintiffs Jeff Rodgers,  
21 Patricia Rodgers, Michael Lavigne, Jennifer Lavigne, Cody Pyle, Jennifer Ribalta,  
22 Izaar Valdez, and Felix Valdez, on behalf of themselves and a putative class of “others  
23 similarly situated,” filed this Action in the United States District Court for the  
24 Southern District of Florida, naming as defendants Herbalife International of  
25 America, Inc.; Herbalife International, Inc.; and Herbalife Nutrition Ltd., as well as  
26 several individual Herbalife distributors, alleging the following claims for relief:  
27 (1) violations of the federal Racketeer Influenced Corrupt Organizations Act (18  
28 U.S.C. §§ 1962 (c) and (d)); (2) violations of Florida’s Deceptive and Unfair Trade

1 Practices Act (FDUTPA) (Fla. Stat. §§ 501.201 – 501.213); (3) a common law claim  
2 for unjust enrichment; and (4) a common law claim for negligent misrepresentation.  
3 Dkt. 1. The complaint sought, among other things, damages for the financial losses  
4 incurred by Plaintiffs and the class; general, compensatory, and exemplary damages;  
5 temporary and permanent injunctive relief; costs; reasonable attorneys’ fees; pre- and  
6 post-judgment interest; and other relief the Court may deem just and proper.

7       2.2 Transfer to this Court. Pursuant to an order issued by the United States  
8 District Court for the Southern District of Florida, the claims of Jeff Rodgers, Patricia  
9 Rodgers, Jennifer Ribalta, and Izaar Valdez against Herbalife were transferred to this  
10 Court on August 23, 2018. Dkt. 106. The other four Plaintiffs’ claims against  
11 Herbalife were compelled to arbitration. *Id.* Jeff Rodgers subsequently passed away  
12 during the pendency of this case.

13       2.3 Motion to Dismiss. On September 28, 2018, Herbalife moved to dismiss  
14 the Complaint. Dkt. 142. On October 22, 2019, the Court granted Herbalife’s motion  
15 to dismiss without prejudice. Dkt. 196.

16       2.4 First Amended Complaint. On November 12, 2019, Plaintiffs filed the  
17 First Amended Complaint. Dkt. 202. The First Amended Complaint omitted the  
18 previously pled common law claim for unjust enrichment, and in lieu of the FDUTPA  
19 claim, Plaintiffs pled a violation of California’s Unfair Competition Law (Cal. Bus.  
20 & Prof. Code §§ 17200 *et seq.*). It also named only Herbalife International of  
21 America, Inc. as a defendant.

22 **3. BENEFITS OF THE SETTLEMENT**

23       3.1 Diligence of Counsel. Counsel for Herbalife and Plaintiffs are  
24 represented by experienced counsel who have conducted extensive fact and expert  
25 discovery. Plaintiffs’ counsel has also conducted an investigation prior to and  
26 throughout the prosecution of the Action. The discovery and investigation have  
27 included: (i) review of hundreds of thousands of pages of documents and hundreds of  
28 hours of Herbalife Event video footage; (ii) depositions of three Herbalife corporate

1 representatives pursuant to Federal Rule of Civil Procedure 30(b)(6), the named  
2 Plaintiffs, and the parties' respective experts; (iii) depositions of, and review of  
3 documents produced by, third-party Herbalife distributors and other persons with  
4 relevant information; (iv) review of written discovery responses provided by the  
5 parties; (v) review of publicly available documents; (vi) interviews with former  
6 Herbalife members or distributors; (vii) consultation with experts; and (viii) research  
7 of the applicable law with respect to the claims asserted in the complaints and the  
8 potential defenses thereto.

9       3.2 Benefits to Settlement Class. Plaintiffs' Counsel have analyzed the  
10 benefits to be obtained under the terms of the proposed Settlement and have  
11 considered the costs, risks, potential weaknesses of the case, and delays associated  
12 with the continued prosecution of the Action and likely appeals, as well as the merits  
13 of the defenses asserted by Herbalife. Among other things, Herbalife presented an  
14 expert survey opining that a very high percentage of Herbalife distributors polled  
15 found "value" in Herbalife Event attendance, and an opinion that there is a positive,  
16 statistically significant relationship between attending Herbalife Events and  
17 distributor earnings. Plaintiffs presented rebuttal experts opining, among other things,  
18 that there is no such correlation and that event attendance does not lead to "success"  
19 in the Herbalife business opportunity. Plaintiffs' Counsel believe that, in  
20 consideration of all of the circumstances and after prolonged, serious, and contentious  
21 arm's-length negotiations in mediation with Herbalife, facilitated by Hon. S. James  
22 Otero (Ret.), the proposed Settlement is fair, reasonable, adequate, and in the best  
23 interests of the Settlement Class.

24       3.3 Benefits to Herbalife. Herbalife has concluded that it is in its best  
25 interests that the Action be settled on the terms set forth in the Settlement Agreement.  
26 Herbalife reached that conclusion after: (1) analyzing the factual and legal issues in  
27 the Action and considering the uncertainty of litigation; (2) determining that further  
28 conduct of the Action through trial and any possible appeals would be protracted and



1 expensive; and (3) considering the benefits of permitting Herbalife to conduct its  
2 business unhampered by the distractions of continued litigation.

3 **NOW, THEREFORE, IT IS HEREBY AGREED** by and between the  
4 parties, through their respective counsel, that the Action and the Released Claims be  
5 finally and fully settled, compromised, and released, and the Action shall be dismissed  
6 with prejudice, on the terms set forth herein, as between Plaintiffs and the Settlement  
7 Class Members on the one hand, and Herbalife on the other.

8 **4. MONETARY RELIEF**

9 4.1 Monetary Fund. Herbalife shall establish a non-reversionary  
10 “Settlement Fund” in the amount of \$12,500,000.00. This amount shall be deposited  
11 into an escrow account within ten (10) business days after the Court issues the  
12 Preliminary Approval Order. The Settlement Fund shall be applied: (a) first, to pay  
13 the costs of notice and settlement administration; (b) second, to pay Plaintiffs’  
14 Counsel’s attorneys’ fees and expenses and any plaintiff service awards in the amount  
15 awarded by the Court; and (c) third, to pay Settlement Class Members who submit a  
16 valid claim for a cash award (this final amount is the “Net Settlement Fund”). If there  
17 are insufficient funds available to satisfy all class claims, then claims to the Settlement  
18 Class Members shall be paid proportionately from the Net Settlement Fund. The Court  
19 shall oversee the distribution of any amounts remaining in the Net Settlement Fund  
20 pursuant to the *cy pres* doctrine to Consumer Federation of America. To the extent  
21 interest is earned on amounts held in escrow, it shall accrue and be added to the  
22 Settlement Fund. The Escrow Agent, on behalf of the Settlement Class, shall be  
23 responsible for all administrative, accounting, and tax compliance activities in  
24 connection with this escrow account and shall comply with the provisions of the  
25 escrow agreement.

26 4.2 Calculation of Pro Rata Cash Awards to Settlement Class Members.

27 4.2.1 Each Settlement Class Member shall be informed by the Claims  
28 Administrator as to the Herbalife Corporate Events for which that Settlement Class



1 Member purchased tickets according to Herbalife’s records.

2 4.2.2 A Settlement Class Member may claim additional Herbalife  
3 Events for which the Settlement Class Member purchased tickets if the Settlement  
4 Class Member certifies the following as to each additional Herbalife Event:

- 5 (a) The name of the event;
- 6 (b) The date of the event;
- 7 (c) The location of the event; and
- 8 (d) The cost of the ticket to attend the event.

9 4.2.3 Following the claims deadline set by the Court, the Claims  
10 Administrator shall calculate the Net Settlement Fund amount. The Claims  
11 Administrator shall then divide the Net Settlement Fund amount by the total number  
12 of Herbalife Event tickets purchased by Authorized Claimants (the “Per Event  
13 Award”).

14 4.2.4 Each Authorized Claimant shall be entitled to receive the Per  
15 Event Award for each Herbalife Event for which that Authorized Claimant purchased  
16 a ticket. Payments made to an Authorized Claimant may exceed the total amount that  
17 the Authorized Claimant spent on tickets to attend Herbalife Events during the Class  
18 Period, up to a total payment ceiling of 150 percent of the total amount spent on tickets  
19 by an Authorized Claimant.

20 4.2.5 The total amount of payments allocated to Authorized Claimants  
21 may not exceed the amount of the Net Settlement Fund. In the event that the total  
22 amount of payments allocated to Authorized Claimants exceeds the amount of the Net  
23 Settlement Fund, the Per Event Award shall be reduced according to the below  
24 graduated scale. Under the below scale, a given Authorized Claimant’s Herbalife Per  
25 Event Award shall be reduced in accordance with the number of Herbalife Events for  
26 which the Authorized Claimant purchased tickets.

- 27 (a) 2 to 5 Herbalife Events: Per Event Award.
- 28 (b) 6 to 10 Herbalife Events: 75 percent of Per Event Award for

1 the tickets purchased for this subset of events.

2 (c) 11 to 15 Herbalife Events: 50 percent of Per Event Award  
3 for the tickets purchased for this subset of events.

4 (d) 16-plus Herbalife Events: 25 percent of Per Event Award  
5 for the tickets purchased for this subset of events.

6 4.2.6 In the event that the total amount of payments allocated to  
7 Authorized Claimants exceeds the amount of the Net Settlement Fund under the above  
8 graduated scale, then cash awards shall be paid to Authorized Claimants on a pro rata  
9 basis.

10 4.3 Claim Forms. Claim Forms shall be available from the Claims  
11 Administrator, as set forth in the Notice to the Settlement Class. Completed Claims  
12 Forms shall be due to the Claims Administrator no later than 120 days after the entry  
13 of preliminary approval of the Settlement Agreement.

14 4.4 Opt-Out Request. Settlement Class Members may submit an Opt-Out  
15 request to the Claims Administrator prior to the Claims Deadline asking to be  
16 excluded from the Settlement Class. If a Settlement Class Member submits both a  
17 Claim Form and an Opt-Out request, the Claims Administrator shall disregard the  
18 Opt-Out request.

19 4.5 The claims process shall employ standard anti-fraud measures to be  
20 implemented by the Claims Administrator. These measures may include comparing  
21 data provided by Settlement Class Members with information otherwise available to  
22 Herbalife. If the Claims Administrator reasonably determines that it needs further  
23 information or documentation to properly process a claim, it will so notify the  
24 claimant in writing. If the claimant fails to correct any deficient conditions identified,  
25 the claim may be rejected in whole or in part by the Claims Administrator.

26 4.6 No Disbursement of Direct Relief Before Effective Date. The Escrow  
27 Agent and the Claims Administrator shall not disburse any portion of the Net  
28 Settlement Fund before the Effective Date, except as provided for in the Settlement

1 Agreement.

2       4.7 Privacy. The Claims Administrator shall take reasonable measures to  
3 the extent permitted by law to assert and to protect the privacy rights of Settlement  
4 Class Members, including by maintaining the confidentiality and security of and  
5 preventing the unauthorized access or acquisition of any financial or personal  
6 information submitted in connection with any claim for benefits pursuant to this  
7 Settlement Agreement. In the event of any unauthorized access to or acquisition of  
8 personal information concerning any Settlement Class Member as a direct result of  
9 the intentional or negligent acts or omissions of the Claims Administrator, the Claims  
10 Administrator shall be responsible for complying with any privacy, data security, or  
11 breach notification obligations under state or federal law, and will be solely  
12 responsible for directly providing notice to state agencies, affected Settlement Class  
13 Members, and/or other persons or entities.

14       4.8 Taxes on Escrow Account. The Settlement Fund shall constitute a  
15 qualified settlement fund within the meaning of Treasury Regulations Sections  
16 1.468B-1 through 1.468B-5, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 (1992). The  
17 Settling Parties shall treat the Settlement Fund as a qualified settlement fund for all  
18 reporting purposes under the federal tax laws. For the purpose of Section 468B of the  
19 Internal Revenue Code of 1986, as amended, and the regulations promulgated  
20 thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall  
21 timely and properly file all informational and other tax returns necessary or advisable  
22 with respect to the Settlement Fund (including, without limitation, the returns  
23 described in Treas. Reg. Section 1.468B-2(k)). Such returns shall be consistent with  
24 this Subsection and in all events shall reflect that all taxes (including any interest or  
25 penalties) on the income earned by the Settlement Fund shall be paid out of the income  
26 earned by the Settlement Fund. Taxes and tax expenses shall be treated as, and  
27 considered to be, a cost of administration of the Settlement Fund and paid without  
28 prior order from the Court. The Escrow Agent shall be obligated (notwithstanding

1 anything herein to the contrary) to withhold from the income earned by the Settlement  
2 Fund any funds necessary to pay such taxes, including the establishment of adequate  
3 reserves for any taxes and tax expenses (as well as any amounts that may be required  
4 to be withheld under Treas. Reg. Section 1.468B-2(1)(2)). The Escrow Agent shall  
5 maintain accurate records of all expenditures made pursuant to this Subsection, and  
6 shall provide the records upon request to Plaintiffs' Counsel and Herbalife's counsel.  
7 None of the Settling Parties, or any of their counsel, shall have any responsibility for  
8 the payment of taxes described in this Subsection. The parties hereto agree to  
9 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants  
10 to the extent reasonably necessary to carry out the provisions of this Subsection.

11 4.9 Discretion of Claims Administrator. The Claims Administrator, who  
12 shall be approved by the Court, shall have discretion to make equitable decisions to  
13 carry out the intent of the Settlement Agreement.

14 4.10 Continuing Jurisdiction Over Direct Relief. The Settlement Fund shall  
15 be within the control and jurisdiction of the Court, *custodia legis*, until such time as  
16 they are distributed pursuant to this Settlement Agreement.

## 17 **5. CORPORATE POLICIES**

18 5.1.1 All corporate policies set forth in this Section 5 shall be continued  
19 for no less than three years from the date the Court issues final approval of the  
20 Settlement Agreement or such earlier date as Herbalife shall elect to implement them.  
21 These policies shall relate to all U.S. Herbalife distributors, regardless of whether they  
22 are Settlement Class Members or opt out of the Settlement Class.

23 5.1.2 Herbalife shall amend its U.S. Rules of Conduct and Distributor  
24 Policies to indicate that U.S. event attendance is not mandatory and does not guarantee  
25 financial success.

26 5.1.3 Herbalife shall amend its U.S. Rules of Conduct and Distributor  
27 Policies to indicate that representations made by distributors that U.S. event  
28 attendance is mandatory or that it guarantees financial success are prohibited.

1           5.1.4 U.S. Herbalife Corporate Event flyers, and the portion of  
2 Herbalife’s website promoting U.S. STS events, shall include a disclaimer that U.S.  
3 event attendance is not mandatory and does not guarantee financial success.

4           5.1.5 Herbalife shall amend its U.S. Rules of Conduct and Distributor  
5 Policies to provide that ticket purchases for U.S. Herbalife Corporate Events shall be  
6 refundable via the company’s existing buyback procedure pursuant to its Gold  
7 Standard Guarantee.

8           (a) Additionally, Herbalife shall also allow distributors to  
9 cancel their U.S. Herbalife Corporate Event ticket  
10 purchases within 24 hours of purchase.

11           5.1.6 Herbalife distributors shall be precluded from purchasing more  
12 than two tickets per distributorship for any given U.S. Herbalife Corporate Event.

13 **6. ENTRY OF PRELIMINARY APPROVAL ORDER, NOTICE TO THE**  
14 **SETTLEMENT CLASS, AND ENTRY OF FINAL JUDGMENT**

15           6.1 Motion for Preliminary Approval. Promptly upon execution of this  
16 Settlement, the Settling Parties shall submit this Settlement Agreement together with  
17 its exhibits and shall jointly apply to the Court for entry of the Preliminary Approval  
18 Order, which includes provisions that, among other things, will:

19           6.1.1 Preliminarily approve the Settlement Agreement as being  
20 reasonable and the product of good faith negotiations;

21           6.1.2 Certify for settlement purposes only the Settlement Class under  
22 Rule 23 of the Federal Rules of Civil Procedure;

23           6.1.3 Approve the Claim Form substantially in the form attached as  
24 Exhibit C, and approve A.B. Data as the Claims Administrator, or as otherwise  
25 proposed by the parties or selected by the Court;

26           6.1.4 Approve the Notice substantially in the form attached as Exhibit  
27 A and the Summary Notice substantially in the form attached as Exhibit B;

28           6.1.5 Order that the Summary Notice be disseminated in accordance

1 with the Preliminary Approval Order;

2           6.1.6 Provide that any person falling within the definition of the  
3 Settlement Class who desires to be excluded from the Settlement Class must request  
4 exclusion by submitting a timely and valid exclusion request, in compliance with the  
5 instructions in the Notice of Proposed Settlement, to the Claims Administrator no later  
6 than 120 days after the entry of preliminary approval of the Settlement Agreement;

7           6.1.7 Provide that persons falling within the definition of the Settlement  
8 Class who do not file valid and timely requests for exclusion will be: (i) bound by the  
9 Final Judgment dismissing the Action on the merits and with prejudice; and (ii)  
10 permanently barred and enjoined from commencing, prosecuting, or participating in  
11 the recovery in any direct or representative action, or any action in any other capacity,  
12 asserting or relating to any of the Released Claims, in the manner described in Section  
13 8;

14           6.1.8 Find that the notice to be given in accordance with the Preliminary  
15 Approval Order (including the contents of the Notice and Summary Notice and the  
16 proposed means for effecting notice to persons falling within the definition of the  
17 Settlement Class) constitutes the best notice practicable under the circumstances and  
18 constitutes valid, due, and sufficient notice to all members of the Settlement Class,  
19 complying fully with the requirements of Rule 23 of the Federal Rules of Civil  
20 Procedure, the Constitution of the United States, and any other applicable law;

21           6.1.9 Order that notice to persons falling within the definition of the  
22 Settlement Class shall be structured to be as efficient as possible and to make  
23 maximum use of notice by email and other electronic means and that such notice shall  
24 be undertaken by the Claims Administrator;

25           6.1.10 Schedule a Settlement Hearing to consider and determine  
26 whether the Settlement proposed under the terms of this Settlement Agreement should  
27 be finally approved as fair, reasonable, and adequate, and whether the Final Judgment  
28 approving the Settlement Agreement and resolving the Action should be entered, and

1 to consider the request for an award of attorney’s fees and reimbursement of expenses;

2           6.1.11 Provide that the hearing on this Settlement Agreement and any  
3 request for an award of attorneys’ fees and reimbursement of expenses may, from  
4 time to time and without further notice to the Settlement Class, be continued or  
5 adjourned by order of the Court;

6           6.1.12 Provide that any Settlement Class Member seeking to object to  
7 (i) the proposed Settlement, (ii) entry of Final Judgment, (iii) entry of an order  
8 approving the Settlement Agreement, or (iv) any proposed award of attorneys’ fees  
9 and reimbursement of expenses to Plaintiffs’ Counsel (an “Objector”) shall, no later  
10 than 120 days after entry of the Court’s Preliminary Approval Order, file a written  
11 objection with the Court stating the basis for the Objector’s objection(s) and whether  
12 the Objector intends to appear at the Settlement Hearing;

13           6.1.13 Provide that, on the Effective Date, all Settlement Class  
14 Members, whether or not they file a Claim Form or sign a release, shall be barred  
15 from asserting any Released Claims against any of the Released Parties, and each and  
16 all Settlement Class Members shall conclusively be deemed to have released and  
17 forever discharged any and all such Released Claims as against all of the Released  
18 Parties, in the manner described in Section 8.

19           6.2 Cooperation. Herbalife shall cooperate in providing to the Claims  
20 Administrator the names, email addresses, Herbalife Event attendance information,  
21 last-known addresses of the Settlement Class Members, and all other contact  
22 information reasonably necessary for the Claims Administrator to provide the notice  
23 contemplated by Section 4.2.1 and this Section 6, to the extent Herbalife has such  
24 information. Such information shall be provided to the Claims Administrator  
25 pursuant to a confidentiality agreement.

26           6.3 Motion for Final Judgment. If, after the Settlement Hearing scheduled  
27 by the Court in the Preliminary Approval Order, the Court approves the Settlement  
28 Agreement, then counsel for the Settling Parties shall request that the Court enter



1 Final Judgment.

2       6.4 Dismissal of Florida Action. Within three (3) business days of the  
3 Effective Date, the related Florida action stylized as *Lavigne, et al. v. Herbalife Ltd.,*  
4 *et al.*, Case No. 1:17-cv-23429-MGC (S.D. Fla.) shall be dismissed with prejudice.

5 **7. NO ADMISSION OF FAULT, LIABILITY, OR WRONGDOING**

6       7.1 The Settlement is Not an Acknowledgement of Liability or Wrongdoing.  
7 Herbalife enters into this Settlement Agreement without in any way acknowledging  
8 any fault, liability, or wrongdoing of any kind. Herbalife continues to deny all of the  
9 material allegations in the Complaint and First Amended Complaint and assert that  
10 Plaintiffs' claims are without merit.

11       7.2 The Settlement Raises No Inference of Liability or Wrongdoing. Neither  
12 this Settlement Agreement, nor any of the negotiations or proceedings connected with  
13 it, nor any other action taken to carry out this Settlement Agreement by any of the  
14 Settling Parties shall be construed as, or shall be used as, or shall raise any  
15 presumption or inference of, an admission or concession by or against or respecting  
16 Herbalife of the truth of any of the allegations in the Complaint or First Amended  
17 Complaint, or of any liability, fault, or wrongdoing.

18       7.3 The Settlement is Not Evidence of Liability or Wrongdoing. Neither this  
19 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations  
20 or proceedings connected with them shall be offered as evidence or received in  
21 evidence in any pending or future civil, criminal, or administrative action or be used  
22 to create any inference or presumption of liability or an admission of any kind by  
23 Herbalife, except as may be necessary to enforce the terms of this Settlement  
24 Agreement.

25 **8. RELEASE**

26       8.1 As of the Effective Date and in consideration of this Settlement  
27 Agreement and the benefits extended to the Settlement Class, Herbalife Nutrition  
28 Ltd., Herbalife International, Inc., and Herbalife International of America, Inc., and

1 each of their present and former, direct and indirect, subsidiaries, parents, affiliates,  
2 unincorporated entities, divisions, groups, officers, directors, shareholders, partners,  
3 partnerships, joint ventures, employees, agents, servants, assignees, successors,  
4 insurers, indemnitees, attorneys, transferees, and/or representatives, as well as any  
5 non-Settlement Class Members who spoke at, presented at, planned, or promoted any  
6 Herbalife Event or sold tickets to any Herbalife Event during the Class Period  
7 (collectively, the “Released Parties”) shall be released and forever discharged by (i)  
8 the Named Plaintiffs, for themselves and as the representatives of each Settlement  
9 Class Member; (ii) each Settlement Class Member on behalf of himself or herself or  
10 itself; and (iii) their respective present and former, direct and indirect, subsidiaries,  
11 parents, affiliates, unincorporated entities, divisions, groups, officers, directors,  
12 shareholders, partners, partnerships, joint ventures, employees, agents, servants,  
13 assignees, successors, insurers, indemnitees, attorneys, transferees, spouses, and/or  
14 representatives (collectively, the “Releasing Parties”) from all claims, demands,  
15 rights, liabilities, suits, or causes of action, known or unknown, that were or could  
16 have been asserted in the Action that are based upon, arise out of, or relate to Herbalife  
17 Events, whether organized by Herbalife or independent distributors (“Released  
18 Claims”).

19       8.2    The Released Claims include any unknown claims that reasonably could  
20 have arisen out of the same facts alleged in the Action that the Settlement Class  
21 Members do not know or suspect to exist in their favor at the time of the release,  
22 which, if known by them, might have affected their settlement with, and release of,  
23 the Released Parties or might have affected their decision not to object to this  
24 Settlement. With respect to the Released Claims only, the Settlement Class Members  
25 stipulate and agree that, upon the Effective Date, the Settlement Class Members shall  
26 be deemed to have, and by operation of the Final Judgment shall have, expressly  
27 waived and relinquished, to the fullest extent permitted by law, the provisions, rights,  
28 and benefits of Section 1542 of the California Civil Code, or any other similar

1 provision under federal or state law, which provides:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
3 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
4 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
5 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
6 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
7 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8 8.3 The Settlement Class Members may hereafter discover facts in addition  
9 to or different from those they now know or believe to be true with respect to the  
10 subject matter of the Released Claims, but upon the Effective Date, shall be deemed  
11 to have, and by operation of the Final Judgment shall have, fully, finally, and forever  
12 settled and released any and all of the Released Claims, whether known or unknown,  
13 suspected or unsuspected, contingent or non-contingent, which now exist, or  
14 heretofore have existed, upon any theory of law or equity now existing or coming into  
15 existence in the future, for damages, injunctive relief, rescission, disgorgement, or  
16 restitution or any other right, remedy, or relief of every nature and description  
17 whatsoever, whether based on federal, state, local, statutory, or common law or any  
18 other law, rule, or regulation, including the law of any jurisdiction outside the United  
19 States, that were brought or could have been brought in the complaints in this Action  
20 without regard to the subsequent discovery or existence of such different or additional  
21 facts.

22 8.4 Continuing Jurisdiction. Except for the enforcement of the Final  
23 Judgment entered pursuant to this Settlement Agreement, the Releasing Parties shall  
24 be barred from prosecuting any proceeding against any of the Released Parties with  
25 respect to any Released Claim. The Court shall retain jurisdiction to enforce the Final  
26 Judgment, releases, and bars to suits contemplated by this Settlement Agreement. It  
27 is further agreed that the Settlement Agreement and the Final Judgment may be  
28 pleaded as a complete defense to any proceeding subject to this Section.

**9. EXCLUSION (OPTING OUT) FROM THE SETTLEMENT CLASS**

9.1 Any Person falling within the definition of the Settlement Class who

1 does not wish to participate in the Net Settlement Fund and be bound by the dismissals  
2 and releases provided for in this Settlement Agreement must request exclusion from  
3 the Settlement Class. A request for exclusion must state: (1) the name, address, and  
4 telephone number of the Person requesting exclusion, (2) the statement “I wish to  
5 exclude myself from the Settlement Class and do not wish to participate in the  
6 Settlement in *Lavigne, et al. v. Herbalife*, No. 2:18-cv-07480-JAK (MRWx)” or  
7 substantially similar words to this effect that are clear and unambiguous, and (3)  
8 signed by the individual personally and not by a lawyer or someone acting on that  
9 person’s behalf. “Mass” or “class” opt outs made on behalf of multiple persons or  
10 classes of persons will be deemed invalid. The exclusion request must be sent by mail  
11 or email to the Claims Administrator and postmarked or emailed on or before the date  
12 specified in the Preliminary Order. The Claims Administrator shall deliver copies of  
13 any and all requests for exclusion to Plaintiffs’ Counsel and Herbalife’s counsel. The  
14 Claims Administrator shall make such deliveries on a weekly basis and shall ensure  
15 that the final such delivery is received by Plaintiffs’ Counsel and Herbalife’s counsel  
16 at least thirty (30) days before the Settlement Hearing. Plaintiffs’ Counsel shall file  
17 any and all such requests for exclusion with the Court at or before the Settlement  
18 Hearing. All Persons who submit valid and timely requests for exclusion in the  
19 manner set forth in this Section shall have no rights under this Settlement Agreement,  
20 and shall not share in the distribution of the Net Settlement Fund. All Persons falling  
21 within the definition of the Settlement Class who do not request exclusion in the  
22 manner set forth in this Section shall be Settlement Class Members and shall be bound  
23 by this Settlement Agreement and the Final Judgment. Any Person falling within the  
24 definition of the Settlement Class who timely requests exclusion shall, upon approval  
25 of the Court, be excluded from the Settlement Class certified pursuant to Fed. R. Civ.  
26 Proc. 23(b)(3).

27 **10. ATTORNEYS’ FEES AND DISBURSEMENT OF EXPENSES**

28 10.1 Application for Attorneys’ Fees and Expenses. Plaintiffs’ Counsel may

1 apply to the Court at the Settlement Hearing for an award of attorneys' fees and  
2 reimbursement of their expenses and costs from the Settlement Fund in an amount to  
3 be determined by the Court as a percentage of the entire value of settlement, including  
4 monetary and other relief (such as corporate reforms), as a common fund, in  
5 accordance with Ninth Circuit Court of Appeals precedent and the pertinent law.  
6 Plaintiffs' Counsel anticipates requesting an award of attorneys' fees. Plaintiffs'  
7 Counsel will file a separate motion with the Court requesting an award of attorney  
8 fees, costs to be reimbursed, and any enhancements from the Settlement Fund in an  
9 amount consistent with Ninth Circuit precedent. Plaintiffs and Plaintiffs' Counsel  
10 agree that they will not seek to collect any attorneys' fees, expenses, or costs from  
11 any source other than the Settlement Fund. To the extent the Court may award fees to  
12 counsel for any Settlement Class Member appearing before the Court in connection  
13 with the approval or implementation of this Settlement Agreement, such fees shall be  
14 payable solely from the Settlement Fund.

15       10.2 Payment of Attorneys' Fees and Expenses Award. The attorneys' fees,  
16 expenses, and costs approved by the Court to be distributed to Plaintiffs' Counsel  
17 shall be paid by the Escrow Agent to Plaintiffs' Counsel from the Settlement Fund  
18 within five (5) business days after the Effective Date.

19       10.3 Named Plaintiffs' Compensation. The Court may award reasonable  
20 incentive compensation to the Named Plaintiffs for their service in the case, which  
21 shall come from the Settlement Fund. Any such Court-ordered compensation shall be  
22 paid within (5) five business days after the Effective Date. The Released Parties shall  
23 have no responsibility for, and no liability whatsoever with respect to, any incentive  
24 compensation to any of the Named Plaintiffs, except as expressly provided in  
25 Subsection 4.1.

26       10.4 No Effect On Settlement. Any orders or proceedings relating to the  
27 application of Plaintiffs' Counsel for an award of attorneys' fees, costs, and expenses  
28 shall not operate to terminate or cancel this Settlement Agreement and shall have no

1 effect on the finality of the Final Judgment to be entered pursuant to this Settlement  
2 Agreement.

3       10.5 Released Parties Not Responsible for Payment of Award. The Released  
4 Parties shall have no responsibility for, and no liability whatsoever with respect to,  
5 any payment to Plaintiffs' Counsel from the Settlement Fund that may occur, except  
6 as expressly provided in Subsection 4.1.

7       10.6 Released Parties Not Responsible for Allocation of Award. The  
8 Released Parties shall have no responsibility for, and no liability whatsoever with  
9 respect to, the allocation among Plaintiffs' Counsel, and any other Person who may  
10 assert some claim thereto, of any award of attorneys' fees, costs, or expenses that the  
11 Court may make.

12 **11. TERMINATION OF SETTLEMENT AGREEMENT**

13       11.1 Conditions Permitting Termination. Herbalife or Plaintiffs may elect to  
14 terminate the Settlement Agreement, at their option, in the event that more than five  
15 percent (5%) of members of the Settlement Class exclude themselves from the  
16 Settlement pursuant to the provisions of Section 9.

17       11.2 Procedure for Termination. In order to terminate this Settlement  
18 Agreement pursuant to Subsection 11.1, a party must serve a written notice of  
19 termination on the Court and on opposing counsel, by hand delivery or by First-Class  
20 Mail. Such written notice must be delivered or postmarked within ten (10) business  
21 days after counsel for the party seeking termination of the Settlement Agreement  
22 receives from the Claims Administrator the last weekly delivery of copies of requests  
23 for exclusion as provided for in Section 9 or within ten (10) business days after the  
24 Court grants any additional request for exclusion from the Settlement Class for any  
25 reason.

26       11.3 Consequences of Termination. If the Effective Date does not occur or if  
27 a party terminates this Settlement Agreement as provided in this Section 11, then this  
28 Settlement Agreement shall have no further force or effect and the Settling Parties

1 shall revert to their respective positions as of the date that the Settlement Agreement  
2 was executed by Plaintiffs and Herbalife as though this Settlement Agreement had  
3 never been executed. In that event, within five (5) business days after written  
4 notification of such event is sent by Herbalife’s counsel or Plaintiffs’ Counsel to the  
5 Escrow Agent, the Settlement Fund, less expenses and any costs which have been  
6 disbursed pursuant to Subsections 4.1 and/or 4.2, shall be refunded by the Escrow  
7 Agent to Herbalife’s counsel. In such event, Herbalife shall be entitled to any tax  
8 refund owing to the Settlement Fund. At the request of Herbalife, the Escrow Agent  
9 or its designee shall apply for any such refund and pay the proceeds, after deduction  
10 of any fees or expenses incurred in connection with such application(s) for a refund,  
11 to Herbalife.

12       11.4 Inadmissible for Purposes of Certifying a Litigation Class. If the  
13 Settlement Agreement is terminated pursuant to the provisions set forth in this Section  
14 11 or the Effective Date does not occur for any reason, the parties will not offer this  
15 Settlement Agreement, any agreement negotiated between the parties in connection  
16 with or regarding the Settlement or the Settlement Agreement, or any motion seeking  
17 approval of the Settlement or Settlement Agreement in connection with a motion to  
18 certify a litigation class or in any other proceeding in this Action.

19 **12. OTHER PROVISIONS OF THE SETTLEMENT**

20       12.1 Public Communications. The Settling Parties shall consult concerning  
21 separate communications to the public with respect to the Settlement, and shall agree  
22 that any other public communications regarding the Settlement will be consistent with  
23 those communications. For a period of one year from the date the Court issues final  
24 approval of the Settlement Agreement, counsel for the Settling Parties agree not to  
25 disparage any Settling Parties on social media or in any statement that will be publicly  
26 disseminated.

27       12.2 Stay of Proceedings. Upon the execution of this Settlement Agreement,  
28 all discovery and other proceedings in the Action shall be stayed until further order



1 of the Court, except for proceedings that may be necessary to implement the  
2 Settlement or comply with or effectuate the terms of this Settlement Agreement.

3       12.3 Restoration to Status Quo Upon Termination. In the event this  
4 Settlement Agreement is not approved by the Court in its present form, or the  
5 conditions required for the Settlement Agreement to be consummated do not occur,  
6 then the Settling Parties hereto shall be restored to their respective positions as of the  
7 date that the Settlement Agreement was executed by Plaintiffs and Herbalife, the  
8 terms and provisions of the Settlement Agreement shall have no further force and  
9 effect with respect to the Settling Parties, and to the extent permitted by law, the  
10 Settlement Agreement and associated exhibits shall not be used in any action or  
11 proceeding for any purpose, and any orders entered by the Court in accordance with  
12 the terms of the Settlement Agreement shall be treated as vacated nunc pro tunc.

13       12.4 Best Efforts and Cooperation. The Settling Parties acknowledge that it  
14 is their intent to consummate this Settlement Agreement. Accordingly, the Settling  
15 Parties agree to cooperate to the extent necessary to effectuate and implement all  
16 terms and conditions of the Settlement Agreement and exercise their best efforts to  
17 establish the foregoing terms and conditions of the Settlement Agreement. The  
18 Settling Parties further agree to cooperate in effecting notice to members of the  
19 Settlement Class and in securing the Court's approval of the Settlement.

20       12.5 Authorization of Counsel. The undersigned counsel represent that they  
21 are fully authorized to execute and enter into the terms and conditions of the  
22 Settlement Agreement on behalf of their respective clients.

23       12.6 Entire Agreement. This Settlement Agreement (along with the exhibits  
24 thereto) constitutes the entire agreement among the Settling Parties and supersedes  
25 any prior agreements or understandings between them. All terms of this Settlement  
26 Agreement are contractual and not mere recitals and shall be construed as if drafted  
27 by all Settling Parties. The terms of this Settlement Agreement are and shall be  
28 binding upon and inure to the benefit of each of the Settling Parties and Settlement

1 Class Members, their agents, attorneys, employees, heirs, successors, and assigns, and  
2 upon all other persons claiming any interest in the subject matter hereto through any  
3 of the parties hereto, including any Plaintiff or Settlement Class Member.

4 12.7 Amendment. This Settlement Agreement may be amended or modified  
5 only by a written instrument signed by or on behalf of all parties hereto or their  
6 successors in interest. Amendments and modifications may be made without notice  
7 to the Settlement Class, unless notice is required by the Court.

8 12.8 Execution in Counterparts. This Settlement Agreement may be executed  
9 in counterparts or by facsimile, with each counterpart or facsimile signature having  
10 the same force and effect as an original. All executed counterparts and each of them  
11 shall be deemed to be one and the same instrument. Counsel for the parties to this  
12 Settlement Agreement shall exchange among themselves original signed counterparts  
13 and a complete set of original executed counterparts shall be filed with the Court.

14 12.9 Jurisdiction. The Court shall have exclusive and continuing jurisdiction  
15 over the implementation, interpretation, and execution of the Final Judgment and this  
16 Settlement Agreement and all exhibits thereto, with respect to all parties hereto,  
17 including all Settlement Class Members.

18 12.10 Governing Law. The rights and obligations of the parties to the  
19 Settlement Agreement shall be construed and enforced in accordance with, and  
20 governed by, the laws of the State of California.

21 12.11 Headings. The headings and subheadings to this Settlement Agreement  
22 have been inserted for convenience only and are not to be considered when construing  
23 the provisions of this Settlement Agreement.

24 12.12 Severability. In the event any one or more of the provisions contained  
25 in this Settlement Agreement shall for any reason be held to be invalid, illegal, or  
26 unenforceable in any respect, such invalidity, illegality, or unenforceability shall not  
27 affect any other provision if the Settling Parties all elect to proceed as if such invalid,  
28 illegal, or unenforceable provision had never been included in the Agreement.

1 IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement  
2 to be executed on its behalf by its duly authorized counsel of record, all as of the day  
3 set forth below.

4  
5 **Local Rule 5-4.3.4(a)(2)(i) Compliance:** Filer attests that all other signatories  
6 listed concur in the filing's content and have authorized this filing.

7 DATED: May 27, 2022 Mark Migdal & Hayden

8  
9 By: /s/ Etan Mark  
10 Etan Mark  
11 Attorneys for Plaintiffs Patricia Rodgers,  
12 Jennifer Ribalta, and Izaar Valdez

13 DATED: May 27, 2022 Mark T. Dooks  
14 Paul S. Chan  
15 Gopi K. Panchapakesan  
16 Jonathan M. Jackson  
17 Bird, Marella, Boxer, Wolpert, Nessim,  
18 Dooks, Lincenberg & Rhow, P.C.

19 By: /s/ Paul S. Chan  
20 Paul S. Chan  
21 Attorneys for Defendant Herbalife  
22 International of America, Inc.  
23  
24  
25  
26  
27  
28