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16 Attorneys for the Representative Plaintiffs  
17 Nancy Jacobs and Annette M. Sanchez,  
18 Individually and on behalf of all others  
19 similarly situated; and on behalf of the  
20 general public

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20 NANCY JACOBS andANNETTE M,  
21 SANCHEZ Individually On Behalf Of  
22 Themselves And All Others Similarly  
23 Situated, and on Behalf of the General Public,

Case No. CV-02-1431 PA (RCx)

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Plaintiffs,

**PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

vs.

**JURY TRIAL DEMANDED**

HERBALIFE INTERNATIONAL, INC.,  
HERBALIFE INTERNATIONAL OF  
AMERICA, INC., DREAM BUILDERS &  
ASSOCIATES INTERNATIONAL, INC.,  
H.B. INTERNATIONAL GROUP, INC.,  
ANTHONY POWELL, DORAN ANDRY,  
CRAIG M. TSUTAKAWA, CAROLINE  
TSUTAKAWA, TARUN JUNEJA, JOHN  
BEALL, BRETT BARTHOLOMEW, LEAH  
SINGLETON, STEPHEN COMBS and  
DEBERA COMBS,

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Defendants.

Individual and Representative Plaintiffs, Nancy Jacobs and Annette M. Sanchez,  
on behalf of themselves and all others similarly situated, allege as follows:

**I. JURISDICTION AND VENUE**

1. Plaintiffs bring this action pursuant to the Racketeer Influenced and Corrupt  
Organizations ("RICO") sections of Title IX of the Organized Crime Control Act of  
1970 [18 U.S.C. §§1961-1968], as well as the statutory and common law of the State  
of California.



1 capacities on behalf of the Plaintiff Class of United States Herbalife Supervisors who  
2 are or have been members of a Lead Generation System known as “The Newest Way  
3 to Wealth” (“NWTW”), the d/b/a of defendant Dream Builders & Associates  
4 International, Inc.

5 5. At all times herein relevant:

6 a. Defendant Herbalife International, Inc. was a corporation organized  
7 and existing under the laws of the State of Nevada having its principal place of  
8 business at 1800 Century Park East, Los Angeles, California 90067.

9 b. Defendant Herbalife International of America, Inc. was a  
10 corporation organized and existing under the laws of the State of California, having its  
11 principal place of business at 1800 Century Park East, Los Angeles, California 90067.  
12 Herbalife International of America, Inc. has common and/or overlapping management  
13 with and is owned and controlled by Herbalife International, Inc. Defendants Herbalife  
14 International, Inc. and Herbalife International of America, Inc. are collectively referred  
15 to herein as "Herbalife" or the “Herbalife Defendants” except where the context  
16 indicates otherwise.

17 c. Defendant Dream Builders & Associates International, Inc.  
18 (“Dream Builders”) was a corporation organized and existing under the laws of the  
19 State of Nevada, having its principal place of business at 1004 Central Avenue South  
20 Kent, Washington 98032-6103.

21 d. Defendant H.B. International Group, Inc. was a corporation  
organized and existing under the laws of the State of Nevada, having its principal place  
of business at 1241 E. Dyer Road #110, Santa Anna, California 92705-5750.

e. Defendant Anthony Powell ("Powell") was an executive officer

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1 and/or director of Dream Builders and was actively engaged in business in this District  
2 on behalf of Herbalife and Dream Builders and committed the wrongs alleged herein in  
3 this District and throughout the United States. Powell also has the ability to and does  
4 in fact, conduct or participate in the affairs of Herbalife and Dream Builders. In 2001  
5 Powell achieved the rank of “President’s Team” in the Herbalife Sales and Marketing  
6 Plan. Powell, along with other of the Defendants, conceived, authorized the use of and  
7 operated the Lead Generation System known as “The Newest Way to Wealth”  
8 (“NWTW” or the “NWTW System”), the fraudulent business opportunity marketing  
9 scheme complained of herein, made the misrepresentations alleged herein, and drafted  
and/or adopted the fraudulent NWTW promotional materials discussed below.

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10 f. Defendant Doran Andry ("Andry") is one of Herbalife’s top  
11 distributors, a member of Herbalife’s Chairman’s Club, the highest level in the  
12 Herbalife Sales and Marketing Plan. Andry represents that he earns \$500,000 per  
13 month from his Herbalife business. Andry is president, chief executive officer and/or  
14 director of Defendant H.B. International Group, Inc., and a close associate of  
15 Defendant Powell. Andry and Defendant Powell were actively involved in the  
16 conception, formation and operation of the NWTW System as alleged herein. As a  
17 member of Herbalife’s Chairman’s Club, Andry met regularly with the officers and  
18 directors of Herbalife to set Herbalife’s policies, procedures and regulations governing  
19 all distributor representations and solicitations. Andry has the ability to and does in  
20 fact, conduct or participate in the affairs of Herbalife, H.B. International Group, Inc.  
21 and Dream Builders. Andry authorized the use of the NWTW System, the fraudulent  
business opportunity complained of herein, made the misrepresentations alleged herein,  
and drafted and/or adopted the fraudulent NWTW promotional materials discussed

1 below.

2 g. Defendant Craig M. Tsutakawa (“C.M. Tsutakawa”) is one of  
3 Herbalife’s top distributors, and achieved the rank of Presidents Team in November of  
4 1999. C.M. Tsutakawa has the ability to and does in fact, conduct or participate in the  
5 affairs of Defendants Dream Builders, H.B. International Group, Inc. and Herbalife.  
6 C.M. Tsutakawa was a close associate of Defendant Powell and was actively involved  
7 in the conception, formation and/or operation of the NWTW System, authorized the  
8 use of the NWTW System, the fraudulent business opportunity complained of herein,  
9 made the misrepresentations alleged herein, and drafted and/or adopted the fraudulent  
10 NWTW promotional materials discussed below.

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11 h. Defendant Caroline Tsutakawa (“Tsutakawa”) is one of  
12 Herbalife’s top distributors, and achieved the rank of Presidents Team in November of  
13 1999. Tsutakawa has the ability to and does in fact, conduct or participate in the  
14 affairs of Defendants Dream Builders, H.B. International Group, Inc. and Herbalife.  
15 Tsutakawa was a close associate of Defendant Powell and was actively involved in the  
16 conception, formation and/or operation of the NWTW System, authorized the use of  
17 the NWTW System, the fraudulent business opportunity complained of herein, made  
18 the misrepresentations alleged herein, and drafted and/or adopted the fraudulent  
19 NWTW promotional materials discussed below.

20 i. Defendant Tarun Juneja (“Juneja”) is one of Herbalife’s President’s  
21 Team distributors, an executive officer and/or director of Dream Builders and a close  
associate of Defendants Powell and Andry. Juneja was actively involved in the  
conception, formation and/or operation of the NWTW System as alleged herein.  
Juneja has the ability to and does in fact, conduct or participate in the affairs of Dream

1 Builders and Herbalife. Juneja authorized the use of the NWTW System, the  
2 fraudulent business opportunity complained of herein, made the misrepresentations  
3 alleged herein, and drafted and/or adopted the fraudulent NWTW promotional  
4 materials discussed below.

5 j. Defendant John Beall (“Beall”) is one of Herbalife’s top distributors,  
6 an executive officer and/or director of Dream Builders and a close associate of  
7 Defendant Powell. Beall was actively involved in the conception, formation and/or  
8 operation of the NWTW System as alleged herein. Beall has the ability to and does in  
9 fact, conduct or participate in the affairs of Dream Builders and Herbalife. Beall  
10 authorized the use of the NWTW System, the fraudulent business opportunity  
11 complained of herein, made the misrepresentations alleged herein, and drafted and/or  
12 adopted the fraudulent NWTW promotional materials discussed below.

13 k. Defendant Brett Bartholomew (“Bartholomew”) is one of  
14 Herbalife’s top distributors, an executive officer and/or director of Dream Builders and  
15 a close associate of Defendant Powell. Bartholomew was actively involved in the  
16 conception, formation and/ or operation of the NWTW System as alleged herein.  
17 Bartholomew has the ability to and does in fact, conduct or participate in the affairs of  
18 Dream Builders and Herbalife. Bartholomew authorized the use of the NWTW  
19 System, the fraudulent business opportunity complained of herein, made the  
20 misrepresentations alleged herein, and drafted and/or adopted the fraudulent NWTW  
21 promotional materials discussed below.

l. Defendant Leah Singleton (“Singleton”), formerly sued herein as  
Leah Graham, is one of Herbalife’s top distributors, an executive officer and/or director  
of Dream Builders and a close associate of Defendant Powell. Singleton was actively

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1 involved in the conception, formation and/or operation of the NWTW System as  
2 alleged herein. Singleton has the ability to and does in fact, conduct or participate in  
3 the affairs of Dream Builders. Singleton authorized the use of the NWTW System, the  
4 fraudulent business opportunity complained of herein, and made the misrepresentations  
5 alleged herein, and drafted and/or adopted the fraudulent NWTW promotional  
6 materials discussed below.

7 m. Defendant Steven Combs (“S. Combs”) is one of Herbalife’s  
8 President’s Team distributors, and a close associate of Defendant Powell. S. Combs  
9 was actively involved in the conception, formation and/or operation of the NWTW  
10 System as alleged herein. S. Combs has the ability to and does in fact, conduct or  
11 participate in the affairs of Dream Builders and Herbalife. S. Combs authorized the use  
12 of the NWTW System, the fraudulent business opportunity complained of herein,  
13 made the misrepresentations alleged herein, and drafted and/or adopted the fraudulent  
14 NWTW promotional materials discussed below.

15 n. Defendant Debera Combs (“D. Combs”) is one of Herbalife’s  
16 President’s Team distributors, and a close associate of Defendant Powell. D. Combs  
17 was actively involved in the conception, formation and/or operation of the NWTW  
18 System as alleged herein. D. Combs has the ability to and does in fact, conduct or  
19 participate in the affairs of Dream Builders and Herbalife. D. Combs authorized the  
20 use of the NWTW System, the fraudulent business opportunity complained of herein,  
21 made the misrepresentations alleged herein, and drafted and/or adopted the fraudulent  
NWTW promotional materials discussed below.

6. Defendants Powell, Andry, C.M. Tsutakawa, Tsutakawa, Juneja, Beall,  
Bartholomew, Singleton, S. Combs and D. Combs are sometimes collectively referred

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1 to herein as the "Individual Defendants."  
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3  
4 **III. FACTS COMMON TO ALL CAUSES OF ACTION**

5 **A. Background of Herbalife**

6 7. Herbalife began operations in 1980. Herbalife is a multi-level or  
7 "network" marketing company that sells a wide variety of weight management  
8 products, nutritional supplements and personal care products throughout the United  
9 States and in approximately 50 countries. Defendant Herbalife International, Inc. does  
10 business in its own behalf and through 47 domestic and foreign subsidiaries, including  
11 Defendant Herbalife International of America, Inc. Herbalife International, Inc.'s Form  
12 10-K Annual Report for the year 2000 (the "year 2000 10-K") reported retail sales for  
13 that year in the amount of \$1.764 billion, and net income for that year of \$36,919,000.

14 8. The year 2000 10-K represents that Herbalife markets 179 products under  
15 various trade names, including "thermojetics." That document also discloses that  
16 Herbalife creates and sells to distributors various marketing materials purportedly to  
17 assist Herbalife distributors in marketing Herbalife products and recruiting new  
18 Herbalife distributors. These marketing materials include written educational and  
19 promotional documents, videotapes, audio cassette recordings and so-called  
20 "distributor kits," the purchase of which is a prerequisite to obtaining an Herbalife  
21 distributorship.

22 9. The year 2000 10-K represents that Herbalife's products are distributed  
23 exclusively through a "network marketing system" consisting of over one million  
24 distributors.

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10. The Herbalife network marketing system is jointly managed by Herbalife’s executive officers and a select group of distributors at the President’s Team level. Herbalife’s senior distributors, including the Individual Defendants, are deeply and intimately involved in its sales, training, motivation and strategic planning efforts.

11. The management role of Herbalife’s high level distributors is emphasized in Herbalife’s publicly filed documents. For instance, Herbalife’s February 5, 1997 Form S-3 (the “1997 Prospectus”) states that “Mark Hughes and the Company’s top distributors ... are committed to training and motivating Herbalife’s distributors.” The 1997 Prospectus reported that Herbalife’s “most senior distributors consist of approximately 260 distributors (as of December 31, 1996) who comprise the President’s Team and who work closely with Mark Hughes to develop and implement new initiatives and strategies for increasing sales and distributor productivity throughout the Company’s entire distributor organization.”

12. This joint management of Herbalife’s network marketing system continued throughout the Class Period, including after the death of Mr. Hughes. For instance, Herbalife’s December 31, 2001 Form 10-K states that “[m]embers of the President’s Team work closely with us to develop and implement new initiatives and strategies for increasing sales and distributor productivity throughout our entire distributor organization.” Herbalife acknowledges that “some key supervisors who have attained the highest levels within our distributor network are responsible for generating a substantial portion of our sales and for recruiting a substantial number of our distributors.”

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**B. The Herbalife Sales and Marketing Plan**

13. Herbalife pays its distributors pursuant to the “Herbalife Sales and Marketing Plan” (the Herbalife Plan”). The entry level in the Herbalife Plan is the distributor level. To become a distributor, a person must be “sponsored” by an existing distributor, and must purchase a “distributor kit.” Distributors are entitled only to purchase and sell Herbalife products. A distributor who wishes to sponsor other distributors and earn royalties and bonuses on the purchases of those distributors must become a “Supervisor.” In order to qualify as a Supervisor, the distributors must purchase, from Herbalife or another distributor, Herbalife products representing 4,000 volume points in one month, or 2,500 volume points in two consecutive months. One “volume point” is equivalent to \$1 (U.S.) at Herbalife’s suggested retail prices. A Supervisor must re-qualify once each year (by again purchasing 4,000 volume points in one month or 2,500 volume points in two consecutive months) in order to keep their “Supervisor” status and continue receiving royalties and bonuses.

14. Supervisors who maintain their purchase requirements are paid “royalty overrides” and various production bonuses on purchases of Herbalife products by their “downline organizations.” By meeting various volume and recruitment targets, Supervisors can ascend in the Herbalife hierarchy from “World Team,” “Global Expansion Team,” “Millionaire Team” and “President’s Team.” The President’s Team includes an additional five levels, the highest being the “Chairman’s Club,” the requirements for which include having at least five recruits who meet the volume requirements for the President’s Team. Distributors who reach the higher levels of the Herbalife Plan and recruit large downline organizations can earn royalties and bonuses far in excess of any retail profits they might earn in selling Herbalife products to

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1 consumers. However, the number of distributors who reach the higher levels is quite  
2 small. For example, in 1997 there were only 260 Herbalife President’s Team  
3 distributors out of a total of 115,000 Supervisors. In 1998 there were 397 President’s  
4 Team distributors out of a total of 139,000 Supervisors.

5 15. The compensation structures of multi-level marketing companies like  
6 Herbalife lend themselves readily to the opportunity for abuse, to the extent that  
7 distributors are incentivized to focus their attention heavily on recruiting new  
8 distributors rather than on making retail sales of products. Such abuses include  
9 encouraging distributors to purchase more products than they can feasibly sell to bona  
10 fide retail customers in order to meet volume requirements (a practice known as  
11 “inventory loading”) and making deceptive earnings claims. A multi-level sales  
12 organization in which the members obtain monetary benefits primarily from the  
13 recruitment of new members rather than selling goods to bona fide consumers is a  
14 pyramid scheme. Pyramid schemes are inherently deceptive because most participants  
15 are doomed to failure.

16 16. Herbalife’s compensation structure, as set forth in the Herbalife Plan, is  
17 readily subject to these abuses. The potential payout for distributors who sponsor large  
18 downline organizations far exceeds the “retail profits” a distributor could feasibly earn  
19 by simply retailing Herbalife products. Accordingly, if not properly monitored and  
20 policed, the Herbalife Plan would encourage distributors to spend most of their time  
21 and energy in the recruitment of new distributors as opposed to the retail sale of  
Herbalife products to consumers, which would result in the Herbalife Plan constituting  
a pyramid scheme.

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17. In order to avoid being characterized as a pyramid scheme, Herbalife has purported to adopt rules which require most of a distributor’s product purchases to be retailed to consumers. Among other things, these rules require distributors to certify that they have sold at least 70% of their prior product purchases before making a new order and that they have made retail sales to at least ten customers per month.

18. The executive officers and directors of Herbalife have, and had at all times relevant hereto, the obligation to monitor the promotional methods of its distributors to insure that Herbalife distributors were not engaged in activities that would foster and/or virtually insure the occurrence of the abuses described above. Further, Herbalife’s executive officers and directors at all times relevant hereto were obligated to sanction and/or immediately terminate the Herbalife distributorship of any Herbalife distributor who conceived and formed marketing and promotional strategies that fostered the abuses described above.

19. There have been previous instances where Herbalife distributors committed abuses of the Herbalife Sales and Marketing Plan. For instance, on March 6, 1985, the California Attorney General filed a civil lawsuit against Herbalife, alleging inter alia that Herbalife’s Sales and Marketing Plan violated the California Endless Chain Scheme law. Herbalife attributed the marketing plan allegations to “over enthusiastic” distributors, but ultimately paid penalties of \$850,000 and agreed to develop a compliance department to monitor the activities of its distributors.

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2 **C. Background of Herbalife’s Lead Generation Systems**

3 20. Beginning in the late 1980's Herbalife began aggressively expanding  
4 overseas. Herbalife’s sales trend in new markets has been characterized by an initial  
5 period of rapid growth, as new distributors are recruited, followed by a decline in sales.  
6 In its public filings Herbalife explains these sales declines as due to adverse publicity  
7 and increased regulatory scrutiny and other factors. In fact, the pattern of initial rapid  
8 sales growth followed by sales decline accompanied by adverse publicity and increased  
9 regulatory scrutiny is a fundamental characteristic of pyramid schemes. The opening of  
10 a new market results in an initial wave of recruitment as new distributors get caught up  
11 in the excitement of potentially earning large amounts of royalties and bonuses. Most  
12 of these distributors are inevitably disappointed when the huge financial returns fail to  
13 materialize. By continuously opening new markets, however, Herbalife was able to  
14 keep a sufficient number of Supervisors sufficiently incentivized to keep sales  
15 increasing.

16 21. Herbalife asserted that this continuous opening of new markets was an  
17 essential component of its business strategy. Following this strategy, from 1992  
18 through 1996 Herbalife commenced operations in twenty-three (23) new countries.

19 22. Herbalife’s expansion strategy worked until approximately 1995, in that  
20 while some markets declined after an initial period of explosive growth, these declines  
21 were more than offset by sales increases in new markets, such that Herbalife’s total  
22 sales increased substantially every year. In addition, as Herbalife expanded into new  
23 markets through 1995, its United States sales continued to increase, such that the  
24 percentage of Herbalife’s United States sales as compared to total worldwide sales  
25 remained relatively constant, about 33% to 36%. However, in 1996 Herbalife’s United

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1 States sales experienced a dramatic drop, both in absolute terms and as a percentage of  
2 worldwide sales. Herbalife's United States sales declined from \$333.6 million in 1995  
3 (36.1% of worldwide sales) to \$279.6 million in 1996 (23.3% of worldwide sales).

4 23. As stated in its February 5, 1997 Form S-3 and its March 30, 1999 Form  
5 10-K, in 1996 Herbalife determined that it needed to develop new initiatives to enhance  
6 sales in the U.S. market and other markets that had followed the trend of initial rapid  
7 growth followed by sales declines. Such "sales revitalization" initiatives were to  
8 include extensive training and motivational programs and the creation of new "regional  
9 planning and strategy groups that include senior distributors."

10 24. One of Herbalife's new initiatives was to encourage and facilitate the  
11 development by senior distributors of "Lead Generation Systems." The term "Lead  
12 Generation Systems" is used within Herbalife to refer to distributor-developed  
13 promotional systems, the use of mass mailings, telephone solicitations, sign-posting,  
14 sales scripts and other techniques designed to increase recruitment of new distributors.

15 25. One of the largest and most prominent Lead Generation Systems in  
16 Herbalife was the "Newest Way to Wealth" program.

17 26. Lead Generation Systems were ostensibly intended, as stated by  
18 Herbalife's current CEO, Francis X. Tirelli, in a letter to President's Team distributors,  
19 to take advantage of "21<sup>st</sup> Century communications vehicles" such as the internet and  
20 computerized mailing and telephone systems. In fact, the use of Lead Generation  
21 Systems was consciously intended by Herbalife and its senior distributors (a) to permit  
senior distributors to use more aggressive promotional materials and methods than  
those previously utilized and approved by Herbalife, (b) to provide Herbalife with a  
plausible defense (i.e., the "over zealous distributor" defense) in the event of regulatory

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1 problems with the distributor-generated promotional materials, and (c) to enable senior  
2 distributors to supplement their income through the sale of promotional materials to  
3 their downlines, and thereby provide an additional incentive for senior distributors to  
4 remain with Herbalife.

5 27. In effect, Herbalife unleashed its senior distributors and expressly and  
6 tacitly directed and encouraged them to use deceptive and coercive techniques to  
7 recruit new distributors. Herbalife tacitly agreed to refrain from enforcing its rules  
8 against using deceptive earnings claims and other misrepresentations to recruit new  
9 distributors, and to refrain from enforcing its rules designed to ensure that at least 70%  
10 of product purchases by Supervisors be actually retailed to consumers. Moreover, at  
11 least in the case of the Newest Way to Wealth LGS, Herbalife participated in the  
12 conduct of the LGS through its ongoing consultations with the top distributors involved  
13 with NWTW, by giving prominent roles to the founders and leaders of NWTW (for  
14 example, by recognizing Anthony Powell at the May, 2001 Nashville extravaganza for  
15 having achieved the rank of President's Team in a company-wide record time of  
16 approximately one year, and by featuring Doran Andry on the cover of Herbalife's  
17 business Today magazine, which is circulated to all Herbalife distributors), by  
18 appearing at NWTW events (for instance, an October 2001 NWTW event in Las  
19 Vegas was attended by Herbalife's director of marketing), by adopting rules which  
20 permitted distributors to develop their own promotional materials, and by refraining  
21 from enforcing the requirement that such distributor-developed promotional materials  
comply with Herbalife's standards and be pre-approved by Herbalife's compliance  
department.

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1           28. In a memorandum sent to President’s Team members in mid to late 2001  
2 (the exact date being unknown to Plaintiffs), Herbalife’s CEO Tirelli asserted that Lead  
3 Generation Systems were “[o]ne of our greatest opportunities [but] also one of our  
4 greatest risks” (the “Tirelli Memo”). Tirelli characterized Lead Generation Systems  
5 (“LGS”) as one side of the “Golden Triangle of Success” (the other sides being  
6 “products” and the “Home Office”) and noted that he had been communicating this  
7 message at every corporate and distributor event he had attended. Tirelli further stated  
8 that “Herbalife is committed to take full advantage of all the collective innovative and  
9 creative solutions in the marketplace with respect to Lead Generation Systems.”

10 Tellingly, the Tirelli Memo warned that “LGS should be an augment to the Herbalife  
11 mission and business and should not become more important economically than the  
12 Herbalife opportunity.”

13           29. The Tirelli Memo was sent in 2001, in an effort to “close the barn door  
14 after the horses were gone.” By that time, the Newest Way to Wealth and other LGS’s  
15 had been in existence for several years, and indeed had constituted a key part of  
16 Herbalife’s business strategy to revitalize sales and the recruitment of new distributors  
17 and Supervisors. For the first time, Herbalife, in the Tirelli Memo, adopted a series of  
18 guidelines, effective January 1, 2002, governing the use of LGS. These guidelines  
19 included review by Herbalife of every LGS to ensure compliance with legal  
20 regulations, industry standards and Herbalife’s own standards (although Tirelli  
21 emphasized that he would be personally involved in all decisions and was committed to  
the “innovative and creative use of LGS”; a requirement that at least 50% of every  
LGS should be focused on Herbalife’s products; an understanding that the purpose of  
LGS was to “augment the Herbalife mission and business and should not become more

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1 important economically than the Herbalife opportunity;” and a requirement that “all  
2 LGS should stay within the Chairman’s Club lineage.”

3 30. The new guidelines were addressed to the actual kinds of problems  
4 Herbalife was now forced to recognize that it had with LGS in general and with  
5 NWTW in particular. When Tirelli referred to LGS as “one of our greatest risks” he  
6 was referring to the adverse impact of regulatory scrutiny which would likely be  
7 prompted to the use of deceptive LGS promotional materials and the emphasis on  
8 recruiting new distributors over retail selling. The admonition that at least 50% of a  
9 LGS should be devoted to extolling the merits of Herbalife’s products is particularly  
10 telling, since the primary focus of Herbalife’s LGS, including NWTW, was the  
11 recruitment of new distributors. In fact, NWTW materials explicitly advised  
12 participants to spend at least 80% of their time and efforts in recruiting new  
13 distributors, and only 20% in retailing. Moreover, in the case of NWTW, Tirelli’s  
14 admonition that a LGS should not become “more important economically than the  
15 Herbalife opportunity” reflected an accomplished fact.

16 31. Herbalife’s LGS initiative in the United States had a significant impact on  
17 its financial performance. In 1997 Herbalife’s United States “retail” sales were \$298.7  
18 million, approximately 20% of Herbalife’s total world-wide retail sales of \$1,490.7  
19 million. As set forth in the following chart, the United States share of Herbalife’s sales  
20 has increased every year since then, notwithstanding an absolute decline in sales in  
21 2001:

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Herbalife International, Inc.  
U.S. Retail Sales vs. Worldwide Retail Sales

Year	Total Worldwide Retail Sales (in millions)	U.S. Retail Sales (in millions)	U.S. Sales as a percentage of Total Retail Sales
1993	693.1	247.0	35.6%
1994	884.0	295.0	33.4%
1995	923.6	333.6	36.1%
1996	1,200.1	279.6	23.3%
1997	1,490.7	298.7	20%
1998	1,644.8	364.5	22.2%
1999	1,793.5	416.1	23.2%
2000	1,764.9	453.0	25.7%
2001	1,656.2	441.7	26.7%

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32. In addition, Herbalife’s LGS initiative has resulted in the decrease in sales of “official” corporate promotional literature, presumably due to the increasing sales of distributor-generated LGS promotional literature (which is not publicly reported). As demonstrated in the following chart, prior to the commencement of the LGS initiative in 1997, Herbalife’s sales of promotional literature had averaged approximately 5% of total retail sales. Since then such sales have declined every year, both in absolute terms and as a percentage of total sales:

Herbalife International, Inc.  
Sales of Promotional Literature

Year	“Retail Sales” (in millions)**	Sales of Promotional and Other (in millions)	Promotional Literature as a percentage of total Retail Sales
1994	884.0	49.2	5.6%
1995	923.6	35.3	3.8%
1996	1,200.1	60.4	5.0%
1997	1,490.7	69.4	4.6%
1998	1,644.8	67.9	4.1%
1999	1,793.5	46.6	2.6%
2000	1,764.9	50.8	2.8%
2001	1,656.2	25.0	1.5%

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\*\* Based on the numbers set forth in this chart, plaintiffs believe that Herbalife’s senior distributors are earning tens of millions of dollars in the sale of LGS promotional materials, principally the sale of NWTW materials.

33. Herbalife’s LGS initiative, with its emphasis on recruiting more distributors, has also resulted in the fact that an increasing percentage of Herbalife’s sales is comprised of purchases by Supervisors who are meeting their initial and/or annual qualifying purchase requirements. As set forth above, in order to rise to the rank of Supervisor, a distributor must initially qualify by purchasing 4,000 points worth of Herbalife products in one month, or 2,500 points worth of Herbalife products in two

1 consecutive months; and a Supervisor must requalify every year in order to maintain his  
 2 or her Supervisor status. Since the inception of Herbalife’s LGS initiative in 1997, the  
 3 percentage of Herbalife’s “retail” sales which can be accounted for by Supervisors  
 4 meeting their qualifying purchase requirements has increased from 32.4% of total sales  
 5 to no less than 40.5%, as set forth in the following chart:

6 **Herbalife International, Inc. Total Retail Sales\***  
 7 **Compared to Minimum Qualifying Purchases by Supervisors**

8	Year	Supervisors	Minimum	“Retail” Sales	Percentage of
9			qualifying	(less promo	Retail Sales by
10			purchases by	literature) (in	qualifying
11			Supervisors	millions)**	Supervisors
12			(in millions)*		
13	1997	115,000	460	1,421.3	32.4%
14	1998	139,000	556	1,576.9	35.3%
15	1999	147,000	588	1,746.9	33.7%
16	2000	160,000	640	1,714.1	37.3%
17	2001	165,000	660	1,631.2	40.5%

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18 \* To become a Herbalife Supervisor, the distributor must purchase at least 4,000  
 19 “points” (approximately equivalent to the suggested retail price, i.e., 1 point  
 20 equals \$1) worth of Herbalife products in one month, or 2,500 points in two  
 21 consecutive months. The figures in this column are derived by multiplying the  
 number of Supervisors in a given year by 4,000. Accordingly, the minimum

1 qualifying sales are understated, since some Supervisors qualify by purchasing a  
2 total of 5,000 points over two months.

3  
4 \*\* Herbalife reports “retail sales” based on the suggested retail sale prices reflected  
5 on its invoices to its distributors.

6  
7 34. The emphasis on recruitment is also demonstrated by the fact that while  
8 Herbalife’s sales have been decreasing for the past two years (and the rate of sale  
9 growth was increasing for years before that), the number of Supervisors has continued  
10 to increase, as set forth in the following chart:

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Herbalife International, Inc.

Year-to-year Growth in Number of Supervisors and Retail Sales

Year	Supervisors	Increase over previous year	“Retail” Sales (in millions)**	Increase (decrease) over previous year
1991	12,000		191.0	
1992	18,000	50%	405.1	112.1%
1993	41,000	127.8%	693.0	71.1%
1994	75,000	82.9%	884.0	27.6%
1995	90,000	20%	923.6	4.5%
1996	99,000	10%	1,200.01	29.9%
1997	115,000	16.2%	1,490.7	24.2%
1998	139,000	20.9%	1,644.8	10.3%
1999	147,000	5.8%	1,793.5	9.0%
2000	160,000	8.8%	1,764.9	(1.6%)
2001	165,000	3.1%	1,656.2	(6.2%)

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\*\* Herbalife reports “retail sales” based on the suggested retail sale prices reflected on its invoices to its distributors.

35. In sum, the development of Lead Generation Systems such as the Newest Way to Wealth was a central part of Herbalife’s business strategy to revitalize sales in the United States market, was consciously developed, implemented and intended by Herbalife and its distributors to encourage the use of deceptive earnings claims and other misrepresentations to promote increased recruitment of distributors and supervisors, and was implemented in a manner intended to permit Herbalife to disclaim responsibility for the acts of its distributors, whom it characterizes as independent contractors.

**D. The Newest Way to Wealth (“NWTW”) Scheme**

36. On or before December 1999, pursuant to Herbalife’s Lead Generation System initiative, Defendants Dream Builders, H.B. International Group, Inc., Individual Defendants Powell, Andry, Juneja, Beall, Bartholmew and Singleton and other distributors not known to Plaintiffs, conceived, developed and implemented a Lead Generation System dubbed “The Newest Way to Wealth” (“NWTW”) to be employed exclusively in the promotion of Herbalife (i.e. the NWTW System).

37. Ostensibly, the NWTW System is an internet-based mail order system designed to assist Herbalife distributors to:
- a. Recruit customers and potential new Herbalife distributors (i.e. “Lead Generation”);
  - b. Select “serious people out of th[e] leads without...having to see or even speak to them”; and

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1 c. Train and follow-up with those serious leads.

2 38. In fact, the NWTW System is a fraudulent scheme designed to exhort  
3 Herbalife distributors to instantly achieve “Supervisor” status under the Herbalife  
4 compensation structure by making a qualifying purchase of Herbalife products, to focus  
5 most of their efforts on recruiting new distributors, and to ignore retailing. The  
6 NWTW scheme benefits Herbalife because the qualifying purchases to reach the  
7 Supervisor level generate substantial sales. The NWTW scheme benefits the  
8 Individual Defendants because the qualifying purchases by new Supervisors result in  
9 additional royalty and bonus income for them, and it benefits Dream Builders and H.B  
10 International because they realize additional profits from the sale of substantial  
11 amounts of NWTW promotional materials. In effect, the NWTW System transforms  
12 the Herbalife Sales and Marketing Plan into a pyramid sales scheme, where rewards  
13 are paid in connection with recruitment of new participants and not in connection with  
14 the sale of products to bona fide consumers.

15 39. It was part of the NWTW scheme to cause distributors to disseminate  
16 promotional materials which fraudulently projected the successful expansion and  
17 operation of the Herbalife businesses of NWTW members. For example, NWTW  
18 materials state that:

19 ? ~~By using the Herbalife NWTW system, you will dramatically accelerate the~~  
20 ~~growth of your business by using the NWTW system to help you recruit new distributors.~~  
21 the NWTW promotional materials through the use of the mails and to follow up  
the mailings with telephone calls, following detailed sales scripts. The NWTW  
System called for two mailings, a “First Package” and a “Second Package,” each  
of which was to be followed up with a scripted telephone call.

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41. It was also part of the NWTW scheme to exhort NWTW members to become Supervisors under the Herbalife Sales and Marketing Plan, by making the minimum qualifying purchase, and to make substantial purchases of NWTW promotional materials. NWTW promotional materials were sold in various packages (“Gold,” “Silver” and “Platinum”) and participants were told that a significant portion of their earnings would be derived from the sale of packages of promotional materials to their recruits. NWTW also provided participants with pre-selected Herbalife product orders, designed to meet the Supervisor purchase qualifications. The NWTW System also involved efforts to keep new recruits motivated for as long as possible, despite the failure of the system to live up to the expectations created by the promotional materials, so as to increase their purchases of Herbalife products and NWTW promotional materials. These efforts included “focus group” conference calls and the extensive use of Herbalife’s “touchfon” voice messaging system, both of which were used to transmit additional training in recruitment techniques and motivational messages intended to boost distributor morale.

42. It was also part of the NWTW scheme to make fraudulent projections concerning the earnings a new Herbalife distributor would expect to earn. The NWTW promotional materials tout the so-called “20K” plan which projects that a Herbalife distributor who makes a minimum investment in the NWTW System will achieve “\$20,000 in business every single month...within 30-90 days.” Further, these materials project that after 90 days the NWTW System would be “self-funding.” *The NWTW Plan is entirely premised on the recruitment of new distributors. NWTW distributors are instructed to spend*

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1 *at least 80% of their time on the recruitment of new distributors* The NWTW  
2 materials represents that distributors will not only receive bonuses from  
3 Herbalife based on product purchases by their recruits, but that they will make  
4 profits on the sale of NWTW promotional materials to their recruits, as well as a  
5 bonus directly from NWTW for each new recruit.

6 43. The NWTW promotional materials make numerous representations  
7 concerning the “incredible” incomes which participants can achieve if they buy  
8 in at Herbalife’s “Supervisor” level and follow the NWTW System, including  
9 but not limited to the following:

10 a. “The Second Package Video will show you how so many  
11 others are making incredible incomes with this opportunity. Herbalife has  
12 created more millionaires than any other company in the history! Currently,  
13 Herbalife has over 500 people on its prestigious President’s Team who are  
14 earning between \$200,000 per year and \$5,000,000 per year! (Yes, you read the  
15 amount correctly - \$5 Million Per Year). In addition, there are thousands other  
16 people earning 6-figure income of \$100,000 per year or more. These people  
17 come from various backgrounds and ethnicity from welfare moms and 80-year-  
18 old grandmothers to teenagers and young adults between the ages of 17 and 19.”

19 b. “Several of these people reached the \$100,000 per year  
20 income level within 1 year by using our [NWTW] incredible mail order and  
21 Internet marketing program.”

c. “Your income at the [Herbalife] supervisor level is  
practically UNLIMITED.”

d. “The supervisor position is undoubtedly the most

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1            advantageous and lucrative position to start your business, however, if you are  
2            not able to start at this level, please consult with your mentor to help you work  
3            your way to this level as quickly as possible.”

4            e.            “[Herbalife] distributors earn 30-50% more than almost any  
5            other company’s distributors assuming the same sales volume. In fact, the  
6            company [Herbalife’s] compensation plan returns 73% OF THE TOTAL NET  
7            SALES to its distributors. That means that out of the \$1.8 Billion in sales in  
8            1998, \$1.3 Billion was paid out to us, the distributors! That translates into  
9            incredible earning power for the individual distributor.”

10            f            Numerous “testimonial” earnings claims by the Individual  
11            Defendants and others, including “Larry & SK Clark, TX: In their first 60 days  
12            earned \$2,500”; “John & Leslee Beall, IN: By my 11th month in business I was  
13            earning over \$10,000 per month ... still part-time”; “TJ Juneja, DC: Made over  
14            \$7,000 per month within 7 months of starting with this program [NWTW] and  
15            quit his full time job as a CPA”; “Steve & Debbie Combs, CA: Less than five  
16            years ago our financial situation was a disaster. Thanks to this business  
17            opportunity we now have financial freedom and a monthly income of more than  
18            \$28,000”; “Leah Graham, WA: \$30,000 check last month”; and “Bret & Amber  
19            Bartholomew, NV: February’s check *over \*\$60,000 just nine months using mail  
20            order!*” (emphasis in original).

21            g.            Other testimonials indicate that most if not all of these  
22            alleged earnings are based on recruitment bonuses and commissions, as opposed  
23            to retail sales.

24            44.    The NWTW Second Package includes a series of charts showing

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1 projected earnings for NWTW/Herbalife distributors, labeled “Five gets Five  
2 gets Five Plan”, which represents potential earnings ranging from \$19,375 to  
3 \$42,625 monthly, “Four gets Four gets Four Plan”, which represents potential  
4 earnings ranging from \$10,500 to \$23,100 monthly, and so on.

5 45. The NWTW Second Package represents that the “Worst Case” is  
6 that the distributor will be earning \$13,000 per month after 12 months following  
7 the program.

8 46. Defendants Dream Builders, H.B. International Group, Inc. and the  
9 Individual Defendants sponsor promotional seminars and distribute promotional  
10 literature, video tapes and audio cassettes at or by which prospects are recruited  
11 and trained to join the NWTW System and to induce others to also join. In  
12 promotional materials distributed in connection with the NWTW System, and at  
13 promotional events sponsored by Herbalife, H.B. International Group, Inc. and  
14 Dream Builders, NWTW members deliver “rags-to-riches” testimonials and  
15 allude to extraordinary monthly incomes, exhorting the prospects to become  
16 Herbalife Supervisors and join the NWTW System.

17 47. Defendants' representations as to the probabilities of success and  
18 their income projections were and are false. Defendants' representations that the  
19 NWTW System is “self-funding” in less than 90 days were and are false.  
20 Despite Defendants' claims, there is in fact little, if any chance that most  
21 individuals who purchase the NWTW System distributorships will ever recoup  
even their initial investment.

48. In connection with the NWTW System, Defendants have uniformly  
failed to disclose, in the First Package, the Second Package, the After First

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1 Package Call Back Script, the After Second Package Call Back Script, in “focus  
2 group” conference calls, “touchfon” voice messages or otherwise, the following  
3 material facts:

4 a. That investments of money and time in the NWTW System  
5 are exceedingly risky because the NWTW System as employed in connection  
6 with the Herbalife Sales and Marketing Plan is a pyramid sales scheme, that  
7 such schemes inevitably collapse after a period of explosive growth, and most  
8 people in pyramid schemes lose money;

9 b. That the Federal Trade Commission and state agencies have  
10 found the practice of representing by implication, the use of hypothetical  
11 examples, or otherwise that distributors in multi-level marketing programs earn  
12 or achieve any stated amounts of profits, earnings or sales in excess of the  
13 average profits, earnings, or sales of all distributors, to be an "unfair or deceptive  
14 act or practice" in violation of law, unless the average profits, earnings or sales  
15 or the percent of all distributors who actually achieved such stated profits,  
16 earnings or sales is clearly and conspicuously disclosed;

17 c. That in order to effectively evaluate the Herbalife Supervisor  
18 positions as business opportunities, each of the Defendants should have  
19 disclosed the following information to the Plaintiff and to all prospective  
20 NWTW members and failed to do so:

21 (1) The actual bases for the earnings claims made in  
connection with the NWTW System’s marketing scheme in the uniform  
promotional materials created and/or approved by the Defendants;

(2) The number and percentages of Supervisors who

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1 actually achieved the earnings or ranges of earnings represented by the  
2 Defendants, as well as the total number of distributors who acquired interests in  
3 each rank of the Herbalife Sales and Marketing Plan, on an annual basis and by  
4 geographical area;

5 (3) The number and percentages of distributors who  
6 reached each rank in the Herbalife Sales and Marketing Plan as compared to the  
7 total number of distributors who acquired interests in the Herbalife Sales and  
8 Marketing Plan, on an annual basis and by geographical area;

9 (4) The average income actually earned by distributors at  
10 each rank of the Herbalife Sales and Marketing Plan on an annual basis and by  
11 geographical area;

12 (5) The average payments and expenses actually made  
13 and incurred by distributors at each rank of the Herbalife Sales and Marketing  
14 Plan, on an annual basis and by geographical area;

15 (6) The number and percentages of distributors at each  
16 level of the Herbalife's Sales and Marketing Plan who voluntarily terminated or  
17 failed to renew their positions, who were terminated or refused renewal by  
18 Herbalife for any reason, who ceased to be "active", or who otherwise  
19 abandoned their positions in the Herbalife Sales and Marketing Plan, on an  
20 annual basis and by geographical area; and

21 (7) all other material information which could affect the  
decision of a reasonable business person.

49. Herbalife and the NWTW System employ disclaimers in their  
contracts and promotional materials which provide that "testimonial" or other

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1 representations as to possible earnings are not “guarantees” or “typical.” Such  
2 disclaimers are insufficient to bar the claims alleged in this lawsuit. Defendants  
3 knew and intended for prospective distributors and participants in NWTW to  
4 rely on these testimonial earnings claims as reasonable projections of possible  
5 earnings. Defendants had no reasonable basis for making these earnings claims  
6 and knew that it would be difficult or impossible for more than a tiny fraction of  
7 new distributors to achieve similar results. For instance, while President’s Team  
8 distributors may earn \$20,000 per month or more, there are only a few hundred  
9 such distributors, representing less than 0.5% of all Supervisors and a minute  
percentage of Herbalife’s million-plus distributors.

10 50. In short, the NWTW scheme is characterized by misrepresentations  
and omissions of material fact. Information provided in video and audio-cassette  
11 tapes, and written promotional materials combine to give investors the materially  
false impression that their investments will be easily recouped, that the  
12 promotional campaigns used in the NWTW System will generate new prospects,  
13 that distributors will profit from their initial investment with little or no risk, and  
14 that the NWTW System will be “self-funding” within 90 days. In fact, only a  
15 handful of distributors have achieved the high levels of income represented by  
16 Defendants, while the overwhelming majority of NWTW/Herbalife participants  
17 suffer an out-of-pocket loss on their initial investment. Persons who attempt to  
18 participate in the NWTW/Herbalife program typically lose from \$10,000 to  
19 \$50,000 or more, and a number of them have been forced into personal  
20 bankruptcy. Defendants are continuing to promote, approve and/or operate the  
21 fraudulent NWTW/Herbalife business opportunity in the State of California and

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1 throughout the United States, including its illegal pyramid scheme aspect. These  
2 continuing activities further threaten the investments of the Class and will  
3 victimize thousands of additional persons unless Defendants are restrained and  
4 enjoined. Defendants' activities have inflicted, and will continue to inflict,  
5 irreparable harm upon plaintiff, the Class members, and prospective Herbalife  
6 distributors who employ the NWTW System.

7 51. As a result of and in reliance upon the uniform and standardized  
8 representations and omissions of each of the Defendants, the Plaintiffs and other  
9 NWTW/Herbalife distributors at all levels have become unknowing victims of  
10 the NWTW/Herbalife scheme.

11 **E. Inadequate or Unenforced Retail Sales Requirements**

12 52. There is no effective and enforceable requirement that the NWTW System  
13 distributors actually make retail sales of Herbalife products. The NWTW System calls  
14 for distributors to make wholesale purchase of at least the minimum amount of  
15 products necessary to maintain their status as Supervisors, regardless of whether the  
16 distributor is actually making retail sales, a practice, known as "inventory loading".

17 For example, the projected earnings chart in the NWTW "Second Package" states that:

18 These examples will assume that everyone does just the MINIMUM of 2,500  
19 Volume Points to be eligible to receive Royalties, and nothing more! Production  
20 Bonuses are paid on infinite levels, [but] for these examples we are just  
21 considering our first three levels. (emphasis in original).

22 53. NWTW System distributors are encouraged by Defendants to sponsor a  
23 recruit with a distributor kit, significant purchases of the NWTW System marketing  
24 tools and hundreds if not thousands of dollars of "wholesale" product purchases from

1 Herbalife. The NWTW System emphasizes through its uniform promotional materials  
2 the need to continue the on-going recruitment and sponsoring of new distributors into  
3 the NWTW System and the maintenance of personal wholesale product purchase  
4 volumes. The common practice of NWTW System distributors is to meet much of  
5 their purchase volumes by "attempting to sell products" to other recruits, by selling  
6 marketing tools and sales aids to recruits, and by inventory loading, as opposed to  
7 retailing to the mythical "end consumer."

8 54. All of the various techniques endorsed by the NWTW System to "retail"  
9 products are actually methods of "prospecting" for new distributors. Retail selling is  
10 virtually non-existent and, in any event, secondary to recruitment.

11 55. While Herbalife supposedly requires all of its distributors to retail its  
12 products, the Herbalife Defendants have failed to monitor and enforce these  
13 requirements and have thereby permitted the NWTW System to flourish and grow.

### 14 **G. Recruitment of the Individual and Representative Plaintiffs**

15 56. Relying on the fraudulent misrepresentations and omissions in the NWTW  
16 promotional materials described above, Plaintiff Nancy Jacobs was induced to apply  
17 for and become an Herbalife distributor on or about September 7, 2001, a member of  
18 NWTW on or about September 10, 2001, a NWTW focus group member on or about  
19 September 26, 2001, and a Herbalife Supervisor prior to October 28, 2001.

20 57. Plaintiff Jacobs committed herself on a full time basis to the NWTW  
21 System. She purchased significant quantities of Herbalife products and NWTW  
promotional materials, including a "Gold Package" and a "Platinum Package", paid to  
attend NWTW training sessions including one held in Cleveland, Ohio on or about  
November 3, 2001, purchased NWTW promotional materials and qualified and became

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1 an Herbalife Supervisor prior to October 28, 2001. Plaintiff continued her efforts to  
2 learn to use the NWTW System by listening to “at home” audio seminars offered over  
3 the telephone and internet, logging on to “focus group” conference calls, and by  
4 purchasing NWTW training tapes and compact disks.

5 58. After nearly three and one-half months of exhaustive work conducted in  
6 accordance with the training materials Plaintiff Jacobs obtained from the NWTW  
7 System, Dream Builders, Herbalife and the other Defendants, Jacobs found herself  
8 nearly bankrupt and without income. She also had an abundance of sales aids and  
9 products which she was unable to dispose of at a fair sale or refund price.

10 59. Once Jacobs recognized that the NWTW System was an illegal practice,  
11 she withdrew from participation and sought the advice of legal counsel.

12 60. Sanchez became a Herbalife distributor on or about March 30, 2000.  
13 Sanchez received a NWTW “After First Package Call Back Script” and NWTW  
14 “Second Package” via mail on or about April 1, 2001 which was sent out at the  
15 direction of the Tustakawa defendants. Relying on the fraudulent misrepresentations  
16 and omissions in the NWTW promotional materials described above, Plaintiff Sanchez  
17 was induced to apply for and become a NWTW distributor on or about April 23, 2001.

18 61. Sanchez committed herself on a full time basis to the NWTW System.  
19 She purchased significant quantities of Herbalife products, attended NWTW training  
20 sessions, purchased NWTW promotional materials and qualified and became an  
21 Herbalife Supervisor prior to July 1, 2001. Plaintiff continued her efforts to learn the  
NWTW System by listening to “at home” audio seminars offered over the telephone  
and internet, logging on to “focus group” conference calls, and by purchasing NWTW  
training tapes and compact disks.

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2 62. After several months of exhaustive work conducted in accordance with  
3 the NWTW promotional and training materials which she purchased, Sanchez was  
4 forced to declare personal bankruptcy. She also had an abundance of sales aids and  
5 products which she was unable to dispose of at a fair sale or refund price.

6 63. Once Sanchez recognized that the NWTW System was an illegal practice,  
7 she withdrew from participation and sought the advice of legal counsel.

8 64. On information and belief, thousands of additional individuals who  
9 invested in the NWTW/Herbalife System are now inactive and have sustained the loss  
10 of most or all of their investments and have sustained additional economic loss.

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**H. Herbalife's Knowledge, Approval and Participation in the NWTW System**

22 65. As alleged above, Herbalife jointly manages the Herbalife network  
23 marketing system with its elite group of President's Club distributors. Herbalife  
24 conceived of and adopted Lead Generation Systems, developed by its high level  
25 distributors, as a crucial part of its business strategy to revitalize sales following the  
26 substantial decline in U.S. sales in 1996.

27 66. As alleged above, NWTW was the largest LGS in Herbalife's network  
28 marketing system. Moreover, NWTW was developed and operated by Doran Andry, a  
29 member of Herbalife's Chairman's Club, the highest level in the Herbalife Marketing  
30 and Sales Plan, as well as prominent President's Team members, including Individual  
31 Defendants Anthony Powell, Tarun Juneja, Stephen and Debera Combs, and Craig and  
32 Caroline Tsutakawa.

33 67. Shortly after the NWTW System was conceived and implemented,  
34 Herbalife obtained, reviewed and authorized the dissemination and use of the uniform

1 sales, marketing and promotional materials employed in connection with the NWTW  
2 System.

3 68. On information and belief, at some time after the inception of the NWTW  
4 System in December, 1999 and prior to May of 2001 (the exact date is known to the  
5 Herbalife Defendants but not to the Plaintiffs), Herbalife began noticing unusual levels  
6 of activity among certain Herbalife distributors, either in the form of unusually high  
7 levels of Herbalife product purchases or unusually rapid promotions through the levels  
8 of the Herbalife Sales and Marketing Plan, or both. Herbalife’s legal department  
9 conducted an unknown number of interviews of these Herbalife distributors, and  
10 determined that they were employing the NWTW promotional system in connection  
11 with their Herbalife distributorships.

12 69. In May, 2001, Herbalife held a sales and training session in Nashville,  
13 Tennessee for its top distributors (the “Nashville Extravaganza”). The Nashville  
14 Extravaganza was attended by Defendants Powell and Juneja, among other Individual  
15 Defendants, and by many “20-K Plan” members of the NWTW System. Both the “20-  
16 K Plan” members and Defendant Powell prominently displayed themselves with  
17 NWTW System “Campaign” buttons and banners. At the Extravaganza, Defendant  
18 Powell was recognized for achieving his President’s Team membership in the Herbalife  
19 business in a company-wide record time of approximately one year.

20 70. Around the time of or just prior to the Nashville Extravaganza,  
21 Defendants Juneja and Powell met with Herbalife to discuss the NWTW promotional  
materials. Among the representatives of Herbalife at this meeting were then Chief  
Executive Officer of Herbalife, Christopher Pair, now resigned, and Herbalife director

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1 and current CEO Tirelli. This meeting did not result in any material change in the  
2 NWTW promotional materials or system.

3 71. Shortly after Tirelli became Herbalife's CEO, he met with Juneja, Powell,  
4 S. Combs and D. Combs and Herbalife's in house counsel to discuss the NWTW  
5 promotional materials. This meeting did not result in any material change in the  
6 NWTW promotional materials or system.

7 72. As a result of Herbalife's internal investigation, and the meetings with  
8 Juneja and Powell, Tirelli and other director and executive officers of Herbalife have  
9 had ample time to review the promotional materials employed in the NWTW System,  
10 and to determine that they are fraudulent, deceptive and violate Herbalife's own  
standards.

11 73. It was not until shortly after the filing of this lawsuit, however, that  
12 Herbalife finally took some action to enforce its rules and contractual requirements  
13 regarding earnings claims and other misrepresentations. On March 1, 2002, Herbalife  
14 suspended Defendants Powell and Juneja for their role in the NWTW scheme.

15 74. On or about January 8, 2002, certain distributors of the NWTW System  
16 participated on a conference call to voice their concerns about the NWTW System, the  
17 financial losses that they had sustained because of the NWTW System, and the  
18 possible use that they might make of a lead generation system other than the NWTW  
19 System. During that call, Defendant Powell, who had not been invited to participate,  
20 was connected to the conference call announcing that the participants' identities were  
21 known to Herbalife, that their conduct in considering an alternate lead generation  
system to the NWTW System would be dealt with severely by Herbalife, and that

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1 Tirelli had been connected to the call and was monitoring the conversation of the  
2 participants.

#### 4 IV. THE NEED FOR INJUNCTIVE RELIEF

5 75. Defendants are continuing the deceptive and fraudulent NWTW  
6 promotional scheme (i.e., the NWTW System) in conjunction with the Herbalife Sales  
7 and Marketing Plan. Herbalife has utterly failed to enforce the policies and procedures  
8 which were ostensibly designed to preclude the operation of the Herbalife Sales and  
9 Marketing Plan as an illegal pyramid scheme. Defendants have demonstrated every  
10 inclination to continue defrauding current and prospective Herbalife distributors  
11 through the use of the NWTW promotional scheme. Injunctive relief is essential in  
12 order to prevent further injury.

#### 13 V. CLASS ACTION ALLEGATIONS

14 76. Individual and Representative Plaintiffs brings this Class Action on behalf  
15 of themselves, and on behalf of all other persons similarly situated, as members of the  
16 Plaintiff Class. Plaintiffs request that this Court certify the Plaintiff Class, or  
17 appropriate subclasses thereof, initially defined as all residents of the United States  
18 who, at any time from December 1, 1999 to the date the Class is certified in this action  
19 (the "Class Period"):

- 20 b) were Herbalife distributors at the Supervisor level or higher; and NWTW  
21 incurred substantial economic loss as a result of the Defendants' distribution scheme.  
The Defendants, any entity in which any of them have a controlling interest, and  
their legal representatives, heirs, and successors, are expressly excluded from  
membership in the Plaintiff Class and any subclasses thereof, to avoid conflict of  
interest.

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2 77. This action has been brought and may properly be maintained,  
3 pursuant to the provisions of Fed. R. Civ. P. 23(a)(1) through (4), 23(b)(1), (2)  
4 and/or 23(b)(3); and satisfies the numerosity, commonality, typicality, adequacy,  
5 impairment and superiority requirements thereof, because:

- 6 A. [REDACTED]
- 7 B. [REDACTED]
- 8 C. [REDACTED]
- 9 D. [REDACTED]
- 10 E. [REDACTED]
- 11 F. [REDACTED]
- 12 G. [REDACTED]

13 **VI. CAUSES OF ACTION**

14 **FIRST CLAIM FOR RELIEF**

15 **(Violation of 18 U.S.C. §1962(c))**

16 **(Against All Defendants)**

17 78. Plaintiffs, on behalf of themselves and all others similarly situated,  
18 reallege, as if fully set forth, each and every allegation contained in the preceding  
19 paragraphs, and further allege:

20 79. Defendants are "persons" within the meaning of 18 U.S.C. §1961(3).

21 80. Plaintiffs and each member of the Class are "persons" within the meaning  
of 18 U.S.C. §1961(3).

81. Since no later than December of 1999, and continuing up to and including  
the date of the filing of the initial complaint in this action, in the Central District of  
California and elsewhere, defendants Herbalife International, Inc., Herbalife  
International of America, Inc., Dream Builders & Associates International, Inc., H.B.

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1 International Group, Inc., the Individual Defendants and other high level Herbalife  
2 distributors whose identities are not known to Plaintiff but will be revealed during  
3 discovery, have collectively constituted an “enterprise,” as that term is defined in 18  
4 U.S.C. §1961(4), that is, a group of business entities and individuals associated in fact,  
5 which was engaged in, and the activities of which affected, interstate commerce. Each  
6 defendant participated in the operation and management of the NWTW Enterprise.

7 82. The ostensible purpose of the NWTW Enterprise is to develop and  
8 employ a Lead Generation System to assist Herbalife distributors to sell Herbalife  
9 products and to recruit new Herbalife distributors, consistent with the Herbalife Sales  
10 and Marketing Plan. The actual purpose of the NWTW Enterprise was to achieve the  
11 Defendant’s shared goals of increasing the recruitment of new distributors through  
12 unlawful means including the use of fraudulent and deceptive promotional materials  
13 and recruitment techniques as set forth in detail above and to conceal the fact that the  
14 combination of the Herbalife Sales and Marketing Plan with the NWTW System  
15 resulted in an unlawful pyramid scheme, in which only a few participants would benefit  
16 at the expense of the thousands who would lose all or most of their investment.

17 83. The NWTW Enterprise is separate and distinct from the predicate acts  
18 and the pattern of racketeering activity alleged herein. The NWTW Enterprise had and  
19 has a continuity of structure, despite various changes in the membership of the  
20 association in fact which constantly fluctuates as new distributors are recruited and  
21 existing distributors are terminated or cease active participation in the Herbalife Sales  
and Marketing Plan.

84. Each of the Defendants was associated with the NWTW Enterprise and  
conducted or participated, directly or indirectly, and/or conspired to conduct or

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1 participate, in the affairs of the NWTW Enterprise through a pattern of racketeering  
2 activity as set forth herein.

3 85. The roles of each of the Defendants were generally as follows:

4 (a) The Individual Defendants promoted NWTW through their  
5 “leadership roles” as high level Herbalife distributors, including but not limited to  
6 recruiting and training Herbalife distributors in the use of the NWTW System,  
7 participating in special, Herbalife-arranged conference calls, speaking at Herbalife-  
8 sponsored training events, and by developing, reviewing, approving and distributing the  
9 NWTW promotional materials and system exclusively for use by Herbalife distributors.

10 (b) Defendants Dream Builders and H.B. International Group, Inc.  
11 developed and distributed the NWTW promotional materials and system exclusively  
12 for use by Herbalife distributors.

13 (c) The Herbalife Defendants administered the Herbalife Sales and  
14 Marketing Plan, without which NWTW would have no reason to exist, incorporated  
15 the concept of distributor-developed Lead Generation Systems into Herbalife’s  
16 business plan, encouraged and facilitated senior Herbalife distributors to develop LGS  
17 such as NWTW, granted leadership roles to the Individual Defendants and thereby  
18 granted Herbalife’s imprimatur to their promotional methods and the NWTW System,  
19 developed and facilitated policies which were consciously intended to promote  
20 NWTW, including policies permitting senior distributors to develop their own  
21 promotional materials, refraining from enforcing retail selling requirements and  
refraining from enforcing prohibitions against deceptive earnings claims.

22 86. Throughout the Class Period, for the purpose of executing the fraudulent  
NWTW scheme alleged herein, the Defendants repeatedly caused letters and other

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1 materials to be delivered by the United States Postal Service in violation of 18 U.S.C.  
2 §1341 (mail fraud); and repeatedly used interstate wire facilities to further their scheme  
3 in violation of 18 U.S.C. §1343 (wire fraud), including the following:

4 (a) Causing the NWTW “First Package” to be mailed to the Plaintiff  
5 Nancy Jacobs at 2016 Manchester Road, Wheaton, Illinois on or about August 27,  
6 2001;

7 (b) Causing the NWTW “First Package” to be mailed to other Class  
8 Members on diverse occasions, the exact dates and locations of which are not known  
9 to Plaintiffs but are known to Defendants and will be disclosed during discovery, but in  
10 general continuing from December, 1999 to date;

11 (c) Causing the NWTW “Second Package” to be mailed to the  
12 Plaintiff Nancy Jacobs at 2016 Manchester Road, Wheaton, Illinois on or about August  
13 29, 2001;

14 (d) Causing the NWTW “Second Package” and the “After First  
15 Package Call Back Script” to be mailed to the Plaintiff Annette Sanchez on or about  
16 April 1, 2001;

17 (e) Causing the NWTW “Second Package” to be mailed to other Class  
18 Members on diverse occasions, the exact dates and locations of which are not known  
19 to Plaintiffs but are known to Defendants and will be disclosed during discovery, but in  
20 general continuing from December, 1999 to date;  
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(f) Causing the Gold and Platinum product packages to be mailed to Plaintiff Nancy Jacobs at 2016 Manchester Road, Wheaton, Illinois on or about September 7, 2001;

(g) Causing the Platinum, Gold and Silver product packages to be mailed to other Class Members on diverse occasions, the exact dates and locations of which are not known to Plaintiffs but are known to Defendants and will be disclosed during discovery, but in general continuing from December, 1999 to date;

(h) Causing wire transmissions in which a NWTW participant repeated the fraudulent “After First Package Call Back Script” and the “After Second Package Call Back Script” to current or prospective Herbalife distributors, for the purpose of inducing the prospect to join Herbalife and the NWTW System, the exact dates and locations of which are not known to Plaintiffs but are known to Defendants and will be disclosed during discovery, but in general continuing from December, 1999 to date;

(i) Causing wire transmissions in connection with “Focus group” conference calls during 2001 on September 9, October 3, October 7, October 18, October 21, October 25, November 1, November 8, November 11, November 15 and November 25, in which Plaintiff Nancy Jacobs participated from her home in Wheaton, Illinois;

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1 (j) Causing wire transmissions to other Class Members in connection  
2 with “focus group” conference calls, “Touchfon” Voice Mail/Communications and  
3 promotional seminars over the Internet, for the purpose of inducing the Class Members  
4 to stay in Herbalife and the NWTW System on diverse occasions from December,  
5 1999 to date, the exact dates and locations of which are not known to Plaintiff but are  
6 known to Defendants and will be disclosed during discovery.  
7

8 87. The foregoing acts of mail fraud and wire fraud constitute a pattern of  
9 racketeering activity through which each of the Defendants, individually or through the  
10 activities of their employees and agents, conducted or participated in the NWTW  
11 Enterprise within the meaning of 18 U.S.C. §1961(5).  
12

13 88. The foregoing acts of mail fraud and wire fraud comprising the pattern of  
14 racketeering activity alleged herein commenced on a date or dates unknown to the  
15 Plaintiffs but no later than December 1, 1999, and has continued through the present  
16 time. It can reasonably be inferred from the acts constituting the pattern of  
17 racketeering activity, that this activity is likely to continue into the future.

18 89. Plaintiff and the members of the Class have been injured in their  
19 businesses or properties as a direct and proximate result of the Defendants' violation of  
20 18 U.S.C. §1962(c) and are entitled to recover treble damages, costs of suit and  
21 reasonable attorneys' fees, pursuant to 18 U.S.C. §1964(c).

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**SECOND CLAIM FOR RELIEF**

**(Violation of 18 U.S.C. §1962(d))**

**(Against All Defendants)**

90. Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in the preceding paragraphs, and further allege:

91. Defendants conspired with each other and others to conduct and participate in the affairs of the NWTW Enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(d).

92. At all relevant times, Defendants knowingly agreed and conspired with each other and others to commit at least two of the predicate acts set forth herein, with knowledge that such acts were in furtherance of their conduct of the NWTW Enterprise and their fraudulent scheme to engage in mail and wire fraud.

93. This conspiracy commenced at a date unknown to Plaintiffs but no later than December 1, 1999 and is continuing.

94. Defendants specifically agreed to join the RICO conspiracy and to engage in the acts set forth above.

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95. Plaintiffs and the members of the Class have been injured in their businesses or properties as a direct and proximate result of the Defendants' conspiracy to violate 18 U.S.C. §1962(c) and are entitled to recover treble damages, costs of suit and reasonable attorneys' fees, pursuant to 18 U.S.C. §1964(c).

**THIRD CLAIM FOR RELIEF**

**(Fraud and Deceit)**

**(Against All Defendants)**

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96. Individual and Representative Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in the preceding paragraphs, and further allege:

97. Each of the acts, practices, misrepresentations, omissions, violations, and other wrongs complained of above, have been engaged in by Defendants with malice and with specific and deliberate intent to oppress, defraud and deceive Plaintiff.

98. Defendants, and each of them, knew and know that the Defendants and others identified herein were engaged in the fraudulent conduct as aforesaid, and that said conduct has constituted a breach of their duties to the Class and a fraud.

Notwithstanding this, said Defendants, and each of them, has engaged in conduct as

1 hereinbefore described which rendered and continues to render substantial assistance  
2 to, aided and abetted, and concealed the fraudulent NWTW scheme.

3  
4 99. With knowledge of the unlawful purpose thereof, said Defendants, and  
5 each of them, have entered into an undisclosed agreement to accomplish an illegal  
6 pyramid scheme and in their actions have assisted that scheme and its injurious results.

7 100. As a proximate result of the conduct of Defendants, each of them,  
8 Plaintiffs and the Class have invested time and money in their Herbalife distributorships  
9 and the NWTW promotional scheme in actual and justifiable reliance thereon, and  
10 Plaintiffs and the Class have been injured as aforesaid.

11  
12 101. As a result, and because Defendants have acted and continue to act  
13 maliciously and oppressively, despicably, and in callous disregard of the rights and  
14 interests of Plaintiffs, Plaintiffs and the class are not only entitled to the damages set  
15 forth above, but also to punitive damages, in a sum not presently known, for the sake of  
16 example and by way of punishing Defendants.

17  
18 **FOURTH CLAIM FOR RELIEF**

19 **(Endless Chain Scheme in Violation of California Penal Code §327)**

20 **(Against All Defendants)**  
21

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102. Individual and Representative Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in the preceding paragraphs, and further allege:

103. The NWTW scheme for the promotion of Herbalife distributorships constitutes an Endless Chain scheme within the meaning of California Penal Code §327.

104. Plaintiffs and the Class are entitled to rescission of the NWTW and Herbalife contracts and return of all consideration paid pursuant to Defendants' Endless Chain Scheme, less any compensation received, pursuant to California Civil Code §1689.2.

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**FIFTH CLAIM FOR RELIEF**

**(Violation of California Seller Assisted Marketing Plans Law)**

**(Against All Defendants)**

105. Individual and Representative Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in the preceding paragraphs, and further allege:

1 106. The NWTW System is a Seller Assisted Marketing Plan within the  
2 meaning of the California Civil Code §1812.201(a) and is not within the scope of any  
3 of the exclusions set forth in California Civil Code §1812.201(b), in that:

4 a. The NWTW System calls for Herbalife/NWTW distributors to  
5 make a total initial payment exceeding \$500 within six months after commencement of  
6 operations for products, equipment, supplies or services, including but not limited to  
7 the purchase of multiple copies of the “First Package” and “Second Package” for use in  
8 soliciting new distributors;

9  
10 b. Defendants have advertised or solicited the purchase of the NWTW  
11 Plan; and

12 c. Defendants have represented that purchasers will earn, are likely to  
13 earn and can earn an amount in excess of the initial payment.

14  
15 107. Defendants have sold, or represented that they have sold, five or more  
16 NWTW distributorships within the 24 months preceding the solicitations of Plaintiffs  
17 and Class Members, or have represented that they intend to sell five or more NWTW  
18 distributorships within the 12 months following the solicitations of Plaintiffs and Class  
19 Members.

20  
21 108. The sales or offers to sell NWTW distributorships occurred within or  
originated from the State of California in that Plaintiff Annette Sanchez resides in the

1 State of California, the Herbalife Defendants and Defendant H.B. International Group,  
2 Inc. have their principal places of business in California, and the purchase of a NWTW  
3 distributorship necessarily involves the purchase of an Herbalife distributorship.  
4

5 109. Defendants have violated the California Seller Assisted Marketing Plans  
6 law, California Civil Code §1812.200, et seq., by:

7 a. Making earnings claims concerning the NWTW System without the  
8 substantiating data or disclosures required by California Civil Code §1812.204(d); and

9 b. Failing to provide prospective purchasers of the NWTW System  
10 with the disclosure statement required by California Civil Code §1812.205 or the  
11 information sheet required by California Civil Code §1812.206.  
12

13 110. Plaintiffs and members of the Class have been injured by Defendants'  
14 violations of the California Seller Assisted Marketing Plans law and are therefore  
15 entitled to actual damages, damages in the nature of rescission and punitive damages  
16 pursuant to California Civil Code §1812.218.

17 **SIXTH CLAIM FOR RELIEF**

18 **(Unlawful, Unfair or Deceptive Business Practices in Violation**  
19 **of California Business and Professions Code Section 17200 et seq.)**  
20

21 **(Against All Defendants)**

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111. Individual and Representative Plaintiffs, on behalf of themselves and all others similarly situated, reallege, as if fully set forth, each and every allegation contained in the preceding paragraphs, and further allege:

112. By promoting and selling NWTW distributorships in connection with Herbalife distributorships as alleged herein, Defendants have engaged in unlawful or deceptive business practices and unfair competition within the meaning of California Business and Professions Code §17200, including but not limited to:

- a. Making false or misleading statements in violation of California Business and Professions Code §17500; and
- b. Contriving, preparing, setting up, proposing or operating an endless chain in violation of California Penal Code §327.

113. In addition, Defendants engaged in a deceptive and/or unfair business practice, as well as unfair, deceptive, or untrue advertising and acts prohibited by Business & Professions Code §17500, et seq. Specifically, Defendants marketed the NWTW distributorships as described above. Said marketing, including said omissions, were material and substantial.

114. The above-described unlawful, unfair and deceptive business practices conducted by Defendants, present a threat and likelihood of deception to members of the Class and the general public, in that Defendants have systematically perpetrated

1 and continue to perpetrate deceptive, unlawful and unfair acts upon members of the  
2 public by knowingly marketing the NWTW distributorships deceptively as described  
3 above.  
4

5 115. Pursuant to Business & Professions Code §§17200 and 17203, Plaintiffs,  
6 on behalf of themselves, Class members and members of the general public, seeks an  
7 order of this Court awarding Plaintiffs and members of the Class restitution of all  
8 monies wrongfully acquired by Defendants by means of such wrongful acts and  
9 practices, as permitted under California law, so as to restore any and all monies to  
10 Plaintiffs and members of the Class which are still retained by Defendants, plus  
11 interest, attorneys' fees and costs pursuant to, inter alia, Code of Civil Procedure  
12 §1021.5.  
13

14 116. Defendants' unfair competition presents a continuing threat and likelihood  
15 of causing further harm to Plaintiffs and members of the Class, such that injunctive  
16 relief would be appropriate, in the form of an order enjoining Defendants from selling,  
17 promoting or condoning the sale of NWTW promotional materials and ordering  
18 Defendants to disgorge all money received as a result of the NWTW scheme.  
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**VII. PRAYER FOR RELIEF**

WHEREFORE, Individual and Representative Plaintiffs request of this Court the following relief, on behalf of Plaintiffs and of all others similarly situated:

A. Further order (or writ) of the proposed Plaintiff (Glasland Fed) By Citiz. P. Court: [REDACTED] from proper and further regarding equitable relief as this Court may able

**DEMAND FOR JURY TRIAL**

The Plaintiffs demand a trial by jury as to all issues so triable.

DATED: January \_\_, 2003

SCHUBERT & REED, LLP

By: \_\_\_\_\_

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