Herbalife Lawsuit

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

CLINT S. FALLOW, MARY LYNN FALLOW, and DANIEL S FALLOW, Plaintiffs, **vs.** **HERBALIFE INTERNATIONAL, INC., a Nevada Corporation, TONNI and JAY RILEY, Husband and Wife, Defendants.**	**No. CV 96-03558** **AMENDED COMPLAINT FOR:** **BREACH OF CONTRACT** **QUANTUM MERUIT** **INTENTIONAL INTERFERENCE WITH CONTRACT** **FRAUD, CONVERSION** **RACKETEERING** **(Jury Trial Demanded)** **(Assigned to the Honorable Colin F. Campbell)**

Plaintiffs Clint S. Fallow, Mary Lynn Fallow, and Daniel S. Fallow for their amended complaint against Defendants Herbalife International Inc., and Herbalife of America, Inc. (together "Herbalife") and Tonni and Jay Riley by and through counsel undersigned, hereby allege as follows:

I. PARTIES

1. Plaintiff Clint S. Fallow is a resident and citizen of Maricopa County, Arizona.
2. Plaintiff Mary Lynn Fallow is a resident and citizen of Sandpoint, Idaho. At relevant times, Mary Lynn Fallow was married to and then divorced from Dan S. Fallow, Clint Fallow's father. At relevant times herein, she was a resident of Maricopa County, Arizona.

3. Plaintiff Daniel S. Fallow is a resident and citizen of Sandpoint, Idaho. At relevant times herein, he was a resident of Maricopa County, Arizona.
4. Defendant Herbalife International Inc. has, and at all relevant times had, its principal place of business in Southern California. Nonetheless, it is a Nevada corporation. Herbalife is the holding company for Herbalife of America Inc.
5. Defendant Herbalife of America Inc. has, and at all relevant times had, its principal place of business in Southern, California.
6. Upon information and belief, at all times relevant herein Herbalife of America and Herbalife International Inc. acted in concert and as agents of each other.
7. Defendants Tonni and Jay Riley, husband and wife, are believed to be residents of Prescott, Arizona, doing business in Maricopa County. At relevant times herein, they were residents of Maricopa County.
8. Herbalife does, and at all relevant times has been doing, business in Maricopa County Arizona, and collects sales tax for the State of Arizona (which may or may not be paid over to the State, and which may form the basis for a later class action claim). Herbalife has solicited consumer sales in Arizona, shipped large amounts of products to Arizona, and has solicited thousands of Arizona residents to become sales agents for Herbalife.
9. At all relevant times, Mark Reynolds Hughes, has been and is the Founder and President of Herbalife International.
10. Mary Fallow began her Distributorship for Herbalife while a resident of Maricopa County, Arizona. Mary operated the Distributorship in Maricopa County from April of 1984 to mid 1987.
11. Clint Fallow began his Distributorship for Herbalife while a resident of Maricopa County, Arizona. Clint operated the Distributorship in Maricopa County, Arizona, at all relevant times herein.
12. Dan Fallow began a Distributorship with Mary in Maricopa County, Arizona, and operated that Distributorship with Mary in Maricopa County until 1987.

II. GENERAL ALLEGATIONS

A. Facts Relating To the Business of Herbalife

1. ***The Herbalife Promises: Income Limited Only By Individual Effort.***
   13. Herbalife sells the idea of success, the ability to get rich quick, and to enjoy a lavish lifestyle and unlimited income. Herbalife recruits Distributors through a series of video tapes, offering the promise of new homes, dream vacations and quick cash designed to lure more and more people into filling out the bottom of the Herbalife pyramid, necessary to support the avarice of the those at the top.
   14. The contrivance for Herbalife's pyramidal get rich quick scheme is the sales and distribution of overpriced herbal weight loss, nutritional and personal care products. The products cannot be purchased through retail outlets. Rather, they are sold exclusively through a network of persons employed as independent "Distributors."
   15. Plaintiff Dan Fallow has recently gained information which makes him believe that Herbalife is able to offer its Distributors the promise of large returns because the mark-up on its products is over seven times the cost of manufacturing. For example, its "Protein Power" weight loss drink is believed to cost approximately $2.50 a can to manufacture. Herbalife sells it for $20.00 a can -- all of which is profit. Herbalife recoups its costs by tacking on other charges, marking up UPS or other freight charges over actual cost, and adding a superfluous 6% packaging and handling charge on every order. Upon information and belief, Herbalife funds its recently announced "infinite bonus" payments to the highest level of Distributors by the packaging and handling charge. Prior to implementing this bonus system, Herbalife had never charged packaging and handling.
   16. In its promotional materials, Herbalife offers the example of Founder and President, Mark Hughes as someone who became rich selling Herbalife, and drives a Rolls Royce and lives in a $20 million dollar Beverly Hills mansion. However,

upon information and belief, a large portion of Hughes' current income is not earned through sales of Herbalife products through Distributorship, but is earned from sales made to Herbalife by supplier companies in which Hughes has an equity interest. According to recent 10-Q report filed with the SEC in May of 1995, Hughes earned almost $5,000,000 in 1994 from these companies, one of which has a requirements contract, obligating Herbalife to purchase all of its products from it.

17. An applicant for a Herbalife Distributorship becomes a Distributor when the person purchases a "Distributor Kit" and "when [his] completed application has been accepted and processed by Herbalife World Headquarters." Once the application has been accepted, the "contract with Herbalife becomes effective immediately, giving [the Distributor] all the rights and responsibilities of a Distributor."
18. Herbalife induces persons to become Distributors by promising opportunity and income limited only by the Distributor's individual effort. Herbalife promises its Distributors that its "sales and marketing plan has been designed" to "maximize his success" if "he applies dedication, hard work and perseverance." Herbalife promises that "the rewards you receive as a Distributor operating your own business will be directly proportionate to the time and effort you put into your business." By sponsoring others, the Distributor had "the opportunity to grow as fast as [he] want[s] to" and "may sponsor people anywhere" and "earn a profit on their sales activities."
19. Herbalife Distributors are also promised the ability to operate his or her Distributorship as their "own business". Herbalife promises "a freedom of choice in [his] earning potential . . . It is our belief that each person should have the inherent right to choose the manner in which they live, the work they perform and the amount of money they want to earn."
20. Pursuant to this philosophy that each Distributor operates his or her own business, each Herbalife Distributor is required to bear all the expenses of running the operation, including advertising, travel, entertainment, office or home space, hotel meeting room rentals, etc. Herbalife bears no part of these expenses, regardless of the profit to Herbalife.
21. Additionally, Herbalife Distributors make sales of "Distributor Kits" and literature for Herbalife for which they receive no compensation. As royalties are paid only on certain items, sales of non-royalty items are profit to the company, but earn no profit to the Distributor.
22. Distributors, Herbalife proclaims, earn money by making retail sales to "all those persons with whom they come into contact." Additionally, Distributors "who sponsor others into their specific Distributor network can earn royalty override bonuses based on the individual sales of the persons that they have sponsored."
23. In addition to income from personal retail sales, and royalties from sales of others sponsored by the Distributor, Distributors also receive "bonus" payments tied to a complex system of tiered production levels.

2. ***The Reality: Herbalife Arbitrarily and In Violation Of Its Own Rules Takes Away Earned Income.***

24. Despite these representations, after a Distributor has attained some success, quit other employment and has received some large royalty and bonus checks, Herbalife has a pattern and practice of arbitrarily and capriciously taking away income from its Distributors and withholding it, or redistributing that income to other persons more favored within the organization.
25. Herbalife also has a pattern and practice of arbitrarily reducing checks without explanation and then refusing to account for the deficiencies. Herbalife's accounting is so confusing and unexplained that a Distributor never has all the information needed to determine whether he or she has been paid as promised. This purposeful lack of access to information give Herbalife the ability to arbitrarily withhold income.

3. ***Herbalife's Stated Organizational Structure.***

26. Herbalife also promises that "[e]ach and every Distributor begins in the same position with an equal opportunity for success and advancement.

4. ***Herbalife's Actual Organizational Structure.***

27. Despite this outward protestation of a meritocracy, the truth is that not all Herbalife Distributors are created equal. In

reality, Herbalife is a dictatorship run by its founder and a small group of favored sycophants. As demonstrated by what happened to these Plaintiffs, and as they have observed happen to others, Plaintiffs now know that the chosen few are allowed to violate the stated rules and are given favored treatment.

5. ***The Herbalife Rules.***

a. Rules Regarding Married Couples.

28. Married couples who wish to be Distributors must work under the same Sponsor, and cannot sponsor each other. If Distributors marry each other, one must relinquish his or her distributorship, unless either Spouse has achieved "Supervisor" status, in which case, each may maintain their separate distributorship in the original line of Sponsorship.
29. Any Herbalife Distributor may resign at any time by submitting his or her notarized resignation letter to Herbalife headquarters. At relevant times herein, Distributors were told that he or she must wait six months before re-applying for another Herbalife Distributorship under any Sponsor other than the original Sponsor. Herbalife later increased the six month requirement to twelve months.

b. The Reality: The Rules Are Bent or Broken To Favor Certain Sponsors.

30. Despite these written rules, and even if Distributors follow these rules, as demonstrated by what happened to these Plaintiffs, the rules are broken in order to benefit certain favorite sponsors at the expense of Distributors who suffer the misfortune of being targeted by the favorite few.

c. The Rules Barring Unfair Sales Practices.

31. Rule 8 of the Rules of Conduct for Herbalife Distributors provides that: No Distributor shall attempt to induce any other Herbalife Distributor, whom he does not personally sponsor, to sell Herbalife products. The purpose of the rule is to ensure that the rights of other Sponsors are honored at all times.

d. The Reality: These Rules Are Ignored When It Benefits The Favored Few.

32. Despite these written rules, demonstrated by what happened to violating Distributors under one of these Plaintiffs, if certain Distributors break these rules, the violations are ignored if enforcing the rules would result in less income for favorite sponsors -- even though the failure to enforce the rules resulted in a huge income loss to Plaintiff.

e. Herbalife Promises Due Process Prior To Cutting A Distributor's Income.

33. Rule 13 of the Rules of Conduct for Herbalife Distributors provides that: Every Distributor has the duty and responsibility to investigate and properly report any and all violations of the Distributor Rules of Conduct.
34. The Herbalife Enforcement Procedures provide a "step-by step summary of the methods by which Herbalife Distributors may deal with violations of the Rules of Conduct.

Step 1. Upon learning of a violation, a Distributor should inform the violator of the appropriate section in the Rules of Conduct and discuss the matter with him. Point out the purpose behind the particular rule. Be sure that the alleged violator knows how his conduct broke the rule and what the proper conduct should have been. Most violations are due to a lack of understanding; a discussion usually settles the matter.

If the violator understands the rule and agrees to comply, then is not necessary to inform the Company of the violation. However, a Distributor should always ensure that his Supervisor is aware of the problem.

Step 2. If the alleged violator shows by word or conduct that he is unwilling or refuses to cooperate, then the Distributor should send a letter to the company stating the nature of the complaint; names, addresses, and telephone numbers of all persons involved; dates; times; places; etc. The letter must be signed by the Distributor(s) reporting the violation. Anonymous complaints cannot be made the basis for disciplinary action.

After the letter has been mailed, the Distributor should maintain contact with the violator and report any changes in the situation. The utmost care must be taken to ensure that the complaint is accurate and truthful -- knowingly making a false complaint is a violation of the Rules of Conduct. The Company considers all complaint information to be strictly confidential.

Step 3. When the complaint is received by the Company, it will be handled accordingly to set Company procedures. All parties will be afforded the opportunity to present evidence and argument in writing to the Company. No decision will be rendered until all parties have been notified and an opportunity to appeal the fairness of the decisions has been made available. Although the Company bears the primary responsibility for enforcement of the Rules of Conduct, Supervisors and occasionally Sponsor may be called upon to implement and enforce these decisions.

f. The Reality: Herbalife Denies Due Process When It Suits It.
Despite this outwardly fair facade, as demonstrated by what happened to these Plaintiffs, Herbalife does not offer due process when it targets disfavored Distributors to advantage favored Distributors. In fact, on at least one occasion, Herbalife conducted a secret, damaging and rumor filled investigation, then withheld income and forced a Distributor out of business, without so much as a chance to explain, much less the process described above.

6. ***The Real Rules: Whatever Herbalife Wants At The Moment.***

35. Despite these Rules, as demonstrated by what happened to these Plaintiffs and others, Herbalife, has a pattern of either ignoring them, or making up new ones, in order to withhold income, and/or redistribute income to other persons more favored within the organization. As demonstrated by testimony given by Founder Mark Hughes in a recent deposition taken on November 29, 1995, in Los Angeles, California, Herbalife also has unwritten rules it enforces at will without notice.
36. Herbalife is no doubt aware that giving large rewards and fast dollars generates loyalty. Apparently, however, even that promise is not enough to generate the kind of control over its Distributors Herbalife insists upon. Plaintiffs have information that makes them believe that, on many occasions, Herbalife has exercised its power to turn off a Distributors' income stream, and/or significantly reduce it, to force successful Distributors to bend to its will, whether or not Herbalife's demand is within Herbalife's stated rules or policies. Herbalife uses this coercion tactic to gain a level of control over its Distributors not afforded by its contractual rights.
37. In one example of this coercive control, a Southern California Distributor's income was terminated when she began to generate income from selling direct mail literature to her down line Distributors. There is no Herbalife Rule preventing the sale of literature which does not use the Herbalife name or trademarks.
38. Favoritism also results in broken rules. Herbalife represents that it will now allow Distributors to sell into foreign countries which are not yet "open" by Herbalife. The truth is that, on at least one occasion, it has allowed a favored Distributorship, John and Susan Peterson, to sell and establish Distributorship in an unopened country, Mexico, prior to allowing competition by any other Distributors. This favoritism allowed the Petersons to gain an immense advantage and a much greater income than the normal Distributor who was bound by the no-selling limitation.
39. While the favored prosper, the disfavored suffer. In one instance, one Texas million dollar distributor was terminated when he began to sell competing products. Another Southern California distributor was terminated when her husband began to sell competing products. Yet, as described herein, Herbalife has also chosen to turn a blind eye to identical behavior when it benefited the favored. Plaintiffs are currently investigating other such examples of disparate treatment among Distributors.

B. The Fallows Join Herbalife.

1. ***Mary And Dan Become a Distributorship.***

40. On or about April 13, 1984, Dan Fallow, Clint's Father, and Mary Fallow, while residents of Mesa, Arizona, signed an "Application for Distributorship", No. 545212, with Herbalife under the Sponsorship of favored John O. Peterson of Harris County, Texas.
41. In 1984, the Fallows lived Herbalife, working seven days a week and 12 hour days. Their activities included: paying all their own expenses, advertising for Distributors by distributing flyers on car and telephone poles, posting notices in grocery stores, laundries, placing advertisements in the newspaper, handling calls from people interested in the product or becoming Distributors, setting up to twenty appointments a day with potential Distributors in their home, selling the product retail, holding sales training and motivational meetings three times a week with people who had become Distributors, holding meetings in rented hotel rooms at which as many as 500 people would attend on the weekends, following up on referrals, and having their house constantly filled with people.
42. That first year, the Fallows earned as much as $30,000 a month and more than $300,000 for the year.
43. However, the second year Herbalife experienced problems with the FDA which Herbalife represented as the FDA's insistence that Herbalife change its labeling. Herbalife refused and instead instituted suit against the FDA. The negative publicity surrounding the fight made it extremely difficult for the Fallows, despite constant effort. Hotel meetings which had previously been attended by as many as 500 people now dwindled. The Fallows paid for and held a few meetings where no one came. Their income plummeted from $30,000 a months to $30,000 for the entire second year. The Fallows lost their home, their credit rating and their security.
44. Rather than leave the organization as others began to do, the Fallows remained committed. They agreed to move to Colorado for six months and then to Mexico for six months to follow better markets. Sales and Distributorship were much more difficult, but the Fallows persisted and began to rebuild.
45. It was in Mexico that the Fallows first noticed how favoritism ran Herbalife. Although the Mexican market was not officially "open" to Herbalife Distributors, Herbalife allowed the favored John and Susan Peterson to sell and establish Distributorship in advance of allowing competition from other Distributors. Before any other Distributor could make sales, the Petersons were sending product by the plane full to Mexico.

2. ***Dan and Mary Divorce, Dan Resigns, His Distributorship Ends, and the Distributorship Becomes Mary's Alone.***

46. As a result of suffering injuries in an automobile accident, on or about March 21, 1988, Dan Fallow sent Herbalife headquarters a notarized letter and resigned his distributorship with Herbalife.
47. On or about January 16, 1989, Dan and Mary Fallow received a decree of divorce. The Fallows and Herbalife agreed that the Distributorship was to belong to Mary Fallow alone.
48. Herbalife confirmed that the Distributorship had been reassigned to Mary Fallow alone.
49. Dan then met the stated Herbalife requirements for inactive Distributorship, severing himself from his former sponsor, the favored John and Susan Peterson. For at least the next twelve months after this resignation, Dan Fallow was inactive in the Herbalife business. He did not become a Distributor. He did not participate in any way in the operation, training, selling or recruiting of Mary Fallow's or any other Herbalife Distributorship.

C. Dan's Son, Clint S. Fallow Joins Herbalife.

50. Dan's son, Clint had recently gotten out of the Armed Forces. Impressed by the success in Herbalife of Dan and Mary, on or about April 25, 1992, while living in Tempe, Arizona, Clint Fallow applied for and became an Herbalife Distributor. Warned away from Sponsorship of John and Susan Peterson by Dan joined under the sponsorship of David J. Peterman of Spokane Washington.
51. There is no Herbalife rule which requires the son of a former Distributor to sign with any particular sponsor. Clint, on Dan's advice, chose the sponsorship of David Peterman.

52. At the time Clint Fallow applied for Distributorship, his father, Dan Fallow was not an Herbalife Distributor.
53. Clint Fallow followed the Rules to become a Distributor. He paid for and received his Distributor kit. On April 28, 1992, Herbalife sent Clint Fallow an Herbalife Distributor Processor Notice welcoming him to Distributorship.
54. In paragraph 6 of that Application, Herbalife represented that if a Distributor fails to comply with the terms of this agreement, Herbalife may revoke this Distributorship. There is no provision allowing Herbalife to revoke or terminate a Distributorship for any other reason.
55. Clint Fallow's sponsor, Dave Peterman, trained and assisted Clint Fallow in establishing and developing his Herbalife Distributorship. Clint Fallow threw himself into the business and sold Herbalife product in Arizona and signed up new Distributors under his sponsorship. Clint Fallow achieved the advanced level of Herbalife "Supervisor."
56. Thereafter, Peterman discussed opportunities in Germany with Clint Fallow. Another Distributor had recently relocated there and was very successful. Clint had been in the service there and believed he could build Distributors. However, Clint also wanted to return to college and finish his education.
57. When Clint was unable to travel to Germany, Peterman invited Dan Fallow on the trip. Dan Fallow agreed to go to assist Clint. Thereafter, Dan Fallow began to assist his son in the German and later European part of Clint's Distributorship. Dan did not then re-apply to be a Distributor. Instead, he worked solely as an agent of his son.
58. Upon information and belief, Herbalife was then aware of Dan Fallow's assistance to his son. Dan and Clint were open about the arrangement and explained it to every Distributor they signed up. It was also made public knowledge at the Barcelona Extravaganza Herbalife convention in early 1993.
59. Despite this awareness, during the time Clint was building his Distributorship with Dan's assistance, in 1992, 1993 and the first half of 1994, Herbalife never objected. Herbalife never suggested that Dan's assistance to Clint would or could affect Clint's right to payment.
60. The German/European part of Distributorship was extremely successful, resulting in income of $7,000 to $8,000 to Clint per month throughout 1993. Perhaps the Distributorship was too successful, as it then caught the eye of the favored John and Susan Peterson.
61. In 1994, favored Distributors John or Susan Peterson, the Sponsors of Mary Fallow and former sponsor of Dan Fallow, sent in certified letters to Herbalife and complained to Herbalife that Clint Fallow's Distributorship should somehow be credited to them, and not to Clint's sponsor, David J. Peterman.
62. In the spring of 1994, Herbalife then conducted an unprecedented "investigation" of Clint Fallow's Distributorship -- ignoring its own rules of due process. During that investigation, Herbalife contacted several of Clint Fallow's down line Distributors and Supervisors, spreading rumors and implying that Clint was guilty of wrongdoing. The campaign damaged the relationship between Clint Fallow and those persons, upset Clint's Distributors, and resulted in a significant decline of business and loss of income.
63. As a result of this campaign of misinformation, royalties to Clint Fallow from the German/European part of the Distributorship declined to approximately $1,000 a month.
64. On or about July 6, 1994, Herbalife wrote to Clint Fallow and informed him that his distributorship "was in fact a distributorship of Dan Fallow, former husband of Mary Fallow" and required to be under the sponsor, John Peterson." As a result of this determination, Herbalife transferred the Distributorship of Clint Fallow and the lineage developed under that Distributorship to John Peterson. Herbalife further determined that approximately $79,371.97 would be deducted from the earnings of the Clint Fallow Distributorship to repay John Peterson for adjusted "Royalty Override and Production Bonus Adjustments." By the time Herbalife transferred part of Clint's income to the Petersons, Clint's income was down to approximately $1,000 a month. The Petersons are believed to have been making as much as $175,000 a month.
65. Prior to this determination, and contrary to the Step 1 of the Herbalife Enforcement Procedures, neither Herbalife or John Peterson made any attempt to contact or discuss the matter with Clint or Dan Fallow, or inform them that anyone believed a

Rule was being broken.

66. Prior to this determination, and contrary to Step 3 of the Herbalife Enforcement Procedures, Clint Fallow was not "afforded the opportunity to present evidence and argument in writing to the Company" or an "opportunity to appeal the fairness of the decision" prior to the time this decision was rendered.
67. This summary "termination" of Clint Fallow's Distributorship was totally unjustified by Herbalife's Rules or policy. It was in direct contravention of Clint's Fallows rights as a Distributor and Herbalife's representations which induced Clint Fallow to begin and build his Distributorship.
68. Nothing in Herbalife's Rules, literature or memoranda provided to Clint Fallow prohibited him from using agents to assist him. To the contrary, Herbalife went to great lengths to inform its Distributors that they are "independent contractors" and not employees, with freedom to run "their own business."
69. At the time Herbalife made this determination, it had no rule or policy which required the son of a former Distributor (who had previously resigned his Distributorship) to become a Distributor under the original sponsor of his father or under the sponsorship of his father's wife who was no blood relation to him.
70. Just as there was no reason to bind Clint Fallow to sponsorship under the Petersons, there was no reason to bind even Dan Fallow to sponsorship under the Petersons. Under the then operative Herbalife Rules, once Dan Fallow resigned from Herbalife in 1988, divorced, and then waited more than two years becoming active again in Herbalife, Dan Fallow had the right to re-apply as a Distributor under a new sponsor, different from Peterson. Dan Fallow's past relationship with Herbalife was not grounds for "taking" Clint Fallow's Distributorship.
71. At the time Herbalife made this determination, Herbalife also had no rule or policy which prevented a Herbalife Distributor from using a former Distributor to assist him in his business, or which would cause the Distributor to lose his Distributorship as a result of that assistance.
72. Herbalife's arbitrary and sudden taking of Clint Fallow's Distributorship was so without precedent and unprincipled that it apparently confused even Herbalife.
73. Herbalife first informed Clint that it would take only half of his check to send to the Petersons. However, it withheld entire checks or sent checks for a lesser amount without explanation.
74. In 1994 and 1995, after Herbalife officially determined that Clint had no Distributorship because it belonged to Dan, Clint Fallow continued to operate the Arizona portion of his Distributorship. Herbalife sent Clint letters recognizing his right to operate his Distributorship -- at the same time they withheld moneys to send to the Petersons.
75. Dan and Clint also continued work on the German/European part of Clint's Distributorship. In early 1995, through persistent effort, Dan Fallow and a Danish Distributor were able to revive a portion of the German/European part of the Distributorship and increase the royalties and bonuses back up to $15,000 a month (which were sent to the Petersons). But for Herbalife's actions, the value of the German/European part of the Distributorship would have continued to increase.
76. In 1995, the Fallows hired an attorney to investigate and restore their rights. In response to this inquiry, Herbalife began to manufacture reasons to cut the Fallow's income. Inconsistent with its determination that Clint Fallow's Distributorship had been reassigned to Peterson, and was no longer held by Clint (or Dan, who was not recognized as having any Distributorship), Herbalife sent a notice to Dan Fallow, at his address, that the Distributorship had not generated enough sales volume to qualify for "Supervisor Status", preferred treatment and greater payments. Mary Fallow received a similar letter regarding her Distributorship. If Herbalife had treated the two entities as one Distributorship, as it claimed it was required to do, both would have been entitled to preferred treatment and greater payments.
77. Throughout 1995, Herbalife continued their schizophrenic treatment of Clint, deducting payments while recognizing his Distributorship --at both his and Dan's address. Although Herbalife claimed that Clint's Distributorship was in fact Dan's, Clint's name and Distributor ID number were never deleted from the Herbalife Distributor list. Clint's Distributorship was never transferred to Dan's social security number, but remained under Clint's number. On or about February 26, 1995, Mark Hughes,

Founder and President of Herbalife sent Clint Fallow, a letter recognizing that he had "re-qualified as an Herbalife Supervisor." In October of 1995, Herbalife sent another letter to "C.S. Fallow" at Dan's address, informing him that the Distributorship needed to re-qualify to be considered a supervisor and was in danger of losing all of his down- line organization. To avoid this loss, the Distributorship was forced to buy a large amount of product to again re-qualify.

78. Events continued to turn for the worse. In the spring of 1995, Herbalife stopped purporting to offset the royalty checks against the moneys purportedly owed to Peterson, and upon information and belief, the distributorship was transferred to Peterson directly. This transfer is in direct contravention of Herbalife rules which provide that any deleted Distributorship is to be merged with the old line, (in this case that of Mary Fallow) rather than given directly to Fallow's sponsor, the favored John Peterson. Upon information and belief, this departure from Herbalife rules was done to benefit John Peterson at the expense of the Fallows.
79. Simultaneously, Peterson and his wife had contacted some of Clint Fallow's European Distributors and have continued to harm the growth of the German/ European part of the Distributorship. Through a conference call arranged by Herbalife in July of 1994 (at which neither Clint or Dan Fallow were allowed to participate), and through other contacts, the Petersons informed the Distributors that Clint Fallow was no longer their Sponsor, but that they would report to the Petersons. The Petersons stated or implied that Dan or Clint Fallow, or Clint's sponsor, Dave Peterman were guilty of wrongdoing which had necessitated the change in sponsorship. This announcement caused Distributors, who did not wish to be associated with the taint of wrongdoing, to quit Herbalife.
80. The Petersons further damaged the business when they began implementing a new authoritarian and condescending management style which was not well received. The Petersons humiliated and alienated Distributors, who then left Herbalife.
81. Despite all efforts to rebuild, Herbalife's diversion of Clint's income proved disastrous. Clint Fallow was unable to maintain the cash flow necessary to purchase the volume of product necessary to keep the Distributorship producing at its prior levels. A drop in production meant an exponential drop in income. As a result, Clint Fallow lost considerable production and income.
82. Eventually the problems became too much for Clint to overcome. He lost his town home, his credit rating, and his VA loan eligibility. His possessions were put into storage. He later lost them too when he could no longer pay to store them.
83. To date, Clint Fallow's damages, not including the present value of his future royalty income stream and the damage to the growth of that future royalty income stream, are in an amount exceeding $356,000. His lifetime earnings would have exceeded $3,600,000.

D. Facts Relating To the Claims of Mary Fallow

84. As discussed above, Mary and Dan Fallow began their Distributorship in 1984, operating in Maricopa County Arizona for the first three years. As discussed above, Mary and Dan parted, and the Distributorship became hers alone.
85. Mary's "sponsor" for her Distributorship was John O. Peterson then residing in Houston, Texas and now residing in Denver, Colorado.
86. While an Herbalife Distributor, Mary sponsored the Distributorship of a couple, Tonni and Jay Riley, then residents of Maricopa County, Arizona. Tonni Riley, then Tonni Lukavics, signed a Distributorship contract with Herbalife which named the Fallows as her "sponsors" and "supervisors" or third party beneficiaries of that contract. Tonni Riley later married Jay Riley and her joined her in the Distributorship. At all times relevant herein, the Rileys were acting on behalf of, and as agents for each other and for their marital community.
87. On or about 1990, Tonni and Jay Riley began violating Herbalife Rule in two ways: (1) by "cross-sponsoring" persons in Herbalife in violation of Rule 8 of the Rules of Conduct; and (2) by trying to recruit other Distributors in Mary Fallow's Distributorship to another competitive organization selling diet and nutrition products called "Genesis 2000." Upon information and belief, the Rileys developed, marketed and distributed the Genesis 2000 products.

88. Herbalife's long-standing and continuing practice had been to sanction such behavior by deleting the violator's interest in their Distributorship and transferring the interest to the violator's immediate sponsor.
89. However, when Herbalife learned of the Riley's actions in cross sponsoring, Herbalife merely withheld the Riley's royalty checks until the Riley's promised to stop their violations. Herbalife then resumed payment to the Rileys. This departure from policy cannot be understood, except for the fact that the Riley's presence was extremely profitable to the Petersons.
90. Almost immediately after promising to behave, the Riley's started a rival enterprise called Genesis 2000 Company and recruited persons in Mary Fallow's Distributorship.
91. On our about March 24, 1992, Mary Fallow caused a letter to be sent to Herbalife, detailing the complaints about the Rileys, (and attaching inconvertible evidence of the Riley's defection, a flyer with a photograph and testimonial by the Rileys promoting Genesis 2000) and asking that the Riley's distributorship be canceled and reassigned to Mary Fallow as was then Herbalife's established policy.
92. Despite the complaint and evidence, in contravention of Herbalife policy, Herbalife took no action other than to harass Mary in subtle ways.
93. Herbalife began to take strange and unexplained deductions from Mary's check. When she attempted to get relief, no one at Herbalife would return her telephone calls.
94. Mary's financial losses were horrendous. From 1992 through January of 1995, Herbalife's failure to delete the Riley's interest in their distributorship caused Mary Fallow to lose approximately $3,240,000 in monthly royalties and bonuses to date (which was diverted to the favored Petersons), and lifetime earning exceeding $12,000,000.
95. From June of 1991 to January of 1992, Mary lost monthly royalties of approximately $17,000 a month for a total of $119,000. From January of 1992 to September of 1995, Mary lost monthly royalties of $18,000 a month for those 44 months for a total of $710,000. But for the Rileys, her "Infinite Level Bonuses" for 1992 would have been $284,000; $800,000 for 1993 and 1994, and $185,000 for 1995. But for the Rileys, her year end bonuses would have been $200,000 for 1993 and $100,000 for 1994.

E. Facts Relating To the Claims of Dan Fallow

96. At about this time, Dan Fallow discovered that Herbalife had an unwanted competitor in Europe who claimed to own the right to use the Herbalife name in certain countries. Fallow informed Herbalife that this competitor proposed to produce a knock-off product and label it identically or almost identically to Herbalife. At the time, Herbalife estimated that the competitor could cost it tens of millions of dollars.
97. Herbalife was understandably looking for a way to shut this operation down and was willing to use unethical means to accomplish this. Herbalife, through its "safety and security department", which was in reality a dirty tricks department designed to solve business problems outside of legal channels, resolved to stop the competitor.
98. Herbalife proposed to set up a phony manufacturer of products, approach the competitor and induce it to make a large order. Herbalife would then simply keep the money and never deliver product, driving the competitor out of business.
99. In 1994, Herbalife began to pressure Dan Fallow to assist it in shutting down the competitor. In early September, faced with huge losses to Clint and Mary, and coerced with the threat that these losses would continue unless he cooperated, Dan Fallow agreed to pose as the phony manufacturer and gather intelligence about the competitor.
100. At the direction of David Addis, Herbalife's head counsel, and Bill Gillespie, its Director of Security, and with Herbalife funding, Dan Fallow traveled to Europe and began the operation.
101. As conditions of Dan Fallow's coerced cooperation, Herbalife promised to pay him time and expenses, to enforce its policy regarding Distributors Tonni and Jay Riley, rolling up their royalties to Mary Fallow, and to reinstate Clint's Distributorship, and/or restore the lost moneys in the form of a bonus.
102. During its investigation of the competitor, Herbalife learned that the Herbalife product in Russia was controlled by the Russian

Mafia, and that organization could prevent any legitimate Herbalife operations in Russia without payment to the Mafia. Herbalife pressured Dan Fallow to contact the Russian Mafia and gain its permission for product distribution, paying the Mafia if necessary, and/or using the Mafia to put the competitor out of business "quietly." Although Dan Fallow feared for his life and asked Herbalife to provide protection for him, it refused to do so.

103. Herbalife also asked Dan Fallow to work with a U.S. products manufacturer believed to be supplying knock off product. Fallow was able to catch the manufacturer in damaging admissions which formed the basis for a lawsuit which neutralized the manufacturer's threat. In that lawsuit, Herbalife's counsel drafted an affidavit for Dan Fallow to sign, without allowing Fallow an opportunity to add clarification to the statements. Herbalife then used the affidavit to its advantage in the suit.
104. After Dan Fallow traveled all over Europe for Herbalife, risked his life, and posed as its front man in this distasteful scheme, and signed Herbalife's affidavit, Herbalife broke its promises. Herbalife paid Dan Fallow for his time and expenses only until it no longer needed him. After Fallow ceased to be useful, Herbalife refused to pay time or expenses. It did not enforce its policy with regard to the Rileys Distributorship, or "roll up" those and the attached down-line royalties to Mary Fallow, or restore the lost moneys to Clint, in contravention of their agreement with Dan Fallow.

III. CAUSES OF ACTION COUNT ONE BY CLINT FALLOW AGAINST HERBALIFE FOR BREACH OF CONTRACT

105. Plaintiff Clint Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
106. Herbalife and Clint Fallow entered into a contract in 1992 whereby Clint Fallow would act as a Distributor for Herbalife and Herbalife would compensate him as detailed above. At all times relevant herein, Clint Fallow performed all which was required of him under his contract with Herbalife to the mutual profit and satisfaction of both parties.
107. Herbalife additionally promised that if Clint Fallow followed the Herbalife Rules, his Distributorship would not be revoked and that he would be able to maximize his income, limited only by his own individual effort.
108. Herbalife additionally promised that prior to taking action against any Distributorship, it would follow the due process procedure set forth above.
109. Herbalife additionally promised that Clint Fallow would be allowed to run his own business, and that all Distributors would be treated equally.
110. Herbalife breached its contract with Clint Fallow in that it did not pay him as promised, did not allow him to maximize his income, withheld income arbitrarily, revoked his Distributorship even though he had followed all applicable Rules, conducted an "investigation" in violation of its own rules which damaged Clint, revoked his Distributorship without the promised due process, interfered with his ability to run his own business, and failed to treat him equally with other Distributors.
111. As a result of these breaches, Clint Fallow has been damaged in an amount not less than $356,000 in damages accruing to date, and lifetime damages exceeding $3.6 million to be proven at trial.

COUNT TWO BY CLINT FALLOW AGAINST HERBALIFE FOR QUANTUM MERUIT

112. Plaintiff Clint Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
113. At the inducement of Herbalife, Clint Fallow enriched Herbalife by acting as an Herbalife Distributor and by selling product, signing up Distributors and paying expenses relative to that effort.
114. As a result of this effort, Herbalife has been enriched in an amount not less than $3,600,000 to be proven at trial after discovery.

COUNT THREE BY CLINT FALLOW AGAINST HERBALIFE FOR TORTIOUS INTERFERENCE WITH CONTRACT

115. Plaintiff Clint Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
116. Herbalife's "investigation" of Clint Fallow's German/ European part of the Distributorship, the severing of his ties to Herbalife, the transfer of his Distributorship to Peterson, and Peterson's subsequent meddling and mismanagement of the same, were all a knowing an intentional interference with Clint Fallow's existing valid contractual relationship and business expectancy with his German and European Distributors. These acts caused the termination of many of those relationships.
117. As a result of these acts, Clint Fallow has been damaged by the loss of royalty payments, the damage to the German/ European part of the Distributorship, and loss of revenues, in an amount not less than $3,600,000 to be proven at trial.
118. Clint Fallow also suffered further and foreseeable damages as a result of Herbalife's conduct, including the loss of his house, car, credit rating, VA eligibility and possessions in an amount not less than $30,000 to be proven at trial.

COUNT FOUR BY MARY FALLOW AGAINST HERBALIFE FOR BREACH OF CONTRACT

119. Plaintiff Mary Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
120. Herbalife and Mary Fallow entered into a contract in 1984 whereby Mary Fallow would act as a Distributor for Herbalife and Herbalife would compensate her as detailed above. At all times relevant herein, Mary Fallow performed all which was required of her under her contract with Herbalife to the mutual profit and satisfaction of both parties.
121. In that contract, Herbalife promised Mary Fallow that it would follow its own rules and delete offending Distributorship, and transfer the deleted Distributorship and its lineage to the immediate supervisor. Herbalife breached that contract when it failed to delete the Distributorship of Tonni and Jay Riley and allowed the Riley's to damage and interfere with Mary Fallow's Distributorship.
122. As a result of that breach, Mary Fallow has been damaged in an amount no less than $12,000,000 to be determined at the time of trial.

COUNT FIVE BY MARY FALLOW AGAINST HERBALIFE FOR BREACH OF CONTRACT AS THIRD PARTY BENEFICIARY

123. Plaintiff Mary Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
124. In 1994, Dan Fallow and Herbalife entered into a contract for the benefit of Mary Fallow. Dan agreed to perform certain services for Herbalife and in return, Herbalife was to delete the Riley Distributorship and assign the lineage to Mary Fallow. Dan Fallow performed the agreed upon services.
125. Herbalife breached that contract when it failed to delete the Riley Distributorship and transfer the lineage to Mary Fallow. As a result of that breach, Mary Fallow has been damaged in an amount not less than $3,200,000 to be proved at trial.

COUNT SIX BY MARY FALLOW AGAINST THE RILEYS FOR TORTIOUS INTERFERENCE WITH CONTRACT

126. Plaintiff Mary Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
127. Mary Fallow had a valid contract with Herbalife and her "down line" Distributors (in which she was named as a third party beneficiary "Sponsor") which entitled Mary to royalties from the sales of those Distributors.
128. The Rileys were aware of those contracts and intentionally and tortiously interfered with those contracts when they solicited persons to leave Mary's Distributorship and to join a rival multi- level organization.
129. The Rileys were not privileged to interfere, rather they were contractually bound to refrain from such interference, and

tortiously employed the use of confidential information and/or trade secrets in order to accomplish that interference.

130. As a result of that interference, Distributors left Mary's organization, damaging Mary in an amount to be proven at trial.

COUNT SEVEN BY MARY FALLOW AGAINST THE RILEYS FOR BREACH OF CONTRACT BY THIRD PARTY BENEFICIARY

131. Plaintiff Mary Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
132. The Rileys have a written Distributorship Agreement with Herbalife which explicitly names Dan and Mary Fallow as "supervisors" or "third-party" beneficiaries of that contract. The contract was especially for the benefit of Mary Fallow in that she was to collect royalties and bonus income based upon the Rileys efforts.
133. The Rileys breached that contract when they solicited persons to leave Mary's Distributorship and to join a rival multi-level organization and used of confidential information and/or trade secrets in order to accomplish that interference.
134. The Rileys were contractually bound to refrain from such actions.
135. As a result of the breach, Distributors left Mary's organization, damaging Mary in an amount to be proven at trial.

COUNT EIGHT BY DAN FALLOW AGAINST HERBALIFE FOR BREACH OF CONTRACT

136. Plaintiff Dan Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
137. Dan Fallow had a contract with Herbalife in which Herbalife agreed to pay Fallow a salary and reimburse expenses, delete the Riley Distributorship and "roll up" the income to Mary Fallow, and return moneys to Clint Fallow, in return for Fallow's services in investigation and shutting down a competitor.
138. Although Fallow fully performed those services, Herbalife breached in that it did not pay, delete the Riley Distributorship or restore moneys to Clint.
139. As a result of this conduct, Dan Fallow has been damaged in an amount to be determined at trial.

COUNT NINE BY DAN FALLOW AGAINST HERBALIFE FOR QUANTUM MERUIT

140. Plaintiff Dan Fallow realleges each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
141. At the inducement of Herbalife, Dan Fallow enriched Herbalife by investigating and shutting down its competitor.
142. As a result of this effort, Herbalife has been enriched in an amount exceeding $10,000,000 to be proven at trial after discovery.

COUNT TEN BY ALL PLAINTIFF AGAINST HERBALIFE FOR RACKETEERING UNDER AZRAC

143. Plaintiffs reallege each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.
144. Herbalife committed racketeering as defined by A.R.S. § 13-2314.04 through the predicate acts of a scheme or artifice to defraud and a theft of services as defined by A.R.S. § 12301(D)(4)(e) and (t).
145. Herbalife committed a theft of services as defined by A.R.S. § 13-802, on these plaintiffs and others, when it induced them to become Distributors, sell product, and induce others to become Distributors, with the representation that they would be paid, could conduct their own business, and that Herbalife would adhere by its rules and procedures.
146. Herbalife committed a scheme or artifice to defraud these plaintiffs and others as defined by A.R.S. § 13-2310 when it

knowingly obtained a benefit by means of false or fraudulent pretenses, representations promises or material omissions. Herbalife represented Distributors would be paid, could conduct their own business, and that Herbalife would adhere by its rules and procedures. That representation was false in that Herbalife had no intention of paying all that was owed and promised, allowing the Distributors to conduct their own business, or abide by the Herbalife rules and procedures.

147. That representation was material in that it induced plaintiffs and others to become Distributors and expend significant moneys and effort in doing so. Herbalife intended that plaintiffs and others rely upon these false representations.

148. As a result of this conduct, plaintiffs were damaged as described herein in that they were not paid as promised, and they provided services to Herbalife and incurred expenses which they were not compensated and are entitled to treble damages.

COUNT ELEVEN BY ALL PLAINTIFF AGAINST HERBALIFE FOR PUNITIVE DAMAGES

149. Plaintiffs reallege each and every one of the allegations contained in the preceding paragraphs as though fully set forth herein.

150. Herbalife is liable for punitive damages on Plaintiffs' First through Tenth Count in that it willfully and maliciously damaged these Plaintiffs and should be punished for such behavior in an amount to be proven at trial.

WHEREFORE, Plaintiffs request a trial by jury and pray for judgment against Defendant Herbalife as follows:

1. On his First and Second Causes of Action, Clint Fallow asks for damages against Herbalife in an amount exceeding $3,600,000, in an amount to be proven at trial;
2. On his Third Cause of Action for damages, Clint Fallow request damages against Herbalife in an amount to be proven at trial;
3. On her Fourth Cause of Action, Mary Fallow asks for damages against Herbalife in an amount exceeding $12,000,000 to be proven at trial;
4. On her Fifth Cause of Action, Mary Fallow asks for damages in against Herbalife in an amount exceeding $3,200,000 plus punitive damages to be proven at trial;
5. On her Sixth and Seventh Causes of Action, Mary Fallow asks for damages against Tonni and Jay Riley jointly and severally and against their marital community in an amount to be proven at trial;;
6. On her Eighth and Ninth Causes of Action, Dan Fallow asks for damages against Herbalife in an amount to be proven at trial;
7. On the Tenth cause of action, all Plaintiffs ask for racketeering treble damages against Herbalife;
8. On the Eleventh cause of action, all Plaintiffs ask for punitive damages against Herbalife in an amount large enough to deter and punish it for its conduct to be proven at trial;
9. And on all Causes of Action:
   (a) for attorneys fees, costs and expenses
   (b) for costs of suit
   (c) for such other and further relief as the Court may deem proper.

DATED this ________ day of ___________ 1997.

WARNICKE & LITTLER, P.L.C.
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