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19 IN THE UNITED STATE DISTRICT COURT  
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

21 HERBALIFE INTERNATIONAL OF  
22 AMERICA, INC., a Nevada  
23 Corporation,

24 Plaintiff,

25 vs.

26 ROBERT E. FORD and JULIA A.  
27 FORD, ET. AL.,

28 Defendants.

CASE NO.: CV 072529 GF (FMOx)

**DECLARATION OF BRUCE H. ROTH  
IN SUPPORT OF DEFENDANTS' AND  
COUNTERCLAIMANTS'  
OPPOSITION TO PLAINTIFF  
HERBALIFE INTERNATIONAL OF  
AMERICA, INC.'S MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: June 1, 2009  
Time: 9:30 a.m.  
Courtroom: 740 Roybal Courthouse

AND RELATED CROSS-CLAIM.

1 **DECLARATION OF BRUCE H. ROTH**

2 I, Bruce H. Roth, declare:

3 1. I am a defendant and counterclaimant in this case. I am making this  
4 declaration in support of the Defendants' and Counterclaimants' Opposition to  
5 Herbalife's Motion for Summary Judgment. I have personal knowledge of the  
6 matters set forth herein and if called as a witness in the case, I would and could  
7 testify thereto.

8 2. My wife and I held an Herbalife independent distributorship for over  
9 eleven (11) years. We formally resigned from Herbalife in February 2007. As  
10 Herbalife independent distributors, we had our own independent business. We  
11 paid for our own rent, utilities, computer equipment, office supplies, customer and  
12 distributor leads, phone equipment and service, advertising, and office supplies.

13 3. As independent distributors, we owned and operated our independent  
14 business and were responsible for developing our distributor and customer base  
15 through our own effort and expense. As Herbalife independent distributors, we  
16 invested considerable time and considerable financial resources to develop  
17 business relationships with customers, prospective customers, and our Herbalife  
18 downline distributors. We expended thousands of hours and thousands of dollars,  
19 locating, grooming, training, sponsoring and recruiting our potential customers,  
20 actual customers, and "downline" independent distributors. We networked and  
21 developed business relationships with persons who were in our independent sales  
22 organizations. We also spent lots of money and time creating our online business  
23 center and training materials.

24 4. We personally kept track of many of our business associates,  
25 customers, prospects, people we networked with, and people in our independent  
26 sales organization in an Excel spreadsheet and Word documents. Our database  
27 had contact information including the name, address, telephone number, and email  
28 for thousands of people. We had relationships with the people in our database in

1 that we met many of them either in person or over the telephone. We spent many  
2 hours in person with many of the persons listed as contacts as a part of our  
3 independent distributorship business. We also had thousands of leads that we  
4 purchased for use in our business.

5 5. We did not purchase our database from Herbalife and Herbalife did  
6 not enter any of the data in our database. We personally collected and entered the  
7 data in our database as a routine part of operating our independent business.  
8 During the ordinary course of operating our independent business, we gathered  
9 and assembled the names contained in our database through thousands of hours of  
10 work as we tried to grow our independent sales organization. This list was created  
11 through our hard work networking and growing our independent business.

12 6. By 2007, operating an Herbalife independent distributorship business  
13 had become unsustainable. Herbalife's entire program is based on purchases made  
14 from Herbalife. Distributors have to purchase product from Herbalife each month  
15 in order to obtain their paychecks. Under this system, we would not be paid any  
16 money or commissions from the sales by people in our business organization in a  
17 given month unless we purchased products from Herbalife during that month.  
18 Herbalife products became almost impossible to retail because the "pay-for-your-  
19 paycheck" Herbalife product was being dumped by distributors on eBay for much  
20 less than we could sell it. Moreover, this product could not be returned to  
21 Herbalife or the distributor lost his or her paycheck and had to permanently resign  
22 from Herbalife. In addition, Herbalife's product line is very limited and consists  
23 primarily of weight loss and nutritional products. This also makes it very difficult  
24 to retail because customers do not continue to buy the product or the customers  
25 find it cheaper to buy from eBay.

26 7. In 2007, we learned of Melaleuca and learned that Melaleuca had a  
27 much more extensive product line, including household cleaners, soap, laundry  
28 detergent, toothpaste, and other items that people must use every day. We also

1 learned that we did not have to meet sales quotas from Melaleuca in order to get  
2 our paycheck. This eliminates the eBay issue, because Melaleuca's customers  
3 only buy what they need. We tried Melaleuca's products, but because we were  
4 Herbalife distributors for so long, we struggled with the decision to leave  
5 Herbalife. Ultimately, we chose to switch and began opening Melaleuca customer  
6 accounts. We have been independent Melaleuca marketing executives since  
7 February 2007 and we work together in our independent Melaleuca business. We  
8 are in an economic relationship with Melaleuca.

9 8. In 2007, we were paid \$63,318 by Melaleuca. In 2008, we were only  
10 paid \$7,445 by Melaleuca, over \$50,000 less than the year before due to  
11 Herbalife's conduct. Our income from Melaleuca dropped significantly solely  
12 because of Herbalife's wrongful conduct as set forth below. Herbalife has  
13 disrupted our economic relationship with Melaleuca and with the network of  
14 persons we had created in our independent distributorship business while we were  
15 Herbalife distributors.

16 9. We were in an economic relationship with many of the people who  
17 are listed in our database. We had formed bonds with these persons. The people  
18 listed in our database bought products from us, or were a part of our independent  
19 sales organization downline and we received income based on their purchases of  
20 products from Herbalife. Typically, when we recruited a person to join our  
21 downline, we met with them in person or over the telephone, called and followed-  
22 up with that person many times, and developed a business relationship through  
23 countless hours of time.

24 10. We are certain that we would have been able to recruit some of the  
25 persons listed on our database, with whom we had an ongoing business  
26 relationship, to our independent Melaleuca business had Herbalife not engaged in  
27 the conduct described herein and disrupted our business relationship. Our  
28 business relationship with the persons listed in our database was disrupted because

1 of the following Herbalife conduct: (1) Herbalife enforced its covenant not to  
2 compete provisions in its Agreement of Distributorship (paragraph 4) and  
3 prevented us from using our own business information, including our database, to  
4 contact our own customers and business relationships;<sup>1</sup> (2) Herbalife enforced its  
5 broadly worded non-solicitation rule (Rule 8-A) and prevented us from contacting  
6 anyone related in any way to our independent business, including our Excel and  
7 Word database business contacts;<sup>2</sup> (3) Herbalife sent an email to all Herbalife  
8 distributors (and former distributors) known as the Tab Team (the Tab Team is  
9 comprised of thousands of Herbalife Distributors) in the United States claiming  
10 that the Melaleuca products that we were promoting were toxic;<sup>3</sup> (4) Herbalife's  
11 email also stated that we were "misleading, blackmailing and misrepresenting  
12 Melaleuca incomes to Herbalife Distributors;"<sup>4</sup> (5) Herbalife's email stated that  
13 Herbalife had "record retail sales of \$3 billion in 2006;"<sup>5</sup> (6) Herbalife's email  
14 stated that "in 2006, Herbalife Supervisors were paid \$2.2 billion in commissions,  
15 royalties and bonuses;"<sup>6</sup> (7) Herbalife's CEO sent out an "important  
16 announcement" to Herbalife's President's Team members indicating that we were  
17 "competing unfairly with "Herbalife's Independent Distributors," (8) to my  
18 knowledge, Herbalife has not revealed to anyone (other than an admission during  
19 the deposition of Paul Greenberg) that Herbalife now takes the position that it has  
20 abandoned its three (3) year blanket covenant not to compete; (9) to my  
21 knowledge, Herbalife continues to publish its non-solicitation agreement (Rule 8-

22 \_\_\_\_\_  
23 <sup>1</sup> The Herbalife Distributor Agreements are attached to the Declaration of John B.  
24 Stephens ["Stephens Decl."] as Exhibit "P."

25 <sup>2</sup> Rule 8-A is attached to Stephens Decl. as Exhibit "B."

26 <sup>3</sup> The February 6, 2007 email is attached to the Stephens Decl. as Exhibit "K."

27 <sup>4</sup> *See id.*

28 <sup>5</sup> *See id.*

<sup>6</sup> The April 20, 2007 email is attached to the Stephens Decl. as Exhibit "L."

1 A). All of Herbalife's conduct has disrupted our economic business relationships  
2 with the relationships that we developed while independent Herbalife distributors,  
3 including those persons listed in our database. Herbalife's misconduct is a  
4 substantial factor in causing us to lose income in our independent Melaleuca  
5 business.

6 11. We never blackmailed anybody about joining Melaleuca or made any  
7 false statements to anybody regarding Melaleuca's products, the safety of those  
8 products, or Melaleuca's business opportunity, including our Melaleuca income.

9 12. Herbalife's enforcement, and threat of enforcement of its non-  
10 solicitation agreement and covenant not to compete, coupled with its failure to  
11 advise anyone that its non-compete and non-solicitation agreements are illegal, has  
12 also seriously damaged our independent Melaleuca business. Moreover, because  
13 of Rule 8-A, we are not able to suggest (or train) that the former Herbalife  
14 distributors who have joined us with Melaleuca contact their own independent  
15 sales organizations that they built while they were Herbalife independent  
16 distributors. This too has disrupted our economic relationship with these people  
17 and has been a substantial factor in our loss of income from Melaleuca. If Rule 8-  
18 A did not exist, we would be able to help these people use their own business  
19 information that they developed through years of hard work to contact their own  
20 independent sales organizations and grow their Melaleuca business.

21 13. We were with Herbalife for over eleven (11) years. We attended  
22 many Herbalife events and trainings. Herbalife represented to us that we owned  
23 our own business and were building our own sales organization. We have  
24 observed on many occasions at various Herbalife events and trainings that we  
25 attended, that trainers and Herbalife representatives state to the audience that  
26 distributors "own their own business" and are "building their own sales  
27 organizations." It is commonplace at Herbalife for trainers and Herbalife  
28 corporate officials to instruct Herbalife distributors to "develop their downline

1 organization.” Herbalife also represents at its events that success is based on “the  
2 time and effort a distributor puts into his or her own business” and the product  
3 purchases “made by distributors and their downline organization.” Herbalife also  
4 constantly refers to distributors as “independent businesses.” Based on  
5 Herbalife’s statements, we believe that we owned our business including our  
6 business information and our customers and sales organization.

7 14. As an Herbalife trainer, I was never instructed by anyone (including  
8 Herbalife personnel) that Herbalife takes the position that our business  
9 information, contacts, network, customers, and past and current downline  
10 distributors become Herbalife’s property and that we could not use our own  
11 business information when we left Herbalife. I was never told by anyone at  
12 Herbalife to provide this information to people who I trained at the authorized  
13 Herbalife training events at which I taught. Although Herbalife charged  
14 admission to the classes that I taught, I was not paid to teach at Herbalife events.  
15 We believed that training at Herbalife events was a part of networking and  
16 growing our independent distributorship. Herbalife also advises distributors that  
17 teach classes that attending and training at Herbalife events are a part of  
18 networking and growing an independent distributorship. Herbalife now takes the  
19 position that I cannot contact persons that I networked with during the classes that  
20 I taught. The students, however, were typically not in my sales organization and I  
21 did not receive any benefit whatsoever, other than networking. In that Herbalife  
22 takes the position that we cannot network with the people who I taught and trained  
23 (at Herbalife’s request and for which I received no compensation) at classes at  
24 which Herbalife charged admission fees, Herbalife should have to pay me wages  
25 to compensate me for my work.

26 15. At all times, we believed that our independent Herbalife  
27 distributorship business, our customers, and our downline were our property and  
28 not the property of Herbalife. We never knowingly transferred our business

1 goodwill to Herbalife. In fact, Herbalife makes it clear that distributors are not  
2 agents, representatives, or fiduciaries of Herbalife. We do not know how  
3 Herbalife contends that our independent business relationships transferred to  
4 Herbalife. We are mere buyers of products. Through its misconduct, Herbalife  
5 has taken a significant portion of our downline sales organization from us without  
6 our consent and has prevented us from contacting people whom we met and  
7 developed as business contacts through my own hard work. We believe that we  
8 are entitled to restitution for the reasonable value of our business goodwill (our  
9 customers and downline sales organization) that Herbalife took from us. I believe  
10 that many of our customers and downline sales organization continued to do  
11 business with Herbalife after we left Herbalife. We believe that we are entitled to  
12 the profits that Herbalife has made from selling products to these persons.

13 16. At the time that we left Herbalife, we had leftover product that we  
14 had been forced to purchase to get our paycheck from Herbalife. For  
15 approximately the last seven (7) months we were in Herbalife (i.e mid-June 2006  
16 to January 2007), we had to purchase approximately \$7,500 in Herbalife product  
17 to be eligible to receive our monthly paycheck from Herbalife. When we left  
18 Herbalife, we had to throw out about \$5,000 of useless Herbalife product. We did  
19 not ask Herbalife to repurchase this product because Herbalife's buyback policy  
20 imposed too many restrictions. We believe that Herbalife should restore our  
21 money. In addition, Herbalife failed to send us two checks that we were owed for  
22 our work in January 2007. Specifically, we were entitled to our January 2007  
23 royalty and production bonus checks. The total due to us from Herbalife for both  
24 of these checks was approximately \$10,000 but this amount was wrongfully  
25 withheld from us. We also believe that Herbalife should restore this money to us.

26 17. We were never trained on Herbalife's rules and never observed any  
27 training on Herbalife's rules at any time that we were distributors at Herbalife.  
28 We were never trained on the meaning of Herbalife's Agreement of

1 Distributorship. In our experience, these agreements are signed many times in an  
2 exciting party-like atmosphere during Herbalife events.

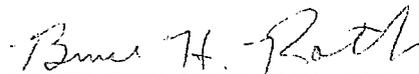
3 18. We did not understand whether or not we were bound by a non-  
4 compete agreement, which prevented us from using our own business information,  
5 and a non-solicitation agreement until after we left Herbalife. We were never  
6 trained by anybody at Herbalife on these rules or provisions. We also never  
7 trained anyone on these rules or provisions. I was never asked by Herbalife to  
8 teach these rules or provisions in the classes that I taught for Herbalife. We  
9 completely stopped using our own business information because of Herbalife's  
10 restraints in 2007.

11 19. We are not lawyers and have no legal education or training. We did  
12 not know what an illegal pyramid or endless chain scheme was until the filing of  
13 this case. Herbalife's representatives have stated to distributors at Herbalife  
14 events, including myself, that Herbalife is not an illegal pyramid scheme and that  
15 Herbalife complies with the law. I believed these representations. We were not in  
16 competition with Herbalife until 2007 when we left Herbalife, thus Herbalife  
17 could not have unfairly competed with us until that time.

18 20. Furthermore, we were not aware of the impact of a number of  
19 Herbalife's contractual clauses on our ability to conduct business and compete  
20 with Herbalife until after we left Herbalife. For example, we did not understand  
21 Herbalife's 70% Rule while we were independent Herbalife distributors. No one  
22 at Herbalife ever trained us on that rule. It was never mentioned at any time  
23 during any Herbalife event that we attended. We did not know anything about the  
24 enforcement of this rule. We did not understand the 10-Customer Rule while we  
25 were at Herbalife. We believed the rule to simply be a form. No one trained us on  
26 that rule with the exception of telling us to sign the form. We did not know  
27 whether Herbalife was required to audit the 10-Customer Rule or 70% Rule. We  
28 were also unaware of the details of Herbalife's buyback policies. We did not

1 know that Herbalife did not track retail sales while we were an independent  
2 Herbalife distributors. In fact, Herbalife frequently announced the amount of its  
3 retail sales. Herbalife represented at distributor events that we attended in 2006  
4 that its retail sales were over \$2.5 billion dollars. At the time that we left  
5 Herbalife, we knew of no reason to doubt the \$2.5 billion in retail sales  
6 representation. At the time we left Herbalife, we had no reason to believe that  
7 Herbalife did not comply with the law, and we believed that a billion dollar  
8 company, such as Herbalife, must be complying with the law.

9 Executed this 18 day of May 2009 at Cleveland, Ohio. I  
10 declare under penalty of perjury under the laws of the State of California and the  
11 United States of America that the foregoing is true and correct.

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15 Bruce H. Roth  
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