

1 ROBERT C. SCHUBERT S.B.N. 62684  
2 JUDEN JUSTICE REED S.B.N. 153748  
3 AARON H. DARSKY S.B.N. 212229  
4 SCHUBERT & REED LLP  
5 Two Embarcadero Center, Suite 1660  
6 San Francisco, California 94111  
7 Telephone: (415) 788-4220

8 DOUGLAS M. BROOKS  
9 EDWARD L. MANCHUR  
10 GILMAN AND PASTOR, LLP  
11 999 Broadway, Suite 500  
12 Saugus, MA 01906  
13 Telephone: (781) 231-7850

14 Attorneys for the Representative Plaintiff  
15 Nancy Jacobs, Individually and on behalf  
16 of all others similarly situated; and on  
17 behalf of the general public

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**UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

17 NANCY JACOBS, Individually On Behalf of  
18 Herself and All Others Similarly Situated, and  
19 on Behalf of the General Public,

20 Plaintiff,

21 vs.

22 HERBALIFE INTERNATIONAL, INC.,  
23 HERBALIFE INTERNATIONAL OF  
24 AMERICA, INC., DREAM BUILDERS &  
25 ASSOCIATES INTERNATIONAL, INC., H.B.  
26 INTERNATIONAL GROUP, INC.,  
27 ANTHONY POWELL, DORAN ANDRY,  
28 CRAIG M. TSUTAKAWA, CAROLINE  
TSUTAKAWA, TARUN JUNEJA, JOHN  
BEALL, BRETT BARTHOLOMEW, LEAH  
GRAHAM, STEPHEN COMBS and DEBRA  
COMBS,

Defendants.

**No.**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**



1 known as AThe Newest Way to Wealth® (“NWTW”), the d/b/a of defendant Dream Builders &  
2 Associates International, Inc.

3 6. At all times herein relevant:

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

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

14 c. Defendant Dream Builders & Associates International, Inc. (ADream  
15 Builders®) was a corporation organized and existing under the laws of the State of Nevada, having  
16 its principal place of business at 1004 Central Avenue South Kent, Washington 98032-6103. Dream  
17 Builders developed, promoted and authorized the use of the NWTW System described herein, the  
18 pyramid structures complained of herein, and made the misrepresentations alleged herein.

19 d. Defendant H.B. International Group, Inc. was a corporation organized  
20 and existing under the laws of the State of Nevada, having its principal place of business at 1241 E.  
21 Dyer Road #110, Santa Anna, California 92705-5750. H.B. International Group, Inc. developed,  
22 promoted and authorized the use of the NWTW System described herein, the pyramid structures  
23 complained of herein, and made the misrepresentations alleged herein.

1 e. Defendant Anthony Powell ("Powell") was an executive officer and/or  
2 director of Dream Builders and was actively engaged in business in this District on behalf of  
3 Herbalife and Dream Builders and committed the wrongs alleged herein in this District and  
4 throughout the United States. Powell also has the ability to and does in fact, conduct or participate  
5 in the affairs of Herbalife and Dream Builders. Powell was a member of the ~~APresident's Team~~ of  
6 Herbalife. Powell, along with other of the Defendants, conceived, authorized the use of and  
7 operated the Newest Way to Wealth Marketing System (the ~~ANWTW System~~), the pyramid  
8 marketing scheme complained of herein, and made the misrepresentations alleged herein.

10 f. Defendant Doran Andry ("Andry") is one of Herbalife's top  
11 distributors, a Chairman's Club member of Herbalife, president, chief executive officer and/or  
12 director of Defendant H.B. International Group, Inc., and a close associate of Defendant Powell.  
13 Doran and Defendant Powell were actively involved in the conception, formation and operation of  
14 the NWTW System as alleged herein. As a member of Herbalife's Chairman's Club, Doran met  
15 regularly with the officers and directors of Herbalife to set Herbalife's policies, procedures and  
16 regulations governing all distributor representations and solicitations. Andry has the ability to and  
17 does in fact, conduct or participate in the affairs of Herbalife, H.B. International Group, Inc. and  
18 Dream Builders. Andry authorized the use of the NWTW System, the pyramid structures  
19 complained of herein, and made the misrepresentations alleged herein.

22 g. Defendant Craig M. Tsutakawa (~~AC.M. Tsutakawa~~) has the ability to  
23 and does in fact, conduct or participate in the affairs of Defendants Dream Builders, H.B.  
24 International Group, Inc. and Herbalife. C.M. Tsutakawa was a close associate of Defendant Powell  
25 and was actively involved in the conception, formation and/or operation of the NWTW System,  
26 authorized the use of the NWTW System, the pyramid structures complained of herein, and made  
27 the misrepresentations alleged herein.  
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h. Defendant Caroline Tsutakawa (ATsutakawa@) has the ability to and does in fact, conduct or participate in the affairs of Defendants Dream Builders, H.B. International Group, Inc. and Herbalife. Tsutakawa was a close associate of Defendant Powell and was actively involved in the conception, formation and/or operation of the NWTW System, authorized the use of the NWTW System, the pyramid structures complained of herein, and made the misrepresentations alleged herein.

i. Defendant Tarun Juneja (AJuneja@) is one of Herbalife's top 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 Builders and Herbalife. Juneja authorized the use of the NWTW System, the pyramid structures complained of herein, and made the misrepresentations alleged herein.

j. Defendant John Beall (ABeall@) is one of Herbalife's top distributors, an executive officer and/or director of Dream Builders and a close associate of Defendant Powell. Beall was actively involved in the conception, formation and/or operation of the NWTW System as alleged herein. Beall has the ability to and does in fact, conduct or participate in the affairs of Dream Builders and Herbalife. Beall authorized the use of the NWTW System, the pyramid structures complained of herein, and made the misrepresentations alleged herein.

k. Defendant Brett Bartholomew (ABartholomew@) is one of Herbalife's top distributors, an executive officer and/or director of Dream Builders and a close associate of Defendant Powell. Bartholomew was actively involved in the conception, formation and/or operation of the NWTW System as alleged herein. Bartholomew has the ability to and does in fact, conduct or participate in the affairs of Dream Builders and Herbalife. Bartholomew authorized the

1 use of the NWTW System, the pyramid structures complained of herein, and made the  
2 misrepresentations alleged herein.

3                   l. Defendant Leah Graham (AGraham@) is one of Herbalife's top  
4 distributors, an executive officer and/or director of Dream Builders and a close associate of  
5 Defendant Powell. Graham was actively involved in the conception, formation and/or operation of  
6 the NWTW System as alleged herein. Graham has the ability to and does in fact, conduct or  
7 participate in the affairs of Dream Builders. Graham authorized the use of the NWTW System, the  
8 pyramid structures complained of herein, and made the misrepresentations alleged herein.

9                   m. Defendant Stephen Combs (AS. Combs@) is one of Herbalife's top  
10 distributors, and a close associate of Defendant Powell. S. Combs was actively involved in the  
11 conception, formation and/or operation of the NWTW System as alleged herein. S. Combs has the  
12 ability to and does in fact, conduct or participate in the affairs of Dream Builders and Herbalife. S.  
13 Combs authorized the use of the NWTW System, the pyramid structures complained of herein, and  
14 made the misrepresentations alleged herein.

15                   n. Defendant Debra Combs (AD. Combs@) is one of Herbalife's top  
16 distributors, and a close associate of Defendant Powell. D. Combs was actively involved in the  
17 conception, formation and/or operation of the NWTW System as alleged herein. D. Combs has the  
18 ability to and does in fact, conduct or participate in the affairs of Dream Builders and Herbalife. D.  
19 Combs authorized the use of the NWTW System, the pyramid scheme complained of herein, and  
20 made the misrepresentations alleged herein.

21                   7. Defendants Powell, Andry, C.M. Tsutakawa, Tsutakawa, Juneja, Beall,  
22 Bartholomew, Graham, S. Combs and D. Combs are sometimes collectively referred to herein as the  
23 "Individual Defendants."  
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1                   8.       Defendants Herbalife International, Inc., Herbalife International of America,  
2 Inc., Dream Builders & Associates International, Inc., H.B. International Group, Inc. and the  
3 Individual Defendants are continuing to operate an illegal pyramid or endless chain scheme known  
4 as ~~A~~The Newest Way to Wealth~~@~~ and are engaging in unlawful and fraudulent trade practices  
5 throughout the United States.  
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8                                   **III. FACTS COMMON TO ALL CAUSES OF ACTION**

9                   **A. Background of Herbalife**

10                   9.       Herbalife began operations in 1980. Herbalife is a networking marketing  
11 company that sells a wide variety of weight management products, nutritional supplements and  
12 personal care products throughout the United States and in approximately 50 countries, including the  
13 United States. Defendant Herbalife International, Inc. is a public company whose stock has  
14 continually traded on the NASDAQ National Market Quotation System since April, 1992.  
15 Defendant Herbalife International, Inc. does business in its own behalf and through 47 domestic and  
16 foreign subsidiaries, including Defendant Herbalife International of America, Inc. Herbalife  
17 International, Inc.'s Form 10-K Annual Report for the year 2000 (the ~~A~~year 2000 10-K~~@~~) reported  
18 retail sales for that year in the amount of \$1.764 billion, and net income for that year of  
19 \$36,919,000.  
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22                   10.       The year 2000 10-K represents that Herbalife markets 179 products under  
23 various trade names, including ~~A~~thermojetics.~~@~~ That document also discloses that Herbalife creates  
24 and sells to distributors various marketing materials purportedly to assist Herbalife distributors in  
25 marketing Herbalife products and recruiting new Herbalife distributors. These marketing materials  
26 include written educational and promotional documents, videotapes, audio cassette recordings and  
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1 so-called distributor kits, the purchase of which is a prerequisite to obtaining an Herbalife  
2 distributorship.

3 11. The year 2000 10-K represents that Herbalife's products are distributed  
4 exclusively through a network marketing system consisting of over one million distributors.

5 12. Herbalife distributors are required to execute distributor agreements with  
6 Herbalife International of America, Inc. These agreements grant Herbalife unfettered discretion to  
7 change the terms and conditions of the agreement or the network marketing plan, or to terminate the  
8 agreement for any reason whatsoever on thirty (30) days notice.

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11 **B. The Herbalife Marketing Plan**

12 13. Herbalife represents itself as a multilevel "network marketing" sales  
14 organization which solicits investments in distribution chains whose members can purportedly earn  
15 money through selling Herbalife's products and sponsoring other distributors.

16 14. Network marketing companies such as Herbalife compensate each distributor  
17 through a complex structure of bonus and/or commission payments based upon purchases by the  
18 distributor and those recruited by him (i.e. his downline). In the case of Herbalife, this  
19 compensation structure is described in the Herbalife Sales and Marketing Plan. In essence,  
20 Herbalife distributors are required to make wholesale purchases of products (known as a personal  
21 volume) in order to remain active members of the distribution chain and to be qualified to reap  
22 commissions from the purchases by their downline distributors.

23 24. The compensation structures of network marketing companies lend  
24 themselves readily to the opportunity for abuse, to the extent that distributors are incentivized to  
25 focus their attention heavily on recruiting new distributors rather than on making retail sales of  
26 products. Such abuses include encouraging distributors to purchase more products than they can  
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1 feasilby sell to bona fide retail customers in order to meet volume requirements (a practice known as  
2 ~~A~~inventory loading~~@~~) and making unrealistic and even outlandish earnings claims.

3           16.           Herbalife~~s~~ compensation structure, as set forth in the Herbalife Plan, is  
4 readily subject to these abuses. The potential payout for distributors who sponsor large downline  
5 organizations far exceeds the ~~A~~retail profits~~@~~ a distributor could feasibly earn by simply retailing  
6 Herbalife products. Distributors who reach certain volume requirements (e.g., approximately \$4000  
7 worth of products at Herbalife~~s~~ ~~A~~suggested retail prices~~@~~) may qualify as ~~A~~Supervisors~~@~~. Supervisors  
8 who maintain monthly volume requirements are paid ~~A~~royalty overrides~~@~~ on their ~~A~~downline  
9 organizations~~@~~. By meeting various volume and recruitment targets, Supervisors can ascend in the  
10 Herbalife hierarchy from ~~A~~World Team~~@~~, ~~A~~Global Expansion Team~~@~~, ~~A~~Millionaire Team~~@~~ and  
11 ~~A~~President~~s~~ Team~~@~~. The President~~s~~ Team includes an additional five levels, the highest being the  
12 ~~A~~Chairman~~s~~ Club~~@~~, the requirements for which include having at least five recruits who meet the  
13 volume requirements for the President~~s~~ Team. Herbalife distributors who reach the higher levels of  
14 this compensation plan and recruit large downline organizations can earn royalties and bonuses far  
15 in excess of any ~~r~~etail profits they might earn in selling Herbalife products. Accordingly, if not  
16 properly monitored and policed, the Herbalife Plan would encourage distributors to spend most of  
17 their time and energy in the recruitment of new distributors as opposed to the retail sale of Herbalife  
18 products to consumers.

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

3           18. There have been previous instances where Herbalife distributors committed  
4 abuses of the Herbalife compensation system. For instance, on March 6, 1985, the California  
5 Attorney General filed a civil lawsuit against Herbalife, alleging inter alia that Herbalife's marketing  
6 plan violated the California Endless Chain Scheme law. Herbalife attributed the marketing plan  
7 allegations to ~~over~~ enthusiastic distributors, but ultimately paid penalties of \$850,000 and agreed  
8 to monitor the activities of its distributors.

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10           **C. The Newest Way to Wealth (ANWTW) Promotional System**

11           19. In or about December 1999, Defendants Dream Builders, H.B. International  
12 Group, Inc. and Individual Defendants Powell, Andry, Juneja, Beall, Bartholmew and Graham  
13 conceived and formed a promotional system dubbed ~~A~~The Newest Way to Wealth (ANWTW) to be  
14 employed exclusively in the promotion of Herbalife (i.e. the NWTW System).

15           20. The NWTW System is an internet-based mail order system purportedly  
16 designed to have an Herbalife distributor instantly achieve ~~A~~Supervisor status under the Herbalife  
17 compensation structure and to achieve ~~A~~\$20,000 in business every single month...within 30-90 days.

18           21. According to uniform promotional materials offered in connection with  
19 NWTW System, the NWTW System purportedly would assist Herbalife distributors who signed on  
20 as NWTW members to:

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23           a. Recruit customers and potential new Herbalife distributors (i.e. ~~A~~Lead  
24           Generation);  
25           b. Select ~~A~~serious people out of th[e] leads without...having to see or even speak  
26           to them; and  
27           c. Train and follow-up with those serious leads.  
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1                   22.           Uniform promotional materials offered in connection with the NWTW  
2 System virtually guaranteed the successful expansion and operation of the Herbalife business of  
3 NWTW members. For example, these materials state:

4       \$       By using our powerful [NWTW] system, you **will** dramatically accelerate the growth of your  
5 Herbalife business.

6       \$       If you follow [our] instructions...your business **will be** up and running in just a few days.  
7 Follow all of the steps **exactly**.

8       \$       If you follow all the steps and work with us, [~~you=re~~] **going to be just as successful** as the  
9 people you've already read about.®

10                   23.           The uniform promotional materials offered in connection with NWTW  
11 System require NWTW members to become Supervisors under the Herbalife commission structure,  
12 to make significant purchases of NWTW promotional materials and Herbalife products in various  
13 product packages such as **AGold®** and **APlatinum,®** and to recruit additional distributors using a  
14 carefully structured sales pitch and following a series of detailed scripts.

15                   24.           Uniform promotional materials offered in connection with NWTW tout the  
16 so-called **A20K®** plan which purports to guarantee the profits to be made from the NWTW System  
17 with a minimum investment. Further, these materials represent that the NWTW System would not  
18 require investments after 90 days because the profits from the NWTW System would be sufficient to  
19 make the business **Aself-funding.®** *The NWTW Plan is entirely premised on the recruitment of new*  
20 *distributors. NWTW distributors are instructed to spend at least 80% of their time on the*  
21 *recruitment of new distributors* The NWTW materials represents that distributors will not only  
22 receive bonuses from Herbalife based on product purchases by their recruits, but that they will make  
23 profits on the sale of NWTW promotional materials to their recruits, as well as a bonus directly from  
24 NWTW for each new recruit.

1                   25. For example, the NWTW promotional materials include a sales script entitled  
2 **After 2<sup>nd</sup> Package Call Back Script** (the **Second Script**) a copy of which is attached as **Exhibit A**,  
3 which describes the NWTW System as follows:

4                   Turn to page 29-30 of the Second Package Manual, and let's go over the **20K Plan**.  
5 I'm going to break it down for you so you can understand how once again you're  
6 going to move your Supervisor order and build an organization. O.K. great. Let's  
7 start with 200 books a week. What we are going to focus on is getting enough people  
8 to call to get 200 books a week out the door, meaning that I'm going to teach you  
9 how many signs, how many ads to place, how many flyers, etc. you need to do. But  
10 the bottom line, we are going to focus on 200 books per week, that is our focus. So  
11 what we **know** is, if you mail 200 books per week **you are going to have** 10 people  
12 order the \$45.00 package. We call that the first package. Now, if you multiply that  
13 by four weeks, that means you are moving 40 first packages a month. So with 40  
14 first packages a month, every package sells for \$45.00, **you're going to profit \$800**.  
15 Next we know that if you have 40 packages shipped out per month, that's 40 people  
16 that want to know about this business. Out of 40 phone calls, **12 of them for sure**  
17 **are going to become a Distributor and give you \$299**. Two things are going to  
18 happen here. Number one, **you're going to make \$100 profit per person that**  
19 **comes in[to] [the] Distributorship**. Number two, every time you move a  
20 Distributorship you're going to take an Advanced Program out of your Supervisor  
21 order and ship it with that Distributorship. Meaning that you're going to move half of  
22 your Supervisor order by bringing in the 12 Distributorships. **So as you can see,**  
23 **you're going to move your Supervisor order in a maximum of 8 weeks or less.**  
24 **Moving these 12 Distributorships will profit you \$1,200.**  
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Next, **the 20K Plan** shows that if you bring in 12 Distributorships, you will bring in a minimum of 4 Supervisors, each of them will qualify themselves at 5,000 volume points. Now if you have 4 people who qualify for Supervisor at 5,000, 4 people [multiplied by] 5,000 volume points = \$20,000 in business that you did. And Herbalife will send you a \$1,500 check for bringing in the 4 Supervisors. Lastly, if you are a Gold or Platinum member with The Newest Way to Wealth, every time you move 5,000 volume points, Newest Way to Wealth will pay you a \$100 bonus. So if you do \$20,000 in volume, that's a \$400 bonus.

Let's add up all of the profit margins now. You received \$800 from moving 40 packages, \$1,200 from bringing in 12 Distributorships, \$1,500 from bringing in 4 Supervisors, and \$400 for bringing in 2 Gold or Platinum members. If you add this all up, that means your projected profit is around \$4,000. This is the money you will be using to reinvest in your advertising. **That's what makes this a self-funding system.** Are you unclear on anything that I just went over with you? Isn't that incredible, aren't you excited?

....

26. NWTW's uniform promotional materials make numerous representations concerning the **incredible** incomes which participants can achieve if they buy in at Herbalife's **supervisor** level, including but not limited to the following:

- a. **The "Second Package Video"** will show you how so many others are making incredible incomes with this opportunity. Herbalife has created more millionaires than any other company in the history!

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Currently, Herbalife has over 500 people on its prestigious President's Team who are earning between \$200,000 per year and \$5,000,000 per year! (Yes, you read the amount correctly - \$5 Million Per Year). In addition, there are thousands other people earning 6-figure income of \$100,000 per year or more. These people come from various backgrounds and ethnicity from welfare moms and 80-year-old grandmothers to teenagers and young adults between the ages of 17 and 19.@

- b. ASeveral of these people reached the \$100,000 per year income level within 1 year by using our [NWTW] incredible mail order and Internet marketing program.@
- c. "Your income at the [Herbalife] supervisor level is practically UNLIMITED."
- d. "The supervisor position is undoubtedly the most advantageous and lucrative position to start your business, however, if you are not able to start at this level, please consult with your mentor to help you work your way to this level as quickly as possible."
- e. "[Herbalife] distributors earn 30-50% more than almost any other company's distributors assuming the same sales volume. In fact, the company [Herbalife=s] compensation plan returns 73% OF THE TOTAL NET SALES to its distributors. That means that out of the \$1.8 Billion in sales in 1998, \$1.3 Billion was paid out to us, the distributors! That translates into incredible earning power for the individual distributor.@

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- f Numerous “testimonial” earnings claims by the Individual Defendants and others, including “**Larry & SK Clark, TX: In their first 60 days earned \$2,500**”; “**John & Leslee Beall, IN: By my 11<sup>th</sup> month in business I was earning over \$10,000 per month ... still part-time**”; “**TJ Juneja, DC: Made over \$7,000 per month** within 7 months of starting with this program [NWTW] and quit his full time job as a CPA”; “**Steve & Debbie Combs, CA: Less than five years ago our financial situation was a disaster. Thanks to this business opportunity we now have financial freedom and a monthly income of more than \$28,000**”; “**Leah Graham, WA: \$30,000 check last month**”; and “**Bret & Amber Bartholomew, NV: February’s check over \*\$60,000 just nine months using mail order!**” (emphasis in original).
- g. Other testimonials indicate that most if not all of these alleged earnings are based on recruitment bonuses and commissions, as opposed to retail sales.

27. The NWTW Second Package includes a series of charts showing projected earnings for NWTW/Herbalife distributors, labeled **AFive gets Five gets Five Plan@**, which represents potential earnings ranging from \$19,375 to \$42,625 monthly, **AFour gets Four gets Four Plan@**, which represents potential earnings ranging from \$10,500 to \$23,100 monthly, and so on. A copy of this revenue projection is set forth in attached **Exhibit B**.

28. The NWTW Second Package represents that the **AWorst Case@** is that the distributor will be earning \$13,000 per month after 12 months following the program.

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**D. The NWTW Marketing Scheme Transforms the Herbalife Marketing Plan Into an Illegal Pyramid Scheme**

29. The overwhelming bulk of the NWTW's promotional effort is devoted to extolling the merits of moving up the Herbalife pyramid as quickly as possible to generate a "downline" organization which will lead to "financial freedom". The ultimate purpose of the NWTW System promotional efforts is to enlist prospects to sell others on the virtue of selling others on the NWTW System, in an endless chain.

30. The NWTW System as employed in conjunction with the Herbalife compensation structure and marketing plan constitutes a classic pyramid sales scheme in that participants pay valuable consideration for the chance to receive compensation for recruiting new participants, or to receive compensation when a person introduced by the participant recruits a new participant, and compensation is paid regardless of whether any retail sales are made to persons who are not participants in the scheme. The result is an endless chain scheme in which product sales are secondary to recruitment efforts. The NWTW System has been conceived and/or approved and operated by each of the Defendants as an illegal pyramid.

31. The NWTW System's pyramid scheme as employed in connection with the Herbalife compensation structure and marketing plan is characterized by three basic features: (1) it requires that the investor "buy in" through purchases of large amounts of promotional aids, sales kits and the maintenance of personal volume purchases in order to benefit from the promotion of the scheme and to obtain the right to receive bonuses based on the wholesale purchases of Herbalife products by other distributors and executives in their "downline", as well as their purchases of NWTW sales aids, thereby encouraging "inventory loading" (that is, excessive up-front wholesale product purchases); (2) it is premised upon the recruitment of new distributors (NWTW distributors are urged to spend 80% of their time recruiting) and provides for the payment of sales bonuses and



1 commissions based on the number of recruits one brings into the NWTW chain; and (3) it uses  
2 outlandish earnings projections which bear no relation to the earnings a new distributor may  
3 reasonably anticipate.

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5 32. Defendants Dream Builders, H.B. International Group, Inc. and Individual  
6 Defendants Powell, Andry, C.M. Tsutakawa, Tsutakawa and Graham, sponsor promotional seminars  
7 and distribute promotional literature, video tapes and audio cassettes at or by which prospects are  
8 recruited and trained to join the NWTW System sales pyramid and to induce others to also join. In  
9 promotional materials distributed in connection with the NWTW System, and at promotional events  
10 sponsored by Herbalife, H.B. International Group, Inc. and Dream Builders, NWTW members  
11 deliver Arags-to-riches@testimonials and allude to extraordinary monthly incomes, exhorting the  
12 prospects of joining the NWTW System.

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14 33. In addition to the Second Script, the NWTW System employs standard, pre-  
15 printed agreement forms and related materials in the execution of its pyramid marketing scheme,  
16 including, without limitation:

- 17 (A) The NWTW "Distributor Agreement", a copy of which is attached hereto as  
18 **Exhibit C**;
- 19 (1) A NWTW Quick Start Workbook, a copy of which is attached as **Exhibit D**;
- 20 (2) A NWTW Second Package Manual, a copy of which is attached as **Exhibit**  
21 **E**; and
- 22 (3) A First Script, a copy of which is attached as **Exhibit F**.

23  
24 **E. Inadequate or Unenforced Retail Sales Requirements**

25 34. There is no effective and enforceable requirement that the NWTW System  
26 distributors actually make retail sales of Herbalife products. The NWTW System calls for  
27 distributors to make wholesale purchase of at least the minimum amount of products necessary to  
28

1 maintain their status as Supervisors, regardless of whether the distributor is actually making retail  
2 sales, a practice, known as "inventory loading". For example, the projected earnings chart in the  
3 NWTW ASecond Package@ states that:

4           These examples will assume that everyone does just the MINIMUM of 2,500 Volume Points  
5 to be eligible to receive Royalties, and nothing more! Production Bonuses are paid on  
6 infinite levels, [but] for these examples we are just considering our first three levels.  
7  
8 (emphasis in original).

9  
10           35. NWTW System distributors are encouraged by Defendants to sponsor a  
11 recruit with a distributor kit, significant purchases of the NWTW System marketing tools and  
12 hundreds if not thousands of dollars of Awholesale@product purchases from Herbalife. The NWTW  
13 System emphasizes through its uniform promotional materials the need to continue the on-going  
14 recruitment and sponsoring of new distributors into the NWTW System and the maintenance of  
15 personal wholesale product purchase volumes. The common practice of NWTW System  
16 distributors is to meet much of their purchase volumes by "attempting to sell products@to other  
17 recruits, by selling marketing tools and sales aids to recruits, and by inventory loading, as opposed  
18 to retailing to the mythical "end consumer."  
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21           36. All of the various techniques endorsed by the NWTW System to "retail"  
22 products are actually methods of "prospecting" for new distributors. Retail selling is virtually non-  
23 existent and, in any event, secondary to recruitment.

24           37. While Herbalife supposedly requires all of its distributors to retail its products,  
25 the Herbalife Defendants have failed to monitor and enforce these requirements and have thereby  
26 permitted the NWTW System to flourish and grow.  
27

28           **F. The NWTW-s Uniform and Standardized Recruitment Techniques**

1           38.     The NWTW System enforces uniformity in the presentations by new  
2 distributors through the required use of the uniform promotional materials attached hereto as  
3 **Exhibits A, D, E and F**, and audio and video cassettes prepared by the Defendants.

4  
5           39.     NWTW distributors are not permitted to generate any marketing or training  
6 materials on their own. They are told, instead, that they must purchase and use the prepared scripts  
7 and other standardized, scripted and uniform marketing tools prepared for use and sold to them by  
8 the Defendants.

9  
10           **G.     Defendants' Fraudulent Representatives and Deceptive Omissions**

11           40.     The NWTW System represents in its uniform promotional materials that its  
12 marketing structure is legal, and uses the language of trade and commerce ("retail sales", etc.) to  
13 mimic the forms and structures of legitimate businesses and to obscure the fundamental nature of its  
14 structure as an illegal pyramid or endless chain marketing scheme.

15  
16           41.     At all times mentioned herein, each Defendant was the authorized agent of the  
17 other Defendants and has knowingly engaged in the activities and misrepresentations mentioned  
18 herein in a planned conspiracy to defraud the plaintiff and the class. Defendants' representations as  
19 to the probabilities of success were and are false. Defendants' representation that the NWTW  
20 System is self-funding in less than 90 days were and are false. Despite Defendants' claims, there is  
21 in fact little chance that most individuals who purchase the NWTW System distributorships will  
22 ever recoup their initial investment.

23  
24           42.     In connection with the NWTW System, Defendants have uniformly failed to  
25 disclose, among other material facts, the following:

- 26           (A)     That investments of money and time in the NWTW System are exceedingly  
27 risky because the NWTW System as employed in connection with the  
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Herbalife ASales and Marketing Plan@ is a pyramid sales scheme, such schemes inevitably collapse after a period of explosive growth, and most people in pyramid schemes lose money;

- (B) That the uniform promotional materials disseminated to NWTW distributors contained false and misleading information and misrepresent material facts;
- (C) That most states, including California, have enacted outright prohibitions against pyramid schemes or endless chain schemes on the grounds that such schemes are inherently fraudulent since all but the developers or initial participants in the scheme will not make any money;
- (D) That the Federal Trade Commission and state agencies have found the practice of representing by implication, the use of hypothetical examples, or otherwise that distributors in multi-level marketing programs earn or achieve any stated amounts of profits, earnings or sales in excess of the average profits, earnings, or sales of all distributors, to be an "unfair or deceptive act or practice" in violation of law, unless the average profits, earnings or sales or the percent of all distributors who actually achieved such stated profits, earnings or sales is clearly and conspicuously disclosed;
- (E) That the true objective of the NWTW=s marketing scheme is to perpetrate a pyramid chain of "Supervisors" and to sell such Supervisors rights and thereby create an artificial market for the Herbalife products, rather than to make bona fide retail sales of products to consumers;
- (F) That the inherent risk and instability associated with a pyramid scheme renders the long-term benefits which the "Supervisors" expect to obtain through "downline" resales both uncertain and risky at best;

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(G) That in order to effectively evaluate the Herbalife Supervisor positions as business opportunities, each of the Defendants should have disclosed the following information to the Plaintiff and to all prospective NWTW members and failed to do so:

- (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 actually achieved the earnings or ranges of earnings represented by the Defendants, as well as the total number of distributors who acquired interests in each rank of Herbalife "Sales and Marketing Plan" on an annual basis and by geographical area;
- (3) The number and percentages of distributors who reached each rank in the Herbalife "Sales and Marketing Plan" as compared to the total number of distributors who acquired interests in Herbalife's "Sales and Marketing Plan" on an annual basis and by geographical area;
- (4) The average income actually earned by distributors at each rank of Herbalife's "Sales and Marketing Plan" on an annual basis and by geographical area;
- (5) The average payments and expenses actually made and incurred by distributors at each rank of Herbalife's "Sales and Marketing Plan" on an annual basis and by geographical area;

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- (6) The number and percentages of distributors at each level of Herbalife's "Sales and Marketing Plan" who voluntarily terminated or failed to renew their positions, who were terminated or refused renewal by Herbalife for any reason, who ceased to be "active", or who otherwise abandoned their positions in the Herbalife "Sales and Marketing Plan" on an annual basis and by geographical area; and
- (7) all other material information which could affect the decision of a reasonable business person.

43. In short, Defendants' sales activities are commonly characterized by misrepresentations and omissions of material fact. Information provided in uniform and standardized video and audio-cassette tapes, and written promotional materials combine to give investors the materially incorrect impression that their investments will be easily recouped, that the promotional campaigns used in the NWTW System will generate new prospects, that distributors will profit from their initial investment with little or no risk, and that the NWTW System will be self-funding within 90 days. In fact, only a handful of distributors have achieved the extraordinary levels of income represented by Defendants, with most suffering an out-of-pocket loss on their initial investment. Persons who attempt to participate in the NWTW/Herbalife program typically lose from \$10,000 to \$50,000 or more, and a number of them have been forced into personal bankruptcy. Defendants are continuing to promote, approve and/or operate the NWTW System in the State of California and throughout the United States, including its illegal pyramid scheme aspect. These continuing activities further threaten the investments of the Class and will victimize thousands of additional persons unless Defendants are restrained and enjoined. Defendants' activities have

1 inflicted, and will continue to inflict, irreparable harm upon plaintiff, the Class members, and  
2 prospective Herbalife distributors who employ the NWTW System.

3 44. As a result of and in reliance upon the uniform and standardized  
4 representations and omissions of each of the Defendants, the Plaintiff and other NWTW System  
5 distributors at all levels have become unknowing victims of the NWTW pyramid sales scheme.

6  
7 **H. Recruitment of the Plaintiff**

8 45. Relying on the uniform and standardized misrepresentations and written  
9 promotional materials promulgated by Herbalife and Dream Builders and its agents, including the  
10 **AFirst Script** (attached as **Exhibit F** in which Dream Builders and the NWTW state that they are  
11 representing Herbalife), Plaintiff Jacobs was induced to apply for and become an Herbal Life  
12 distributor on or about September 7, 2001, a NWTW distributor on or about September 10, 2001, a  
13 NWTW focus group member on or about September 26, 2001, and a NWTW Supervisor prior to  
14 October 28, 2001. A copy of Plaintiffs= NWTW Distributor Agreement is attached as **Exhibit G**.

15  
16 46. Plaintiff committed herself on a full time basis to the NWTW System. She  
17 purchased significant quantities of Herbalife products, including a product **AGold Package** and a  
18 product **APlatinum Package**, paid to attend NWTW training sessions including one held in  
19 Cleveland, Ohio on or about November 3, 2001, purchased NWTW promotional materials and  
20 qualified and became an Herbalife Supervisor prior to October 28, 2001. Plaintiff continued her  
21 efforts to learn the NWTW System by listening to **Aat home** audio seminars offered over the  
22 telephone and internet, logging on to **Afocus group** conference calls, and by purchasing NWTW  
23 training tapes and compact disks.  
24

25  
26 47. After nearly three and one-half months of exhaustive work conducted in  
27 accordance with the training materials Plaintiff obtained from the NWTW System, Dream Builders,  
28 Herbalife and the other Defendants, Plaintiff found herself nearly bankrupt and without income. She

1 also had an abundance of sales aids and products which she was unable to dispose of at a fair sales  
2 or refund price.

3 48. Once the Plaintiff recognized that the NWTW System was an illegal practice,  
4 she withdrew from participation and sought the advice of legal counsel.

5 49. On information and belief, thousands of individuals who invested in the  
6 NWTW System's pyramid scheme are now inactive and have sustained the loss of most or all of  
7 their investments and have sustained additional economic loss.

8  
9 **I. Herbalife Rules of Conduct**

10 50. Herbalife maintains rules governing the conduct of Herbalife distributors.  
11 Specifically, Herbalife maintains and provides to all Herbalife distributors its written distributor  
12 rules and policies entitled **ARules of Conduct & Distributor Policies.@ (AHerbalife Rules of**  
13 **Conduct@)**. The NWTW Distributor Agreement states that the NWTW distributor will **A[a]dhere to**  
14 **the policies and procedures established by Herbalife ... and [its] Rules of Conduct & Distributor**  
15 **Policies Sections...@**

16 51. Rule 27 of the Herbalife Rules of Conduct deals with sales aids and  
17 promotional materials that are conceived of and prepared by Herbalife distributors (i.e., **Anon-**  
18 **Herbalife@materials**). Rule 27-A, which permits Herbalife distributors to develop and use sales aids  
19 and materials for use in their Herbalife business under limited circumstances, provides as follows:  
20  
21

22 **Rule No. 27 Non-Herbalife Sales Aids and Materials**

23  
24 Distributors may develop their own sales aids and materials for the purpose of  
25 building, training and motivating their own Distributor organization provided that the  
26 materials:

27 **\$ Do not suggest or imply any specific level of income may be earned from**  
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**the Herbalife business by following any specific method or system.**

**\$** Follow the Rules of Conduct and all other written rules and regulations of Herbalife.

**\$** **Do not become or are not perceived as an income-generating enterprise that is being conducted instead of, or in conjunction with, the Herbalife Distributorship.**

52. The uniform promotional materials conceived, approved and/or implemented by Defendants in the NWTW System violate at least Rule 27-A, paragraphs 2 and 4 of Herbalife's Rules of Conduct.

53. Rule 27-C of the Rules of Conduct, which permits Herbalife to sanction any Herbalife distributor that violates its Rules of Conduct pertaining to sales and promotional materials, including terminating the violator's Herbalife distributorship, provides as follows:

**Rule 27-C Violation of Rules for Non-Herbalife Produced Sales Aids or Materials**

In the event that Herbalife determines that non-Herbalife produced sales aids and materials supplied by a Distributor, violate any applicable law or the Herbalife Rules of Conduct or other rules and regulations published by the company from time to time or impair the Herbalife business or damage its reputation, Herbalife reserves the right to instruct the Distributor to cease producing, supplying or distributing the sales aids and materials. If Distributors violate this rule, Herbalife is entitled to sanction the Distributor, including termination of the Distributorship and hold the Distributor

1 responsible for any costs, losses, damages or other liabilities suffered by Herbalife  
2 and/or its Distributors as a result of the production or distribution of such material.

3 54. The last sentence in Rule 27-C of the Rules of Conduct, which requires a  
4 violator of Rule 27 to indemnify Herbalife and its distributors, is in recognition that a violation of  
5 Rule 27 constitutes an illegal activity for which Herbalife may be held liable.  
6

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

8  
9 55. Shortly after the NWTW System was conceived and implemented, Herbalife  
10 obtained and reviewed the uniform sales, marketing and promotional materials employed in  
11 connection with the NWTW System.

12 56. On information and belief, at some time after the inception of the NWTW  
13 System in December, 1999 and prior to May of 2001 (the exact date is known to the Herbalife  
14 Defendants but not to the Plaintiff), Herbalife began noticing unusual levels of activity among  
15 certain Herbalife distributors, either in the form of unusually high levels of Herbalife product  
16 purchases or unusually rapid promotions through the levels of the Herbalife Sales and Marketing  
17 Plan, or both. Herbalife's legal department conducted an unknown number of interviews of these  
18 Herbalife distributors, and determined that they were employing the NWTW promotional system in  
19 connection with their Herbalife distributorships.  
20  
21

22 57. In May, 2001, Herbalife held a sales and training session in Nashville,  
23 Tennessee for its top distributors (the "Extravaganza"). The Nashville Extravaganza was attended  
24 by Defendants Powell and Juneja, among other Individual Defendants, and by many "A20-K Plan"  
25 members of the NWTW System. Both the "A20-K Plan" members and Defendant Powell prominently  
26 displayed themselves with NWTW System "Campaign" buttons and banners. At the Extravaganza,  
27  
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1 Defendant Powell was recognized for achieving his President's Team membership in the Herbalife  
2 business in a company-wide record time of approximately one year.

3           58. Shortly after the Extravaganza, Defendants Juneja and Powell met with  
4 directors and executive officers of Herbalife to discuss the uniform sales and promotional materials  
5 being employed in the NWTW System. Among the representatives of Herbalife at this meeting  
6 were then Chief Executive Officer of Herbalife, Christopher Pair, now resigned, and Herbalife  
7 director and current CEO Francis X. Tirelli (ATirelli@).  
8

9           59. As a result of Herbalife's internal investigation, and the meeting with Juneja  
10 and Powell, Tirelli and other director and executive officers of Herbalife reviewed the uniform sales  
11 and promotional materials employed in the NWTW System.  
12

13           60. In or about August, 2001, Tirelli, acting on behalf of Herbalife as director and  
14 Chief Executive Officer, suggested that the NWTW uniform sales and promotional materials be  
15 revamped. At or about this time, Tirelli issued a rule of conduct requiring all customer Alead  
16 generation systems@, including the NWTW System, to obtain approval by Herbalife before being  
17 implemented.  
18

19           61. Notwithstanding the fact that the NWTW System and the uniform sales and  
20 promotional materials violate Rule 27-A of the Rules of Conduct, neither Herbalife nor any of its  
21 representatives has ceased the distribution of those materials nor terminated the Herbalife  
22 distributorships of the Individual Defendants who conceived and/or approved of the NWTW System  
23 and its materials. Rather, the NWTW System and the materials associated therewith continue to be  
24 employed and distributed with the knowledge and acquiescence of Herbalife's board of directors and  
25 Chief Executive Officer.  
26

27           62. On or about January 8, 2002, certain distributors of the NWTW System  
28 participated on a conference call to voice their concerns about the NWTW System, the financial

1 losses that they had sustained because of the NWTW System, and the possible use that they might  
2 make of a lead generation system other than the NWTW System. During that call, Defendant  
3 Powell, who had not been invited to participate, was connected to the conference call announcing  
4 that the participants' identities were known to Herbalife, that their conduct in considering an  
5 alternate lead generation system to the NWTW System would be dealt with severely by Herbalife,  
6 and that Tirelli had been connected to the call and was monitoring the conversation of the  
7 participants.  
8

9 **IV. THE NEED FOR INJUNCTIVE RELIEF**

10 63. Defendants are continuing the deceptive and fraudulent NWTW promotional  
11 scheme (i.e., the NWTW System) in conjunction with the Herbalife Sales and Marketing Plan.  
12 Herbalife has utterly failed to enforce the policies and procedures which were ostensibly designed to  
13 preclude the operation of the Herbalife Sales and Marketing Plan as an illegal pyramid scheme.  
14 Defendants have demonstrated every inclination to continue defrauding current and prospective  
15 Herbalife distributors through the use of the NWTW promotional scheme. Injunctive relief is  
16 essential in order to prevent further injury.  
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19  
20 **V. CLASS ACTION ALLEGATIONS**

21 64. Individual and Representative Plaintiff brings this Class Action on behalf of  
22 herself, and of all other NWTW distributors similarly situated, as members of the Plaintiff Class.  
23 Plaintiff request that this Court certify the Plaintiff Class, or appropriate subclasses thereof, initially  
24 defined as all residents of the United States who, at any time from December 1, 1999 to the date the  
25 Class is certified in this action (the Class Period):  
26

27 (a) were Herbalife distributors at any level;  
28

1 (b) either executed the NWTW Distributor Agreement or purchased NWTW  
2 promotional materials for use with their Herbalife distributorship; and

3 (c) incurred net economic loss.

4 The Defendants, any entity in which any of them have a controlling interest, and their legal  
5 representatives, heirs, and successors, are expressly excluded from membership in the Plaintiff Class  
6 and any subclasses thereof, to avoid conflict of interest.

7  
8 65. This action has been brought and may properly be maintained, pursuant to the  
9 provisions of Fed. R. Civ. P. 23(a)(1) through (4), 23(b)(1), (2) and/or 23(b)(3); and satisfies the  
10 numerosity, commonality, typicality, adequacy, impairment and superiority requirements thereof,  
11 because:

12  
13 (A) The members of the Class are so numerous that their individual joinder herein  
14 is impractical. The Class is believed to number over 5,000 members.

15 Individual and Representative Plaintiff invested and lost in excess of  
16 \$13,000.00 in Defendants' pyramid marketing scheme. The remaining  
17 aggregate out-of-pocket loss of the Class is estimated to exceed \$40 million.  
18 If the Court determines notice to be necessary or appropriate, Class members  
19 may be notified of the pendency of this action by mail, supplemented or  
20 substituted by published notice.

21  
22 (B) Common questions of law and fact exist as to all members of the Class.  
23 These questions predominate over any questions which affect only the  
24 individual members of the Class. These common legal and factual questions  
25 include:  
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- (1) Whether the Defendants conducted or participated in the affairs of a RICO Enterprise through a pattern of racketeering activity, as alleged in this Complaint;
- (2) Whether the Defendants committed or conspired to commit the predicate acts alleged in this Complaint;
- (3) Whether the use of the NWTW promotional system in conjunction with the Herbalife sales and compensation plan results in an Endless Chain scheme in violation of California Penal Code ' 327;
- (3) Whether the sale of the NWTW promotional system in conjunction with the Herbalife sales and compensation plan constitutes a Seller Assisted Marketing Plan pursuant to California Civil Code ' 1812.201;
- (4) Whether the NWTW promotional documents and materials, including video presentations and audio tapes, prepared and disseminated by Defendants to the Class misrepresented or omitted material facts about the benefits, prospects, interrelationships, financial condition, activities of, and the safety, security, and economic benefits of the business opportunities offered in Herbalife and/or Dream Builders;
- (5) Whether the NWTW documents and materials, audio tapes and video presentations misrepresented material facts relative to the true value of Herbalife's and/or Dream Builders' distributorships, and the economic benefits which could be obtained by serving as one of Herbalife's "Distributors" or "Supervisors";
- (6) Whether the Defendants were aware of and misrepresented or omitted material facts relative to the true value of Herbalife's and/or Dream

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Builder's business opportunities, and the economic benefits which could be obtained by serving as one of Herbalife's "Distributors" or "Supervisors";

- (7) Whether the Defendants acted willfully, recklessly or with gross negligence in omitting to state and/or misrepresenting material facts with respect to the foregoing, in aiding and abetting, or in controlling such misstatements;
- (8) Whether Defendants operated Herbalife and Dream Builders, and/or the NWTW System as a deceptive business practice, and/or an illegal pyramid or endless chain scheme; and
- (9) Whether the members of the Class have sustained damages as a result of Defendants' wrongdoing; and, if so, what is the proper measure and appropriate formula of damages.

(C) Individual and Representative Plaintiff's claims are typical of those of the proposed Plaintiff Class, since Plaintiff made investments similar to those of the Class, and the proposed Plaintiff Class is defined to include all persons and entities (except Defendants and affiliates and insiders as set forth above) who made such investments. Furthermore, Plaintiff and all members of the Plaintiff Class have sustained monetary damages arising out of Defendants' wrongful conduct in violation of RICO and California law as alleged herein.

(D) Plaintiff will fairly and adequately protect the interests of the members of the Class. The named Plaintiff has no interests which are adverse to the interests of the Class members. Plaintiff Jacobs lost over \$13,000.00 in Defendants' pyramid scheme. This provides her with a substantial stake in this action and the incentive to prosecute it vigorously for herself and for the Class. The named Plaintiff has retained counsel competent and experienced in class actions,

1 franchising and distribution law and consumer protection litigation, and intend to pursue this action  
2 vigorously.

3 (E) A class action is superior to other available methods for the fair and efficient  
4 adjudication of the litigation since individual joinder of all damaged distributors is impracticable.  
5 Although the damages suffered by each individual Class member may total thousands or even tens  
6 of thousands of dollars, damages of such magnitude are nonetheless relatively small given the  
7 expense and burden of individual prosecution of the complex and extensive litigation necessitated  
8 by the fraudulent promotion of an illegal pyramid scheme. Thus, it would be virtually impossible  
9 for the Class members to effectively individually redress the wrongs done to them. Even if the  
10 Class members themselves could afford such individual litigation, the Court system could not.  
11 Individualized litigation presents the potential for inconsistent or contradictory judgments.  
12 Individualized litigation magnifies the delay and expense to all parties, and to the court system,  
13 presented by the complex legal and factual issues of the case. By contrast, the class action device  
14 presents far fewer management difficulties, and provides the benefits of unitary adjudication,  
15 economy of scale, and comprehensive supervision by a single court.

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18 (F) The foregoing allegations demonstrate the satisfaction of the basic certification  
19 criteria of Fed. R. Civ. P. 23(a)(1)-(4) and 23(b)(3) and the requirements for voluntary, or opt-out  
20 certification under Fed. R. Civ. P. 23(c)(2). However, the circumstances of this litigation may  
21 likewise justify the certification of the proposed Plaintiff Class on a mandatory (non-opt out) basis  
22 under Fed. R. Civ. P. 23(b)(1)(A) and/or (B), because the prosecution of separate actions by the  
23 members of the proposed Plaintiff Class in the federal and/or state courts would create a risk of (A)  
24 inconsistent or varying adjudication with respect to individual members of the Class which would  
25 establish incompatible standards of conduct for the party opposing the Class, or (B) adjudication  
26 with respect to individual members of, the Class which would as a practical matter be dispositive of  
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1 the interests of the other members not party to the adjudications or substantially impair or impede  
2 their ability to protect their interests.

3 (G) In conducting the illegal pyramid scheme alleged herein and by omitting and  
4 concealing material facts regarding the scheme from prospective distributors, Defendants have acted  
5 or refused to act on grounds generally applicable to the Class, thereby making appropriate final  
6 injunctive relief or corresponding declaratory relief with respect to the Class as a whole, and making  
7 appropriate class certification under Fed. R. Civ. P. 23(b)(2).  
8

9 **VI. CAUSES OF ACTION**

10 **FIRST CLAIM FOR RELIEF**

11 (Violation of 18 U.S.C. ' 1962(c))

12 (Against All Defendants)

13 66. Plaintiff, on behalf of herself and all others similarly situated, realleges, as if  
14 fully set forth, each and every allegation contained in the preceding paragraphs, and further alleges:  
15

16 67. Defendants are "persons" within the meaning of 18 U.S.C. ' 1961(3).  
17

18 68. Plaintiff and each member of the Class are "persons" within the meaning of  
19 18 U.S.C. ' 1961(3).  
20

21 69. The Enterprise, hereinafter referred to as the NWTW Enterprise consists of  
22 the association in fact comprised of all Herbalife distributors, including all of their interlocking  
23 downline organizations, who utilized or attempted to utilize the NWTW promotional system in  
24 connection with their Herbalife distributorships. Alternatively, the NWTW Enterprise consists of an  
25 association in fact comprised of Defendant Dream Builders, Defendant H.B. International Group,  
26 Inc., the Individual Defendants and other high level Herbalife distributors whose identities are not  
27 known to Plaintiff but will be revealed during discovery.  
28

1           70.     The ostensible purpose of the NWTW Enterprise is to develop and employ a  
2 promotional system to assist Herbalife distributors to sell Herbalife products and to recruit new  
3 Herbalife distributors, consistent with the Herbalife Sales and Marketing Plan.

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

9           72.     Each of the Defendants was associated with the NWTW Enterprise and  
10 conducted or participated, directly or indirectly, and/or conspired to conduct or participate, in the  
11 affairs of the NWTW/Herbalife Enterprise through a pattern of racketeering activity as set forth  
12 herein.

13           73.     The roles of each of the Defendants were generally as follows:

14           (a) The Individual Defendants conducted or participated in the affairs of the  
15 NWTW Enterprise through their leadership roles as high level Herbalife distributors, including but  
16 not limited to participating in special, Herbalife-arranged conference calls, speaking at Herbalife-  
17 sponsored training events, and by developing and distributing the NWTW promotional materials and  
18 system exclusively for use by Herbalife distributors.

19           (b) Defendants Dream Builders and H.B. International Group, Inc. conducted  
20 or participated in the affairs of the NWTW Enterprise by developing and distributing the NWTW  
21 promotional materials and system exclusively for use by Herbalife distributors.

22           (c) The Herbalife Defendants conducted or participated in the affairs of the  
23 NWTW Enterprise (i) by granting leadership roles to the Individual Defendants and thereby granting  
24 Herbalife's imprimatur to their promotional methods and the NWTW System, (ii) through their  
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1 absolute contractual power over the administration of the Herbalife marketing plan and the duty to  
2 enforce the Herbalife Rules of Conduct and Distributor Policies, and (iii) through their knowledge of  
3 the activities of the Individual Defendants and their failure to enforce their own rules and policies,  
4 thus permitting the NWTW System to continue.  
5

6 74. Throughout the Class Period, each of the Defendants, through the activities of  
7 their employees and agents, engaged in repeated predicate acts within the meaning of 18 U.S.C.  
8 ' 1961(1). All such instances were related to their common objectives, and were repeated on at least  
9 two or more occasions during the Class Period, and are susceptible to further repetition and  
10 continuation. As a result, such repeated representations and misrepresentations and material  
11 omissions constitute a pattern of racketeering activity within the meaning of 18 U.S.C. ' 1961(5).  
12

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

18 76. Throughout the Class Period, for the purpose of executing the fraudulent  
19 scheme alleged herein, the Defendants repeatedly caused letters and other materials to be delivered  
20 by the United States Postal Service in violation of 18 U.S.C. ' 1341 (mail fraud); and repeatedly  
21 used interstate wire facilities to further their scheme in violation of 18 U.S.C. ' 1343 (wire fraud).  
22 The Defendants mailed product order forms and sales and training material order forms, and  
23 established and maintained telephone lines for the purpose and with the consequence of assisting  
24 and causing Plaintiff and Class to (a) place product purchase orders and sales and training materials  
25 orders, and (b) remit payments for product purchases and sales and training material purchases.<sup>77</sup>  
26 The acts of mail fraud in which Defendants engaged in furtherance of the unlawful scheme alleged  
27 herein, include but are not limited to the following transmissions through the United States Mail:  
28

1 (a) Mailing the AFirst Package@to the Plaintiff on or about August 27, 2001  
2 and to other Class Members on diverse occasions, the exact dates of which are not known to  
3 Plaintiff but are known to Defendants and will be disclosed during discovery, but in general  
4 continuing from December, 1999 to date;

5  
6 (b) Mailing the ASecond Package@to the Plaintiff on August 29, 2001 and to  
7 other Class Members on diverse occasions, the exact dates of which are not known to Plaintiff but  
8 are known to Defendants and will be disclosed during discovery, but in general continuing from  
9 December, 1999 to date; and

10 (c) Mailing the Gold and Platinim product packages to Plaintiff on or about  
11 September 7, 2001, and mailing Platinum, Gold and Silver product packages to other Class  
12 Members on diverse occasions, the exact dates of which are not known to Plaintiff but are known to  
13 Defendants and will be disclosed during discovery, but in general continuing from December, 1999  
14 to date;

15  
16 78. The acts of wire fraud in which Defendants engaged in furtherance of the  
17 unlawful scheme alleged herein, include but are not limited to the following transmissions through  
18 telephone and interstate wire facilities:

19  
20 (a) Focus group and other types of promotional conference calls during 2001  
21 on September 9, October 3, October 7, October 18, October 21, October 25, November 1, November  
22 8, November 11, November 15 and November 25, and use of Touchfon Voice Mail/Communication  
23 on and diverse other occasions from December, 1999 to date; and

24 (b) Promotional seminars over the Internet on diverse occasions from  
25 December, 1999 to date, the exact dates of which are not known to Plaintiff but are known to  
26 Defendants and will be disclosed during discovery.  
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1                   79. Plaintiff and the members of the Class have been injured in their businesses or  
2 properties as a direct and proximate result of the Defendants' violation of 18 U.S.C. ' 1962(c) and  
3 are entitled to recover treble damages, costs of suit and reasonable attorneys' fees, pursuant to 18  
4 U.S.C. ' 1964(c).

5  
6                                   **SECOND CLAIM FOR RELIEF**

7   (Violation of 18 U.S.C. ' 1962(d))

8   (Against All Defendants)

9                   80. Plaintiff, on behalf of herself and all others similarly situated, realleges, as if  
10 fully set forth, each and every allegation contained in the preceding paragraphs, and further alleges:  
11

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

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

19  
20                   83. This conspiracy commenced at a date unknown to Plaintiff but no later than  
21 December 1, 1999 and is continuing.

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

24                   85. Plaintiff and the members of the Class have been injured in their businesses or  
25 properties as a direct and proximate result of the Defendants' conspiracy to violate 18 U.S.C.  
26 ' 1962(c) and are entitled to recover treble damages, costs of suit and reasonable attorneys' fees,  
27 pursuant to 18 U.S.C. ' 1964(c).

**THIRD CLAIM FOR RELIEF**

(Fraud and Deceit)

(Against All Defendants)

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6 86. Individual and Representative Plaintiff, on behalf of herself and all others  
7 similarly situated, realleges, as if fully set forth, each and every allegation contained in the preceding  
8 paragraphs, and further alleges:

9 87. Each of the acts, practices, misrepresentations, omissions, violations, and  
10 other wrongs complained of above, have been engaged in by Defendants with malice and with  
11 specific and deliberate intent to oppress, defraud and deceive Plaintiff.  
12

13 88. Defendants, and each of them, knew and know that the Defendants and others  
14 identified herein were engaged in the fraudulent conduct as aforesaid, and that said conduct has  
15 constituted a breach of their duties to the Class and a fraud. Notwithstanding this, said Defendants,  
16 and each of them, has engaged in conduct as hereinbefore described which rendered and continues  
17 to render substantial assistance to, aided and abetted, and concealed the fraudulent NWTW scheme.  
18

19 89. With knowledge of the unlawful purpose thereof, said Defendants, and each  
20 of them, have entered into an undisclosed agreement to accomplish an illegal pyramid scheme and in  
21 their actions have assisted that scheme and its injurious results.

22 90. As a proximate result of the conduct of Defendants, each of them, Plaintiff  
23 and the Class have invested time and money in her Herbalife distributorship and the NWTW  
24 promotional scheme in actual and justifiable reliance thereon, and Plaintiff and the Class have been  
25 injured as aforesaid.  
26

27 91. As a result, and because Defendants have acted and continue to act  
28 maliciously and oppressively, despicably, and in callous disregard of the rights and interests of

1 Plaintiff, Plaintiff and the class are not only entitled to the damages set forth above, but also to  
2 punitive damages, in a sum not presently known, for the sake of example and by way of punishing  
3 Defendants.

4 **FOURTH CLAIM FOR RELIEF**

5 (Endless Chain Scheme in Violation of California Penal Code ' 327)

6 (Against All Defendants)

7  
8 92. Individual and Representative Plaintiff, on behalf of herself, and all others  
9 similarly situated, realleges, as if fully set forth, each and every allegation contained in the preceding  
10 paragraphs, and further alleges:

11 93. The NWTW scheme for the promotion of Herbalife distributorships  
12 constitutes an Endless Chain scheme within the meaning of California Penal Code ' 327.

13 94. Plaintiff and the Class are entitled to rescission of the NWTW and Herbalife  
14 contracts and return of all consideration paid pursuant to Defendants= Endless Chain Scheme, less  
15 any compensation received, pursuant to California Civil Code ' 1689.2.

16 **FIFTH CLAIM FOR RELIEF**

17 (Violation of California Seller Assisted Marketing Plans Law)

18 95. Individual and Representative Plaintiff, on behalf of herself, and all other  
19 class members, realleges, as if fully set forth, each and every allegation contained in the preceding  
20 paragraphs, and further alleges:

21 96. The NWTW System is a Seller Assisted Marketing Plan within the meaning  
22 of the California Civil Code ' 1812.201(a) and is not within the scope of any of the exclusions set  
23 forth in California Civil Code ' 1812.201(b), in that:

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27 a. The NWTW System calls for Herbalife/NWTW distributors to make a  
28 total initial payment exceeding \$500 within six months after

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commencement of operations for products, equipment, supplies or services, including but not limited to the purchase of multiple copies of the AFirst Package@ and ASecond Package@ for use in soliciting new distributors;

- b. Defendants have advertised or solicited the purchase of the NWTW Plan; and
- c. Defendants have represented that purchasers will earn, are likely to earn and can earn an amount in excess of the initial payment.

97. Defendants have sold, or represented that they have sold, five or more NWTW distributorships within the 24 months preceding the solicitations of Plaintiff and Class Members, or have represented that they intend to sell five or more NWTW distributorships within the 12 months following the solicitations of Plaintiff and Class Members.

98. The sales or offers to sell NWTW distributorships occurred within or originated from the State of California in that the Herbalife Defendants and Defendant H.B. International Group, Inc. have their principal places of business in California, and the purchase of a NWTW distributorship necessarily involves the purchase of an Herbalife distributorship.

99. Defendants have violated the California Seller Assisted Marketing Plans law, California Civil Code ' 1812.200, et seq., by:

- a. Making earnings claims concerning the NWTW System without the substantiating data or disclosures required by California Civil Code ' 1812.204(d); and
- b. Failing to provide prospective purchasers of the NWTW System with the disclosure statement required by California Civil Code ' 1812.205 or the information sheet required by California Civil Code ' 1812.206.



1               100. Plaintiff and members of the Class have been injured by Defendants=

2                       violations of the California Seller Assisted Marketing Plans law and are therefore entitled to actual

3                       damages, damages in the nature of rescission and punitive damages pursuant to California Civil

4                       Code ' 1812.218.

5

6   **SIXTH CLAIM FOR RELIEF**

7               (Unlawful, Unfair or Deceptive Business Practices in Violation of California Business

8   and Professions Code Section 17200 et seq.)

9               101. Individual and Representative Plaintiff, on behalf of herself, and all other

10                     Class members, realleges, as if fully set forth, each and every allegation contained in the preceding

11                     paragraphs, and further alleges:

12

13               102. By promoting and selling NWTW distributorships in connection with

14                     Herbalife distributorships as alleged herein, Defendants have engaged in unlawful or deceptive

15                     business practices and unfair competition within the meaning of California Business and Professions

16                     Code ' ' 17200, including but not limited to:

- 17                               a.       Making false or misleading statements in violation of California
- 18   Business and Professions Code ' 17500; and
- 19
- 20                               b.       Contriving, preparing, setting up, proposing or operating an endless
- 21   chain in violation of California Penal Code ' 327.

22               103. In addition, Defendants engaged in a deceptive and/or unfair business

23                     practice, as well as unfair, deceptive, or untrue advertising and acts prohibited by Business &

24                     Professions Code ' ' 17500, et seq. Specifically, Defendants marketed the NWTW distributorships

25                     as described above. Said marketing, including said omissions, were material and substantial.

26

27               104. The above-described unlawful, unfair and deceptive business practices

28                     conducted by Defendants, present a threat and likelihood of deception to members of the Class and

1 the general public, in that Defendants have systematically perpetrated and continue to perpetrate  
2 deceptive, unlawful and unfair acts upon members of the public by knowingly marketing the  
3 NWTW distributorships deceptively as described above.

4  
5 105. Pursuant to Business & Professions Code ' ' 17200 and 17203, Plaintiff, on  
6 behalf of herself, Class members and members of the general public, seeks an order of this Court  
7 awarding Plaintiff and members of the Class restitution of all monies wrongfully acquired by  
8 Defendants by means of such wrongful acts and practices, as permitted under California law, so as  
9 to restore any and all monies to Plaintiff and members of the Class which are still retained by  
10 Defendants, plus interest, attorneys= fees and costs pursuant to, inter alia, Code of Civil Procedure  
11 ' 1021.5.

12  
13 106. Defendants=unfair competition presents a continuing threat and likelihood of  
14 causing further harm to Plaintiff and members of the Class, such that injunctive relief would be  
15 appropriate, in the form of an order enjoining Defendants from selling, promoting or condoning the  
16 sale of NWTW distributorships and ordering Defendants to disgorge all money received as a result  
17 of the NWTW scheme.

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19  
20 **VII. PRAYER FOR RELIEF**

21 WHEREFORE, Individual and Representative Plaintiff requests of this Court the following  
22 relief, on behalf of Plaintiff and of all others similarly situated:

23 A. For an order certifying the proposed Plaintiff Class under Fed. R. Civ. P. 23(b)(1)  
24 and/or 23(b)(2) on a mandatory basis; under 23(b)(3) on a voluntary basis, or, in the alternative,  
25 according to proof; and certifying any necessary or appropriate subclasses under Fed. R. Civ. P.  
26 23(c)(4)(B);  
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1           B.       For rescission of Class members' contracts with Herbalife and NWTW and recovery  
2 of the consideration by them paid to Defendants and other amounts expended in connection  
3 therewith, plus interest thereon at the contract or legal rate from the date of each said purchase;

4           C.       For compensatory damages for their economic losses, together with interest thereon  
5 at the contract or legal rate, plus additional general and incidental damages, according to proof;

6           D.       For exemplary and punitive damages for Defendants' fraud, in an amount  
7 commensurate with each Defendant's ability to pay, which will be shown at trial;

8           E.       For treble damages pursuant to 18 U.S.C. § 1964(c) for Defendants' Civil RICO  
9 violations:

10           F.       For disgorgement by Defendants, and restitution to Plaintiff, of all earnings, profits,  
11 compensation and benefits obtained by Defendants as a result of their deceptive business practices;

12           G.       For injunctive relief, as requested above, and the cessation of the NWTW  
13 promotional scheme in violation of applicable federal and state law;

14           H.       For costs incurred herein, including attorneys' fees to the extent allowable by law;

15  
16 and

17           I.       For such other and further legal and equitable relief as this Court may deem proper.  
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**DEMAND FOR JURY TRIAL**

The Plaintiff demands a trial by jury as to all issues so triable.

DATED: February 15, 2002

SCHUBERT & REED, LLP

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

Aaron H. Darsky

ROBERT C. SCHUBERT S.B.N. 62684  
JUDEN JUSTICE REED S.B.N. 153748  
AARON H. DARSKY S.B.N. 212229  
SCHUBERT & REED LLP  
Two Embarcadero Center, Suite 1660  
San Francisco, California 94111  
Telephone: (415) 788-4220

DOUGLAS M. BROOKS  
EDWARD L. MANCHUR  
GILMAN & PASTOR, LLP  
Stonehill Corporate Center  
999 Broadway, Suite 500  
Saugus, MA 01906  
Telephone: (781) 231-7850

Attorneys for Individual and  
Representative Plaintiff Nancy Jacobs