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 19 *International, Inc., and Herbalife Ltd.*

20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA

22 DANA BOSTICK, a California citizen on
 23 behalf of himself and all others similarly
 24 situated, and on behalf of the general
 25 public,

26 Plaintiff,

27 v.

28 HERBALIFE INTERNATIONAL OF
 AMERICA, INC., a Nevada Corporation,
 HERBALIFE INTERNATIONAL, INC.,
 a Nevada Corporation, HERBALIFE
 LTD., a Cayman Islands Corporation,

Defendants.

Case No. 13-cv-02488 BRO (RZx)

**[PROPOSED] STIPULATED
 ORDER GOVERNING THE
 DESIGNATION AND HANDLING
 OF CONFIDENTIAL MATERIALS**

DISCOVERY MATTER

Hon. Ralph Zarefsky

**NOTE: CHANGES HAVE BEEN
 MADE TO THIS DOCUMENT**

1 WHEREAS, Plaintiff and Defendants (collectively, “the Parties”), hereby
2 acknowledge that certain documents and other information being produced in this
3 litigation include confidential, proprietary and/or trade secret information relating
4 to the business of each party, which, if disclosed, would harm the party’s business,
5 commercial, or financial interests;

6 WHEREAS, the Parties desire to expedite the flow of discovery material,
7 and facilitate the prompt resolution of disputes over confidentiality of discovery
8 materials;

9 WHEREAS the Parties desire to adequately protect information the Parties
10 are entitled to keep confidential as well as ensure that only such materials are
11 subject to special treatment; and

12 WHEREAS the Parties respectfully submit that protection of this
13 confidential information will protect the Parties from unfair competition, burden,
14 and expense;

15 IT IS HEREBY STIPULATED AND AGREED, pursuant to Rule 26(c) of
16 the Federal Rules of Civil Procedure, by and among the parties hereto, through their
17 undersigned counsel, that the following provisions of this Stipulated Order
18 Governing the Designation and Handling off Confidential Materials (the “Order”)
19 govern disclosure and use by the parties of all documents, testimony, interrogatory
20 answers, responses to requests to admit, electronically stored information (“ESI”),
21 and any other materials and information produced or provided in the above-
22 referenced Action.

23 1. PURPOSES AND LIMITATIONS

24 This case involves production of, among other things, Defendants’ business
25 models, non-public financial data, marketing strategies and business information of
26 a similar nature, Discovery in this action therefore is likely to involve production of
27 confidential, proprietary, or private information for which special protection from
28 public disclosure and from use for any purpose other than prosecuting this litigation

1 may be warranted. The parties stipulate to and petition the court to enter the
2 following Order. The Order does not confer blanket protections on all disclosures
3 or responses to discovery. The protection it affords from public disclosure and use
4 extends only to the limited information or items entitled to confidential or highly
5 confidential treatment as set forth herein and subject to the applicable legal
6 principles. The parties further acknowledge that this Order does not entitle them to
7 file confidential information under seal.

8 Notwithstanding anything to the contrary in this Order, this Order shall not
9 govern in connection with dispositive motions or at trial, where different legal
10 standards may apply. *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d
11 1122, 1136 (9th Cir. 2003); *Kamakana v. City and County of Honolulu*, 447 F.3d
12 1172 (9th Cir. 2006). If protection is desired in connection with those proceedings,
13 it shall be sought separately, from the judicial officer who will preside at those
14 proceedings. Local Rule 79-5 and the “Pilot Program – Instructions to Attorneys
15 Procedures for Filing Under Seal Documents” set forth the procedures that must be
16 followed and the standards that will be applied when a party seeks permission from
17 the court to file material under seal.

18 2. DEFINITIONS

19 2.1. Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.2. “CONFIDENTIAL”: information (regardless of how it is generated,
22 stored or maintained) that has not been revealed to the public and that falls into one
23 or more of the following categories:

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25 e information is contained in a document or is presented in a form
26 that, when analyzed in conjunction with other information produced
27 in the Action, would reveal Highly Confidential Information, as
28 defined below;

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- b. pri
vate information about any party, officer, employee or other individual;
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mmercially-sensitive information regarding the development, production, marketing, branding, sales or promotion of the entity’s products or finances, the disclosure of which would have the effect of causing harm to the competitive position of the person or entity from which the information is obtained.

No material shall be designated “CONFIDENTIAL” if the material has been published, distributed to the public, accessible to the public, or disclosed to a non-party without a confidentiality agreement or a reasonable expectation that the material would be maintained by the non-party in confidence.

2.3. Counsel: attorneys (i) who are not employees of a Party but are retained to represent or advise a Party in connection with this action or are affiliated with a law firm which has appeared for a Party (and all support staff) or (ii) who are employees of a Party and whose job responsibilities include the provision of legal advice (and all support staff).

2.4. Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.5. Disclosures or Discovery Material: all items or information, regardless of the medium or manner in which they are generated, stored, or maintained (including documents, testimony, interrogatory answers, responses to requests to admit or deny, transcripts, ESI and tangible things) produced or generated in connection with disclosures or responses to discovery in this matter.

1 2.6. Expert: a person with specialized knowledge or experience in a matter
2 pertinent to this action who (1) has been retained by a Party or its Counsel to serve
3 as an expert witness or as a consultant in this action, (2) is not a current employee
4 of a Party or of a Party's competitor, and (3) at the time of retention, is not
5 anticipated to become an employee of a Party or of a Party's competitor.

6 2.7. High Risk Expert: An Expert shall be a "High Risk Expert" if he or she
7 is or was (From January 1, 2010 to the present) employed or has reason to believe
8 that within the next three years he or she will be employed, in (1) any form of
9 consulting or professional relationship with any person or entity that competes with
10 Herbalife; or (2) any form of consulting or professional relationship regarding or
11 relating to Herbalife with any person who profits or attempts to profit from
12 Herbalife's failure or a diminution in the value of its common stock. Counsel shall
13 exercise good faith and reasonable diligence in determining whether an Expert is a
14 "High Risk Expert."

15 2.8. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
16 Information or Items: Information that has not been made public and falls into one
17 or more of the following categories:

- 18 a. confidential future business, marketing or sales
19 plans, including specific business plans, strategies and projections,
20 future marketing plans and strategies, future sales plans and
21 strategies, forward-looking pricing strategies; the development of
22 new product concepts, extensions of existing product lines, and
23 other similar forward-looking information that is kept confidential
24 by the party.
- 25 b. specific financial information at a level of detail
26 beyond that disclosed in sources available to the public;
- 27 c. results of research, studies or other complex
28 analyses that the parties expended money to develop or obtain and

1 that would be useful to current or potential competitors. This
2 category includes, among other things, consumer research studies
3 that the parties commissioned at considerable expense from third
4 parties, complex market analyses provided by third parties under
5 contracts with non-disclosure clauses, and analyses of other
6 competitors in the market;

7 d. terms of contracts with the companies' suppliers
8 or customers that could be used by current or potential competitors
9 in their own negotiations with suppliers or customers;

10 e. specific proprietary product formulas or
11 proprietary manufacturing processes;

12 f. product concepts in development that have not
13 been launched into the market.

14 Care shall be taken by the producing party to use the "HIGHLY
15 CONFIDENTIAL-ATTORNEYS' EYES ONLY" designation only where the
16 producing party has a good faith belief that such protection is needed.

17 2.9. Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.10. Party: any party to this action, including all of its officers, directors,
20 employees, and consultants.

21 2.11. Pershing Square Person: Pershing Square Capital Management and
22 any present or former directors, officers, executives, partners, principals, trustees,
23 employees, agents, attorneys, accountants, advisors and representatives, or any
24 other person(s) known, believed, or suspected to be acting or purporting to act on
25 its behalf, now or at any previous time since January 1, 2010, including but not
26 limited to William Ackman and Sullivan & Cromwell LLP.

27 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material.

1 2.13. Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.14. Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.”

8 2.15. Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 3. SCOPE

11 The protections conferred by this Order cover not only Protected Material (as
12 defined above), but also (1) any information copied or extracted from Protected
13 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
14 and (3) any testimony, conversations, or presentations by Parties or their Counsel
15 that might reveal Protected Material. However, the protections conferred by this
16 Order do not cover the following information: (a) any information that is in the
17 public domain at the time of disclosure to a Receiving Party or becomes part of the
18 public domain after its disclosure to a Receiving Party because of publication not
19 involving a violation of this Order, including becoming part of the public record
20 through trial or otherwise; and (b) any information known to the Receiving Party
21 prior to disclosure or obtained by the Receiving Party after the disclosure from a
22 source who obtained the information lawfully and under no obligation of
23 confidentiality to the Designating Party.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed the later of (1) dismissal of all claims and defenses in this action, with or

1 without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1. Exercise of Restraint and Care in Designating Material for Protection.**

7 Each Party or Non- Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. To the extent it is practical to do so, the
10 Designating Party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify – so that other
12 portions of the material, documents, items, or communications for which protection
13 is not warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be unjustified or that have been made for an improper purpose
16 (e.g., to unnecessarily encumber or retard the case development process or to
17 impose unnecessary expenses and burdens on other parties) expose the Designating
18 Party to sanctions.

19 If it comes to a Designating Party’s attention that information or items that it
20 designated for protection do not qualify for protection at all or do not qualify for the
21 level of protection initially asserted, that Designating Party must promptly notify all
22 other parties that it is withdrawing the mistaken designation.

23 **5.2. Manner and Timing of Designations.** Except as otherwise provided in
24 this Order (*see, e.g.*, second paragraph of section 5.2 below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.

28 Designation in conformity with this Order requires:

1 a) for information in documentary form (e.g., paper, but excluding
2 transcripts of depositions or other pretrial or trial proceedings), that the Producing
3 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If
5 only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins) and must specify, for each portion, the level
8 of protection being asserted.

9 A Party or Non-Party that makes original documents or materials available
10 for inspection need not designate them for protection until after the inspecting Party
11 has indicated which material it would like copied and produced. During the
12 inspection and before the designation, all of the material made available for
13 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY.” After the inspecting Party has identified the documents it wants copied
15 and produced, the Producing Party must determine which documents, or portions
16 thereof, qualify for protection under this Order. Then, before producing the
17 specified documents, the Producing Party must affix the appropriate legend
18 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY”) to each page that contains Protected Material. If only a portion or portions
20 of the material on a page qualifies for protection, the Producing Party also must
21 clearly identify the protected portion(s) (e.g., by making appropriate markings in
22 the margins) and must specify, for each portion, the level of protection being
23 asserted.

24 b) for testimony given in deposition or in other pretrial or trial
25 proceedings, that the Designating Party identify on the record, before the close of
26 the deposition, hearing, or other proceeding, all protected testimony and specify the
27 level of protection being asserted. When it is impractical to identify separately each
28 portion of testimony that is entitled to protection and it appears that substantial

1 portions of the testimony may qualify for protection, the Designating Party may
2 invoke on the record (before the deposition, hearing, or other proceeding is
3 concluded) a right to have up to 21 days to identify the specific portions of the
4 testimony as to which protection is sought and to specify the level of protection
5 being asserted. Only those portions of the testimony that are appropriately
6 designated for protection within the 21 days shall be covered by this Order.
7 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
8 afterwards if that period is properly invoked, that the entire transcript shall be
9 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
10 EYES ONLY.”

11 Parties shall give the other parties notice if they reasonably expect a
12 deposition, hearing or other proceeding to include Protected Material so that the
13 other parties can ensure that only authorized individuals who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
15 proceedings. Using a document as an exhibit at a deposition shall not affect its
16 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY.”

18 Transcripts containing Protected Material shall have an obvious legend on
19 the title page that the transcript contains Protected Material, and the title page shall
20 be followed by a list of all pages (including line numbers) designated as Protected
21 Material and the level of protection being asserted by the Designating Party. The
22 Designating Party shall inform the court reporter of these requirements. Any
23 transcript that is prepared before the expiration of a 21-day period for designation
24 shall be treated during that period as if it had been designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
26 agreed. After the expiration of that period, the transcript shall be treated only as
27 actually designated.
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1 c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information or item is stored
4 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY.” If only a portion or portions of the information or item warrant
6 protection, the Producing Party, to the extent practicable, shall identify the
7 protected portion(s) and specify the level of protection being asserted.

8 d) for electronic documents produced in native format (e.g., .XLS files),
9 designations shall be made in accordance with an agreed upon protocol governing
10 production of electronically stored information.

11 5.3. Inadvertent Failures to Designate. An inadvertent failure to designate
12 qualified information or items does not, standing alone, waive the Designating
13 Party’s right to secure protection under this Order for such material. Upon
14 correction of a designation, the Receiving Party must make reasonable efforts to
15 assure that the material is treated in accordance with this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
20 substantial unfairness, unnecessary economic burdens, or a significant disruption or
21 delay of the litigation, a Party does not waive its right to challenge a confidentiality
22 designation by electing not to mount a challenge promptly after the original
23 designation is disclosed.

24 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process by providing written notice of each designation it is challenging
26 and describing the basis for each challenge. To avoid ambiguity as to whether a
27 challenge has been made, the written notice must recite that the challenge to
28 confidentiality is being made under this specific paragraph of the Order. The

1 parties shall attempt to resolve each challenge in good faith and must begin the
2 process by conferring directly (in voice to voice dialogue; other forms of
3 communication are not sufficient) within seven days of service of notice. In
4 conferring, the Challenging Party must explain the basis for its belief that the
5 confidentiality designation was not proper and must give the Designating Party an
6 opportunity to review the designated material, to reconsider the circumstances, and,
7 if no change in designation is offered, to explain the basis for the chosen
8 designation. The Parties may proceed to the next stage of the challenge process
9 only if the Challenging Party has engaged in this meet and confer process first or
10 establishes that the Designating Party is unwilling to participate in the meet and
11 confer process in a timely manner.

12 6.3. Judicial Intervention by Joint Stipulation. If the Parties cannot resolve
13 a challenge, within fourteen days of the conference of counsel the Parties shall
14 prepare and present to the Court a joint letter brief consistent with Local Civil Rule
15 37-2 (and in compliance with Local Rule 79-5, if applicable) that identifies the
16 challenged material and sets forth the respective positions of the parties about the
17 propriety of the challenged confidentiality designations. The Designating Party is
18 the “moving party” and the Challenging Party is the “opposing party.” The
19 Designating Party has seven days from the conference of counsel to prepare their
20 portion of the stipulation and the Challenging Party has seven days from the
21 service, by e-mail, of the Designating Party’s portion of the stipulation to prepare
22 the Challenging Party’s portion of the stipulation.

23 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. The failure of any party to comply with or cooperate in the
25 foregoing procedures set forth in Section 6.2 and this Section 6.3 may result in the
26 imposition of sanctions. Frivolous challenges and those made for an improper
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
28 parties) may expose the Challenging Party to sanctions.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1. Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the litigation has been terminated, a
7 Receiving Party must comply with section 13 below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated
14 “CONFIDENTIAL” only to:

15 a) the Receiving Party’s Counsel, and staff of said Counsel to whom it is
16 reasonably necessary to disclose the information for this litigation and who have
17 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto
18 as Exhibit A;

19 b) the officers, directors, and employees of the Receiving Party to whom
20 disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this litigation and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 d) the Court and its personnel;

26 e) court reporters and their staff, professional jury or trial consultants,
27 and Professional Vendors to whom disclosure is reasonably necessary for this
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1 litigation and who have signed the “Acknowledgment and Agreement to Be
2 Bound” (Exhibit A);

3 f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement
5 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
6 ordered by the court. Pages of transcribed deposition testimony or exhibits to
7 depositions that reveal Protected Material must be separately bound by the court
8 reporter and may not be disclosed to anyone except as permitted under this Order;

9 g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 h) Notwithstanding the foregoing provisions of this Section 7.2, no
12 discovery material designated as “CONFIDENTIAL” may be disclosed to any
13 Pershing Square Person at any time. In the event that a party seeks to show
14 material designated as “CONFIDENTIAL” to an Expert who is a Pershing Square
15 Person, that party shall first provide a written notification to the Designating Party
16 as described in Section 7.4(a) below. Within ten days after delivery of this
17 notification, the parties shall meet and confer in a good faith effort to resolve their
18 dispute. If the parties are unable to settle their differences, the parties shall seek
19 judicial intervention pursuant to the procedures set forth in Section 6.3 of this
20 Agreement. In such context, the party seeking to disclose materials shall be the
21 “moving party” and the Designating Party shall be the “opposing party.” The
22 burden of persuasion in any such proceeding shall be on the moving party to
23 demonstrate why it would be unduly prejudiced unless granted relief from this
24 provision.

25 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
27 in writing by the Designating Party, a Receiving Party may disclose any
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1 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” only to:

- 3 a) the Receiving Party’s Counsel and staff of said Counsel to whom it is
4 reasonably necessary to disclose the information for this litigation and
5 who have signed the “Acknowledgment and Agreement to Be Bound”
6 that is attached hereto as Exhibit A;
- 7 b) Experts of the Receiving Party (1) to whom disclosure is reasonably
8 necessary for this litigation, (2) who have signed the “Acknowledgment
9 and Agreement to Be Bound” (Exhibit A), and (3) if the Expert is a High
10 Risk Expert as to whom the procedure in paragraph 7.4, below, has been
11 followed.
- 12 c) the court and its personnel;
- 13 d) court reporters and their staff, professional jury or trial consultants, mock
14 jurors, and Professional Vendors to whom disclosure is reasonably
15 necessary for this litigation and who have signed the “Acknowledgment
16 and Agreement to Be Bound” (Exhibit A); and
- 17 e) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the
19 information.

20 f) Notwithstanding the foregoing provisions of this Section 7.3, no
21 discovery material designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” may be disclosed to any Pershing Square Person at any time. In the
23 event that a party seeks to show material designated as “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to an Expert who is a Pershing
25 Square Person, that party shall first provide a written notification to the Designating
26 Party as described in Section 7.4(a) below. Within ten days after delivery of this
27 notification, the parties shall meet and confer in a good faith effort to resolve their
28 dispute. If the parties are unable to settle their differences, the parties shall seek

1 judicial intervention pursuant to the procedures set forth in Section 6.3 of this
2 Agreement. In such context, the party seeking to disclose materials shall be the
3 “moving party” and the Designating Party shall be the “opposing party.” The
4 burden of persuasion in any such proceeding shall be on the moving party to
5 demonstrate why it would be unduly prejudiced unless granted relief from this
6 provision.

7 7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY
8 CONFIDENTIAL –ATTORNEYS’ EYES ONLY” Information or Items to High
9 Risk Experts.

10 a) Unless otherwise ordered by the court or agreed to in writing by the
11 Designating Party, a Party that seeks to disclose to a High Risk Expert (as defined
12 above) any information or item designated “HIGHLY CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
14 written notification to the Designating Party that (1) identifies the general
15 categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 information that the Receiving Party seeks permission to disclose to the Expert, (2)
17 sets forth the full name of the High Risk Expert and the city and state of his or her
18 primary residence, (3) attaches a copy of the High Risk Expert’s current resume, (4)
19 identifies the High Risk Expert’s current employer(s), (5) identifies the reason(s)
20 why the Expert is a High Risk Expert.

21 b) A Party that makes a notification and provides the information
22 specified in the preceding respective paragraphs may disclose the subject Protected
23 Material to the identified High Risk Expert unless, within fourteen 14 days of
24 delivering the request, the Party receives a written objection from the Designating
25 Party. Any such objection must detail the grounds on which it is based.

26 7.5. A Party that receives a timely written objection must meet and confer
27 with the Designating Party (through direct voice to voice dialogue) to try to resolve
28 the matter by agreement within seven days of the written objection. If no

1 agreement is reached, the Party seeking to prohibit the disclosure to the High Risk
2 Expert may file a joint motion as provided in Local Civil Rule 37 (and in
3 compliance with Local Civil Rule 79-5, if applicable) to prohibit the disclosure.
4 The Designating Party is the “moving party” and the party seeking disclosure is the
5 “opposing party.” The moving party has seven days from the conference of counsel
6 to prepare their portion of the stipulation and the opposing party has seven days
7 from the service, by e-mail, of the moving party’s portion of the stipulation to
8 prepare the opposing party’s portion of the stipulation. Any such motion must
9 describe the circumstances with specificity, set forth in detail the reasons why the
10 disclosure to the High Risk Expert creates a substantial risk of serious harm that
11 could not be avoided by less restrictive means, assesses the risk of harm that the
12 disclosure would entail, and suggests any additional means that could reduce that
13 risk. Any such motion must be accompanied by a competent declaration describing
14 the parties’ efforts to resolve the matter by agreement (i.e., the extent and the
15 content of the meet and confer discussions).

16 In any such proceeding, the Party opposing disclosure to the High Risk
17 Expert shall bear the burden of proving that the risk of harm that the disclosure
18 would entail (under the safeguards proposed) outweighs the Receiving Party’s need
19 to disclose the Protected Material to its High Risk Expert.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
21 IN OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this action as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
25 ONLY” that Party must:

26 a) promptly notify in writing the Designating Party. Such notification
27 shall include a copy of the subpoena or court order;

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1 b) promptly notify in writing the party who caused the subpoena or order
2 to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Order. Such notification shall include a copy of
4 this Order; and

5 c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be affected.

7 ~~If the Designating Party timely seeks a protective order, the Party served with~~
8 ~~the subpoena or court order shall not produce any information designated in this~~
9 ~~action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’~~
10 ~~EYES ONLY” before a determination by the court from which the subpoena or~~
11 ~~order issued, unless the Party has obtained the Designating Party’s permission. The~~
12 ~~Designating Party shall bear the burden and expense of seeking protection in that~~
13 ~~court of its confidential material—and nothing in these provisions should be~~
14 ~~construed as authorizing or encouraging a Receiving Party in this action to disobey~~
15 ~~a lawful directive from another court.~~

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 a) This Order applies to information produced by a Non-Party in this
19 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in
21 connection with this litigation is protected by the remedies and relief provided by
22 this Order. Nothing in these provisions should be construed as prohibiting a Non-
23 Party from seeking additional protections.

24 b) If a Party is required, by a valid discovery request, to produce a Non-
25 Party’s confidential information in its possession, and the Party is subject to an
26 agreement with the Non-Party not to produce the Non-Party’s confidential
27 information, then the Party shall:
28

1 1) promptly notify in writing the Requesting Party and the Non-
2 Party that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 2) promptly provide the Non-Party with a copy of this Order, the
5 relevant discovery request(s), and a reasonably specific description of the
6 information requested; and

7 3) make the information requested available for inspection by the
8 Non-Party.

9 c) If the Non-Party fails to object or seek a protective order from this
10 court within fourteen days of receiving the notice and accompanying information,
11 the Receiving Party may produce the Non-Party's confidential information
12 responsive to the discovery request. If the Non-Party timely seeks a protective
13 order, the Receiving Party shall not produce any information in its possession or
14 control that is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court. Absent a court order to the contrary, the Non-Party
16 shall bear the burden and expense of seeking protection in this court of its Protected
17 Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Order, the Receiving Party must immediately (a) notify in writing the Designating
22 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
23 unauthorized copies of the Protected Material, (c) inform the person or persons to
24 whom unauthorized disclosures were made of all the terms of this Order, and (d)
25 request such person or persons to execute the "Acknowledgment and Agreement to
26 Be Bound" that is attached hereto as Exhibit A.

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 If information is inadvertently produced in discovery that is subject to a
4 claim of privilege or of protection as trial-preparation material, the party making the
5 claim may notify any party that received the information of the claim and the basis
6 for it. After being notified, a party must promptly (within one day) return or
7 destroy the specified information and any copies it has and may not sequester, use
8 or disclose the information until the claim is resolved. This includes a restriction
9 against presenting the information to the court for a determination of the claim.

10 This provision is intended to be fully consistent with Federal Rule of Evidence 502.

11 12. MISCELLANEOUS

12 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the court in the future.

14 12.2. Right to Assert Other Objections. By stipulating to the entry of this
15 Order no Party waives any right it otherwise would have to object to disclosing or
16 producing any information or item on any ground not addressed in this Order.
17 Similarly, no Party waives any right to object on any ground to use in evidence of
18 any of the material covered by this Order.

19 12.3. Filing Protected Material. Without written permission from the
20 Designating Party or a court order secured after appropriate notice to all interested
21 persons, a Party may not file in the public record in this action any Protected
22 Material. A Party that seeks to file under seal any Protected Material must comply
23 with Local Rule 79-5 and the “Pilot Program – Instructions to Attorneys Procedures
24 for Filing Under Seal Documents.” Protected Material may only be filed under seal
25 under a court order authorizing the sealing of the specific Protected Material at
26 issue. If a Receiving Party’s request to file Protected Material under seal is denied
27 by the court, then the Receiving Party may file the Protected Material in the public
28 record, unless otherwise instructed by the court.

1 12.4. Use of Protected Material at Trial: Unless the judicial officer who
2 will preside at trial directs otherwise, Before the trial begins, the Parties shall
3 meet and confer in good faith as part of the pre-trial conference statement process
4 to discuss a procedure for identification of and use of Protected Material at trial.
5 The Parties shall include in the pre-trial conference statement, for the Court’s
6 consideration, the agreed-upon procedure. If the Parties cannot agree on a
7 procedure, the Designating Party may seek appropriate Court Orders concerning the
8 handling at trial of Protected Material under applicable Court rules, including the
9 Local Rules, Federal Rules of Evidence, and Federal Rules of Civil Procedure.

10 13. FINAL DISPOSITION

11 Within 60 days after the final disposition of this action, as defined in
12 Paragraph 4, each Receiving Party must return all Protected Material to the
13 Producing Party or destroy such material. As used in this subdivision, “all
14 Protected Material” includes all copies, abstracts, compilations, summaries, and any
15 other format reproducing or capturing any of the Protected Material. Whether the
16 Protected Material is returned or destroyed, the Receiving Party must submit a
17 written certification to the Producing Party (and, if not the same person or entity, to
18 the Designating Party) by the 60-day deadline that (1) identifies (by category,
19 where appropriate) all the Protected Material that was returned or destroyed and (2)
20 affirms that the Receiving Party has not retained any copies, abstracts,
21 compilations, summaries or any other format reproducing or capturing any of the
22 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
23 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if
26 such materials contain Protected Material. Any such archival copies that contain or
27 constitute Protected Material remain subject to this Order as set forth in Section 4
28 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

DATED: April 23, 2014

BOIES, SCHILLER & FLEXNER LLP

/s/ Jonathan Sherman

Jonathan Sherman

Attorneys for Defendants
Herbalife International of America, Inc.,
Herbalife International, Inc. and Herbalife
Ltd.

DATED: April 23, 2014

FABIAN & CLENDENIN, P.C.

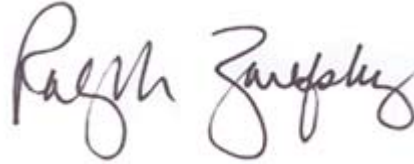
/s/ Philip D. Dracht

Philip D. Dracht

Attorneys for Plaintiff
Dana Bostick

PURSUANT TO STIPULATION, IT IS SO ORDERED, as modified above.

DATED: April 23, 2014



Hon. Ralph Zarefsky

UNITED STATES MAGISTRATE JUDGE