

In the Matter Of:

JEFF RODGERS vs HERBALIFE LTD

1:17-cv-23429-MGC

SILVIA RAMIREZ

January 24, 2018



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JEFF RODGERS, et al.,
individually and on behalf
of all others similarly
situated,

Plaintiffs, No. 1:17-cv-23429-MGC

vs.

HERBALIFE LTD, et al.,
Defendants.

DEPOSITION OF SILVIA RAMIREZ

January 24, 2018

9:30 a.m.

1875 Century Park East, Suite 2300
Los Angeles, California

Diana Janniere, CSR-10034

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DEPOSITION OF SILVIA RAMIREZ

JANUARY 24, 2018

SILVIA RAMIREZ,
having been first duly sworn, testifies as follows:

EXAMINATION

BY MR. MARK:

Q Good morning, Ms. Ramirez.

A Good morning.

Q Would you please state your name for the
record?

A Silvia Ramirez.

Q Have you ever been deposed before?

A Yes.

Q You have had your deposition taken before?

A Yes.

Q How many times, approximately?

A One.

Q When was that?

A I would say about seven or eight years ago.

Q And in light of the fact that you have not
been deposed in some time, I am just going to go
through the ground rules for today's deposition.
Okay?

1 I am going to ask questions. I am going to
2 ask that you answer those questions. Your counsel may
3 object from time to time to one of the questions I
4 ask.

5 Unless they instruct you not to answer, I am
6 going to ask that you proceed with an answer to the
7 question. Okay?

8 A Okay.

9 Q If you don't understand a question, I will
10 be happy to rephrase it. Sometimes my questions don't
11 make any sense, but if you answer them, I am going to
12 assume that you understand the question I asked.

13 Okay?

14 A Okay.

15 Q There is, obviously, somebody here who is
16 recording everything that you say. Please provide
17 oral responses to questions. A shake of the head,
18 it's not going to be able to be recorded. Okay?

19 A Okay.

20 Q Are you under any medication that would
21 impact your ability to testify truthfully or
22 completely today?

23 A No.

24 Q Where are you currently employed?

25 A At Herbalife International.

1 Q What is your title there, please?

2 A Vice president of Worldwide Operations,
3 Distributor Operations.

4 Q Vice president of Worldwide Distributor
5 Operations?

6 A Um-hmm.

7 MR. DROOKS: You can't say, "Um-hmm."

8 THE WITNESS: Oh, I'm sorry. Yes.

9 BY MR. MARK:

10 Q Thank you.

11 And what are your responsibilities in
12 connection with that role?

13 A In connection with that role, we support
14 customer service for our distributors, project
15 management and the compensation area for our
16 distributors.

17 Q Did you say, "project management"?

18 A Yes.

19 Q And "compensation"?

20 A For the distributors. The compensation
21 piece of the business.

22 Q When you say you "support customer service
23 for the distributors," what does that mean?

24 A That means that for our teams globally, if
25 they have questions or situations they might not be

1 able to assist our distributors with, they come to us
2 for support and guidance. So it is customer service
3 to help them answer questions.

4 Q So there are teams globally that support
5 with customer service and then if they have issues,
6 they come to you?

7 A They come to my team, yes.

8 Q And what is your team called?

9 A Worldwide Operations.

10 Q And just so we make sure we are using the
11 same verbiage today, you mentioned distributor,
12 customer service distributor.

13 What is a distributor?

14 A That is one of our -- I am not sure how to
15 answer that. The distributors are the people that
16 sign up to do the business with Herbalife.

17 Q Now, are there different categories of
18 distributors or is it just one category of distributor
19 that you -- that your customer service center
20 supports?

21 A Just one category.

22 Q So all distributors across the board?

23 A All distributors.

24 Q Do distributors contact your support center
25 directly or do they contact a different support

1 center, which then contacts you?

2 I am just trying to understand the -- sort
3 of the hierarchy.

4 A They contact their local support center in
5 their country.

6 Q There are support centers in every country
7 where Herbalife does business?

8 A It depends.

9 Q What does it depend on?

10 A Which country they are contacting. There
11 might be one that is in the country, or there might be
12 one that is original hub.

13 Q Okay. In the United States, there is a
14 support center, presumably?

15 A Yes.

16 Q And that support center is separate from
17 your support center --

18 A Yeah, we are back office.

19 Q What is that support center? Where is that?

20 A Where is the support center?

21 Q Yeah.

22 A There is one here in the U.S. and then there
23 is one in Guadalajara.

24 Q And each of those support centers supports
25 the distributors in the United States?

1 A Yes.

2 Q Guadalajara, Mexico?

3 A Um-hmm. Yes.

4 Q And if there is -- if there is a question
5 the support center cannot answer, then they will
6 escalate it to you?

7 A It will come to my team.

8 Q To your team?

9 A Uh-huh.

10 Q How many people are on your team?

11 A Oh, my God, on the top of my head, I can't
12 say the number, the exact number of people.

13 Q 20 people? 200 people?

14 A No, I have -- I will say 12 people.

15 Q Okay.

16 A But -- okay.

17 Q I understand your -- it could be 10? It
18 could be 14?

19 A Yes.

20 Q I understand.

21 A Yeah.

22 Q Okay. And then you also stated that you are
23 responsible for compensation for the distributors or
24 you are responsible for -- tell me what you meant by
25 that?

1 A So the -- that is another area that I
2 oversee.

3 Q Okay.

4 A And, basically, that department answers any
5 questions related to the compensation piece of the
6 business.

7 Q Any questions from distributors?

8 A From distributors or the contact centers.

9 Q Is it the same kind of setup where,
10 typically, a distributor will go to one of their
11 regional centers, let's call it; and then if there is
12 an issue that needs to be escalated, it will be
13 escalated to you?

14 A Correct.

15 Q And when you refer to compensation for the
16 distributors, are you referring to commissions? Is
17 that what you are referring to?

18 A Yes.

19 Q Is there other kinds of compensation that
20 you oversee besides commissions for distributors?

21 A It is the whole compensation piece. So that
22 includes commissions, royalty overrides, and
23 production bonus.

24 Q Royalty overrides?

25 A And production bonus.

1 Q What are "royalty overrides"?

2 A It is a payment that is made to the
3 distributors based on the productivity of their
4 organization; monthly payment.

5 Q Okay. And what is a "production bonus"?

6 A It is the same thing. It is a compensation.
7 It is just -- you know, it is something that is paid
8 to someone at a higher level in the marketing plan.

9 Q What level?

10 A President's Team and above.

11 Q So only people President's Team and above
12 are going to get production bonuses?

13 A I'm sorry, no, top team. It is top
14 achievers. So anyone that reaches that level is
15 eligible to receive a production bonus.

16 Q And your team fields questions that -- when
17 you say that you oversee the compensation for
18 production bonuses, are you deciding the amounts of
19 production bonuses?

20 A No, we are not.

21 Q Okay. How are production bonuses different
22 from royalty overrides other than the level of the
23 distributor?

24 MR. DROOKS: Is there some discussion of
25 production bonuses in these declarations?

1 MR. MARK: Well --

2 MR. DROOKS: They are not available to any
3 of the plaintiffs in the case. They are not
4 referenced in the declarations.

5 MR. MARK: Okay.

6 Q Well, let's -- let me ask: What level
7 are -- when you say "top team and above," what are the
8 various levels?

9 A It is Get Team.

10 Q Okay.

11 A Mail Team and Press Team.

12 Q Okay. So I am just trying to understand the
13 difference between royalty overrides and the
14 production bonuses. Is there a difference?

15 A Yes.

16 Q Okay. What is the difference?

17 A Royalty overrides is paid to anyone that
18 qualifies to supervisor and has an organization.

19 And then the production bonuses is anyone
20 that once they achieve top team level might be
21 eligible to receive that production.

22 Q You mentioned project management is another
23 one of your responsibilities. What does that mean?

24 A We support implementation of projects.

25 Q What does that mean?

1 A That we help with understanding the business
2 requirements and work with the IT group on
3 programming.

4 Q You "help with understanding the business
5 requirements," you said?

6 A Yes.

7 Q Of what business requirements?

8 A Whatever the project might be.

9 Q Okay. Can you just give me an example of a
10 project, just so I have an idea as to what --

11 A Someone wants to implement a new way to
12 deliver products.

13 Q Okay. So your team will assist in managing
14 that project?

15 A To the extent, yes.

16 Q Is it the same team of 12 or so people that
17 does each of these roles or are these all separate
18 teams that you oversee?

19 A Separate teams.

20 Q That you oversee?

21 A Yes.

22 Q And how many people are on the Project
23 Management Team?

24 A The -- the same group that we talked about
25 before, the 12 or 13 people.

1 Q Okay. That is what I am asking. So it is
2 the same group of 12 --

3 A For Project Management, yes.

4 Q Okay. Not for the compensation?

5 A No.

6 Q How big is the Compensation Team?

7 A Compensation Team is about 30 or so people.

8 Q But the team doesn't actually determine the
9 amounts of the commissions, it just -- it just fields
10 inquiries and questions that people have regarding
11 commissions and other compensation for Herbalife?

12 A Correct.

13 Q How long have you been with Herbalife?

14 A It is going to be 25 years in November.

15 Q Have you always been in the position of vice
16 president of Member Operations?

17 A No.

18 Q When did you become the vice president of
19 Member Operations?

20 A April, 2014.

21 Q And before that, what was your title?

22 A I was a senior director.

23 Q Were you still -- were you senior director
24 within Member Operations?

25 A Correct.

1 Q And then you were promoted to vice president
2 of Member Operations?

3 A That's correct.

4 Q And who do you report to?

5 A Jenny Hienrich.

6 Q Can you spell that?

7 A J-E-N-N. Hienrich, H-I-E-N-R-I-C-H.

8 Q J-E-N-N-Y?

9 A No. For -- for her first name?

10 Q Yes.

11 A Yes.

12 Q And what is her title?

13 A She is also vice president of Distributor
14 Operations and Services.

15 Q Okay.

16 MR. MARK: Is it all right if we mark
17 exhibits consecutively just starting with 1 and
18 going -- keep marking them consecutively throughout
19 the course of this whole case?

20 That way, we don't have to --

21 MR. DROOKS: Well, that is a requirement in
22 the Central District of California.

23 MR. MARK: Oh.

24 MR. DROOKS: I don't know if it is --

25 MR. MARK: It is not in Florida.

1 MR. DROOKS: -- in the Southern District,
2 but we are certainly used to that.

3 MR. MARK: Let's do that, then. Okay.

4 So let's mark this, then, as Exhibit 1.

5 I am marking as Exhibit 1 the Declaration of
6 Silvia Ramirez in Support of Defendant's Joint Motion
7 to Compel Arbitration.

8 I assume you all have more copies of that?
9 (Exhibit 1 marked.)

10 BY MR. MARK:

11 Q What did you do to prepare for today's
12 deposition?

13 And I don't want to hear about your
14 conversations with your attorney. I just want to know
15 what you did to prepare for today.

16 A Review the information that I presented on
17 the deposition -- on the declaration.

18 Q Anything else?

19 A Just the meeting that I had with him.

20 Q Okay. Did you review any documents other
21 than the declaration -- the two declarations you
22 signed?

23 A No.

24 Q Okay. So you have in front of you the
25 document that has been marked as Exhibit 1.

1 You've seen that document before?

2 A Yes.

3 Q That is your signature on the third page?

4 A Yes.

5 Q Did you write this document or was it
6 provided to you?

7 A It was provided to me.

8 Q Okay. But you read it before you signed it;
9 right?

10 A Yes.

11 Q Did you make any changes before you signed
12 it?

13 A I provided the information in the
14 declaration.

15 Q You filled in the blanks?

16 A Correct.

17 Q Okay. And the blanks were the commission
18 amounts?

19 A Yeah.

20 Q Were there any other blanks? Maybe the
21 dates? I don't know.

22 A Yeah, that information. It was whatever
23 information is in here, purchases, commissions and the
24 dates.

25 Q Okay. So in paragraph 5 of the affidavit,

1 you -- the declaration, excuse me, it states:

2 "In the ordinary course of
3 business, Herbalife maintains a
4 distributor activity tracking
5 system."

6 Do you see that?

7 A Yes.

8 Q Okay. Can you describe for me, please, what
9 that tracking system is?

10 A It's our internal system where we maintain
11 the distributors' data.

12 Q Is it called anything? I mean, within
13 Herbalife, what do you call it?

14 A It is called HDMS.

15 Q HTMS?

16 A HDMS, Herbalife Distributor Management
17 System.

18 Q HDMS?

19 A Uh-huh.

20 Q Got it. Thank you.

21 So that is what you were referring to when
22 you referred to the distributor activity tracking
23 system?

24 A Correct.

25 Q Okay. And what information is on HDMS?

1 A The distributor's profile, personal data,
2 the people that they sponsor into the business.

3 Q Um-hmm.

4 A And the purchasing patterns.

5 Q When you say "the people they sponsor into
6 the business," you mean the downline?

7 A Correct.

8 Q And "purchasing patterns," what does that
9 mean?

10 A They are purchases.

11 Q Just their history?

12 A Their history.

13 Q Purchasing history. I assume it has a
14 commission history, as well?

15 A Not this particular system, but yes.

16 Q So there is another system that contains a
17 history of commissions?

18 A Correct.

19 Q What is that system called?

20 A Member Compensation System.

21 Q So the information here that -- in this
22 affidavit, paragraph 6, 7, 8, for example, that states
23 the amounts of commissions that were earned.

24 Was that pulled from the Member Compensation
25 System or HDMS?

1 A Member Compensation System.

2 Q But product purchases are tracked on HDMS?

3 A HDMS and Auto Management System.

4 Q And these product purchases that are
5 maintained on this system, any time there is a
6 purchase made online, it automatically updates HDMS?

7 A It syncs to HD -- to HMS.

8 Q It syncs to HM --

9 A So you have HMS, which is where we keep the
10 order information.

11 Q That's different from HDMS?

12 A Yes.

13 Q Okay. And what is "HMS"?

14 A It is just the system where we keep all the
15 purchases.

16 Q Does it stand for something?

17 A Herbalife Management System.

18 Q Okay. Okay. So Herbalife Management System
19 is the system that records the purchases?

20 A Correct.

21 Q And those purchases sync to online
22 purchases; correct?

23 A The online purchases sync to HMS.

24 Q To HMS. You said it better than I did.

25 Thank you.

1 When you purchase product not online, okay;
2 in other words, if you are purchasing product through
3 some other mechanism other than via -- I assume
4 "online" means myherbalife.com?

5 A Yes.

6 Q Okay. Does it still sync up with the
7 Herbalife Management System?

8 A Yes.

9 Q How does that happen?

10 A I am not -- I don't have that technology
11 knowledge to answer that.

12 Q Okay. So we have got the -- I just want to
13 make sure I understand.

14 You got HDMS, which is the profile, personal
15 data, downline information; purchasing patterns;
16 right, that is one system; and then separately you
17 have got the Member Compensation System, which records
18 commissions that have been paid and other compensation
19 that distributors have received over the course of
20 their time at Herbalife; right?

21 And then you have got Herbalife Management
22 System, which records purchases?

23 MR. DROOKS: It's compound.

24 BY MR. MARK:

25 Q Is that correct?

1 A The purchasing patterns are the ones that
2 fall under HMS.

3 Q There are three separate systems, though?

4 A Yes.

5 Q Okay. So let me try it again because your
6 counsel objected to it as a compound question, and it
7 was compound. So let me try again.

8 HDMS records the profile, personal data, the
9 downline of distributors; correct?

10 A Correct.

11 Q Does it record any other information besides
12 those three categories of information?

13 A I don't think so.

14 Q Okay. Then you have the Member Compensation
15 System, that is a separate system; correct?

16 A Correct.

17 Q And that records commissions?

18 A Yes.

19 Q And any other compensation that distributors
20 receive; correct?

21 A Correct.

22 Q And -- and that would include the two other
23 forms of compensation that you testified to earlier;
24 right?

25 A Correct.

1 Q And then the third system is the Herbalife
2 Management System; is that correct? HMS?

3 A Yes.

4 Q And that records the amount of product that
5 distributors purchase?

6 A Correct.

7 Q Does it record anything else besides that,
8 to your knowledge?

9 A Not to my knowledge.

10 Q Okay. And it records it by syncing with
11 online purchases; correct?

12 A Correct.

13 Q And you're not sure exactly how it records
14 information that is purchased not online; correct?

15 A I am not sure what you mean "not online."

16 Q Well, are there other ways to purchase
17 product besides online?

18 A Contacting the call center --

19 Q Okay.

20 A -- on the phone.

21 Q So you can call up a call center and say, I
22 would like to buy some Herbalife product?

23 A Correct.

24 Q Okay. Does that get recorded? Does that
25 purchase get recorded into HMS?

1 A Yes.

2 Q Are there any other ways to purchase product
3 besides those two ways you just mentioned?

4 A I guess mobile, you know, on the phone, but
5 that would be considered, you know, if the distributor
6 uses their mobile phone to place an order.

7 Q But that would be using the same system,
8 either online or calling the call center?

9 A Correct.

10 Q So is there any other way to purchase
11 product?

12 A Not that I --

13 MR. CATLETT: From Herbalife?

14 MR. MARK: From Herbalife.

15 THE WITNESS: Not that I am aware of.

16 BY MR. MARK:

17 Q Now, there are ways to purchase product from
18 other distributors; correct?

19 A Who?

20 Q Well, can a distributor purchase product
21 from a source other than Herbalife?

22 A Distributors, they should be purchasing from
23 Herbalife.

24 Q That is the only place they should be
25 purchasing product?

1 A Um-hmm. I'm sorry, yes.

2 Q Thank you.

3 Okay. So in your affidavit -- well, first
4 of all, let's just make sure we are talking about the
5 same thing.

6 So you also submitted a supplemental
7 affidavit; right?

8 MR. DROOKS: Declaration.

9 MR. MARK: A declaration. Thank you.

10 Q You submitted a supplemental declaration, as
11 well; correct?

12 A Correct.

13 MR. MARK: Okay. I am going to hand you a
14 document that we will mark as Exhibit 2.

15 (Exhibit 2 marked.)

16 BY MR. MARK:

17 Q Could you identify that document for me,
18 please?

19 A Yes.

20 Q What is it?

21 A It's a supplemental declaration.

22 Q You signed that?

23 A Yes.

24 Q Okay. And why did you sign it? What was
25 the purpose of this declaration -- the supplemental

1 declaration?

2 A To clarify the status of a particular
3 distributor.

4 Q That is Mr. Pyle?

5 A That's correct.

6 Q So Mr. Pyle, you state in paragraph 4,
7 converted to a preferred membership?

8 A Correct.

9 Q Okay. So, remember, when I asked you
10 earlier if there were different levels of -- sort of
11 membership?

12 A Yes.

13 Q Okay. So are there different levels of
14 membership?

15 A So this is a new category and they still
16 signed a contract with the company. So I am not sure
17 how to -- how to explain it.

18 So he converted to a preferred member and he
19 only now buys products for personal consumption.

20 Q So there is a membership level called
21 Preferred Member, which only entitles you to purchase
22 product for personal consumption; is that correct?

23 A That's correct.

24 Q Okay. And what is the other level of
25 membership called?

1 A The Distributor.

2 Q Okay. So you have two levels, Distributor
3 and Preferred Member?

4 MR. DROOKS: That lacks foundation.
5 Mischaracterizes the testimony.

6 BY MR. MARK:

7 Q So I am asking the question: Are there two
8 levels of distributor: Preferred Membership and
9 Distributor?

10 A Yes, that's correct.

11 Q And the only difference, to your knowledge,
12 is that a Preferred Member can purchase products only
13 for his personal use; whereas a Distributor can
14 purchase product to do other things with besides using
15 it for his personal use?

16 A That's correct.

17 Q So then it states that Mr. Pyle is no longer
18 eligible to sell Herbalife products, recruit or
19 sponsor distributors or receive compensation under the
20 Herbalife marketing plan.

21 Do you see that?

22 A Yes.

23 Q Do you understand that to be the distinction
24 between Preferred Member and Distributor?

25 A Yes.

1 Q Are there any other distinctions that you
2 are aware of besides the distinctions that are listed
3 at the end of paragraph 4 of your declaration?

4 A Not that I am aware of, no.

5 Q Looking at paragraph 6 of Exhibit 1, please.
6 So you write that:

7 "From September 1, 2013 through
8 November 30th, 2017, plaintiffs'
9 Patricia Rodgers and Jeff Rodgers
10 purchased \$3,874.41 in Herbalife
11 product, earned \$12,142.10 in
12 commissions. 100 percent of which
13 were paid out to them and
14 100 percent of which were cashed."

15 Did I read that correctly?

16 A Yes.

17 Q How did you determine these -- these
18 quantities in paragraph 6?

19 A Based on the data in our system.

20 Q Which system?

21 A The member -- the purchases, HMS.

22 Q Okay. So the purchases of Herbalife product
23 were determined by HMS. Okay?

24 A And the commissions by Member Compensation
25 System.

1 Q Did you actually type -- so how did you --
2 tell me about the process, please, to determine these
3 numbers.

4 Did you go into the system, type the -- the
5 names of these individuals, type their distributor
6 number? What did you do to -- to get this
7 information?

8 A I had my team conduct a research.

9 Q Who on your team did it?

10 A I had two people.

11 Q Who were they?

12 A Cristian Dates.

13 Q Can you spell that, please?

14 A C-R-I-S-T-I-A-N, Dates, D-A-T-E-S.

15 Q Um-hmm.

16 A And Sally Hidalgo. S-A-L-L-Y. Last name
17 H-I-D-A-L-G-O.

18 Q Okay. So did -- is Cristian a male or
19 female?

20 A Male.

21 Q Okay. So did Mr. Dates and Ms. Hidalgo, did
22 they perform the calculations for each of the --
23 supporting each of the -- the numbers in this
24 declaration?

25 A They pulled the data from the system.

1 Q Okay.

2 A And provided it to me.

3 Q Both the quantity of Herbalife product, as
4 well as the commission information?

5 A Correct.

6 Q And did they provide you printouts of it; is
7 that what they did, or did they just tell you what it
8 was?

9 A They entered the information into the
10 declaration and provided me with the data.

11 Q How did they provide you with the data?

12 A Via E-mail.

13 Q Did they -- was it some kind of printout or
14 did they just type in an E-mail and say, this is the
15 amount that, you know, Mr. and Mrs. Rodgers purchased
16 in between 2013 and 2017?

17 A It was an E-mail with the information and
18 the attachments with the data.

19 Q What was the attachment? That is what I am
20 trying to understand.

21 A An Excel.

22 Q Okay. Did they create the Excel
23 spreadsheet, Mr. Dates and Ms. Hidalgo, or did that --
24 was that something that was automatically generated by
25 the system?

1 A It is something that they can pull out of
2 the system.

3 Q So you could not run a report in HMS that
4 then generates an Excel spreadsheet, which they then
5 E-mailed you?

6 A Yes.

7 Q Did you do anything to verify the contents
8 of the Excel spreadsheet?

9 A My team did that verification.

10 Q Who did the verification?

11 A Cristian Dates. He is the one that oversees
12 Sally.

13 Q Okay. So Sally pulled the information;
14 Mr. Dates verified it?

15 A Correct.

16 Q And then they E-mailed it to you and you put
17 it into the declaration?

18 A He put it into the declaration and then I
19 verified the information with what was in the E-mail.

20 Q How did you verify it? Let's hold on a
21 second.

22 Let's go off the record, please.

23 (Discussion held off the record.)

24 BY MR. MARK:

25 Q How did you verify it?

1 A By looking at the information on the
2 declaration and what was presented to me on the
3 E-mail.

4 Q In other words, you looked at the Excel
5 spreadsheet -- let me just make sure I understand.

6 Mr. Dates filled in the information in the
7 declaration, sent you the information in the
8 declaration, sent you the Excel spreadsheet; you
9 compared the information in the declaration to the
10 Excel spreadsheet; and then that was your
11 verification?

12 A Correct.

13 Q Did you do anything to confirm that the
14 information in the Excel spreadsheet was accurate?

15 A No. Not personally, no.

16 Q Mr. Dates did that?

17 A Correct.

18 Q In paragraph 6, it states that \$12,142.10 in
19 commissions were paid to Mr. and Mrs. Rodgers;
20 correct?

21 A Correct.

22 Q Does com -- how is a commission earned?

23 A It is what they earned based on purchases
24 made by the downline at a lower percentage and
25 discount; and the difference is paid out on

1 commissions.

2 Q So commissions earned are based on sales in
3 the downline?

4 A Purchases made by the downline.

5 Q Purchases made, oh, okay.

6 So the commissions earned by, for example,
7 Mr. and Mrs. Rodgers are based on the amount of
8 purchases that the downline makes?

9 A And what -- now, whatever they have, you
10 know, documented as sales.

11 Q Can you explain that? I'm sorry.

12 A When they make a purchase.

13 Q When who?

14 A A distributor makes a --

15 Q A downline distributor?

16 A A downline distributor makes a purchase, and
17 then they submit receipts that they made those sales
18 and the commission is calculated.

19 Q Is that a new way of calculating commissions
20 or has it always been that way?

21 A It's now since May, it is a new way with the
22 document to volume.

23 Q May of 2017?

24 A Yes, that's correct.

25 Q And how did it work before that?

1 A Before, it was on purchases.

2 Q As opposed to sales?

3 A Documented sales.

4 Q Documented, yeah.

5 This number of \$12,142.10 of commissions,
6 does that include any other payments that they
7 received from Herbalife or is it only commissions
8 based on downline purchases and documented sales?

9 A That's only commissions.

10 Q Again, remember, you talked about the other
11 ways that distributors can be compensated?

12 A Correct.

13 Q That is not included in -- anywhere in this
14 declaration; correct?

15 A Correct.

16 Q Do distributors receive commissions from
17 Herbalife based on product that they themselves
18 purchased?

19 A I don't understand the question.

20 Q Sure.

21 So you state in your declaration that the
22 Rodgers last purchase products from Herbalife on
23 January 31st, 2017 for \$599.66; correct?

24 A Correct.

25 Q Okay. Do they receive any commission as a

1 result of that purchased product?

2 A No.

3 Q So the only commissions that they are
4 getting is because of conduct by their downline; is
5 that correct?

6 A Correct.

7 Q And when you say, "the Rodgers currently
8 maintain a registered distributorship," how did you
9 ascertain that?

10 A On the system, they have a valid ID in
11 their --

12 Q "The system" being the HDMS system?

13 A That's correct.

14 Q And who was it in your office who verified
15 the validity of the distributorship?

16 MR. DROOKS: That lacks foundation as to
17 "validity."

18 BY MR. MARK:

19 Q Okay. You can answer, if you understand the
20 question.

21 A When it says that it is registered, it is in
22 the system.

23 Q Okay. So let's talk about registered
24 distributorships.

25 Who was it in your office that confirmed

1 that Mr. and Mrs. Rodgers currently maintained a
2 registered distributorship?

3 A The same people that we spoke about
4 earlier, --

5 Q Okay.

6 A -- Cristian Dates and Sally.

7 Q Did you do anything to verify that?

8 A No.

9 Q And -- and same -- with respect to each of
10 the individuals listed here, I mean, I can go through
11 it one by one; but Ms. -- Mr. and Mrs. Lavigne, for
12 example, okay, who was it who determined that the
13 Lavignes currently maintain a registered
14 distributorship?

15 A The same group of people.

16 Q Same answer for Ms. Ribalta?

17 A Yes.

18 Q And Mr. Pyle?

19 A Yes.

20 Q And Mr. Valdez?

21 MR. DROOKS: That lacks foundation.

22 When you say "Mr. Valdez," you mean Felix
23 Valdez?

24 MR. MARK: There is only one Mr. Valdez,
25 yeah.

1 MR. DROOKS: Okay. Withdrawn.

2 BY MR. MARK:

3 Q And Mr. Valdez?

4 A Mr. Valdez has terminated distributorship.

5 Q Okay. Where does it say that -- Izaar is a
6 woman.

7 Are -- does it state here that Mr. -- does
8 it state here that Mr. Valdez has a terminated
9 distributorship?

10 MR. DROOKS: Why don't you just use Felix
11 and Izaar, and that way you --

12 MR. MARK: I am happy to do that.

13 MR. DROOKS: -- clarify.

14 BY MR. MARK:

15 Q Felix Valdez, that is who I am referring to.

16 A Oh, I'm sorry. No, he has a valid one.

17 Q Okay. And Izaar Valdez?

18 A It indicates here it is terminated.

19 Q Okay. Did you do anything to verify that
20 her distributorship has been terminated?

21 A No.

22 Q Do you know why her distributorship was
23 terminated?

24 A No.

25 Q Did you do anything to verify the last date

1 that Mr. and Mrs. Rodgers purchased product from
2 Herbalife?

3 A The date that was presented to me.

4 Q But did you do anything to verify that date?

5 A No.

6 Q Did you do anything to verify the date on
7 which the Lavignes last purchased product from
8 Herbalife?

9 A Except for the data provided to me.

10 Q Did you do anything to verify that data?

11 A No.

12 Q Did you do anything to verify the last date
13 that Ms. Ribalta purchased Herbalife -- product from
14 Herbalife?

15 A Again, except for the data provided by my
16 staff.

17 Q I understand that a document was provided to
18 you by your staff. I stated --

19 A Um-hmm.

20 Q -- that each of these individuals last
21 purchased product on a certain date, but what I am
22 asking is: Did you do anything to verify that date?

23 A No.

24 Q And the same goes for each of the
25 distributors mentioned in this declaration?

1 A That's correct.

2 Q And how is it that you were able to
3 determine that the -- well, how is it that these
4 distributors received their commissions? By -- by
5 check?

6 A I didn't check that information.

7 Q Did different distributors receive
8 information -- do different distributors receive their
9 commissions via different means?

10 A A check of electronic funds transfer.

11 Q Okay. So some of them get them -- the
12 commissions wired to them and some of them get checks?

13 A Correct.

14 Q Do you know whether each of these
15 individuals received checks or wires to get their
16 commissions paid?

17 A No.

18 Q The fact that it says in each of these
19 paragraphs that the commissions were cashed suggests
20 to me, and I don't want to put words in your mouth,
21 that -- that there were checks that were received; but
22 you don't know, though, it could be wires; is that
23 fair?

24 A Correct.

25 Q Do distributors who have terminated -- do

1 former distributors continue to receive commissions
2 after their distributorship terminates from the
3 conduct of their downline?

4 A No.

5 Q Once the distributorship terminates, they
6 are not continuing to receive commissions; is that
7 correct?

8 A Correct.

9 Q What is your home address? I forgot to ask
10 that at the beginning.

11 A 6400 --

12 Q 6400.

13 A -- crescent Park East, Apartment 119, Playa
14 Vista 90094.

15 Q And your work address?

16 A 950 West 190th Street in Torrance,
17 California 90502.

18 Q Is that the Herbalife headquarters? What is
19 that building?

20 A Operations.

21 Q Okay. Herbalife International Operations?

22 A Yeah.

23 Q Okay.

24 MR. MARK: Let's just take five minutes. I
25 think I am done.

1 (Recess.)

2 BY MR. MARK:

3 Q In your declaration in paragraphs 6 and 7,
4 you state that:

5 "Plaintiffs, Patricia Rodgers and
6 Jeff Rodgers, purchased \$3,874.41
7 in Herbalife product"; correct?

8 A Correct.

9 Q Now, were the commission checks that are
10 referenced in that paragraph sent to both Mr. and
11 Mrs. Rodgers; is that your understanding?

12 MR. DROOKS: Lacks foundation as to
13 "commission checks."

14 BY MR. MARK:

15 Q You can answer.

16 A I don't know.

17 Q Well, it says here that the -- that they --
18 that plaintiffs, Patricia Rodgers and Jeff Rodgers,
19 purchased \$3,874.41 in Herbalife product, earned
20 \$12,142.10 in commissions, 100 percent of which were
21 paid out to them, and 100 percent of which were
22 cashed; right?

23 A Yes.

24 Q So were the checks that were written or the
25 commissions that were sent to them sent to both of

1 them? Sent to one of them? Do you know?

2 A I don't.

3 Q Is that something that would be in the
4 system, as well?

5 A It should be, yeah.

6 Q Okay. And does -- do you also know which of
7 Mr. Rodgers or Mrs. Rodgers or both purchased product
8 from Herbalife?

9 A No.

10 Q And same question for Jennifer Lavigne and
11 Michael Lavigne, do you know which of the two of them
12 purchased the Herbalife product referenced in
13 paragraph 7?

14 A No.

15 Q Do you know which of the two of them earned
16 \$6,902.81 in commissions?

17 A No.

18 Q And when it says, "100 percent of which were
19 paid out to them," were the commissions paid to both
20 Mr. and Mrs. Lavigne?

21 A I don't know.

22 Q And when it says, "100 percent of which were
23 cashed," you don't know whether it was Mr. or
24 Mrs. Lavigne, obviously, that, quote, "cashed those
25 commissions"?

1 A Correct.

2 Q Do you know anything about whether husbands
3 and wives can be distributors together? Are you aware
4 of those rules?

5 A Yes.

6 Q Okay. Can you tell me what those rules are
7 today?

8 A They can be on the same distributorship.
9 You have one dis -- the main holder and then the
10 spouse.

11 Q Okay. And do you know whether Mr. and
12 Mrs. Rodgers were distributors together?

13 A Patricia Rodgers and Jeff Rodgers?

14 Q Yes.

15 A He was added as the spouse of the
16 distributorship.

17 Q Okay. When did that occur?

18 A I don't know.

19 Q And why do you say that he was added as a
20 spouse to the distributorship?

21 A His name appears in the system as a spouse.

22 Q Same thing for Mr. and Mrs. Lavigne?

23 A Correct.

24 Q Mr. -- which of the two was the main
25 distributor and which one was added, if you know?

1 A Jennifer Lavigne shows as the distributor
2 and Michael Lavigne shows as the spouse.

3 Q Okay. So Mr. Lavigne was added to
4 Mrs. Lavigne's distributorship?

5 A He shows as the spouse.

6 Q What does that mean?

7 A That when you look in the system, you see
8 her name as the distributor and his name as the
9 spouse.

10 Q But the fact that he is added as a spouse,
11 what does that mean for purposes of commissions, for
12 example?

13 A We pay out to the main distributorship.

14 Q You pay out to her?

15 A She is the main distributorship, so the
16 account is in her name.

17 Q So she will receive the checks?

18 A I don't know. It depends on what was in the
19 system at that time.

20 Q But what does it depend on?

21 A If it went to an account -- a wire transfer,
22 I don't know who is the holder of that account.

23 Q I see. So a commission can be paid to
24 somebody other than the named main distributor?

25 A No.

1 Q It has to be paid to the main distributor?

2 A Correct.

3 Q Can a commission be paid to a spouse?

4 A Not that I am aware of.

5 Q So in light of that testimony, I guess, I am
6 trying to understand why you had indicated that you're
7 not sure whether the commissions went to Mrs. Lavigne
8 or Mr. Lavigne?

9 MR. DROOKS: It has been asked and answered.

10 BY MR. MARK:

11 Q In other words, you testified that
12 Ms. Lavigne was the main distributor; correct?

13 A Correct.

14 Q And Mr. Lavigne was added to her
15 distributorship; correct?

16 A He shows as the spouse.

17 Q Okay. So he shows as the spouse?

18 A Correct.

19 Q And he is not -- he is not receiving the
20 commissions; correct, she is?

21 MR. CATLETT: Foundation.

22 BY MR. MARK:

23 Q If you know.

24 A I don't know.

25 Q Okay. And when you say in the end of

1 paragraph 6, "The Rodgers currently maintain a
2 registered distributorship," you are referring to
3 Mr. and Mrs. Rodgers; correct?

4 A Patricia and Jeff?

5 Q Yes.

6 A That's correct.

7 Q Okay. And with respect to the last sentence
8 in paragraph 7 where you say, "The Lavignes currently
9 maintain a registered distributorship," you are
10 referring to Jennifer Lavignes and Michael Lavigne;
11 correct?

12 A Correct.

13 Q Can a spouse added to a distributorship
14 purchase Herbalife product, if you know?

15 A I don't know.

16 Q Does a spouse that is added to a
17 distributorship receive a separate distributorship
18 number or ID?

19 A No.

20 Q Same ID?

21 A Same ID.

22 Q When a -- when product is purchased on
23 myherbalife.com, can the purchaser be somebody
24 different than the name on the distributorship?

25 MR. CATLETT: Form.

1 THE WITNESS: No. They have to have access
2 to the account.

3 BY MR. MARK:

4 Q Right. But, let's say, for example -- I am
5 just going to give you a hypothetical, okay, which
6 your counsel is going to be objecting to; but it is
7 fine.

8 So let's say my -- let's say, I am a
9 distributor and my mom wants to buy me some Herbalife
10 product for Christmas. In my case, Hanukkah. Okay.

11 Does she -- is she able -- if I log onto my
12 account, can I put in my mother's credit card
13 information to purchase that product, if you know?

14 A I am not sure.

15 Q Okay. Are you aware of whether Mr. Pyle's
16 spouse was listed on his distributorship?

17 MR. DROOKS: Lacks foundation.

18 THE WITNESS: I am not sure.

19 BY MR. MARK:

20 Q Is it fair for me to assume that if she was
21 listed on his distributorship, then paragraph 9 would
22 have said both plaintiff, Cody Pyle and Mrs. Cody
23 Pyle?

24 MR. DROOKS: Lacks foundation, and calls for
25 speculation.

1 BY MR. MARK:

2 Q You can answer.

3 A I am not sure how to answer.

4 Q In other words, the reason that the spouses
5 in paragraphs 6 and 7 were added to your declaration
6 is because they are listed on as part of the
7 distributorship for Ms. Rodgers and Ms. Lavigne
8 respectively; correct?

9 MR. DROOKS: No, it is because they are
10 parties. They are named plaintiffs.

11 BY MR. MARK:

12 Q Is that why you added them, because they
13 were plaintiffs in this case?

14 The reason you added Ms. Rodgers your --
15 your counsel just decided to testify for you.

16 So is the reason that you added Mr. Rodgers
17 to paragraph 6 is because he is a plaintiff in this
18 matter and has nothing to do with the fact that he is
19 on the system as a spouse of the distributor?

20 MR. DROOKS: Mischaracterizes my testimony.

21 BY MR. MARK:

22 Q Right. You can answer -- well, why don't we
23 take a step back.

24 Why is Mr. Rodgers listed in paragraph 6?

25 MR. CATLETT: And you can answer so long as

1 you don't disclose attorney-client communications in
2 doing so.

3 BY MR. MARK:

4 Q Yeah. You signed this declaration. You
5 read it. I assume you thought it was accurate when
6 you signed it.

7 Why is Mr. Rodgers listed in paragraph 6?

8 A That was the information that was presented
9 to me.

10 Q The information presented to you by
11 Mr. Dates?

12 A The part of the declaration included their
13 names, so we verified the information.

14 Q Right. But if Mr. Dates went into the
15 system and Mr. Rodgers' name did not appear, would
16 paragraph 6 still refer to Mr. Rodgers?

17 MR. DROOKS: Speculative.

18 MR. CATLETT: Foundation.

19 BY MR. MARK:

20 Q You can answer.

21 A I don't know.

22 Q Well, okay. Let's look paragraph 6
23 together.

24 You state at the beginning of your
25 deposition this morning that there were blanks; right?

1 A Correct.

2 Q You received this declaration in near
3 finished form and there were some blanks; right?

4 A Correct.

5 Q Where were the blanks in paragraph 6?

6 A The data, the purchase.

7 Q Okay. So the dates -- were the dates blank?

8 A The purchase, commissions and the date.

9 Q Okay. So the amount of the purchased
10 commissions -- the amount of the product purchases,
11 the amount of the commissions, and the dates?

12 A Correct.

13 Q And I assume the last date that they
14 purchased product; right?

15 A Correct.

16 Q And the amount of that product purchased?

17 A Correct.

18 Q Okay. Is there a reason that your
19 declaration states that plaintiffs, Patricia Rodgers
20 and Jeff Rodgers, both purchased this product, earned
21 the commissions, 100 percent of which were paid out to
22 them, and 100 percent of which were cashed?

23 A No.

24 Q Do you see at the end of paragraph 6 where
25 it says, "The Rodgers currently maintain a registered

1 distributorship"?

2 Do you see that?

3 A Yes.

4 Q That is your understanding; correct, that
5 they both maintained a registered distributorship?

6 A That the distributorship is active.

7 Q For both of them; correct?

8 A Well, he is part of the distributorship. So
9 yes.

10 Q Okay. And if -- and if Mr. Dates went onto
11 the system and saw that, in fact, he was not part of
12 the distributorship, would it state both -- that both
13 Rodgers currently maintain a registered
14 distributorship or would you just write that
15 Ms. Rodgers maintains a distributorship?

16 MR. DROOKS: Speculative.

17 BY MR. MARK:

18 Q You can answer.

19 A I don't know.

20 Q Well, you wouldn't put the Rodgers currently
21 maintain a registered distributorship if it only
22 applied to one of them; correct?

23 A It was just a summary. You know, summation
24 of, you know, the Rodgers, meaning both.

25 Q Right. But you would not put the Rodgers

1 currently maintain a registered distributorship if
2 only Patricia Rodgers maintained a registered
3 distributorship; correct?

4 A If it was only one name. One name provided.

5 Q So it is correct?

6 A Correct.

7 MR. MARK: All right. Thanks a lot. Thank
8 you for your time. I really appreciate it.

9 MR. DROOKS: Don't we need to do a
10 stipulation on the transcript?

11 MR. MARK: Whatever you -- I mean -- okay.
12 I mean, do you want to read? Do you want to --

13 MR. DROOKS: I'm sorry?

14 MR. MARK: Stipulation with respect to what?

15 MR. DROOKS: To the handling of the
16 transcript.

17 MR. MARK: Oh, sure. How do you want to do
18 it?

19 MR. DROOKS: I propose that the court
20 reporter be relieved of her obligation to maintain the
21 original. The original will be sent to me.

22 Ms. Ramirez will review it. We will provide
23 you with any errata. She will sign it under penalty
24 of perjury without benefit of a notary.

25 I will provide the original to you. You

1 will maintain it for all purposes. File it with the
2 court, as needed or appropriate.

3 If the original is lost or misplaced, a
4 certified copy can be used for all purposes. And if
5 the original is not timely signed, you can use an
6 unsigned, certified copy for all purposes.

7 And I understand you have a motion pending.
8 So if you want to expedite the transcript, you can do
9 that. We will make every effort to have Ms. Ramirez
10 review it and sign it within 10 days of receipt.

11 If that becomes a problem, for some reason,
12 we will let you know.

13 MR. MARK: Well, yeah, so -- so I would like
14 to expedite the transcript.

15 Yeah. Obviously, you have the right to read
16 the transcript and make any changes, et cetera, via an
17 errata sheet. So I don't have a problem with that.

18 Obviously, I would like to expedite it in
19 light of the fact that we have a response due in
20 20 days, I think. That should be fine.

21 MR. DROOKS: So stipulated?

22 MR. MARK: Yeah. Yeah.

23 (The deposition concluded at 10:30 a.m.)

24 * * *

25

REPORTER'S CERTIFICATION

I, Diana Janniere, a Certified Shorthand Reporter,
in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn;
That the deposition was then taken before me at the
time and place herein set forth; that the testimony
and proceedings were reported stenographically by me
and later transcribed into typewriting under my
direction; and that the foregoing is a true record of
the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I subscribed my name
this 25th day of January, 2018.



Diana Janniere, CSR No. 10034

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DECLARATION ERRATA SHEET

Our Assignment No. J1131135
Case Caption: Rodgers
vs. Herbalife

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the foregoing transcript of my deposition taken in the above-captioned matter or the same has been read to me, and the same is true and accurate, save and except for the changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 2018.

SILVIA RAMIREZ

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SILVIA RAMIREZ

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SILVIA RAMIREZ

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