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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MICHAEL LAVIGNE, *et al.*,
 Plaintiffs,
 vs.
 HERBALIFE LTD., *et al.*,
 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)
 [Related Case 2:13-cv-02488-BRO-RZ]
**HERBALIFE’S REPLY IN SUPPORT
 OF MOTION TO DISMISS**
 Date: January 28, 2019
 Time: 8:30 A.M.
 Crtrm.: 10B
 Assigned to Hon. John A. Kronstadt

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Nothing in Plaintiffs' Opposition to the Motion warrants the Court ignoring
4 this Circuit's "strong judicial policy favoring class settlements."¹ Herbalife should
5 not be forced to re-litigate allegations that Plaintiffs Patricia Rodgers, Jeff Rodgers,
6 and Izaar Valdez released as class members in a settlement approved by this Court.
7 These Plaintiffs' claims are predicated on the same allegation that formed the basis
8 for the *Bostick* action, that Herbalife misrepresented that its business opportunity
9 could successfully be pursued. Buried in the Opposition is an admission that
10 Plaintiffs attended "Circle of Success" events for one reason—to learn "information
11 about how to legitimately make money through Herbalife," and that the events were
12 allegedly worthless only because these Plaintiffs did not (and allegedly could not)
13 make money. Opp. at 14-15. Plaintiffs therefore ask the Court to blink at the
14 obvious: Achieving success through attendance at Herbalife events is predicated on
15 the successful pursuit of the Herbalife business opportunity by selling Herbalife
16 products. The *Bostick* release manifestly bars these three Plaintiffs' claims.²

17 All four Plaintiffs' RICO claims fail because the alleged "enterprise" is not
18 a distinct enterprise under RICO, but rather just a collection of Herbalife entities and
19 its top distributors engaged in their primary purpose: promoting the sale of Herbalife
20 products through its business opportunity. Moreover, the alleged misrepresentations
21 cited in the Opposition in support of Plaintiffs' wire fraud predicate continue to
22 suffer from fatal defects, *i.e.*, Plaintiffs' failure to plead reliance, falsity, or more
23 than mere puffery.

24
25 _____
26 ¹ *Van Ba Ma v. Covidien Holding, Inc.*, 2014 WL 247316, at *2 (C.D. Cal. 2014)
(citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1992)).

27 ² It should not be lost on the Court that these three Plaintiffs, whose claims are
28 barred by the *Bostick* release, purport to represent a nationwide class of Herbalife
distributors, the vast majority of whose claims are in turn also barred.

1 Plaintiffs’ Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”)
 2 claim is barred because written agreements controlling the parties’ relationships
 3 provide that California law “governs” any dispute arising therefrom. In any event,
 4 all of Plaintiffs’ state law claims fail to meet Rule 9(b)’s heightened pleading
 5 standard.

6 Colorful language like “wheel of despair,” “henchmen,” and “con artists”
 7 feature prominently in the Opposition, but they do nothing more than distract from
 8 the merits of the Motion. On the merits, this Complaint must be dismissed.

9 **II. ARGUMENT**

10 **A. The *Bostick* Settlement Release Bars Plaintiffs Patricia Rodgers, 11 Jeff Rodgers, and Izaar Valdez’s Claims.**

12 **1. The *Bostick* Action Subsumes Plaintiffs’ Claims.**

13 Plaintiffs Patricia Rodgers, Jeff Rodgers, and Izaar Valdez do not dispute that
 14 they are *Bostick* class members subject to its broad settlement release. Rather, they
 15 erroneously contend that the factual predicate underlying their claims and the claims
 16 brought in *Bostick* is different. Part of *Bostick*’s broad attack on Herbalife’s
 17 business model, however, was an attack on the very “subordinate conspiracy”
 18 Plaintiffs assert here. Opp. at 1. The *Bostick* complaint alleged that Herbalife
 19 misrepresented its “touted, yet non-existent” business opportunity through
 20 a “massive advertising campaign,” including in “presentations” and “events”
 21 organized by Herbalife and its top distributors. Dkt. 142-2, Exh. 2 at ¶¶ 269, 275.

22 Exhibit A to this Reply, which reflects a comparison of key allegations from
 23 *Bostick* and this action, demonstrates that the claims brought in both cases “depend[]
 24 upon the same set of facts,” including allegations that Herbalife misrepresented,
 25 through a variety of media, that its business opportunity could successfully be
 26 pursued.³ *Williams v. Boeing Co.*, 517 F.3d 1120, 1134 (9th Cir. 2008); *see also*

27 _____
 28 ³ Plaintiffs grossly mischaracterize the *Bostick* complaint when they contend that it

1 *Howard v. Am. Online Inc.*, 208 F.3d 741, 747 (9th Cir. 2000) (holding plaintiffs’
 2 RICO claims were barred by a prior class action settlement that released claims
 3 arising out of “identical billing” fraud allegations).⁴ It is disingenuous for Plaintiffs
 4 to contend otherwise, especially as some of the factual questions Plaintiffs allege to
 5 be common to the putative class plainly overlap with factual questions that were at
 6 the heart of *Bostick*. See, e.g., Complaint at ¶ 333 (“Whether Defendants
 7 intentionally withheld material information about the likelihood and ability of
 8 Plaintiffs’ obtaining the promised results and monetary returns from pursuing the
 9 Herbalife business opportunity”; “The extent to which Defendants intentionally
 10 misrepresented that the Herbalife business opportunity could be successfully
 11 pursued at little cost”; and “Whether Defendants knowingly presented financial
 12 success testimonials from people who were not having financial success”).

13 **2. Plaintiffs’ Remaining Arguments Are Unfounded.**

14 **a. It Is Appropriate for the Court to Determine at the**
 15 **Pleading Stage Whether or Not the *Bostick* Settlement**
 16 **Bars Plaintiffs’ Claims.**

17 A motion to dismiss “predicated on undisputed facts may properly invoke
 18 *res judicata* as a ground for dismissal” and “may take judicial notice of ‘matters of
 19 public record’ without converting the motion into one for summary judgment.”
 20 *Moralez v. Whole Foods Mkt., Inc.*, 897 F. Supp. 2d 987, 993 (N.D. Cal. 2012) .
 21 There are no factual disputes for the Court to resolve in order to determine whether
 22 the *Bostick* settlement releases Plaintiffs’ claims, and the only documents presented
 23 _____
 24 concerned only Herbalife’s “lead generation” system. Opp. at 16-17; see Exh. A;
 25 Mot. at 5. Additionally, Plaintiffs’ assertion that the “lead generation” system was a
 26 precursor to the “Circle of Success,” and therefore outside the scope of the *Bostick*
 27 settlement, is belied by their own allegations. Opp. at 16-17; see Complaint at ¶ 57
 28 (“Since its founding in the 1980s, Herbalife has relied on live events for both
 recruitment and retention.”).

⁴ Unless noted, internal quotation marks and citations have been omitted.

1 to the Court on this issue are properly subject to judicial notice. *See Reyn's Pasta*
 2 *Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (determining the
 3 preclusive effect of a prior class settlement at the pleading stage).

4 **b. Plaintiffs Do Not Allege Post-Settlement Conduct.**

5 The effective date of the *Bostick* settlement release was September 18, 2015,
 6 not, as Plaintiffs contend, December 2, 2014, which was the end of the *Bostick* class
 7 period. *Opp.* at 18; *Mot.* at 6 n.5; *Dkt.* 142-2, *Exh.* 5 at ¶ 3. Contrary to Plaintiffs'
 8 contention that the Complaint alleges "largely post-settlement conduct," Plaintiffs
 9 Patricia Rodgers, Jeff Rodgers, and Izaar Valdez do not specifically allege that they
 10 attended Herbalife events after September 18, 2015. *Opp.* at 17; *see* Complaint at
 11 ¶ 161 ("The Rodgers attended almost every event from 2011 to 2015"); ¶ 189
 12 (failing to allege that Valdez attended an Herbalife event after October 2014). Nor
 13 do the Complaint's stray references to events that occurred or testimonials that were
 14 published after September 18, 2015 suffice for specific allegations as to these three
 15 Plaintiffs.⁵

16 **c. Plaintiffs Were Adequately Represented in *Bostick*.**

17 The *Bostick* plaintiffs adequately represented the interests of Plaintiffs here
 18 because they too alleged attendance at events and the same purported
 19 misrepresentations made by Herbalife. *See Exh. A.* Plaintiffs offer no reason why
 20 this Court should disturb its prior determination that the *Bostick* plaintiffs were
 21 adequate class representatives. *Dkt.* 142-2, *Exh.* 4 at 23.⁶

22 _____
 23 ⁵ After September 2013, Herbalife required its distributors to enter into an
 24 arbitration agreement with the company. The claims of three of the original eight
 25 named Plaintiffs were dismissed on that basis. *Dkt.* 106. Therefore, even if the
 26 Complaint were to focus on "post-settlement" conduct, the vast majority of the
 27 putative class members who might have attended events after September 2015, the
 effective date of the *Bostick* settlement, would be precluded from membership in the
 putative class by virtue of signing an arbitration agreement.

28 ⁶ Plaintiff Jennifer Ribalta, the only remaining Plaintiff who is not subject to the

1 **B. Plaintiffs’ Allegations Do Not Establish Viable RICO Claims.**

2 **1. Plaintiffs’ Allegations Amount to an Attack on Herbalife’s**
 3 **Business Practices, Not a RICO Enterprise.**

4 Plaintiffs’ Complaint reduces to the allegation that Herbalife and some of its
 5 distributors fraudulently promoted the Herbalife business opportunity to current and
 6 prospective Herbalife distributors.⁷ Plaintiffs therefore “merely allege that the
 7 Defendants are associated in a manner directly related to their own primary business
 8 activities.”⁸ *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales*
 9 *Practices, & Prod. Liab. Litig.*, 826 F. Supp. 2d 1180, 1199, 1202 (C.D. Cal. 2011)
 10 (dismissing RICO claim predicated on the allegation that several Toyota entities and
 11 their employees falsely advertised vehicles known to be defective).

12 Plaintiffs hide the ball in arguing that Herbalife’s business model is merely
 13 a “backdrop” for their Complaint. Opp. at 3. They allege that the only reason they
 14

15 _____
 16 *Bostick* release, was excluded from the settlement because she was a member of
 17 Herbalife’s Global Expansion Team, one of its higher levels of distributors. Dkt.
 18 142-2, Exh. 5 at ¶ 3. If she is the only Plaintiff whose claims are not dismissed,
 19 Ribalta would undoubtedly face serious challenges in seeking to certify a class
 20 comprised of Herbalife’s most successful distributors who, despite the fact that they
 21 made money pursuing the Herbalife business opportunity, would be seeking refunds
 22 for tickets they purchased to attend Herbalife events. It is also very unlikely that
 23 such members would even have viable claims against Herbalife given their lack of
 24 detrimental reliance. There is therefore no excuse for what amounts to a vague and
 25 overbroad Complaint that fails to specify how Ribalta, and the narrow class she
 26 purports to represent, could possibly have viable claims against Herbalife.

27 ⁷ Plaintiffs contention that the alleged enterprise includes “a tangle of entities and
 28 individuals” beyond Herbalife and the individual distributors named in the Florida
 action (Opp. at 3) amounts to a moving target that plainly fails to meet Rule 9(b)’s
 heightened pleading standard.

⁸ As the 10-Q quoted by Plaintiffs makes clear, Herbalife’s primary business
 activity is the sale of its nutritional products “through a network of independent
 members,” including Plaintiffs and the putative class members who pursued the
 Herbalife business opportunity. Opp. 3.

1 attended events was to learn “information about how to legitimately make money
2 through Herbalife,” but that they were instead “ensnare[d]” into pursuing what is
3 a nonviable business opportunity. *Id.* at 14; Complaint at ¶¶ 9, 26. Plaintiffs
4 therefore insufficiently allege only that Herbalife “controls [a] network of affiliated
5 defendants precisely for the same purposes of promoting and facilitating [its]
6 allegedly fraudulent scheme as those attributed to the RICO enterprise consisting of
7 the same defendants.” *Myers v. Lee*, No. 1:10CV131 AJTJFA, 2010 WL 3745632,
8 at *5 (E.D. Va. Sept. 21, 2010) (dismissing RICO claim for failure to plead
9 a distinct enterprise where plaintiff alleged that a company that ran yoga centers and
10 its “affiliated entities” fraudulently recruited plaintiff to join various programs).⁹

11 **2. The Misrepresentations Alleged by Plaintiffs Fail to Form**
12 **the Basis for a Wire Fraud Claim.**

13 The alleged misrepresentations cited by Plaintiffs in their Opposition are
14 either puffery or are otherwise not well-pled. For example, allegations that
15 attendance at events is “essential to success” or that distributors can “expect” to
16 achieve certain results are puffery. *See Bronson v. Johnson & Johnson, Inc.*, No. C
17 12-04184 CRB, 2013 WL 1629191, at *10 (N.D. Cal. Apr. 16, 2013) (“[C]ases that
18 examined the use of the word ‘essential’ in marketing have determined that the word
19 is mere puffery when used to describe the nature of a product.”).

20 Plaintiffs also fail to allege that the misrepresentations cited in their
21 Opposition, which mainly consist of specific testimonials, are false. *See Carlin v.*
22 *Dairy Am., Inc.*, No. 1:09-CV-0430 AWI GSA, 2014 WL 6390569, at *8 (E.D. Cal.
23 Nov. 17, 2014) (holding that “knowing falsity” is an element of wire fraud); *Jepson,*
24 *Inc. v. Makita Corp.*, 34 F.3d 1321, 1330–31 (7th Cir. 1994) (holding that where
25

26 ⁹ Despite the Complaint’s allegation that the Rodgers Plaintiffs “lost more than
27 \$100,000 pursuing Herbalife’s fraudulent and illusory business opportunity,”
28 Plaintiffs now clarify that they intend to seek as damages only the money they spent
attending Herbalife events. *Opp.* at 5; Complaint at ¶ 163.

1 a plaintiff relies on “wire communications” as the “acts of fraud,” the plaintiff must
2 plead that the underlying wire communications are fraudulent). And although
3 Plaintiffs need not plead first-party reliance under a wire fraud claim, their failure to
4 allege that any putative class members relied on these testimonials is fatal to their
5 claim. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 658 (2008)
6 (“[N]one of this is to say that a RICO plaintiff who alleges injury ‘by reason of’
7 a pattern of mail fraud can prevail without showing that someone relied on the
8 defendant’s misrepresentations.”) (emphasis in original).

9 **3. Plaintiffs Fail Sufficiently to Specify Herbalife’s Role in the**
10 **Alleged Fraudulent Scheme.**

11 Plaintiffs continue to generalize the alleged role of each of the three Herbalife
12 defendants in the purported fraudulent scheme, and therefore fail to meet Rule
13 9(b)’s heightened pleading bar. *See Swartz v. KPMG LLP*, 476 F.3d 756, 764-65
14 (9th Cir. 2007) (“Rule 9(b) does not allow a complaint to merely lump multiple
15 defendants together but require[s] plaintiffs to differentiate their allegations when
16 suing more than one defendant . . . and inform each defendant separately of the
17 allegations surrounding his alleged participation in the fraud.”). Plaintiffs’ response
18 that “the majority of the fraud is distributed online and over social media,” and that
19 the “pervasiveness of social media has created a newly dangerous form of wire
20 fraud – a creeping, constant fraud disguised as casual coffee shop conversation and
21 cooperative scrapbooking” is unintelligible and renders the three Herbalife entities’
22 alleged role in the purported fraudulent scheme even more opaque.¹⁰

23 **C. Plaintiffs’ FDUTPA Claim Should Be Dismissed.**

24 Plaintiffs Patricia Rodgers, Izaar Valdez, and Jennifer Ribalta do not dispute
25 that they entered into valid distributorship agreements with Herbalife containing
26 _____

27 ¹⁰ Plaintiffs’ claim for RICO conspiracy fails for all of the reasons discussed above.
28 *See Howard v. Am. Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000).

1 a California choice-of-law clause, that the agreements attached to the Motion are
2 authentic, and that they were distributors when they attended events.¹¹ Under these
3 circumstances, the Court may consider the agreements in connection with the
4 Motion. *See Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), *superseded by*
5 *statute on other grounds*. The choice-of-law clause, which provides that the
6 agreements “shall be governed” by California law manifestly covers this dispute,
7 which concerns alleged misrepresentations made by Herbalife during the course of
8 Plaintiffs’ pursuit of the Herbalife business opportunity under their agreements.¹²
9 Plaintiff Jeff Rodgers, although not a signatory to his wife’s agreement, is bound by
10 its choice-of-law clause given that he is alleged to have pursued the Herbalife
11 business opportunity under her distributorship and his claims are “closely related” to
12 the agreement and the parties’ dispute. *See* Complaint at ¶¶ 155-56, 162-63; *cf.*
13 *J. Greenburg, D.D.S., Inc. v. White Rock Capital Sols., LLC*, No. CV 11-9498 PA
14 (JEMX), 2012 WL 13012673, at *4 (C.D. Cal. Feb. 22, 2012) (“[W]here the alleged
15 conduct of the non-parties to a contract is closely related to the contractual
16 relationship of which the forum selection clause is a part, that clause may be applied
17 to the non-parties.”).¹³

18
19 ¹¹ That Plaintiffs contend they lacked sophistication in entering into the agreements
20 is not a reason to ignore the choice-of-law clauses contained therein. Plaintiffs do
21 not contend that the agreements are invalid or were procured by fraud.

22 ¹² That the choice-of-law clause uses the phrase “arising from” as opposed to
23 “relating to” does not remove this action from its ambit. Under California law,
24 “a valid choice-of-law clause, which provides that a specified body of law ‘governs’
25 the ‘agreement’ between the parties, encompasses all causes of action arising from
26 or related to that agreement, regardless of how they are characterized, including
27 tortious breaches of duties emanating from the agreement or the legal relationships it
28 creates.” *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal. 4th 459, 470 (1992).
Unsurprisingly, all of the cases Plaintiffs rely upon involve arbitration clauses, not
choice-of-law clauses.

¹³ Judge Cooke ordered the transfer of Plaintiffs’ claims to this Court, including

1 Even if the choice-of-law clause is found not to apply here, Plaintiffs’
2 FDUTPA claim still fails. First, as discussed above in Section II(B)(2), Plaintiffs do
3 not plead with particularity that the alleged misrepresentations, including those cited
4 in the Opposition, amount to more than mere puffery, are false, or that Plaintiffs
5 relied on the statements.¹⁴ Second, Plaintiffs cannot meet FDUTPA’s standing
6 requirement that they plead “actual” damages, which is defined as the “difference in
7 the market value” of the product that was delivered and the product that should have
8 been delivered. *Rodriguez v. Recovery Performance & Marine, LLC*, 38 So. 3d 178,
9 180 (Fla. Dist. Ct. App. 2010). Plaintiffs contend only that they had a “reasonable
10 expectation that the events would provide information about how to legitimately
11 make money through Herbalife.” Opp. at 14. Thus, Plaintiffs heard the information
12 they expected to hear at the events; their only complaint is that the information was
13 not helpful. Plaintiffs’ expectation that they would make a certain amount of money
14 by attending events places their claim outside the scope of FDUTPA.

15 **D. Plaintiff’s Unjust Enrichment Claim Does Not Satisfy Rule 9(b)’s**
16 **Heightened Pleading Requirements.**

17 In their Opposition, Plaintiffs merely restate the Complaint’s vague
18 allegations. Plaintiffs still cannot specify what “unpaid labor” they provided to
19 Herbalife. Nor do they sufficiently allege the “benefit of the bargain” of which they
20 were deprived. Plaintiffs contend only that they did not make money using the

21 _____
22 Jeff Rodgers’ claims, only because they each “signed a Distributorship Agreement
with a valid forum selection clause.” Dkt. 106 at 2.

23 ¹⁴ These alleged misrepresentations also fail to form the basis for a claim under
24 California’s Unfair Competition Law. *See Anunziato v. eMachines, Inc.*, 402 F.
25 Supp. 2d 1133, 1139 (C.D. Cal. 2005) (“Generalized, vague, and unspecified
26 assertions constitute ‘mere puffery’ upon which a reasonable consumer could not
27 rely, and hence are not actionable.”); *Kwikset Corp. v. Superior Court*, 51 Cal. 4th
28 310, 327 (2011) (“[A] UCL fraud plaintiff must allege he or she was motivated to
act or refrain from action based on the truth or falsity of a defendant’s statement, not
merely on the fact it was made.”).

1 information that was provided at the events, not that they were denied entrance or
2 that they expected to hear different information.¹⁵

3 **E. Plaintiffs Fail to Plead the Most Basic Elements of a Negligent**
4 **Misrepresentation Claim.**

5 In their Opposition, Plaintiffs largely identify statements made by Amber
6 Wick and Mark Addy, Herbalife distributors who are defendants in the action that
7 remains in the Southern District of Florida. Opp. at 16. Plaintiffs allege no basis on
8 which these statements, or any intent Wick and Addy may have had in making the
9 statements, can be imputed to Herbalife.

10 As to the alleged misrepresentations that appear in Herbalife’s magazine,
11 these too fail to establish a claim for negligent misrepresentation, even under an
12 ordinary pleading standard. Statements like “now’s the time!” or attending a given
13 event is “key” to one’s success are plainly nonactionable puffery. *See* Mot. at 15;
14 *supra* at 6. And that certain distributors may “credit” their success to attending
15 events is a nonactionable opinion. *See Neu-Visions Sports, Inc. v.*
16 *Soren/McAdam/Bartells*, 86 Cal. App. 4th 303, 308 (2000) (“The law is quite clear
17 that expressions of opinion are not generally treated as representations of fact, and
18 thus are not grounds for a misrepresentation cause of action.”). Nor do Plaintiffs
19 allege that they detrimentally relied on any of these alleged misrepresentations, let
20 alone misrepresentations made by Herbalife as opposed to the individual defendants
21 who are no longer a part of this action.

22
23
24 _____
25 ¹⁵ As discussed above, California law, not Florida law, applies to this dispute,
26 including Plaintiffs’ unjust enrichment claim. No claim for unjust enrichment can
27 lie where, as is the case here, “an enforceable, binding agreement exists defining the
28 rights of the parties.” *Paracor Fin., Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151,
1167 (9th Cir. 1996).

1 **III. CONCLUSION**

2 Based on the foregoing, Herbalife respectfully urges the Court to grant its
3 Motion to Dismiss, and dismiss the Complaint with prejudice.

4
5 DATED: November 2, 2018 Respectfully submitted,

6 Bird, Marella, Boxer, Wolpert, Nessim,
7 Dooks, Lincenberg & Rhow, P.C.

8
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10 Mark T. Dooks
11 Attorneys for Defendants Herbalife
12 Nutrition Ltd. (fka Herbalife Ltd.);
13 Herbalife International, Inc.; and Herbalife
14 International of America, Inc.
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EXHIBIT A

Exhibit A

Comparison of Key Allegations in *Bostick* and *Rodgers*

Rodgers Complaint	Bostick First Amended Complaint
<p>“Herbalife business opportunity participants are told that they must ‘attend every event’ if they want to be successful”</p> <p>Complaint at ¶ 3.</p>	<p>“You only have to put in the hard work along with the dedication, patience and discipline, attributes <i>you can learn at the events</i>. Herbalife is a real opportunity for everyone who is willing to focus and work for his or her goals. Plant a seed every day and you will harvest lifetime success.”</p> <p>“Herbalife recruits prospective participants by promising them . . . ‘Training Events’ that will ‘teach you how to meet your goals, increase your earning power and build an international business without leaving the comfort of your own home!’”</p> <p>Alleging that Plaintiff Chester Cote “went to two training programs – one in Minneapolis, Minnesota and one in Phoenix, Arizona. There, Herbalife representatives gave them pep talks about how much money they could earn being Herbalife distributors.”</p> <p>Dkt. 142-2, Exh. 2 at ¶¶ 166, 32, 78.</p>
<p>“<i>Extravaganza</i> is billed as ‘the BIGGEST and MOST IMPORTANT event to attend’ on the Circle of Success calendar.”</p> <p>Complaint at ¶ 84 (emphasis added).</p>	<p>“Herbalife sponsors what it calls an ‘Herbalife <i>Extravaganza</i>.’ The Herbalife <i>Extravaganza</i> is annual convention that Herbalife promotes in <i>Herbalife Today</i>, online and through emails. At the <i>Extravaganza</i>, Herbalife distributors come from around the country for sales and marketing advice and tips from [Herbalife’s top distributors].”</p>

Exhibit A

Comparison of Key Allegations in *Bostick* and *Rodgers*

<i>Rodgers</i> Complaint	<i>Bostick</i> First Amended Complaint
	<p>“In one video taken from the Herbalife 2010 <i>Extravaganza</i> in Los Angeles, California, [a top distributor] tells a convention hall filled with distributors that the Herbalife plan ‘is a confidence plan . . . to take you from where you are to wherever you want to go,’ grooming them to become multimillionaires.”</p> <p>“In another video taken at the Herbalife 2011 <i>Extravaganza</i> in Las Vegas . . . [top distributor] Susan Peterson tells attendees . . . that, if they are not getting rich in Herbalife, ‘it’s wrong’ and that they are taking things for granted.”</p> <p>Alleging that at “[t]raining and events, such as the <i>Extravaganza</i>, . . . Herbalife distributors made material false representations regarding the ‘business opportunity’ and the success that a distributor could get through Herbalife by purchasing products and recruiting others to do the same.”</p> <p>Dkt. 142-2, Exh. 2 at ¶ 174-76, 302(f) (emphasis added).</p>
<p>Quoting testimonials from event fliers:</p> <p>“The most important part is that they are able to <i>stay at home</i> with their kids and spend every moment with them because of the lifestyle they have earned!”</p>	<p>Quoting testimonials from Herbalife’s website:</p> <p>“Herbalife offered the chance to <i>work from home</i>, coupled with solid earning potential.”</p>

Exhibit A

Comparison of Key Allegations in *Bostick* and *Rodgers*

<i>Rodgers</i> Complaint	<i>Bostick</i> First Amended Complaint
<p>“I fired my <i>bosses</i> and put Nursing school on hold for life and it’s been the best decision I’ve ever made.”</p> <p>“They live in a <i>beautiful custom home with a brand new 2015 Corvette Stingray</i> in the driveway.”</p> <p>Complaint at ¶¶ 92; 165 (emphasis added).</p>	<p>“I wanted to be my own <i>boss</i>. . . . I’ve been able to upgrade to a <i>bigger home and nicer car</i>.”</p> <p>Dkt. 142-2, Exh. 2 at ¶ 159(a)-(b) (emphasis added).</p>
<p>“Of the millions of people around the globe who have been duped over the last three decades into investing substantial sums to pursue Herbalife’s business opportunity, fewer than 200 have achieved anything resembling the kind of lifestyles that are the steady refrain of Herbalife’s marketing messaging.”</p> <p>Complaint at ¶ 29.</p>	<p>“Like the hundreds of thousands of Herbalife distributors before and after, [Plaintiffs] failed. They failed even though they were committed and put in the time and effort,” allegedly because of “[a] marketing plan that pays millions to those few at the top in recruiting rewards at the expense of the many at the bottom.”</p> <p>Dkt. 142-2, Exh. 2 at ¶ 3.</p>
<p>“The President’s Team members conspire to keep themselves on the top of the pyramid and to prevent their share of the take from being diluted Herbalife promotes the fetishized narrative surrounding the income claims of these President’s Team members.”</p> <p>Complaint at ¶¶ 29-30.</p>	<p>Alleging that Herbalife’s “Beneficiaries and Promoters,” including its President’s Team members, make “outlandish statements about potential earnings and the business opportunity for potential and actual distributors.”</p> <p>Dkt. 142-2, Exh. 2 at p. 18 n.2, ¶ 153.</p>