

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-23429-Civ-COOKE/GOODMAN

MICHAEL LAVIGNE, JENNIFER LAVIGNE,
CODY PYLE, JENNIFER RIBALTA, JEFF
RODGERS, PATRICIA RODGERS, et al.,

Plaintiffs,

vs.

HERBALIFE, LTD., HERBALIFE
INTERNATIONAL, INC., et al.,

Defendants.

_____/

**DEFENDANTS' JOINT MOTION TO STAY DISCOVERY, PRETRIAL
DISCLOSURES, AND OTHER DEADLINES, AND FOR PROTECTIVE ORDER,
PENDING RULING ON DEFENDANTS' JOINT MOTION TO COMPEL
ARBITRATION AND THEIR ALTERNATIVE MOTIONS TO TRANSFER VENUE
AND TO DISMISS (WITH INCORPORATED MEMORANDUM OF LAW)**

Defendants, HERBALIFE, LTD., HERBALIFE INTERNATIONAL, INC.,
HERBALIFE INTERNATIONAL OF AMERICA, INC. (collectively, the "**Herbalife
Defendants**"), and MARK ADDY, JILLIAN ADDY, DENNIS DOWDELL, GARRAIN
S. JONES, CODY MORROW, CHRISTOPHER REESE, GABRIEL SANDOVAL,
EMMA SANDOVAL, JOHN TARTOL, LESLIE R. STANFORD, FERNANDO
RANCEL, LORI BAKER, MANUEL COSTA, MARK DAVIS, JENNY DAVIS,
DANIELLE EDWARDS, GRAEME EDWARDS, THOMAS P. GIOIOSA, SANDRA
GIOIOSA, ALCIDES MEJIA, MIRIAM MEJIA, PAULINA RIVEROS, RON
ROSENAU, CAROL ROSENAU, AMBER WICK, JASON WICK, JORGE DE LA
CONCEPCION, DISNEY DE LA CONCEPCION, JENNIFER MICHELI,
GUILLERMO RASCH, CLAUDIA RASCH, SAMUEL HENDRICKS, AMY
HENDRICKS, BRADLEY HARRIS, PAYMI ROMERO, RYAN BAKER,
KRISTOPHER BICKERSTAFF, MARK MATIKA, ENRIQUE CARILLO, DANIEL J.
WALDRON, SUSAN PETERSON, MICHAEL KATZ, DEBI KATZ, and

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ARQUIMEDES VALENCIA (“**Individual Defendants**,” and collectively with the Herbalife Defendants, “**Defendants**”), through their undersigned counsel, hereby file this Joint Motion to Stay Discovery, Pretrial Disclosures, and Other Deadlines, and for Protective Order, Pending Ruling on Their Joint Motion to Compel Arbitration, and their Alternative Motion to Transfer Venue and Motion to Dismiss,¹ along with an incorporated Memorandum of Law, and state as follows:

MOTION TO STAY AND FOR PROTECTIVE ORDER

On September 18, 2017, Plaintiffs, JEFF RODGERS, PATRICIA RODGERS, MICHAEL LAVIGNE, JENNIFER LAVIGNE, CODY PYLE, JENNIFER RIBALTA, IZAAR VALDEZ, and FELIX VALDEZ (collectively, “**Plaintiffs**”) filed a Class Action Complaint (the “**Complaint**”), commencing this action. [D.E. 1]. Defendants’ Responses to the Complaint are currently due on or before December 25, 2017. [D.E. 41].

On November 14, 2017, Plaintiffs served their First Request for Production of Documents on the Herbalife Defendants and their First Request for Production of Documents on the Individual Defendants (collectively, the “**Requests for Production**”), true and correct copies of which are filed herewith as **Exhibits “A”** and “**B**,” respectively. Defendants’ responses to the Request for Production are currently due to be served on December 14, 2017.

On December 14, 2017, Defendants filed their Joint Motion to Compel Arbitration. [D.E. 62]. As set forth in detail in the Joint Motion to Compel Arbitration, Plaintiffs specifically agreed to arbitrate the types of claims they now bring in this action.² *Id.* Plaintiffs filed this action despite binding contractual provisions that expressly preclude their claims in this Court, and they seek to avoid their obligations to arbitrate. In conjunction with their Joint Motion to Compel Arbitration, Defendants filed documents that are

¹ This Motion is subject to, and without waiver of, Defendants’ arguments that the parties’ disputes must be submitted to binding arbitration, and without waiver of Defendants’ alternative arguments that this case should be transferred to the Central District of California, where it should be dismissed for failure to state a claim upon which relief may be granted. [D.E. 62; D.E. 63].

² Plaintiffs also agreed to waive the right to trial by jury as well as any ability to bring the subject claims on a class basis. [D.E. 62].

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relevant to, and require, arbitration of the claims Plaintiffs raised in this action. [D.E. 62-2]. These are documents that Plaintiffs seek in the Requests for Production.

Plaintiffs are also bound by mandatory forum selection clauses that designate the District Court for the Central District of California as the exclusive forum for all disputes between the parties. Moreover, certain of the Plaintiffs are bound by releases embodied in a judgment entered by the District Court for the Central District of California in connection with the settlement of a previous class action. The District Court for the Central District of California also retains exclusive jurisdiction to enforce a consent decree that was entered in litigation involving the Federal Trade Commission, and which is quoted prominently in the Complaint in this case. Consequently, Defendants have also filed (subject to and without waiving their Joint Motion to Compel Arbitration) a Joint Motion to Transfer Venue to the Central District of California Pursuant to 28 U.S.C. § 1404(a) [D.E. 63]. Thus, even if Plaintiffs had not specifically agreed to arbitrate, venue would still be improper in this Court. *Id.*

Furthermore, the Complaint fails to state a cause of action upon which relief may be granted on any of Plaintiffs' claims. This defect is not merely a matter of quibbling over the adequacy of some of the allegations; many of the Plaintiffs have released their claims in their entirety and are violating the terms of the release by prosecuting this action. The Complaint is also plagued by other legal deficiencies. As a result, and subject to and without waiving the foregoing arguments, on or before December 25, 2017³ Defendants will file alternative Motions to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The arbitrator (or, alternatively, the District Court for the Central District of California) should dismiss Plaintiffs' claims. In either event, Plaintiffs do not have any viable claims that they can maintain in this Court.

The procedural posture of this case warrants a stay of discovery, pretrial disclosures, and other deadlines, including, without limitation, a Protective Order relieving Defendants from having to respond to the Requests for Production, until this Court has ruled on Defendants' Joint Motion to Compel Arbitration [D.E. 62]. The Joint Motion to Compel

³ This deadline was imposed by this Court's Order Granting Defendants' Joint Unopposed Motion for Enlargement of Time to Respond to Plaintiffs' Class Action Complaint [D.E. 41]

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Arbitration is meritorious, case dispositive, and was filed in good faith. This Court should also stay discovery (including, but not limited to, issuing a Protective Order as to the Requests for Production), pretrial disclosures, and other deadlines until it has ruled on Defendants' Joint Motion to Transfer [D.E. 63] and Defendants' forthcoming Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

MEMORANDUM OF LAW

This Court has noted that “[d]istrict courts are granted ‘broad discretion over the management of pre-trial activities, including discovery and scheduling.’” *Dayem v. Chavez*, 2014 WL 12588513, *1 (S.D. Fla. 2014) (quoting, *Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1269 (11th Cir. 2001)). This Court further noted “that as a general rule, motions to dismiss should be resolved as soon as practicable to obviate avoidable discovery costs, especially where a dubious claim appears destined for dismissal.” *Dayem*, 2014 WL 12588513 at *1, (citing, *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997)) (“If the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided.”).

Federal Rule of Civil Procedure 26(c) also provides that, upon good cause shown, the court “may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that the disclosure or discovery not be had [or] ... that the disclosure or discovery may be had only on specified terms and conditions, including a designation of time and place.” “To stay discovery under Rule 26(c) due to a pending dispositive motion, ‘good cause and reasonableness’ must exist.” *United States v. Med-Care Diabetic & Med. Supplies, Inc.*, 10-81634-CIV, 2014 WL 12284078, at *1 (S.D. Fla. June 17, 2014) (citing *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)) (granting motion to stay discovery pending ruling on motion to dismiss).

Defendants acknowledge that “[a] request to stay discovery pending a resolution of a motion is rarely appropriate unless resolution of the motion will dispose of the entire case.” *Dayem*, 2014 WL 12588513 at *1, quoting, *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006). Thus, this Court must determine whether there is a strong likelihood that the motion is case dispositive. This is such a case.

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“To evaluate whether there is a strong likelihood ‘the [dismissal] motion will be granted and entirely eliminate the need for such discovery,’ the district court must take a “preliminary peek” at the merits of the motion.” *Dayem, 2014 WL 12588513 at *1*, (quoting *Feldman v. Flood*, 176 F.R.D. 651, 652–53 (M.D. Fla. 1997)) (citations omitted); *see also, United States v. Med-Care Diabetic & Med. Supplies, Inc.*, 10-81634-CIV, 2014 WL 12284078, at *1 (S.D. Fla. 2014) (quoting *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006) (requiring the “Court to take a ‘preliminary peek’ at the merits of the motion to dismiss to see if it appears to be clearly meritorious and truly case dispositive.”)). “The court must also weigh ‘the harm produced by a delay in discovery’ against ‘the likely costs and burdens of proceeding with discovery.’” *Dayem, 2014 WL 12588513 at *1, quoting Feldman, 176 F.R.D. at 652* (citations omitted). The analysis of these factors demonstrates that a Protective Order and a Stay are warranted here.

a. A Stay, including a Protective Order as to the Requests for Production, is appropriate pending a ruling on Defendants’ Motion to Compel Arbitration

As noted above, district courts will stay discovery when a motion to dismiss appears likely to dispose of the case. *See, e.g., Dayem, 2014 WL 12588513 at * 1* (where this Court ruled that a stay of discovery was warranted following a “preliminary peek” at the defendants’ motions to dismiss, including arguments that the court lacked subject matter jurisdiction and that the plaintiff failed to state a claim upon which relief may be granted); *see also, Med-Care Diabetic & Med. Supplies, 10-81634-CIV, 2014 WL 12284078 at *1* (granting motion to stay discovery pending ruling on motion to dismiss); *Tradex Glob. Master Fund SPC Ltd. v. Palm Beach Capital Mgmt., LLC, 09-21622-CIV, 2009 WL 10664410, at *1* (S.D. Fla. Nov. 24, 2009) (stay of discovery was appropriate where case dispositive issues were raised); *Allmond v. City of Jacksonville, 2008 WL 2704426 at *3* (M.D. Fla. 2008) (granting motion to stay discovery pending resolution of case dispositive motions). Significantly, “[t]he Eleventh Circuit treats a motion to compel arbitration as a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.” *Tracfone Wireless, Inc. v. Simply Wireless, Inc.*, 229 F. Supp. 3d 1284, 1292 (S.D. Fla. 2017) (emphasis added).

A “preliminary peek” at the Motion to Compel Arbitration reveals that a stay is appropriate in this case. In fact, because arbitration is favored by the courts, the standard for imposing a stay is actually less stringent with respect to motions to compel arbitration.

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“Recognizing the ‘unmistakenly clear congressional purpose that the arbitration procedure’ should ‘be speedy and not subject to delay and obstruction in the courts,’ *the United States Supreme Court has held that when considering a motion to stay pursuant to the FAA, ‘a federal court may consider only issues relating to the making and performance of the agreement to arbitrate.’*” *Morat v. Cingular Wireless LLC*, 3:07-CV-1057-J-20JRK, 2008 WL 11336388, at *2 (M.D. Fla. Feb. 14, 2008) (emphasis added) (quoting, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967)).

Although some cases allow limited discovery as to the issue of arbitrability, this is not a case where even such limited discovery would be appropriate. Indeed, under the facts of this case, the determination of whether the parties’ dispute is subject to arbitration is for the arbitrator to decide, not the court. *See, e.g., GHM (S. Beach) LLC*, 2012 WL 12969783 at *7 (quoting, *Bhim v. Rent-A-Center, Inc.*, 655 F. Supp. 2d 1307, 1310 (S.D. Fla. 2009) (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)) (“[g]enerally, arbitrability is a question for the trial court—and not the arbitrator—*unless the parties ‘clearly and unmistakably’ provide otherwise.*”) (emphasis added); *see also, Rent-A-Center, West, Inc. v. Jackson*, 130 S. Ct. 2772, 2777 (2010) (stating that “parties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy”).

The arbitration provisions in this case expressly provide that “the arbitrator shall determine the scope and enforceability of this Arbitration Agreement and the arbitrability of any disputes.” [D.E. 62 at 9] (“The arbitrator shall also have exclusive authority to the extent permitted by law to decide the arbitrability of any claim or dispute between Member and Herbalife.”). Furthermore, the arbitration provisions in this case are “governed by the Commercial Arbitration Rules (“AAA Rules”) of the American Arbitration Association (“AAA”).” *Id.* The AAA Rules empower the arbitrator to decide matters relating to the arbitrator’s jurisdiction and require that the Arbitrator, not the Court, decide issues of arbitrability. *Id.* “[*W*]hen ... parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties’ intent to delegate such issues to an arbitrator.” *GHM (S. Beach) LLC*, 2012 WL 12969783 at *7 (quoting *Terminix Int’l Co. LP v. Palmer Ranch Ltd. P’ship*, 432 F.3d 1327,

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1332 (11th Cir. 2005) (quoting *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 (2d Cir. 2005)) (emphasis added). Thus, the arbitrators and not the Court, are to decide whether this action must be arbitrated.

“In addition, if a dispute is arbitrable, ‘responsibility for discovery lies with the arbitrators.’” *Morat*, 2008 WL 11336388, at *2, (quoting, *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 855 (7th Cir. 2002); 9 U.S.C. § 7). “**Based upon these principles, courts have routinely stayed discovery into the underlying merits of the case when a motion to compel arbitration has been filed in good faith.**” *Morat*, 2008 WL 11336388, at *2 (emphasis added) (citing, *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Coors*, 357 F. Supp. 2d 1277, 1280 (D. Colo. 2004) (finding that the defendant's motion to dismiss [and compel arbitration] was not filed for any improper purpose and temporarily staying discovery pending the resolution of the motion to dismiss); *In re Managed Care Litig.*, 2001 WL 6634391, at * 3 (S.D. Fla. 2001) (recognizing the complexity of the issues involved in the litigation and staying discovery for a limited period of time for the court to rule on the motions to dismiss and to compel arbitration); *Coneff v. AT&T Corp.*, 2007 WL 738612, at * 2 (W.D. Wash. 2007) (granting a protective order requesting a stay of merits discovery pending the resolution of a motion to compel arbitration, but declining to grant protective order with regard to discovery relevant to the issue of arbitrability)); *see also*, *GHM (S. Beach) LLC v. Setai Owners LLC*, 1:12-CV-21932-KMM, 2012 WL 12969783, at *7 (S.D. Fla. 2012) (staying the arbitrable and non-arbitrable claims pending an arbitration panel’s ruling on arbitrability).

In addition to the foregoing, Plaintiffs do not require any discovery related to the issue of arbitrability. In conjunction with their Joint Motion to Compel Arbitration Defendants have already filed relevant documents that Plaintiffs seek in the Requests for Production. [D.E. 62-2]. Because Plaintiffs already have the documents demonstrating that Plaintiffs’ claims must be arbitrated, they will not suffer any prejudice if this Court enters a Protective Order, and stays discovery, pretrial disclosures and other aspects of this case as requested in this Motion.⁴

⁴ A Protective Order is also necessary to prevent Plaintiffs from arguing that Defendants engaged in discovery and waived arbitration. Although such an argument would fail, there is no reason to provide Plaintiffs with an opportunity to take this position and thereby

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Defendants' Motion to Compel Arbitration is meritorious and was filed in good faith. The arbitrators must decide issues of arbitrability and discovery relating to the claims asserted in this case. Consequently, this Court should stay discovery, pretrial disclosures and other deadlines in this case, pending the ruling on Defendants' Joint Motion to Compel Arbitration.

b. A Stay and Protective Order are also appropriate pending a ruling on Defendants' Motion to Transfer and Motion to Dismiss

Even in the unlikely event that Plaintiffs are not required to submit this action to the arbitrators to determine whether the action is arbitrable and to rule on discovery issues, this Court should still stay discovery (including issuing a Protective Order as to the Requests for Production), pretrial disclosures and other deadlines pending its ruling on Defendants' Joint Motion to Transfer Venue [D.E. 63] and Defendants' forthcoming Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). In the absence of arbitration, the District Court for the Central District of California would be the proper forum to determine the scope and timing, if any, of discovery and pretrial disclosure (depending on how much, if any, of the case remains after the motions are ruled upon). The District Court for the Central District of California would also rule on Defendants' Motions to Dismiss. That court may well determine that several of the Plaintiffs have released their claims entirely. It would be extremely unfair to require Defendants to incur the expense of participating in discovery concerning claims they already paid to settle.

Once again, this Court should take a "preliminary peek" at the Joint Motion to Transfer and the Motions to Dismiss, consider the potential scope of discovery, and impose a stay. *See, e.g., Dayem*, 2014 WL 12588513. Given the unique posture of this case, and because the subject motions are meritorious and case dispositive, this Court should exercise its discretion and grant a stay of all discovery, pretrial disclosures, and other deadlines pending its ruling on the subject motions.

WHEREFORE, Defendants, HERBALIFE, LTD., HERBALIFE INTERNATIONAL, INC., HERBALIFE INTERNATIONAL OF AMERICA, INC.,

subject Defendants to the additional fees and expenses they will incur if they have to respond to such an argument.

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MARK ADDY, JILLIAN ADDY, DENNIS DOWDELL, GARRAIN S. JONES, CODY MORROW, CHRISTOPHER REESE, GABRIEL SANDOVAL, EMMA SANDOVAL, JOHN TARTOL, LESLIE R. STANFORD, FERNANDO RANCEL, LORI BAKER, MANUEL COSTA, MARK DAVIS, JENNY DAVIS, DANIELLE EDWARDS, GRAEME EDWARDS, THOMAS P. GIOIOSA, SANDRA GIOIOSA, ALCIDES MEJIA, MIRIAM MEJIA, PAULINA RIVEROS, RON ROSENAU, CAROL ROSENAU, AMBER WICK, JASON WICK, JORGE DE LA CONCEPCION, DISNEY DE LA CONCEPCION, JENNIFER MICHELI, GUILLERMO RASCH, CLAUDIA RASCH, SAMUEL HENDRICKS, AMY HENDRICKS, BRADLEY HARRIS, PAYMI ROMERO, RYAN BAKER, KRISTOPHER BICKERSTAFF, MARK MATIKA, ENRIQUE CARILLO, DANIEL J. WALDRON, SUSAN PETERSON, MICHAEL KATZ, DEBI KATZ, and ARQUIMEDES VALENCIA, respectfully request that this Court enter an Order staying discovery, pretrial disclosures, and all other deadlines in this case, including, without limitation, issuing a Protective Order as to the Requests for Production, pending a ruling on Defendants' Joint Motion to Compel Arbitration [D.E. 62], and if necessary, Defendants' Joint Motion to Transfer Venue [D.E. 63] and Defendants' forthcoming Motions to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6); and enter such other and further relief as this Court deems just and proper.

CERTIFICATE OF COMPLIANCE WITH S.D. FLA. L. R. 7.1(a)(3)(A)

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that the undersigned counsel for Defendants conferred with Etan Mark, Esq., counsel for the Plaintiffs, in a good faith effort to resolve the issues raised herein on November 7, 2017, via telephone during the parties' pretrial conference, via email on several occasions between November 16, 2017 and November 30, 2017 in connection with exchanging drafts of a proposed Joint Scheduling Report, via correspondence on December 7, 2017 and via email on December 12, 2017, but the parties were unable to resolve the issues, as Plaintiffs' counsel informed the undersigned that Plaintiffs object to the stay requested in this Motion.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on December **14**, 2017, a true and correct copy of the foregoing was filed with the Clerk of the Court using CM/ECF and served on Etan Mark, Esq., Donald J. Hayden, Esq., and Lara O'Donnell Grillo, Esq. *Attorneys for Plaintiffs*, MARK MIGDAL & HAYDEN, 80 S.W. 8th Street, Suite 1999, Miami, FL, 33130 via transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Todd A. Levine
Todd A. Levine, Esq.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 17-23429-Civ-COOKE/GOODMAN

MICHAEL LAVIGNE, JENNIFER LAVIGNE,
CODY PYLE, JENNIFER RIBALTA, JEFF
RODGERS, PATRICIA RODGERS, et al.,

Plaintiffs,

vs.

HERBALIFE, LTD., HERBALIFE
INTERNATIONAL, INC., et al.,

Defendants.

_____ /

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION
TO DEFENDANTS HERBALIFE, LTD., HERBALIFE INTERNATIONAL,
INC., AND HERBALIFE INTERNATIONAL OF AMERICA, INC.**

Plaintiffs, by and through their undersigned counsel, hereby request that Defendants, Herbalife, Ltd., Herbalife International, Inc. and Herbalife International of America, Inc. produce and permit Plaintiffs to inspect, copy, test, or sample the following items in Defendants' possession, custody, or control. The production and inspection shall take place at Mark Migdal & Hayden, LLC, 80 SW 8th St., Suite 1999, Miami, FL 33130, within thirty (30) days of service of these requests, unless other mutually agreeable arrangements are made between counsel of record, and shall continue for so long as may be reasonably required.

DEFINITIONS

When used in these requests, the following definitions shall apply:

A. "PERSON(S)" includes any natural person, firm, association, organization, partnership, business, trust, corporation, governmental or public entity, or any other form of legal entity.

B. "DOCUMENT(S)" shall mean all documents, electronically stored information, and tangible things as described in Rule 34 of the Federal Rules of Civil

Procedure, including without limitation all written and graphic matter and all other means of recording information, whether written, transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and including but not limited to: originals, drafts, computer-sorted and computer-retrievable information, copies and duplicates that are marked with any notation or annotation or otherwise differ in any way from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books, records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches, diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails, electronic or mechanical records, facsimiles, telegrams and telecopies, and audiotapes. Each draft, annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term. DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents. DOCUMENTS expressly include all ELECTRONIC RECORDS and written COMMUNICATIONS.

C. "ELECTRONIC RECORD(S)" shall mean the original (or identical duplicate when the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description inscribed by mechanical, facsimile, electronic, magnetic, digital, or other means. ELECTRONIC RECORDS includes, by way of example and not by limitation, computer programs (whether private, commercial, or work-in-progress), programming notes and instructions, activity listings of email transmittals and receipts, output resulting from the use of any software program (including word processing documents, spreadsheets, database files, charts, graphs and outlines), electronic mail, and any and all miscellaneous files and file fragments, regardless of the media on which they reside and regardless of whether said ELECTRONIC RECORDS exists in an active file, deleted file, or file fragment. ELECTRONIC RECORDS

include, without limitation, any and all items stored on computer memories, hard disks, diskettes and cartridges, network drives, network memory storage, archived tapes and cartridges, backup tapes, floppy disks, CD-ROMs, removable media, magnetic tapes of all types, microfiche, and any other media used for digital data storage or transmittal. ELECTRONIC RECORDS also include the file, folder tabs, and containers and labels appended to or associated with each original and non-identical copy.

D. “COMMUNICATION(S)” means any oral, written or electronic transmission of information, including but not limited to meetings, discussions, conversations, telephone calls, telegrams, text messages, voicemails, memoranda, letters, emails, telecopies, telexes, conferences, messages, notes, brochures, marketing materials, presentations or seminars.

E. “RELATING TO,” “RELATED TO” or “RELATE(S) TO” means constituting, containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing, evidencing, or in any other way being relevant to that given subject matter.

F. “PLAINTIFFS” shall refer collectively to Michael Lavigne, Jennifer Lavigne, Cody Pyle, Jennifer Ribalta, Jeff Rodgers, Patricia Rodgers, Izaar Valdez and Felix Valdez.

G. “DEFENDANTS” “HERBALIFE” “YOU” and/or “YOUR” shall refer collectively to Defendants Herbalife, Ltd., Herbalife International, Inc. and Herbalife International of America, Inc., and all employees and agents, or other PERSONS acting on behalf of Herbalife, Ltd., Herbalife International, Inc. and Herbalife International of America, Inc.

H. “AGREEMENT” shall mean any contract, document, terms of use, distributor agreement, code of conduct or sales and marketing plan, including any and all attachments or incorporated terms or documents, to which YOU contend any PLAINTIFF in this MATTER is bound, including but not limited to the Herbalife Rules of Conduct, the Herbalife Distributor Policies and the Herbalife Sales and Marketing Plan.

I. “THIS MATTER” or “THIS LAWSUIT” shall refer to this case, filed in the United States District Court for the Southern District of Florida, Case No. 17-CV-23429-COOKE/GOODMAN.

J. "COMPLAINT" shall refer to the operative complaint in THIS MATTER.

INSTRUCTIONS

A. Unless otherwise specified in the requests, the relevant period for the following discovery requests is January 1, 2009 through the present.

B. These requests apply to all documents in DEFENDANTS' possession, custody or control (including documents DEFENDANTS have the effective power or authority to obtain) at the present time, and to those documents in the possession, custody or control of DEFENDANTS' agents, employees, representatives, investigators, or attorneys. These requests shall be deemed continuing, and shall apply to documents that come into the possession, custody or control of any of the foregoing persons or entities after the date of initial production.

C. In producing documents requested herein, please produce documents in full, without abridgment, abbreviation or expurgation of any sort.

D. In producing documents requested herein, please sequentially number the pages produced and precede the numbers with a unique prefix.

E. Please produce electronically stored information in accordance with **Schedule "A"** below.

F. If a document is called for under more than one request, it should be produced in response to the first request with a notice appended to it stating the other request(s) to which it is claimed that such document is responsive.

G. Please produce or submit for inspection and copying each and every copy and draft of a responsive document that differs in any way from the original document or from any other copy or draft.

H. With respect to any document that is requested but which has been lost or destroyed, provide in writing the following information for each such missing document:

- i. The identity of the document;
- ii. The nature of the document (*e.g.*, letter, draft, computer file);

- iii. The identity of the person(s) who created or originated the document;
- iv. The identity of the person(s) who received a copy of the document;
- v. The dates on which the document was created and/or distributed;
- vi. A brief description of what happened to the document; and
- vii. A brief description of the subject matter of the document.

I. For any and all documents not produced on grounds of privilege or other protection from discovery, please submit a privilege log which identifies the document and describes its nature in sufficient detail to enable PLAINTIFFS and the Court to assess the applicability of the asserted privilege or protection.

J. Whenever possible, the singular form of a word shall be interpreted in the plural or vice versa; verb tenses shall be interpreted to include past, present and future tenses; the terms “and” as well as “or” shall be construed either conjunctively or disjunctively, as necessary, to bring within the scope of these requests any information that might otherwise be considered outside their purview; and words imparting the masculine shall include the feminine and vice versa.

K. Terms not defined in these requests shall have their ordinary and usual meanings.

SCHEDULE “A”

Production of Electronically Stored Information (ESI) FORM OF PRODUCTION

Plaintiff’s requests that all ESI (electronically stored information) be produced as follows:

ESI will be produced (printed and loaded) in 300DPI resolution or greater, Group IV Monochrome Tagged Image File Format (.TIF) files in single-page format, with **ALL** native files provided and word searchable OCR/extracted text (Optical Character Recognized – i.e. searchable text) in UTF-8 format. Color photographs should be produced as color JPEG images. Email natives will be delivered in MSG or EML format. Load files will be provided

in Opticon (.OPT) format and an IPRO LFP (.lfp) format. Metadata will be provided in a DAT file with standard Concordance delimiters. The text files containing the OCR/Extracted Text shall be produced in multi-page format with the name corresponding to its associated document. **All small and oversized images should be resized to fit on 8.5x11 canvas.**

The files should be delivered with the following folder structure:

IMAGES – contains the TIF and JPG files, up to 10,000 items.

DATA – contains the OPT and LFP files and the metadata text file (DAT)

NATIVES – contains all the original native files named as the BEGDOC

TEXT – contains the document-level OCR/Extracted text files named as the BEGDOC

Metadata Field	Field Description
BegDoc	BegDoc
EndDoc	EndDoc
BegAttach	BegAttach
EndAttach	EndAttach
Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files
AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)
Companies	Company name
Custodian	Custodian (Last, First)
DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header

InternetMSGID	IntMsgID
MessageID	MsgID
NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

For .xls (Excel), .ppt (PowerPoint), and .doc (Word) files the following additional metadata fields should be included:

Excel_Comments	Comments
Excel_HiddenColumns	Hidden Columns
Excel_HiddenRows	Hidden Rows
Excel_HiddenWorksheets	Hidden Worksheets
Num_Lines	Number of lines
Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides
Num_Multimedia	Number of multimedia clips
Security	Security

REQUESTS FOR PRODUCTION

1. Each version of any and all Agreements between You and any Plaintiff in this Matter.
2. All amendments, supplements or addenda to any and all Agreements between You and any Plaintiff.
3. All communications between you and any Plaintiff relating to any amendments to any Agreement between you and any Plaintiff.
4. All signature pages by or on behalf of any Plaintiff relating to any Agreement.
5. All records referencing or relating to any communications to the Plaintiffs concerning any amendments to any Agreement.
6. Each version of any and all Agreements involving any party in this Matter supporting Your claim that any party is required to, or should arbitrate this Matter.
7. All documents and communications not responsive to any other request supporting Your claim that any Agreement requires arbitration of this Matter.
8. All documents and communications that you contend support transferring the venue of this Matter.
9. All non-privileged documents relating to any effort in which You sought to compel arbitration or transfer venue based on provisions of any Agreement.

Dated: November 14, 2017

MARK MIGDAL & HAYDEN
80 SW 8th Street
Suite 1999
Miami, FL 33130
Telephone: 305-374-0440

By: s/ Etan Mark
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Lara O'Donnell Grillo, Esq.
Florida Bar No. 37735
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eservice@markmigdal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2017, the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, via Electronic mail.

By: s/ Etan Mark
Etan Mark, Esq.

SERVICE LIST

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Jason Jones, Esq.
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Columbus, OH 43201
Co-Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 17-23429-Civ-COOKE/GOODMAN

MICHAEL LAVIGNE, JENNIFER LAVIGNE,
CODY PYLE, JENNIFER RIBALTA, JEFF
RODGERS, PATRICIA RODGERS, et al.,

Plaintiffs,

vs.

HERBALIFE, LTD., HERBALIFE
INTERNATIONAL, INC., et al.,

Defendants.

_____ /

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION
TO THE INDIVIDUAL DEFENDANTS**

Plaintiffs, by and through their undersigned counsel, hereby request that Defendants, Mark Addy, Jillian Addy, Dennis Dowdell, Garrain S. Jones, Cody Morrow, Christopher Reese, Gabriel Sandoval, Emma Sandoval, John Tartol, Leslie R. Stanford, Fernando Rancel, Lori Baker, Manuel Costa, Mark Davis, Jenny Davis, Danielle Edwards, Graeme Edwards, Thomas P. Gioiosa, Sandra Gioiosa, Alcides Mejia, Miriam Mejia, Paulina Riveros, Ron Rosenau, Carol Rosenau, Amber Wick, Jason Wick, Jorge de la Concepcion, Disney de la Concepcion, Jennifer Micheli, Guillermo Rasch, Claudia Rasch, Samuel Hendricks, Amy Hendricks, Bradley Harris, Paymi Romero, Arquimedes G. Valencia, Ryan Baker, Kristopher Bickerstaff, Mark Matika, Enrique Carillo, Daniel J. Waldron, Susan Peterson, Michael Katz, and Debi Katz ("Individual Defendants") produce and permit Plaintiffs to inspect, copy, test, or sample the following items in Defendants' possession, custody, or control. The production and inspection shall take place at Mark Migdal & Hayden, LLC, 80 SW 8th St., Suite 1999, Miami, FL 33130, within thirty (30) days of service of these requests, unless other mutually agreeable arrangements are made between counsel of record, and shall continue for so long as may be reasonably required.

DEFINITIONS

When used in these requests, the following words shall have the following meanings:

A. "PERSON(S)" includes any natural person, firm, association, organization, partnership, business, trust, corporation, governmental or public entity, or any other form of legal entity.

B. "DOCUMENT(S)" shall mean all documents, electronically stored information, and tangible things as described in Rule 34 of the Federal Rules of Civil Procedure, including without limitation all written and graphic matter and all other means of recording information, whether written, transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and including but not limited to: originals, drafts, computer-sorted and computer-retrievable information, copies and duplicates that are marked with any notation or annotation or otherwise differ in any way from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books, records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches, diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails, electronic or mechanical records, facsimiles, telegrams and telecopies, and audiotapes. Each draft, annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term. DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents. DOCUMENTS expressly include all ELECTRONIC RECORDS and written COMMUNICATIONS.

C. "ELECTRONIC RECORD(S)" shall mean the original (or identical duplicate when the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description inscribed by

mechanical, facsimile, electronic, magnetic, digital, or other means. ELECTRONIC RECORDS includes, by way of example and not by limitation, computer programs (whether private, commercial, or work-in-progress), programming notes and instructions, activity listings of email transmittals and receipts, output resulting from the use of any software program (including word processing documents, spreadsheets, database files, charts, graphs and outlines), electronic mail, and any and all miscellaneous files and file fragments, regardless of the media on which they reside and regardless of whether said ELECTRONIC RECORDS exists in an active file, deleted file, or file fragment. ELECTRONIC RECORDS include, without limitation, any and all items stored on computer memories, hard disks, diskettes and cartridges, network drives, network memory storage, archived tapes and cartridges, backup tapes, floppy disks, CD-ROMs, removable media, magnetic tapes of all types, microfiche, and any other media used for digital data storage or transmittal. ELECTRONIC RECORDS also include the file, folder tabs, and containers and labels appended to or associated with each original and non-identical copy.

D. "COMMUNICATION(S)" means any oral, written or electronic transmission of information, including but not limited to meetings, discussions, conversations, telephone calls, telegrams, text messages, voicemails, memoranda, letters, emails, teletypes, telexes, conferences, messages, notes, brochures, marketing materials, presentations or seminars.

E. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting, containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing, evidencing, or in any other way being relevant to that given subject matter.

F. "PLAINTIFFS" shall refer collectively to Michael Lavigne, Jennifer Lavigne, Cody Pyle, Jennifer Ribalta, Jeff Rodgers, Patricia Rodgers, Izaar Valdez and Felix Valdez.

G. "YOU" shall refer to each respective Individual Defendant and any PERSONS acting on their behalf.

H. "THIS MATTER" or "THIS LAWSUIT" shall refer to this case, filed in the United States District Court for the Southern District of Florida, Case No. 17-CV-23429-COOKE/GOODMAN.

- I. "COMPLAINT" shall refer to the operative complaint in THIS MATTER.

INSTRUCTIONS

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8. For any and all documents not produced on grounds of privilege or other protection from discovery, please submit a privilege log which identifies the document and describes its nature in sufficient detail to enable PLAINTIFFS and the Court to assess the applicability of the asserted privilege or protection.

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SCHEDULE “A”

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EndDoc	EndDoc
BegAttach	BegAttach
EndAttach	EndAttach
Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files
AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)
Companies	Company name
Custodian	Custodian (Last, First)
DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header
InternetMSGID	IntMsgID
MessageID	MsgID

NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

For .xls (Excel), .ppt (PowerPoint), and .doc (Word) files the following additional metadata fields should be included:

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Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides
Num_Multimedia	Number of multimedia clips
Security	Security

REQUESTS FOR PRODUCTION

1. All agreements or contracts between You and any Plaintiff in this Matter.

Dated: November 14, 2017

MARK MIGDAL & HAYDEN
80 SW 8th Street
Suite 1999
Miami, FL 33130
Telephone: 305-374-0440

By: s/ Etan Mark
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Lara O'Donnell Grillo, Esq.
Florida Bar No. 37735
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eservice@markmigdal.com

CERTIFICATE OF SERVICE

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Etan Mark, Esq.

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Jason Jones, Esq.
JASON JONES ATTORNEY AT LAW
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Columbus, OH 43201
Co-Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-23429-Civ-COOKE/GOODMAN

MICHAEL LAVIGNE, JENNIFER LAVIGNE,
CODY PYLE, JENNIFER RIBALTA, JEFF
RODGERS, PATRICIA RODGERS, et al.,

Plaintiffs,

vs.

HERBALIFE, LTD., HERBALIFE
INTERNATIONAL, INC., et al.,

Defendants.

_____ /

**ORDER ON DEFENDANTS' JOINT MOTION TO STAY DISCOVERY,
PRETRIAL DISCLOSURES, AND OTHER DEADLINES, AND FOR
PROTECTIVE ORDER, PENDING RULING ON DEFENDANTS' JOINT
MOTION TO COMPEL ARBITRATION AND THEIR
ALTERNATIVE MOTIONS TO TRANSFER VENUE AND TO DISMISS**

THIS MATTER is before the Court on the Defendants' Joint Motion to Stay Discovery, Pretrial Disclosures, and Other Deadlines, and for Protective Order, Pending Ruling on Their Joint Motion to Compel Arbitration, and their Alternative Motion to Transfer Venue and Motion to Dismiss ("Motion") [ECF No. 65], filed on December 14, 2017.

The Court, having reviewed the Motion and being fully advised in the premises, hereby **ORDERS AND ADJUDGES** as follows:

The Motion is hereby granted.

DONE AND ORDERED in Chambers, Miami, Florida, this ____ day of _____
201__.

MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Jonathan Goodman, U.S. Magistrate Judge
Counsel of record