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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
13

14 MICHAEL LAVIGNE, *et al.*,
15 Plaintiffs,
16 vs.
17 HERBALIFE LTD., *et al.*,
18 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)

**HERBALIFE'S SUPPLEMENTAL
BRIEF RE: PLAINTIFFS' MOTION
TO COMPEL DISCOVERY**

Filed concurrently with Declarations of
Gopi K. Panchapakesan and Mauricio
Domingo

Assigned to Hon. Michael R. Wilner
Courtroom 550

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Despite repeatedly representing to the Court that their claims deal only with
4 Herbalife training events—and not a broader “standard attack” on Herbalife’s
5 business model—Plaintiffs now seek discovery that has nothing to do with their
6 purportedly narrow claims. Dkt. 151 at 1. Plaintiffs expressly narrowed their
7 claims in this case in order to avoid the release contained in a prior class action
8 settlement approved by this Court, concerning the viability of Herbalife’s
9 underlying business opportunity. Plaintiffs cannot have it both ways. If, as they
10 assert, their current claims deal only with events that are “separate and distinct from
11 Herbalife’s core business,” then the discovery they seek must be limited
12 accordingly. *Id.* at 4. Herbalife paid over \$15 million to settle the prior class action
13 to avoid the expense and burden of just this type of discovery.

14 Further, the additional discovery Plaintiffs seek concerns the activities of no
15 less than 44 third-party distributors (the “Florida Defendants”). Those distributors
16 were originally named as defendants, but following Herbalife’s motions to compel
17 arbitration and transfer venue, the claims that are now before this Court are against
18 only Herbalife. The Florida Defendants are not employees of Herbalife, the direct
19 claims against them are not before this Court, and therefore they are true third
20 parties to this action. As such, discovery concerning these third parties is relevant to
21 Plaintiffs’ claims against Herbalife *only* if it relates to an alleged conspiracy
22 between Herbalife and those third parties regarding the promotion of events or their
23 content.

24 Plaintiffs nevertheless indiscriminately seek broad discovery regarding,
25 among other things, the amounts these third parties earned pursuing the Herbalife
26 business opportunity, the amounts they have paid Herbalife to purchase product, and
27 any investigations or enforcement actions undertaken by the company against them
28 on matters unrelated to events. None of these things are the proper subject of

1 discovery in this case. Some of these materials also implicate the privacy interests
2 of the Florida Defendants, interests that they have refused to waive. Because
3 Plaintiffs' additional requests seek irrelevant, private information, the Court's
4 inquiry should end there.

5 To the extent the Court is inclined to evaluate the proportionality of the
6 discovery sought by Plaintiffs, it should deny additional discovery on that basis as
7 well. First, this case is at the pre-certification stage. While some "merits" discovery
8 is appropriate, it must be "limited to those aspects relevant to making the
9 certification decision on an informed basis." Fed. R. Civ. Proc. 23 cmt. Plaintiffs'
10 requests ignore the Federal Rules' guidance on this issue.

11 Second, Plaintiffs' requests seek discovery over a ten-year time period, which
12 is facially unreasonable given that the longest statute of limitations applicable to
13 their claims is four years.

14 Third, Herbalife would incur a substantial incremental burden were it required
15 to respond to Plaintiffs' requests. For example, producing documents reflecting "all
16 payments" made by the Florida Defendants to Herbalife "for any reason" would
17 require Herbalife to search for and review all purchase orders, email confirmations,
18 and receipts in connection with any product purchases made by the Florida
19 Defendants, a process that could potentially take hundreds of hours.

20 Fourth, Herbalife already has produced a significant number of documents
21 that fairly relate to the alleged conspiracy between it and the Florida Defendants,
22 including nearly 14,000 pages of emails regarding efforts Herbalife undertook to
23 substantiate earnings claims made by speakers at events; Herbalife's policies and
24 guidelines regarding earnings claims made at events; a summary of the fees it has
25 paid any distributor to speak at an event; and its policies regarding the payment of
26 such fees. Plaintiffs cannot justify why they are entitled to additional discovery to
27 attempt to substantiate their class allegations.

1 **II. RELEVANT BACKGROUND**

2 **A. Factual Background**

3 **1. The Herbalife Business Opportunity**

4 Herbalife is a global nutrition and weight management company. Herbalife
5 offers a business opportunity through which individuals can purchase Herbalife
6 nutritional product from the company at a discount and sell it to customers, and also
7 recruit others to do the same. Declaration of Sacha Mauricio Domingo Donovan
8 (“Domingo Decl.”) at ¶ 2. Those who pursue this opportunity are called Herbalife
9 “distributors.” *Id.* The individuals whom a given distributor recruits into the
10 opportunity are referred to collectively as their “downline.” Distributors can earn
11 retail profit from the direct sale of products to customers, as well as commissions
12 and royalties tied to the sales of one’s downline. *Id.* at ¶ 3, Exh. 1.

13 Herbalife sponsors a number of training events each year, including the
14 Extravaganza, Leadership Development Weekend (“LDW”), Kickoff, and Future
15 President’s Team Retreat events. Dkt. 178-6 at ¶ 3 (Declaration of Bob Bogard).
16 There also are a large number of local events generally run by distributors, including
17 Success Training Seminars (“STS”) and Herbalife Opportunity Meetings (“HOM”).
18 *Id.* at ¶ 6.

19 **2. Plaintiffs’ Complaint**

20 Plaintiffs originally sued Herbalife and the Florida Defendants in the
21 Southern District of Florida, alleging claims under the federal civil RICO statute,
22 Florida’s Deceptive and Unfair Trade Practices Act, and common law claims for
23 unjust enrichment and negligent misrepresentation. Three of the Plaintiffs are
24 Herbalife distributors; one is the spouse of a distributor. Dkt. 1 (Complaint) at
25 ¶¶ 150, 163, 182, 193. Plaintiffs allege that they attended numerous Herbalife
26 events, both those sponsored by the company and those organized by individual
27 distributors. *Id.* at ¶¶ 156, 188, 201. They contend that such events are falsely
28 “pitched as the guaranteed pathway to attaining life changing financial success” and

1 that they were told that they must “attend every event’ if they want to be
2 successful.” *Id.* at ¶¶ 2-3. Plaintiffs allege that if they had known that “there is no
3 correlation between financial success and event attendance,” then they would not
4 have attended such events or incurred the expenses required to do so. *Id.* at ¶ 10.

5 Plaintiffs’ claims against the Florida Defendants (which are not before this
6 Court) center around the allegations that the Florida Defendants are “primarily
7 responsible for the marketing and promotion of the events.” *Id.* at ¶ 100. Plaintiffs
8 allege that STS events are “effectively owned by top distributors” and that tickets
9 for such events are purchased directly from the distributors who run those events or
10 their respective companies. *Id.* at ¶¶ 71-74. Plaintiffs also allege that Herbalife
11 often compensates distributors, including some of the Florida Defendants, to speak
12 at corporate events. *Id.* at ¶¶ at 78, 139.

13 **B. Procedural Background**

14 **1. The Claims Against Herbalife Were Transferred to This** 15 **Court.**

16 While the case was pending before Judge Cooke in the Southern District of
17 Florida, Herbalife and the Florida Defendants moved to compel arbitration of
18 Plaintiffs’ claims, and in the alternative, to transfer any remaining claims to this
19 Court. Dkt. 62, 63. On August 23, 2018, Judge Cooke ordered four of the original
20 eight Plaintiffs’ claims against Herbalife to arbitration pursuant to their
21 distributorship agreements with the company, transferring the remaining four
22 Plaintiffs’ claims against Herbalife to this Court based on a forum selection clause
23 entered into by those Plaintiffs. Dkt. 106. All eight Plaintiffs’ claims against the
24 Florida Defendants remain in the Southern District of Florida, and are stayed
25 pending an appeal of the denial of the Florida Defendants’ motion to compel
26 arbitration.

1 **2. Herbalife Moved to Dismiss Based on a Prior Class Action**
2 **Settlement Release.**

3 After Plaintiffs Patricia and Jeff Rodgers’s, Izaar Valdez’s, and Jennifer
4 Ribalta’s claims were transferred to this Court, Herbalife moved to dismiss the
5 claims of all but Ribalta on the basis that their claims are subject to the release
6 contained in a prior class action settlement approved by this court in *Bostick v.*
7 *Herbalife Int’l of America, Inc., et al.*, Case No. 2:13-cv-02488-BRO-RZ (C.D.
8 Cal.). Dkt. 142 at 5-12. The essence of the allegations in *Bostick* was that Herbalife
9 had misrepresented to distributors that if they “put in the time, effort, and
10 commitment,” they could successfully pursue the Herbalife business opportunity.
11 *Id.* at 5.

12 Plaintiffs opposed the motion by clarifying that their complaint is not “the
13 standard attack on [Herbalife’s] chain recruiting business.” Dkt. 151 at 1. Rather,
14 Plaintiffs assert that their complaint deals only with a purported “subordinate
15 conspiracy” concerning Herbalife events, which they contend is “separate and
16 distinct from Herbalife’s core business.” *Id.* at 1, 4. Thus, in this case, Plaintiffs
17 seek damages relating *only to their attendance at events.* *Id.* at 5:2-7; Declaration of
18 Gopi K. Panchapakesan (“Panchapakesan Decl.”), Exh. A (Excerpt from February
19 11, 2019 Hearing on Motion to Dismiss) (Plaintiffs’ counsel: “The damages the
20 Plaintiffs are seeking in this case are solely related to . . . event attendance.”). By
21 their own account, Plaintiffs are not seeking other categories of damages – such as
22 product purchase expenses or business losses from pursuit of the Herbalife business
23 model – now implicated by their current discovery requests. The Court has not yet
24 ruled on Herbalife’s Motion to Dismiss.

25 **C. The Parties’ Discovery Disputes**

26 Following the parties’ joint submission and two telephonic conferences with
27 the Court, the parties have narrowed their disputes to three of Plaintiffs’ Requests
28

1 for Production:¹

- 2 • Request No. 5: “All documents relating to any and all compensation
3 paid by [Herbalife] to any of the Florida Defendants for any reason,
4 including but not limited to loans made or credit extended.”
- 5 • Request No. 6: “All documents relating to any and all payments made
6 by any of the Florida Defendants to [Herbalife] for any reason.”
- 7 • Request No. 14: “All documents relating to any investigation or
8 enforcement actions taken by [Herbalife] against any Herbalife
9 distributor ranked Millionaire Team or above who has appeared on any
10 Event stage² during the relevant period.”³ Dkt. 178-1, Exh. 1
11 (Plaintiffs’ requests) at 11-12.⁴

12 The parties’ respective positions as to these requests are as follows:

13 Request No. 5 (Payments from Herbalife to the Florida Defendants)

14 Plaintiffs contend that they are entitled to documents regarding such
15 payments to determine “(1) whether such payments were in furtherance of the
16 conspiracy at issue; and (2) if Herbalife knowingly featured events speakers who
17 were improperly misrepresenting their level of success.” Dkt. 178 at 27. Plaintiffs
18

19 ¹ The parties continue to meet and confer regarding Request Nos. 25-30, which
20 concern correspondence between Herbalife and six of the Florida Defendants
21 regarding events.

22 ² Plaintiffs have superficially narrowed this request to read, “spoken on any Event
23 stage.” However, even with this change the request is overbroad, as it imposes on
24 Herbalife the burden of identifying all such speakers at all events.

25 ³ The “relevant period” is defined by Plaintiffs as January 1, 2009 through the
26 present. Dkt. 178-1 at 9. That time period is generally applicable to all of
27 Plaintiffs’ requests.

28 ⁴ When citing to the Appendix attached to the parties’ earlier joint submission, this
brief refers to the page number(s) assigned by CM/ECF. All other cites refer to the
page number found at the bottom of a given page.

1 proposed limiting their request to spreadsheets reflecting the commissions and
2 royalties paid by Herbalife to the Florida Defendants, including any commissions
3 and royalties paid to the Florida Defendants' downline members, from 2011 to
4 2016. Panchapakesan Decl. at ¶ 3.

5 Herbalife rejected Plaintiffs' proposal, because even as modified it still seeks
6 (1) information that is unrelated to Plaintiffs' claims against Herbalife concerning its
7 involvement in events and (2) private compensation information regarding the
8 Florida Defendants and their thousands of downline members. *Id.* at ¶ 4. The
9 Florida Defendants, through their counsel, have refused to consent to the disclosure
10 of this information. *Id.* at ¶ 5, Exh. B.

11 Herbalife already has produced material that is responsive to this request and
12 fully addresses Plaintiffs' alleged bases for the request, including (1) a spreadsheet
13 summarizing any fees it has paid to distributors (including the Florida Defendants)
14 to speak at events; (2) its policies regarding the payment of speaker fees; (3)
15 extensive correspondence regarding Herbalife's efforts to substantiate earnings
16 claims made by speakers at events; and (4) Herbalife's policies and guidelines
17 regarding the making of earnings claims at events. *Id.* at ¶ 6.

18 As a further compromise, Herbalife nevertheless offered to produce top-line
19 earnings information (*i.e.*, that of a given Florida Defendant, but not their downline
20 members) in connection with any alleged misrepresentations made by any of the
21 Florida Defendants at an event regarding their earnings, to the extent such an event
22 was attended by one of the Plaintiffs.⁵ *Id.* at ¶ 4. Rather than wholesale disclosure
23 of confidential financial information for all 44 third parties, Herbalife offered to
24 produce information where one of those individuals allegedly made a

25
26 ⁵ In other words, if Plaintiffs alleged that a Florida Defendant claimed at an event
27 that she earned \$15,000 pursuing the Herbalife business opportunity during a given
28 month, then Herbalife would be willing to produce a summary of that Florida
Defendant's earnings for that month.

1 misrepresentation to one of the Plaintiffs – *i.e.*, discovery where the information
2 would at least arguably be relevant to the claims in this case. Plaintiffs rejected this
3 proposal. *Id.*

4 Request No. 6 (Payments from the Florida Defendants to Herbalife)

5 During the course of the parties’ meet-and-confer discussions, Plaintiffs
6 combined Request No. 6 with Request No. 5, seeking the same commission and
7 royalty reports for the Florida Defendants as those discussed above. *Id.* at ¶ 7.
8 Herbalife’s position, and its offer to produce certain additional material, is the same
9 as that outlined above with respect to Request No. 5. However, Request No. 6 also
10 necessarily seeks all documents regarding any product purchases made by the
11 Florida Defendants. Because many of the Florida Defendants have been with the
12 company for decades, they likely have collectively made tens of thousands of
13 product purchases over the course of the past ten years. Domingo Decl. at ¶ 5.
14 Aside from being irrelevant to Plaintiffs’ current claims, as described more fully in
15 the Domingo Declaration, the company would incur a significant burden if it were
16 required to retrieve and produce such material. *Id.* at ¶ 6.

17 Request No. 14 (Documents regarding investigations / enforcement actions
18 undertaken against distributors ranked “Millionaire Team” or higher)

19 Herbalife already has produced any case files regarding any internal
20 investigations or enforcement actions undertaken against the Florida Defendants in
21 connection with their event activities. Panchapakesan Decl. at ¶ 8. Herbalife has
22 limited its production in this manner for two reasons: (1) Discovery that does not
23 directly concern events is not relevant to Plaintiffs’ claims; and (2) Herbalife does
24 not maintain a list of distributors ranked “Millionaire Team” or higher who have
25 spoken at events, nor is its database containing case files capable of being searched
26 in this way. Domingo Decl. at ¶ 7.

27 During the course of the parties’ recent meet-and-confer discussions,
28 Plaintiffs proposed limiting their request to the Florida Defendants (as opposed to all

1 Millionaire Team members), but continue to seek material regarding matters
 2 unrelated to events, including sales practices and income claims made outside of
 3 events. Panchapakesan Decl. at ¶ 9.

4 **III. ARGUMENT**

5 **A. Legal Standard**

6 On a motion to compel discovery, Plaintiffs bear the burden of
 7 “demonstrating that [they are] entitled to the requested discovery and [have]
 8 satisfied the proportionality and other requirements of Rule 26.” *Rodriguez v.*
 9 *Barrita, Inc.*, No. 09-04057 RS-PSG, 2011 WL 5854397, at *2 (N.D. Cal. Nov. 21,
 10 2011). The “threshold issue in discovery is relevance.” *Appel v. Bos. Nat’l Title*
 11 *Agency, LLC*, No. 18-CV-0873-BAS-MDD, 2019 WL 183504, at *2 (S.D. Cal. Jan.
 12 14, 2019) (denying motion to compel discovery regarding bank deposits made by
 13 third parties, despite the existence of a protective order). Moreover, at the pre-
 14 certification stage, although it is “appropriate to conduct controlled discovery into
 15 the ‘merits,’” such discovery must be “limited to those aspects relevant to making
 16 the certification decision on an informed basis.” Fed. R. Civ. Proc. 23 cmt.; *see also*
 17 Dkt. 159 at 2 (This Court stating in its Scheduling Order that “[t]he foregoing
 18 schedule may be modified in connection with discovery that is necessary if a motion
 19 for class certification is granted.”).

20 **B. Plaintiffs’ Motion Seeks Discovery That Is Neither Relevant nor** 21 **Proportional to the Needs of the Case.**

22 **1. Request No. 5 Impermissibly Seeks Compensation** 23 **Information Pertaining to the Florida Defendants.**

24 **a. The Request Seeks Irrelevant and Private Information.**

25 The amounts that the 44 Florida Defendants, true third parties, have earned
 26 pursuing the Herbalife business opportunity, are not relevant to Plaintiffs’ claims
 27 *against Herbalife*. In this case, discovery regarding the Florida Defendants is
 28 relevant only to the extent that it implicates an alleged conspiracy between Herbalife

1 and the Florida Defendants regarding the promotion of and the content presented at
2 events. Herbalife therefore produced nearly 14,000 pages of emails reflecting its
3 efforts to substantiate income claims made by distributors at events, as well as its
4 policies and guidelines regarding the making of such claims at events.
5 Panchapakesan Decl. at ¶ 6. Those documents fairly concern Herbalife’s role in any
6 income representations made at events; the Florida Defendants’ individual historical
7 earnings do not.

8 The privacy interests of the 44 Florida Defendants and their downline
9 members also militate against the discovery sought by Plaintiffs, interests that the
10 Florida Defendants have refused to waive (and cannot waive on behalf of their
11 downline members). *Id.*, Exh. B; *See Appel*, 2019 WL at *2; *Sherman v. CLP Res.,*
12 *Inc.*, 2015 WL 13543541, at *4 (C.D. Cal. July 17, 2015) (denying in part motion to
13 compel production of third party compensation information given privacy concerns,
14 despite the existence of a protective order).⁶

15 **b. The Request Is Not Proportional.**

16 Nor is Plaintiff’s request proportional to the needs of the case for several
17 reasons. First, the request is facially overbroad in that it seeks “all documents”
18 concerning compensation paid by Herbalife to the Florida Defendants “for any
19 reason.” Dkt. 178-1 at 11. Moreover, it would call for this broad range of
20 documents whether or not a particular Florida Defendant spoke at an event, made an
21 income claim at an event, or allegedly misrepresented his or her income at an event,
22 over a ten-year time period.

23 Second, to the extent Plaintiffs continue to seek such material dating back to
24

25 ⁶ These concerns are heightened given certain statements made by Jason Jones,
26 counsel of record for Plaintiffs, on his blog, “The Salty Droid.” *See*
27 <http://saltydroid.info/discovery-confidential/> (“These dumbdumb creep-stars are
28 giving me data, and videos, and emails, and yada yada yada ... holy mother of
dragons I’m actually getting the stuff!”).

1 January 2009, there is no justification for their position because the longest statute
2 of limitations applicable to their claims is RICO's four-year statute. *See Valley*
3 *Outdoor, Inc. v. Regency Outdoor Advert., Inc.*, No. CV-05-2901-RSWL(CTX),
4 2006 WL 8432058, at *2 (C.D. Cal. July 7, 2006) ("Plaintiff has failed to show how
5 information from more than five years ago is relevant to its current claims.") (citing
6 *Pincay v. Andrews*, 238 F.3d 1106, 1108 (9th Cir. 2001) ("The statute of limitations
7 for civil RICO actions is four years.")).

8 Third, to the extent Plaintiffs seek to verify whether a given earnings
9 representation made by a Florida Defendant at an event was accurate, Herbalife's
10 offer to produce material corresponding to such representations would allow
11 Plaintiffs to do just that. Panchapakesan Decl. at ¶ 4.

12 Fourth, Herbalife's prior production of email correspondence regarding
13 Herbalife's efforts to vet income claims made at events is sufficient to allow
14 Plaintiffs to attempt to substantiate their class allegations regarding the purported
15 conspiracy between Herbalife and the Florida Defendants. *See Frieri v. Sysco*
16 *Corp.*, No. 316CV01432JLSNLS, 2017 WL 2908777, at *8 (S.D. Cal. July 7, 2017)
17 (rejecting request seeking "[a]ll wage records, pay-stubs, and/or paychecks
18 concerning the putative class members" because the requests seeks "merits
19 discovery disproportionate to the needs of the case at the class certification stage.");
20 Fed. R. Civ. Proc. 26(b)(1).⁷

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25 ⁷ Although Plaintiffs did not raise this issue during the meet-and-confer process, to
26 the extent they continue to seek documents regarding any "loans made or credit
27 extended" by Herbalife to the Florida Defendants, that request should be rejected.
28 Plaintiffs have never offered any support for this request, nor does the Complaint
allege that Herbalife ever engaged in such conduct (let alone in a way that relates to
Herbalife's role in events).

1 **2. Request No. 6 Impermissibly Seeks Documents Regarding**
2 **the Florida Defendants’ Product Purchases.**

3 **a. The Request Seeks Irrelevant Information.**

4 In seeking, “all documents relating to any and all payments made by any of
5 the Florida Defendants to [Herbalife] for any reason,” Plaintiffs effectively are
6 seeking all documents regarding any Herbalife product purchases made by the
7 Florida Defendants. Such broad discovery bears no relation to the claims in this
8 case.

9 Plaintiffs purported basis for this Request, that they believe the Florida
10 Defendants engaged in certain “banned practices” and “marketing plan
11 manipulation” to achieve success, falls flat. Dkt. 178 at 30. Plaintiffs have never
12 explained (nor can they explain) why indiscriminately seeking documents regarding
13 any product purchases made by the Florida Defendants would allow them to
14 investigate their allegation. Indeed, the Complaint’s allegations in this respect
15 concern only purported misrepresentations made by the Florida Defendants, not any
16 misrepresentations attributable to Herbalife. Dkt. 1 at ¶ 33. Rather, the Complaint
17 asserts that Herbalife has banned these alleged practices. *Id.* at ¶¶ 32-33.

18 **b. The Request Is Not Proportional.**

19 Plaintiffs cannot justify the proportionality of the discovery they seek. As
20 with Request No. 5, Request No. 6 is facially overbroad in that it (1) seeks “all
21 documents” relating to “any and all payments” made by the Florida Defendants to
22 Herbalife “for any reason”; and (2) seeks such material dating back to January 2009,
23 although the longest statute of limitations applicable to their claims is RICO’s four-
24 year statute. Dkt. 178-1 at 9, 11; *see Valley Outdoor*, 2006 WL at *2 (citing *Pincay*,
25 238 F.3d at 1108).

26 Additionally, to the extent Herbalife were required to produce such
27 information, it would incur the significant burden of retrieving and reviewing
28 documents and emails in connection with what are likely to be tens of thousands of

1 product purchases made by the Florida Defendants. Domingo Decl. at ¶ 5-6.

2 Herbalife's production of nearly 14,000 pages of emails reflecting its efforts
3 to substantiate income claims made by distributors at events, as well as its policies
4 and guidelines regarding such claims, sufficiently addresses Herbalife's role in any
5 such representations made by the Florida Defendants at the pre-certification stage.
6 Panchapakesan Decl. at ¶ 6; *see Frieri*, 2017 WL at *8; Fed. R. Civ. Proc. 26(b)(1).

7 **3. Request No. 14 Improperly Seeks Documents That Are**
8 **Unrelated to Events.**

9 **a. The Request Seeks Irrelevant Information.**

10 Request No. 14, which seeks documents relating to Herbalife's investigations
11 or enforcement actions undertaken against certain distributors, far exceeds the scope
12 of relevant discovery. Any investigations or enforcement actions that Herbalife has
13 undertaken that do *not* concern representations made at or in connection with events
14 are irrelevant. Plaintiffs accordingly cannot justify their request for discovery
15 regarding investigations into the general activities of the Florida Defendants, like
16 sales practices or income claims they made outside of events. *Id.* at ¶ 9.

17 **b. The Request Is Not Proportional.**

18 Plaintiffs' request also fails to satisfy the proportionality standard for several
19 reasons. First, Herbalife does not maintain a list of distributors ranked "Millionaire
20 Team" or higher who have spoken at events, nor is its database containing case files
21 capable of being searched in this way. Domingo Decl. at ¶ 7.

22 Second, Plaintiffs continue to seek such material dating back to January 2009,
23 even though the longest statute of limitations applicable to their claims is RICO's
24 four-year statute. *See Valley Outdoor*, 2006 WL at *2 (citing *Pincay*, 238 F.3d at
25 1108).

26 Third, Herbalife already has produced any case files it has opened in
27 connection with any investigations or enforcement actions taken against the Florida
28 Defendants regarding their event activities. Panchapakesan Decl. at ¶ 8. These

1 documents should be more than sufficient to allow Plaintiffs to attempt to
2 substantiate their class allegations regarding the alleged conspiracy between
3 Herbalife and the Florida Defendants. *See Frieri*, 2017 WL at *8; Fed. R. Civ. Proc.
4 26(b)(1).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Herbalife respectfully urges the Court to deny
7 Plaintiffs' Motion to Compel.

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9 DATED: September 18, 2019

Respectfully submitted,

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11 Paul S. Chan
12 Gopi K. Panchapakesan
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18 Nutrition Ltd. (fka Herbalife Ltd.),
19 Herbalife International, Inc., and Herbalife
20 International of America, Inc.
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