

In the Matter Of:

JEFF RODGERS vs HERBALIFE LTD

1:17-cv-23429-MGC

ROXANE ROMANS

January 24, 2018



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

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

vs.

HERBALIFE LTD, et al.,
Defendants.

DEPOSITION OF ROXANE ROMANS

January 24, 2018

12:00 p.m.

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Los Angeles, California

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1 INDEX OF EXAMINATION

2 WITNESS: Roxane Romans

3 EXAMINATION PAGE

4 By Mr. Mark 6

5

6 INDEX OF EXHIBITS

7 EXHIBIT DESCRIPTION PAGE

8 3 DECLARATION OF ROXANE ROMANS
9 IN SUPPORT OF DEFENDANTS' JOINT
MOTION TO COMPEL ARBITRATION 19

10 4 SUPPLEMENTAL DECLARATION OF
11 ROXANE ROMANS IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
12 COMPEL ARBITRATION 20

13 5 FELIX VALDEZ' MEMBERSHIP APPLICATION 23

14 6 IZAAR VALDEZ' DISTRIBUTOR APPLICATION 24

15 7 PATRICIA RODGER'S DISTRIBUTOR
APPLICATION 25

16 8 JENNIFER LOKEN'S DISTRIBUTOR
APPLICATION 26

17 9 IZAAR VALDEZ' DISTRIBUTOR APPLICATION 27

18 10 CODY PYLE'S DISTRIBUTOR APPLICATION 27

19 11 JENNIFER LAVIGNE'S DISTRIBUTOR
20 APPLICATION 28

21 12 2/13/14 HERBALIFE ANNOUNCEMENT 81

22 13 SUMMARY OF UPDATES 83

23 14 BOOK 4, WHICH INCLUDES THE RULES
24 OF CONDUCT, SALES AND MARKETING PLAN,
SAMPLE FORMS, ORDERING PROCEDURES,
25 ENFORCEMENT PROCEDURES 99

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
15	BOOK 4, VERSION 40, REVISED DATE 09/13	105
16	ONLINE ANNOUNCEMENT	110
17	7/21/14 ANNOUNCEMENT	110
18	BOOK 4, VERSION 31	116
19	PRINTOUT OF MYHERBALIFE.COM HOME PAGE	123
20	TERMS OF USE LOCATED IN MYHERBALIFE.COM WEBSITE	126
21	11/2016 VERSION 33, BOOK 4	139

(Original Exhibits 3 - 21 are attached
hereto.)

INSTRUCTED NOT TO ANSWER

PAGE	LINE
61	10
122	24

DEPOSITION OF ROXANE ROMANS

JANUARY 24, 2018

ROXANE ROMANS,

having been first duly sworn, testifies as follows:

EXAMINATION

BY MR. MARK:

Q Good afternoon, Ms. Romans.

A Good afternoon.

Q My name is Etan Mark. I represent the plaintiffs in this case. I am going to be asking you some questions today; okay?

A Okay.

Q Have you been deposed before?

A Yes.

Q Okay. How many times, approximately?

A Three.

Q When was the last time you were deposed?

A To the best of my recollection, maybe about three, four years ago.

Q Okay. Do you want me to run through the ground rules for today?

MR. MARK: Mr. Dooks, you want me to run through the grounds rules?

1 MR. DROOKS: Up to you.

2 MR. MARK: Okay.

3 Q There is somebody transcribing everything
4 that we say today. So I would ask that you please
5 provide verbal responses. A shake of the head, a nod
6 is not going to be recorded.

7 A Yes.

8 Q To the extent I ask a question that you
9 don't understand, please ask me to rephrase it, and I
10 will be happy to do that.

11 A Thank you.

12 Q If you answer a question, I am going to
13 assume that you understand it; okay?

14 A Okay.

15 Q If at any point you want to take a break,
16 feel free to ask and I will be happy to accommodate
17 you.

18 I would ask that if there is a question
19 pending, you answer the question. Then you could take
20 a break. Okay?

21 A Thank you.

22 Q Sure.

23 What is your home address, please?

24 A 4500 Via, V-I-A, Marina, No. 203, in
25 Marina Del Rey, California 90292.

1 Q And your work address?

2 A My work address -- sorry, I don't recall.

3 We moved recently.

4 Q Okay.

5 A Our building, it is in Torrance.

6 Q It's in Torrance?

7 A Yes, on 190th.

8 Q Do you work in the same building as

9 Ms. Ramirez?

10 A Yes -- no. Sorry, no.

11 Q No.

12 Okay. Are you under any medication that
13 would impact your ability to testify truthfully or
14 completely today?

15 A No.

16 Q What did you do to prepare for today's
17 deposition?

18 And I don't want to hear about any
19 conversations you have had with your attorneys, other
20 than that.

21 A Reviewed my declarations.

22 Q Okay. Did you review the exhibits that were
23 attached to the declaration, as well?

24 A Yes.

25 Q What is your title at Herbalife?

1 A The senior director of Member Policy
2 Administration.

3 Q And that's for which company?

4 A Herbalife International of America, Inc.

5 Q What are your responsibilities as a senior
6 director of Member Policy Administration?

7 A My current responsibilities are developing
8 strategies that relate to our member policies and
9 member materials and departmental operations.

10 Q Did you say departmental --

11 A Operations.

12 Q -- operations?

13 So what does that mean, developing strategy
14 relating to member policies and member materials?

15 What -- on a day-to-day basis, what does
16 that mean?

17 A So, basically, coming up with ideas on how
18 to improve either our materials that include
19 distributor policies or the policies themselves or the
20 way we do the work in our department.

21 Q And what is your department?

22 A Member Policy Administration.

23 Q How many employees are in that department?

24 A It's a worldwide department, but in the
25 U.S., we have seven employees, including myself.

1 Q Are you the head of the department in the
2 U.S.?

3 A Yes.

4 Q Who do you report to?

5 A Pamela Jones Harbor.

6 Q Harbor?

7 A H-A-R-B-O-R.

8 Q And what is her title?

9 A She is the senior vice president, legal
10 officer of privacy and worldwide compliance.

11 Q Are you an attorney?

12 A No.

13 Q Do you hold any graduate degrees?

14 A No.

15 Q Are you generally familiar with the member
16 policies and member materials?

17 A Yes.

18 Q Okay. And what falls into that description,
19 member policies and member materials? What documents
20 are we talking about?

21 A So numerous documents: Our rule book, our
22 member application and other agreements and materials
23 that we post online, advisories.

24 Q Post online on myherbalife.com?

25 A Correct.

1 Q When you said "the rule book," is that the
2 same as the Rules of Conduct?

3 A Yes.

4 Q And the "member application," is that the
5 same thing as the Application for International
6 Distributorship?

7 A Correct.

8 Q If I use those phrases interchangeably
9 today, you understand what I mean?

10 A Yes.

11 Q I might say, "rule book." I say might say,
12 "Rules of Conduct." I mean the same thing when I --

13 A Yes.

14 Q Okay. I will try to use your vernacular,
15 though.

16 Are you responsible for updating these
17 documents?

18 A Yes.

19 Q And what is the process, usually, for
20 updating these documents?

21 A My department becomes aware that there is a
22 need to either update a current rule or add an
23 additional rule, and we facilitate that happening.

24 Q How does your department become aware of the
25 need to update the rules?

1 A Generally, from our other business partners
2 within the company.

3 Q "Other business partners," meaning other
4 employees of Herbalife or --

5 A Yes, perhaps, from the legal department or
6 other departments within Herbalife.

7 Q Okay. Okay. How many times has Herbalife
8 amended the member application?

9 A Numerous times.

10 Q Well, are you aware of what version of the
11 member application is currently in effect?

12 A To the best of my recollection, it is
13 Version 48.

14 Q And does that mean Herbalife's amended it 48
15 times?

16 MR. DROOKS: Um-hmm.

17 BY MR. MARK:

18 Q You can answer.

19 A No.

20 Q So -- so just -- I did not mention this in
21 the ground rules. I apologize. There is going to be
22 sometimes where your counsel is going to be objecting
23 to my questions because they are, for whatever reason,
24 not good questions.

25 Unless he instructs you not to answer, I

1 would ask that you answer the question. Okay?

2 A Okay.

3 Q So -- so you said that, no, Version 48 does
4 not mean that it was amended 48 times.

5 Can you explain that?

6 A Sure.

7 The -- the versioning of our materials
8 occurs between the printer and our Creative Services
9 Department. So there are times where maybe they have
10 skipped a numbering versioning. Sometimes that
11 happens to a line -- our Spanish version of an
12 application and our English version of an application
13 or sometimes -- I don't know exactly the reason; but
14 something happens between the printing company and our
15 Creative Services Department.

16 So just because it is Version 48, doesn't
17 necessarily reflect that it has been changed 48 times.

18 Q Okay.

19 A I wouldn't know without studying how many
20 times.

21 Q And the same thing, same question for the
22 Rules of Conduct, do you know what version,
23 approximately, you were on on the Rules of Conduct?

24 A Today, I believe it is Version 34D.

25 Q Okay. Do you know how many times the Rules

1 of Conduct have been amended?

2 A No. Numerous times.

3 Q More than 30?

4 A I wouldn't know without studying that.

5 Q So -- so -- well, let's take a step back.

6 We are currently on Version 48 of the
7 application; right?

8 A Yes.

9 Q Are we on Version 48 of the Spanish
10 application, as well?

11 A They should align. I believe that they do
12 at this time.

13 Q Okay. And Version 34D of the Rules of
14 Conduct, is it also up to Version 34D of the Spanish
15 versions of the Rules of Conduct?

16 A I believe so at this time.

17 Q And are those rules identical, say, for the
18 language? In other words, the translation?

19 A Yes.

20 Q So you don't know how many times the
21 application has been amended?

22 A Correct.

23 Q Do you know approximately how many times it
24 has been amended?

25 A No.

1 Q And Rules of Conduct, you don't know how
2 many times that has been amended?

3 A No.

4 Q Do you know approximately how many times it
5 has been amended?

6 A No.

7 Q There is varying terminology that I have
8 seen in the Rules of Conduct and the application,
9 distributor, member and customer?

10 A Yes.

11 Q Do you know what each of those terms means
12 in the context of those documents?

13 A Yes.

14 Q Can you tell me?

15 A Sure.

16 So our distributor relates to an individual
17 who entered into an application in order to do the
18 business, which means purchase the products either for
19 their personal use or for resale, and to recruit
20 others to do the same.

21 Q Okay.

22 A A member is an individual who entered into a
23 contract simply to obtain a discount on our products
24 for personal use. They do not do the business.

25 Q Okay.

1 A And a customer relates to an individual that
2 is purchasing a product from a distributor.

3 Q Okay. And that's currently the way those
4 words are used; right?

5 A Correct.

6 Q Is that a fairly recent change?

7 MR. DROOKS: Lacks foundation.

8 BY MR. MARK:

9 Q Do you know? In other words --

10 MR. DROOKS: It still lacks foundation.

11 BY MR. MARK:

12 Q Okay. You can answer.

13 A Can I ask you to rephrase the question?

14 Q Sure. Yeah, that's fine.

15 This difference between distributor and
16 member that you just outlined, has it always been that
17 way at Herbalife?

18 A Yes.

19 Q Did it used to mean the same thing,
20 distributor/member?

21 A No, it has never meant the same thing.

22 Q Okay.

23 A But it wasn't -- it wasn't defined that way
24 in our materials.

25 Q It used to be defined a different way in

1 your materials?

2 A We used to simply use the term

3 "distributor."

4 Q I see. So the term "member" is a new term
5 for Herbalife?

6 A Yes.

7 Q Okay. And distributor, what a distributor
8 means in the old way that Herbalife used it?

9 A Distributor was a person that entered into
10 an agreement --

11 Q Regardless of --

12 A -- with Herbalife.

13 Q Regardless of whether the product was solely
14 for personal consumption or to pursue a business
15 opportunity?

16 A Correct.

17 Q And at a certain point, there was a decision
18 to create these two different categories?

19 A Correct.

20 Q Do you know when that was done?

21 A To the best of my recollection, it was in
22 2013 or '14.

23 Q Okay. So not all -- not all members are
24 distributors today?

25 A Correct.

1 Q But all distributors are members?

2 A All distributors are members -- can you say
3 that again?

4 Q Sure.

5 Distributors can both pursue the business
6 opportunity and also purchase the product for personal
7 consumption; right?

8 A Correct.

9 Q It can be both?

10 Whereas members only are obtaining it to --
11 are only purchasing the product to obtain the discount
12 for personal consumption?

13 A Correct.

14 Q Okay. And what is the approximate split
15 today of Herbalife distributors versus members?

16 A I am not aware of that figure.

17 Q Are there more distributors or more members?

18 A I would be speculating. I don't know.

19 Q Okay. I don't want you to speculate.

20 The Rules of Conduct, do those apply to both
21 distributors and members?

22 A The Rules of Conduct apply to distributors.
23 Members don't do the business.

24 Q So the Rules of Conduct do not apply to
25 members?

1 A Not the Rules of Conduct, no.

2 MR. MARK: Okay. I am going to hand you a
3 document that we will mark as Exhibit 3.

4 (Exhibit 3 marked.)

5 THE WITNESS: Can I grab my glasses?

6 MR. MARK: Of course.

7 Q Okay. Have you seen this document before?

8 A Yes, I have.

9 Q Can you identify it for me, please?

10 A This is my declaration.

11 Q You signed it?

12 A Yes, I did.

13 Q And you agree with the statements contained
14 therein?

15 A Yes, I do.

16 Q You didn't write this declaration; did you?

17 A No, I didn't.

18 Q Did you make any changes to the declaration
19 once you received it?

20 A Yes, I did.

21 Q What were the changes that you made?

22 A I don't specifically recall what the changes
23 were, but if there was anything that I verified
24 that -- if there was a discrepancy, then I made that
25 change.

1 Q Okay. Now, there came a certain point in
2 which you signed a supplemental declaration; correct?

3 A Yes.

4 Q Okay. And why did you do that?

5 A I believe it was for clarification purposes
6 about the printing of one of our rule books.

7 MR. MARK: I will hand you a document that
8 we will mark as Exhibit 4.

9 THE WITNESS: Thank you.

10 BY MR. MARK:

11 Q Can you identify that document for me,
12 please?

13 (Exhibit 4 marked.)

14 THE WITNESS: Yes, this is the supplemental
15 declaration that I signed.

16 BY MR. MARK:

17 Q So the reason you signed the supplemental
18 declaration is because the wrong version of the rules
19 was attached to the first declaration with respect to
20 Exhibit C?

21 A I believe that was the case.

22 Q Okay. But other than that, everything in
23 your first declaration marked as Exhibit 3 is correct?

24 A Yes, correct.

25 Q These applications or distributor agreements

1 that we are talking about, how are those maintained by
2 Herbalife?

3 A Those are maintained online.

4 Q Are there hard copies kept of any of the
5 distributor applications?

6 A I believe with regard to paper applications,
7 there are paper records, and to the best of my
8 knowledge, the online applications are maintained, you
9 know, online.

10 Q Is there a system at Herbalife that
11 maintains those applications?

12 A Yes.

13 Q What is it called?

14 A I -- I can't respond to that because
15 technology may have advanced since -- since I knew
16 what we used to use.

17 Q Well, I am asking today.

18 A I wouldn't know the name of the system
19 today.

20 Q So do you know today how online applications
21 are maintained at Herbalife?

22 A They are maintained online.

23 Q But you don't know how -- you don't know how
24 they get there or who is responsible for maintaining
25 them?

1 A I know that the records department scans
2 paper applications and uploads them into a system, an
3 online system. I don't know the name of that system.

4 Q And what about the -- what about the
5 applications that are completed online, how are those
6 maintained at Herbalife?

7 A Those are, to my knowledge, maintained
8 online.

9 Q How do you know that?

10 A Because we have access to those applications
11 online.

12 Q But you don't know the name of the system
13 you have to access to get the applications?

14 A Correct.

15 Q Do you, in the regular course of your
16 business, access the applications online?

17 A No.

18 Q When was the last time you went online to
19 access an application?

20 A Years.

21 MR. MARK: Okay. Well, I am going to hand
22 you a series of documents that we will mark as
23 Exhibits, I guess, 5 through 11, maybe.

24 So the first one I am going to hand you is
25 attached as Exhibit M to your declaration.

1 (Exhibit 5 marked.)

2 BY MR. MARK:

3 Q Have you seen this document before?

4 A Yes, I have.

5 Q Okay. So this document has been marked as
6 Exhibit 5. Can you identify, please, what that
7 document is?

8 A Yes, this is a membership application for
9 Felix Valdez.

10 Q What is the date of that application?

11 A The date the member signed the application?

12 Q Yes.

13 A Is June 14th of 2008.

14 MR. MARK: Hand you a document that we will
15 mark as Exhibit 6 -- well, before I move on to that,
16 I'm sorry.

17 Q Exhibit 5, you will agree with me, that is
18 the same document that was attached as Exhibit M to
19 your declaration?

20 A Exhibit M being the English translation
21 of --

22 Q So look at your declaration, which is --

23 A Oh, I see it. It is here, sorry.

24 MR. DROOKS: You don't have the exhibits
25 attached to the declaration; do you?

1 MR. MARK: Well, I want her to confirm that
2 that is the document.

3 MR. DROOKS: Well, then you need to give her
4 the declaration with the exhibits, so she could match
5 them up to make sure that they have not been changed.

6 MR. MARK: Okay.

7 MR. DROOKS: If you are representing that
8 you --

9 MR. MARK: I am.

10 MR. DROOKS: -- are offering it to her, I
11 have no reason to dispute it.

12 MR. MARK: That's fine.

13 Q So look at not the supplemental declaration,
14 the original, the other declaration, okay, and if you
15 look at paragraph 16.

16 So I am representing to you that Exhibit 5
17 is Exhibit M to your declaration.

18 A That's correct.

19 Q Okay.

20 MR. MARK: I am going to hand you Exhibit 6.

21 THE WITNESS: Thank you.

22 (Exhibit 6 marked.)

23 BY MR. MARK:

24 Q Can you identify, please, what Exhibit 6 is?

25 A This is a distributor application from Izaar

1 Valdez.

2 Q What is the date of that, please?

3 A The date signed was June 14th, 2008.

4 Q Okay. And if you look at paragraph 17 of
5 your declaration, and I am going to represent to you
6 that the document marked as Exhibit 6 was Exhibit N to
7 your declaration. Okay?

8 A Yes, that's correct.

9 MR. MARK: Hand you a document that we will
10 mark --

11 MR. DROOKS: If you represent to us that you
12 have taken an exhibit with a letter on it from
13 Ms. Romans' declaration and you're now marking it with
14 a number, we are not going to dispute that.

15 MR. MARK: Okay.

16 MR. DROOKS: You don't need to have her
17 physically compare them.

18 MR. MARK: Okay. But I am going to be
19 marking each of the applications, so --

20 MR. DROOKS: That's fine.

21 MR. MARK: -- as separate exhibits.

22 THE REPORTER: That's 7.

23 (Exhibit 7 marked.)

24 BY MR. MARK:

25 Q Okay. Have you seen that document before?

1 A Yes.

2 Q What is it?

3 A It's a distributor application submitted by
4 Patricia Rodgers.

5 Q What is the date of that application,
6 please?

7 A June 23rd, 2010.

8 Q I am going to represent to you that that is
9 attached as Exhibit I to your declaration. Okay?

10 A Okay.

11 MR. MARK: Handing you what has been marked
12 as Exhibit 8.

13 (Exhibit 8 marked.)

14 THE WITNESS: Thank you.

15 BY MR. MARK:

16 Q Have you seen that document before?

17 A Yes, I have.

18 Q Can you identify it, please?

19 A A distributor application submitted by
20 Jennifer Loken.

21 Q And what is the date of that document?

22 A February 14th, 2011.

23 Q I am going to represent to you that that was
24 attached as Exhibit K to your declaration. Okay?

25 A Okay.

1 THE REPORTER: That is 9.

2 MR. MARK: Exhibit 9. Handing you what has
3 been marked as Exhibit 9.

4 Q Can you identify that for me, please?
5 (Exhibit 9 marked.)

6 THE WITNESS: A distributor application
7 submitted by Izaar Valdez.

8 BY MR. MARK:

9 Q What is the date of that, please?

10 A March 22nd, 2013.

11 Q Do you recognize that document?

12 A Yes.

13 Q And I will represent to you that was
14 attached as Exhibit 0 to your declaration. Okay?

15 A Thank you.

16 MR. MARK: Handing you what we will mark as
17 Exhibit 10.

18 (Exhibit 10 marked.)

19 BY MR. MARK:

20 Q Can you identify that document, please?

21 A A distributorship application submitted by
22 Cody Pyle.

23 Q What is the date of that, please?

24 A 7/7/2014.

25 Q And have you seen that document before?

1 A Yes, I have.

2 Q And I will represent to you that was
3 attached as Exhibit L to your declaration.

4 A Thank you.

5 MR. MARK: Last, but not least, Exhibit 11.
6 (Exhibit 11 marked.)

7 BY MR. MARK:

8 Q Have you seen that document before?

9 A Yes, I have.

10 Q What is it?

11 A A distributorship application submitted by
12 Jennifer Lavigne.

13 Q Have you seen that document before?

14 A Yes, I have.

15 Q What is the date of it, please?

16 A December 2nd, 2014.

17 Q Okay. I will represent to you that was
18 attached as Exhibit J to your declaration. Okay?

19 A Thank you.

20 Q So when we were talking about how were these
21 documents maintained by Herbalife, you stated that
22 some are maintained in hard copy and some are
23 maintained electronically; is that correct?

24 MR. DROOKS: Mischaracterizes the testimony.

25

1 BY MR. MARK:

2 Q You can answer.

3 A I think what I stated was paper applications
4 are scanned into our online system, and online
5 applications are, obviously, directly input into the
6 system.

7 Q Are original paper applications maintained
8 at Herbalife, as well?

9 A Yes.

10 Q Okay. So the paper applications are
11 maintained in both the hard copy form and electronic
12 form?

13 A Yes.

14 Q And then the online applications are only
15 maintained in their electronic form?

16 A To my knowledge.

17 Q Okay. So let's start by looking at the
18 declarations of -- I'm sorry, the application of Izaar
19 Valdez.

20 MR. DROOKS: Which one?

21 MR. MARK: Exhibit 6.

22 Q This is not an electronic application;
23 correct?

24 A Correct.

25 Q Is this a -- this is a one-page,

1 double-sided form as maintain -- the original form, is
2 it a one-page double-sided piece of paper?

3 A I believe it was.

4 Q Okay. And the only place for signature on
5 this document that has been marked as Exhibit 6 is on
6 the first page; right?

7 A That's correct.

8 Q And this document, if you look at
9 paragraph 4 -- do you speak Spanish?

10 A A little bit.

11 Q Okay. Me, too, just a little, though.

12 If you look at paragraph 4 of this document
13 marked as Exhibit 6, there is a provision requiring
14 the parties to mediate if there is any dispute and
15 then arbitrate.

16 Do you see that?

17 A Yes, I do.

18 Q Okay. Now, at a certain point in time,
19 Herbalife removed the arbitration provision; is that
20 correct?

21 A Yes, that's correct.

22 Q Do you know when that occurred?

23 A No, I don't recall.

24 Q All right. And what version is this
25 document?

1 MR. DROOKS: "This document" being
2 Exhibit 6?

3 MR. MARK: Yes. I am talking about
4 Exhibit 6 right now.

5 THE WITNESS: The version date on this
6 document is No. 31.

7 BY MR. MARK:

8 Q So this is Version 31?

9 A Spanish.

10 Q In Spanish.

11 And what is the -- and if you turn two
12 pages, you will see that there is the English version
13 of this document; is that right?

14 A Yes, that's correct.

15 Q And this is the Version 29 of the English
16 version; is that right?

17 A Yes, that's correct.

18 Q And the Spanish version, the revision says
19 it is effective January, 2008; is that correct?

20 A Can you repeat the question?

21 Q Sure.

22 The revision date is January, 2008; is that
23 correct?

24 A Are you asking about the -- which document
25 are you asking?

1 Q So I am looking in Exhibit 6.

2 A Uh-huh.

3 Q And you will see there is a footer on
4 Exhibit 6 that says, "Form 4011-USSP-31 Rev 01/08."

5 Did I read that correctly? It's small.

6 A Yeah, it is small.

7 MR. DROOKS: I see the witness is having
8 trouble reading it.

9 Do you mind if she hands it to me and I will
10 read it and stipulate if you have read it accurately?

11 MR. MARK: That's fine.

12 MR. DROOKS: I am reading it and we will
13 stipulate that the first page of Exhibit 6 reads,
14 Form 4011-USSP-31, space, Rev, space, 01/0 -- and I
15 believe that is an 8. It could be a 6, but I think it
16 is an 8.

17 MR. MARK: Okay. So we are saying the same
18 thing, then. Okay?

19 MR. DROOKS: Yeah. And looking, by the way,
20 at Exhibit N to the witness' declaration, which is a
21 clearer copy, it is clearly an 8.

22 MR. MARK: Well, you are looking at the
23 English version. That is why.

24 MR. DROOKS: That's true.

25

1 BY MR. MARK:

2 Q Okay. So does this mean that the last
3 revision -- that this document was revised in January
4 of 2008; is that what that footer means?

5 A Correct.

6 Q Okay. So at a certain point after January,
7 2008, Herbalife removed this arbitration provision;
8 correct?

9 A I don't recall when it was removed.

10 Q Well, it was certainly after January, 2008,
11 though; right? Because this document was signed in
12 June of 2008, and it was last revised in January of
13 2008.

14 A Yes, correct.

15 Q Okay.

16 A Um-hmm.

17 Q Do you know why Herbalife removed the
18 arbitration provision in this document?

19 A No.

20 Q But you would agree with me that there was a
21 certain point in time -- and we will look at those
22 applications soon -- in which Herbalife removed the
23 arbitration provision; correct?

24 A Yes.

25 Q Do you see there is a stamp on this page?

1 It is hard to see, but it is across -- it is
2 sort of a vertical line under where it says, Acuerdo
3 de distribucion.

4 Do you see that?

5 A Yes.

6 Q What is that?

7 MR. CATLETT: Foundation.

8 BY MR. MARK:

9 Q You can answer.

10 A To the best of my knowledge, it would be the
11 stamp imposed by the records department when they
12 physically received this application.

13 Q Okay. So -- and that is why I am interested
14 in the process a little bit.

15 So this hard copy is filled out by
16 Ms. Valdez and it is sent into Herbalife. Herbalife
17 receives it, stamps it, and puts it in a hard file; is
18 that right?

19 A I am not an expert in that area.

20 Q Do you know how that is done or no?

21 A To the best of my knowledge, it is as you
22 described. The application is submitted and stamped
23 by the records department and scanned into the online
24 system; and the paper copy is filed.

25 Q And it is your understanding that was the

1 process in 2008, as well?

2 A Yes.

3 Q Now, if you look at Exhibit 5, which is
4 Felix Valdez's application.

5 A Yes.

6 Q The form is identical; correct?

7 Actually, it's not. This is a different
8 application; correct?

9 A Yes, correct. It is a different version of
10 the application.

11 Q And what version is this?

12 A This one is the Spanish version with the
13 number 28, revision date March of '06.

14 Q Okay. Now, are you aware of what the
15 difference is between these two versions?

16 A No, I am not.

17 Q Okay. And which application is
18 Mr. Valdez -- Felix Valdez, Exhibit 5, which
19 application is Mr. Valdez bound to?

20 MR. DROOKS: Calls for a legal conclusion.

21 BY MR. MARK:

22 Q You can answer.

23 MR. DROOKS: And by "which," do you mean
24 Exhibit M or N?

25 MR. MARK: Yeah.

1 Q I am asking, in other words, he signed this
2 in June of -- the same day as Izaar Valdez; right?

3 They appear to be signed the same day;
4 correct?

5 A Correct.

6 Q Okay. And there are two different versions
7 of the application; correct?

8 A Correct.

9 Q And Version 31 was in place after
10 Version 28; correct?

11 A Correct.

12 Q Do you know which version of the
13 application, Exhibit 5 or Exhibit 6, Mr. Valdez is
14 bound to?

15 MR. DROOKS: Calls for a legal conclusion.

16 BY MR. MARK:

17 Q You can answer.

18 MR. CATLETT: Join.

19 THE WITNESS: Both Mr. Valdezs are --

20 BY MR. MARK:

21 Q Okay. Well, Izaar is a female, but --

22 A Oh, I didn't know.

23 Q That's okay. Yeah.

24 A By virtue of signing these applications,
25 they are bound by all of our rules. There is a clause

1 in the application --

2 Q Um-hmm.

3 A -- that dictates that.

4 Q Okay. So does that mean that they are
5 always bound by the latest version of the application?

6 A They are bound by the most current version
7 of our rules.

8 Q And what about the application, are they
9 bound by the most current version of the application,
10 as well?

11 MR. DROOKS: Calls for a legal conclusion.

12 THE WITNESS: I think I would have to be a
13 lawyer to answer that.

14 BY MR. MARK:

15 Q Well, you have testified that they are bound
16 by the most current version of the rules; correct?

17 A Because we have a clause in the application
18 that states that.

19 Q Where does it say that?

20 A So clause No. 1:

21 "I apply to become an independent
22 distributor of Herbalife products
23 on the terms and conditions set
24 forth below and on the back of this
25 form, as well as the documents

1 which are expressly incorporated
2 into this agreement of
3 distributorship."

4 Q Okay. And which documents are "expressly
5 incorporated into this agreement of distributorship"?

6 MR. DROOKS: Calls for a legal conclusion.

7 BY MR. MARK:

8 Q You can answer.

9 A Can you -- can you repeat the question?

10 Q Sure.

11 Which documents are "expressly incorporated
12 into this agreement of distributorship"?

13 A So those documents are identified in clause
14 No. 5.

15 Q Okay.

16 A Which explicitly states:

17 "The Herbalife International
18 business pack contains, among other
19 things, the Rules of Conduct and
20 distributor policies, the sales and
21 marketing plan, ordering procedures
22 and sample forms. Those documents
23 and such other rules and policies
24 as Herbalife has published or in
25 the future may publish, together

1 with such modifications and
2 amendments as Herbalife shall make
3 from time to time in its sole and
4 absolute discretion collectively
5 the rules are each hereby
6 incorporated into this agreement of
7 distributorship, each in its then
8 most recently published form."

9 Q Okay. So that's the basis for your
10 testimony that the individuals who -- that sign these
11 applications are subject to the Rules of Conduct that
12 are in effect at the time?

13 MR. DROOKS: Lacks foundation. Calls for a
14 legal conclusion.

15 MR. CATLETT: Object to the form.

16 THE WITNESS: That's correct.

17 BY MR. MARK:

18 Q And if you see here, look at -- looking at
19 Exhibit 6, it refers to an Herbalife International
20 business pack, IBP or mini IBP.

21 Do you see that?

22 MR. DROOKS: Are you talking about the
23 English translation, paragraph 5?

24 MR. MARK: No, I am talking about
25 paragraph 3(a).

1 MR. DROOKS: In the English version?

2 MR. MARK: Yes. It is in both versions. I
3 am just using English.

4 MR. DROOKS: Okay.

5 THE WITNESS: Yes, I see that.

6 BY MR. MARK:

7 Q Okay. What is the Herbalife International
8 business pack?

9 A The Herbalife International business pack is
10 what an individual purchases when they want to become
11 a distributor.

12 Q Okay. And what is in an International
13 business pack?

14 MR. DROOKS: Vague as to time.

15 BY MR. MARK:

16 Q At the time that this document was signed in
17 June of 2008, what was in the International business
18 pack?

19 A I am not an expert, but I can tell you, to
20 the best of my knowledge, what was included in the
21 pack.

22 Q Um-hmm.

23 A Distributorship application, a button, some
24 product, and some marketing literature, as well as the
25 rule book; and sales and marketing plan.

1 Q The "rule book" being the Rules of Conduct?

2 A Correct.

3 Q Okay. So after somebody would sign this,
4 mail it into Herbalife, Herbalife would then send back
5 that International business pack?

6 A No.

7 Q Okay. So then how was it that they would
8 receive the International business pack?

9 A They would receive it in a variety of ways.
10 They could receive it from a distributor who meets
11 them and discusses the business opportunity with them.

12 Q Okay.

13 A And that distributor would provide the kit
14 at that moment.

15 If an individual became aware of our
16 business opportunity online, then in that case, yes,
17 the kit would be mailed to them from Herbalife.

18 Q Okay. But right now, I just want to focus
19 in on these applications that were actually
20 handwritten out and mailed back to Herbalife.

21 A Um-hmm.

22 Q Okay. So the way that they would receive
23 the kit would be either from another distributor;
24 right?

25 A Correct.

1 Q Or would Herbalife send the kit or Herbalife
2 would not send the kit?

3 A If these applications were signed previous
4 to our online ability for people to sign up online,
5 they would have received it directly from the
6 distributor.

7 Q Okay. Do you know when Herbalife first
8 permitted people to sign up online?

9 A I don't recall.

10 Q But obviously, Izaar and Felix Valdez did
11 not sign up online; right? You can see that by the
12 application?

13 MR. DROOKS: It's vague as to time.

14 THE WITNESS: That's true.

15 BY MR. MARK:

16 Q In other words, it is true that they didn't
17 sign up online; right?

18 It is not true that it is vague as to time.
19 I am trying to understand.

20 A I'm sorry. I am mistaken.

21 Felix Valdez and Izaar Valdez, in 2008,
22 submitted paper applications.

23 Q Right.

24 A That's correct.

25 Q So they did not receive -- so they did not

1 sign up online; correct?

2 A Correct.

3 Q Okay. So how did they receive the
4 International business pack?

5 How would that have come to them, just
6 solely through another distributor?

7 A To the best of my knowledge, it would have
8 been from their sponsor.

9 Q And does their sponsor -- what is the
10 process by which a sponsor gives them the
11 International business pack?

12 Is it after they fill out the application,
13 they then give it to the sponsor?

14 Obviously, not because they sent it to
15 Herbalife, the application.

16 A Well --

17 MR. DROOKS: It is now compound and
18 argumentative.

19 BY MR. MARK:

20 Q Okay. So how do they receive the
21 International business pack?

22 A They would receive it physically from their
23 sponsor.

24 Q After they signed the application?

25 MR. CATLETT: Foundation.

1 THE WITNESS: It is kind of like the chicken
2 or the egg; right? The application is within the kit.
3 So whether they -- well, they would receive the kit,
4 open it, take out the application; and complete it --
5 BY MR. MARK:

6 Q Oh, okay.

7 A -- together.

8 Q I understand. Okay.

9 So the only way to get the paper application
10 was, it is part of the kit?

11 A Correct.

12 Q Okay. Was the kit -- did the kit contain
13 documents in Spanish or English or both?

14 A We have a Spanish kit and an English kit.

15 Q If the application is in Spanish, does that
16 mean that the other documents in the kit are in
17 Spanish, as well?

18 A Correct.

19 Q There are two different packs referenced
20 here in paragraph 3(a) of Mr. and Mrs. Valdez's
21 application, the International business pack and the
22 mini IBP.

23 What is the difference between the mini IBP
24 and the IBP?

25 A The difference is the product that is

1 included within the kit. So in the full kit, the
2 person receives a full canister of product, and in the
3 mini kit, I believe they are only receiving sample
4 size products.

5 Q Okay. Are all the documents the same in
6 both kits?

7 A Yes.

8 Q Okay. Okay. Let's look at Exhibit 7,
9 please, which is Ms. Rodgers' application.

10 A Okay.

11 Q There were Rules of Conduct in effect at the
12 time of this application?

13 A Yes.

14 Q Okay. Now, this application does not
15 contain an arbitration provision; correct?

16 MR. DROOKS: The documents speaks for
17 itself.

18 BY MR. MARK:

19 Q Okay. You can answer the question.

20 MR. MARK: Please keep your objections to
21 form. Okay.

22 Go ahead.

23 THE WITNESS: Yeah, I would say that is
24 correct.

25

1 BY MR. MARK:

2 Q So you would agree with me that at the time
3 that she signed this application in June of 2010,
4 there was no arbitration agreement in effect; correct?

5 MR. DROOKS: Calls for a legal conclusion.

6 MR. MARK: Her whole affidavit is a legal
7 conclusion. Okay.

8 Go ahead.

9 THE WITNESS: I believe that's correct.

10 BY MR. MARK:

11 Q And the same goes for Ms. Loken; correct, if
12 you look at the next exhibit?

13 MR. DROOKS: Calls for a legal conclusion.

14 MR. MARK: Please keep your objections to
15 form.

16 MR. DROOKS: Calls for a legal conclusion.

17 MR. MARK: I don't know what the practice is
18 in Central District California. In the Southern
19 District of Florida, objection depositions are either
20 form or you can instruct the witness not to answer.

21 MR. DROOKS: Well, my understanding is that
22 calling for a legal conclusion is an objection to form
23 because it could be corrected in a way that would
24 allow you to avoid the objection.

25 MR. MARK: So just say, "Object to form."

1 MR. DROOKS: That is not a viable objection.
2 I have to state what the objection is so that when the
3 Court reviews the transcript, the Court will know what
4 it is; and you are on notice as to how to correct it.

5 MR. MARK: Okay. We disagree.

6 MR. DROOKS: We may have a difference in
7 practice.

8 MR. MARK: It is not a difference in
9 practice. It is a difference in the local rules under
10 the Southern District of Florida.

11 Q Okay. Ms. Rodgers' application, that has
12 been marked as Exhibit 8; is that correct?

13 A 7.

14 Q I'm sorry. 7.

15 Okay. And Ms. Loken's application, what is
16 that exhibit?

17 A 8.

18 Q 8. Okay.

19 So you would agree that Ms. Loken's
20 application does not contain an arbitration provision;
21 correct?

22 A Yes, I agree.

23 Q Okay. And Ms. Rodgers' application does not
24 contain an arbitration provision; correct?

25 MR. DROOKS: What exhibit is that?

1 MR. MARK: 7.

2 MR. DROOKS: What exhibit?

3 MR. MARK: 7. 7.

4 MR. DROOKS: Thank you.

5 THE WITNESS: I don't believe that I have
6 the entire application. I only -- it stops at 8 and
7 it does not include the entire clause.

8 BY MR. MARK:

9 Q I'm sorry, this is Ms. Loken's?

10 A Patricia Rodgers.

11 MR. MARK: Can I see?

12 MR. CATLETT: It should be a three-page
13 document.

14 MR. MARK: Yeah, three pages. Let me run a
15 copy of my version, which has the three pages.

16 THE WITNESS: Okay.

17 MR. MARK: Sorry about that.

18 THE WITNESS: No problem.

19 MR. MARK: Is there someone that can run a
20 copy for me?

21 MR. DROOKS: Sure. We have been going about
22 an hour. Let's take a five-minute break. I will get
23 you the copy, and if you have any other copies, I can
24 do it at the same time.

25 MR. MARK: I don't think I do, but you never

1 know.

2 MR. CATLETT: Are we off the record?

3 MR. MARK: Yeah.

4 (Recess.)

5 MR. MARK: So, Counsel, I am going to add,
6 this page was inadvertently omitted from Exhibit 7.
7 It is the third page of Ms. Rodgers' application.

8 MR. DROOKS: Sure.

9 MR. MARK: Okay. I am going to add that to
10 what has been previously marked as Exhibit 7.

11 Q So now, can you confirm for me that that is
12 a complete application for Ms. Rodgers?

13 A Yes, it is a complete application.

14 Q Okay. Thank you.

15 This application was filled out online?

16 A Yes, it was.

17 MR. LEVINE: What did she say, Etan?

18 MR. MARK: Said this application was filled
19 out online.

20 Q So, remember, earlier we were talking about
21 the process by which those folks who had paper
22 applications received the International business pack?

23 A Yes.

24 Q What is the process by which people who fill
25 out applications online receive the International

1 business pack?

2 A To the best of my knowledge, the applicant
3 could have received the pack in two various ways:

4 One, when they go online, they have the
5 option of purchasing the business pack at that time;
6 but also, we have people that meet a distributor, and
7 just the same as I described for the paper process,
8 that distributor provides them with a kit; but
9 perhaps, they don't want to fill out the paper
10 application. They want to do it online
11 electronically.

12 So in this case, they could either get it
13 from a distributor and fill the application out
14 online, or they could just go online and purchase a
15 kit at the same time that they are filling out the
16 application.

17 Q Oh, when they purchase a kit, that then
18 triggers Herbalife to send the kit to that
19 distributor?

20 A That is correct.

21 Q And in that kit, is the same items that we
22 talked about earlier, it does not change; correct?

23 A That's correct.

24 Q Including the Rules of Conduct; correct?

25 A Correct.

1 Q And if you fill out the application online
2 and the kit is mailed to you subsequently? You are
3 not seeing the Rules of Conducts until the kit is
4 mailed to you; is that correct?

5 MR. DROOKS: That calls -- form. Objection
6 as to form.

7 MR. MARK: Very good. Thank you.

8 Q You can answer.

9 A The distributor has the opportunity to read
10 the rules when they are signing up online.

11 Q How does that work?

12 A Through a link.

13 Q So walk me through that.

14 So you had this application online; right?

15 A Yes.

16 Q And you are filling it out. How do you then
17 see the Rules of Conduct?

18 A So the distributor acknowledges by signing
19 this application that they have reviewed or will
20 review the Rules of Conduct, which are provided online
21 through a link.

22 Q Where does it say that?

23 A Okay. I believe that is cited in
24 Clause 3(d) and also in Clause 4.

25 Cause 3(d) states:

1 "I am aware that the only required
2 purchase to become, succeed or
3 advance as an Herbalife independent
4 distributor is the mini
5 International business pack. The
6 mini IBP is a basic package
7 containing only explanatory
8 materials, forms and product sample
9 packages."

10 Q I'm sorry, what provision are you in?

11 A I am in 3 and D. 3(d).

12 Q Can I see the document that you are looking
13 at, please?

14 A Of course.

15 Q Oh, okay. So I am actually looking at
16 Ms. Rodgers' application.

17 A Oh, I'm sorry.

18 Q So let's look at that one; okay?

19 A Okay.

20 Q And Exhibit 7; right?

21 A Yes.

22 Q Is it your understanding that provision is
23 in there, as well, Exhibit 7?

24 A Yes.

25 Q Okay. Where is that?

1 A That is in also Clause 3(d).

2 Q Okay.

3 A "So I am aware" -- do you want me to --

4 Q I'm sorry, I just don't -- oh, Clause 3.

5 Okay. I am on 3. I got it.

6 A And letter D.

7 Q Mine just says 3.

8 A Well, we have 3 and then we have got an A,
9 B, C, D.

10 Q Can I just make sure we are looking at the
11 same document?

12 A Um-hmm. Of course.

13 Q Okay. Okay. So 3, yup, "I am aware." Got
14 it.

15 A Okay.

16 And the Clause D says: "I will
17 review the statement of average
18 gross compensation of U.S.
19 supervisors and policy statements
20 on business methods, both of which
21 are contained in the mini IBP and
22 the IBP, and which are available on
23 myherbalife.com or upon request
24 from my sponsor or Herbalife's
25 Distributor Relations Department."

1 Q Okay. But -- I'm sorry.

2 A Clause 4, just to continue.

3 Q Yes, please.

4 A "The Herbalife International
5 Business pack contains, among other
6 things: The Rules of conduct and
7 distributor policies, the sales and
8 marketing plan; ordering procedures
9 and sample forms. Those documents
10 and such other rules and policies
11 as Herbalife has published or in
12 the future may publish together
13 with such modifications and
14 amendments as Herbalife shall make,
15 from time to time, in its sole and
16 absolute discretion, collectively
17 the rules are each hereby
18 incorporated into this agreement,
19 each in their then most recently
20 published form."

21 Q Okay.

22 A And, I'm sorry, I know that doesn't answer
23 your question. Let me find that.

24 Q Right. Because I thought you said that
25 there was a provision --

1 MR. DROOKS: Let -- the witness is still
2 answering the question.

3 BY MR. MARK:

4 Q Okay.

5 A Oh, I found it.

6 Q Okay. Good.

7 A It is Clause 3(a).

8 "So I hereby represent, warrant,
9 agree that upon my receipt of
10 Herbalife's mini or full
11 International business pack, I will
12 thoroughly review the contents of
13 the previously unopened pack."

14 Q I see. Okay. And within that pack includes
15 the Rules of Conduct?

16 A Exactly.

17 Q And earlier when you testified that you
18 understood there was a provision in this agreement
19 that provides that the distributor will review the
20 Rules of Conduct, that was the provision that you were
21 referring to?

22 A That's correct.

23 Q Okay. And am I correct that in some cases,
24 the distributor doesn't have physically in his or her
25 possession the Rules of Conduct at the time that they

1 sign this application?

2 A It depends on how you define "physically."

3 Q Okay. How do you define it?

4 A If they are online submitting an
5 application, they had access to the Rules of Conduct
6 online; and also they are able to print them, if they
7 wish.

8 Q Okay. Does it say here how to access the
9 Rules of Conduct online?

10 A I believe so.

11 Q Where is that?

12 A I believe your question is answered with
13 No. 4 for technical requirements.

14 Q Okay.

15 A I will have to read it to see if it answers
16 your question.

17 Q Sure. Please read.

18 A "The technical requirements to access" --

19 Q If you want to read that out loud, you're
20 welcome to; but you don't have to.

21 A Okay. Let me read it to myself.

22 Q Sure.

23 A I don't see that in this version of the
24 application.

25 Q Okay. So how does a distributor access the

1 Rules of Conduct online as of June of 2010?

2 A On myherbalife.com.

3 Q Okay. So after the distributor completes
4 this application, what does it look like to -- how do
5 you access the Rules of Conduct?

6 I know it is obviously on myherbalife.com.

7 This application is completed on
8 myherbalife.com; right?

9 A Correct.

10 Q Okay. So then how do you then get to the
11 Rules of Conduct from this application?

12 A It is my understanding that we provide a
13 link within the application.

14 Q Okay. But there is no link within this
15 application; is there, to the Rules of Conduct?

16 A Not that I can see on this printed version.

17 Q Okay.

18 A But that doesn't mean that there is not a
19 link available.

20 Q Well, what is a link? I mean, is it a
21 hyperlink or is it a button?

22 What does it look like, the link, if you
23 know?

24 A I don't know.

25 Q Okay. So you don't know whether -- you know

1 that the Rules of Conduct were available online as of
2 June, 2010; correct?

3 A Correct.

4 Q But you don't know exactly how it is that a
5 distributor can access those Rules of Conduct from
6 this application?

7 A My understanding is that they are provided
8 with a link and that they click that link, which
9 carries them to the Rules of Conduct.

10 Q Okay. But that link is nowhere to be seen
11 on Exhibit 7; correct?

12 A I don't see that link in Exhibit 7.

13 Q And nor is it on Exhibit 8; correct?

14 A Correct, nor is it on Exhibit 7.

15 Q Okay. And on --

16 A I'm sorry, Exhibit 8.

17 Q Thank you.

18 And on both Exhibits 7 and 8, there is a
19 place for a signature on the first page; correct?

20 A Correct.

21 Q And then how is it, then, the applicant gets
22 to the agreement of distributorship itself when you
23 are looking at it online?

24 Is it literally just a screen that you
25 scroll down and you see the agreement of

1 distributorship, and then you see the next page of the
2 agreement of distributorship; is that how it looks?

3 A I believe so.

4 Q Okay. And once the applicant signs
5 electronically the first page of this document that
6 has been marked as Exhibit 7, is there anything else
7 that the applicant has to do to submit her application
8 for distributorship?

9 A No.

10 Q Now, on the third page of Exhibit 7, there
11 is a provision that says:

12 "Herbalife electronic disclosure
13 agreement and online distributor
14 application and agreement."

15 Do you see that?

16 A Yes.

17 Q Okay.

18 And it says, "By clicking, I agree
19 below," et cetera, et cetera.

20 Do you see that?

21 A Yes.

22 Q Is there a -- is there a button on the
23 bottom of this that normally appears that says, "I
24 agree"?

25 A I am not sure where the button is located,

1 but where the distributor signs on page 1.

2 Q Yes.

3 A "By executing the application,
4 The distributor acknowledges that
5 he/she has reviewed the terms and
6 conditions on the reverse side of
7 the application and agrees to be
8 bound by them."

9 Q Right. So -- and I appreciate that, but
10 what I am wondering is are you aware of any kind of --
11 it says, "By clicking, I agree below."

12 I am wondering if there is a button that the
13 distributor clicks or the applicant clicks, which then
14 submits the application to Herbalife electronically,
15 if you know?

16 A I don't know if it is a button or a link. I
17 don't know what it looks like online.

18 Q But is there some kind of a submit button or
19 an okay button?

20 A There is something, yes.

21 Q Okay. And that is not on the first page of
22 the application; that is at the end of the application
23 after the electronic disclosure agreement?

24 A I wouldn't know.

25 Q Okay.

1 And this statement: "By executing
2 the application, distributor
3 acknowledges that he/she has
4 reviewed the terms and conditions
5 on the reverse side of the
6 application."

7 There is no reverse side of this
8 application; is there?

9 A You're correct.

10 Q And is it your position that they are bound
11 by the terms -- by the Rules of Conduct that are in
12 effect at the time that they signed the application?

13 MR. DROOKS: Yeah, that is a contention
14 interrogatory. That is a contention question. The
15 witness is not a PMQ.

16 I will instruct her not to answer.

17 MR. MARK: Okay.

18 MR. DROOKS: You can ask her her
19 understanding.

20 BY MR. MARK:

21 Q Is it your understanding that at the time
22 that they signed this application, they are bound by
23 the Rules of Conduct in effect as of the date that
24 they signed the application?

25 A As of the date we accept their application,

1 they are bound by the rules that -- yes, the current
2 rules that are -- that are published.

3 And one of our rules stipulates that the
4 distributor should stay informed of our current
5 policies and will abide and comply with our rules and
6 the law.

7 Q And that is Rule 8(c); is that correct?

8 A A portion of 8(c), yes.

9 Q But is that the rule you were referring to,
10 the portion of 8(c)?

11 A One of the rules, yes.

12 Q Is there another rule besides 8(c) that
13 provides that?

14 A There is one rule, 8(c), which stipulates:

15 "The distributor should stay
16 informed of our current rules and
17 abide by them."

18 And then there is another rule that states:

19 "Distributors must comply with our
20 rules and the law."

21 Q What rule is that?

22 A I'm sorry, I don't recall the number.

23 Q Okay. Is Rule 8(c) in the current version
24 of the Rules of Conduct?

25 A I believe that language or similar language

1 is in the current Rules of Conduct, but it is not
2 entitled 8(c).

3 Q Okay. We will get to that later. Okay?

4 A Um-hmm.

5 Q Looking at what has been marked as
6 Exhibits 10 and 11, that's Mr. Pyle and Ms. Lavigne;
7 right?

8 A Yes, that's correct.

9 Q Is there any kind of click to agree in this
10 application?

11 A It's not visible to me on this printout, but
12 it's visible -- something is visible to the applicant
13 on the screen.

14 Q Okay. So let's go through it.

15 So 10 and 11, those are the same -- those
16 are the same versions of the distributorship
17 application; right? They are both Version 43, it
18 looks like, in English?

19 A Yes, that's correct.

20 Q Okay. So let's just look at Mr. Pyle's
21 Exhibit 10. Then I will assume that your answers
22 apply to Exhibit 11; okay?

23 A Okay.

24 Q If they don't, just let me know.

25 So on the first page, there is a place for

1 the applicant's signature; correct?

2 A That's correct.

3 Q Okay. And that is an electronic signature,
4 they type in their name; right?

5 A Correct.

6 Q Now, on the second page of the application
7 where it states, "Gold Standard Guarantees," there are
8 a number of provisions that say, "I have read and
9 understood this message."

10 Do you see that?

11 A Correct.

12 Q Are there little boxes to check next to each
13 of those statements?

14 A That's correct.

15 Q Okay. Are they actually check boxes or do
16 you click, "I have read and understood"; I have read
17 and understood"?

18 A I -- I don't recall.

19 Q Okay. And then the next page is a Statement
20 of Average Gross Compensation paid by Herbalife to
21 U.S. members in 2013; right?

22 A Yes.

23 Q Is there any kind of click to agree or I
24 understand with respect to that statement?

25 A Yes.

1 Q Where is that?

2 A That's No. 6 on the previous page, the Gold
3 Standard Guarantees.

4 Q Okay. Where does it say that -- oh, it
5 says, I understand -- I see. I understand. Okay.

6 A Correct. Um-hmm.

7 Q I see. So that check next to No. 6 applies
8 to the Statement of Average Gross Compensation on the
9 next page?

10 A Correct.

11 Q And then it states, after No. 6:

12 "To see all of your rights and
13 obligations as an Herbalife member,
14 please review Herbalife's Rules of
15 Conduct in your member pack or
16 visit myherbalife.com."

17 Did I read that correctly?

18 A Yes.

19 Q And there is an actual hyperlink to
20 myherbalife.com; correct?

21 A Correct.

22 Q Is there a link to the Herbalife Rules of
23 Conduct?

24 A Directly to the Rules of Conduct?

25 Q Yes.

1 A I don't know.

2 Q Okay. Well, how --

3 A I believe this routes directly to the Rules
4 of Conduct.

5 Q You believe that the hyperlink that says
6 "myherbalife.com" actually links directly to the Rules
7 of Conduct?

8 A I believe so.

9 Q Okay. Are you certain about that or are you
10 speculating?

11 MR. DROOKS: Form.

12 BY MR. MARK:

13 Q You can answer.

14 A I am not certain technically how it works,
15 but I do know that we provide a PDF specifically of
16 the Rules of Conduct, which is linked directly to this
17 application.

18 And so it is my understanding that this link
19 will take the user directly to the rules document.

20 Q Okay. And if you look at the page, the next
21 page that begins with, "A membership," do you see
22 that? It is in two pages.

23 A Yes.

24 Q Is there any place as you go through the
25 next eight or nine pages of this document where you --

1 where it says, click to agree or accept or anything
2 like that, as we have seen on the previous three
3 pages?

4 A I believe that there is near D, Electronic
5 Disclosures.

6 Q Okay. So you are on page 749 of 771; right?
7 Where it says, "Electronic disclosures"?

8 A Yes, correct.

9 Q Okay. So you think that somewhere on D --
10 on that section D, there is a button to click?

11 A To the best of my recollection, yes.

12 Q And where is that button?

13 A Well, it's not showing on this printout.

14 Q Right.

15 A But the person sees it on the screen.

16 Q And it would be after paragraph 1, "Consent
17 to Electronic Disclosures"?

18 A I would be guessing if I told you where it
19 was located.

20 Q Okay. So you think that there is a button
21 somewhere on this page, you're not sure where?

22 A Correct.

23 Q And prior to Herbalife accepting the
24 application, are they required to consent to
25 Electronic Disclosures?

1 MR. DROOKS: By "they," you mean --

2 BY MR. MARK:

3 Q Prior to Herbalife accepting this
4 application, is the applicant required to consent to
5 the Electronic Disclosures?

6 A I don't know the answer to that question.

7 Q Prior to Herbalife accepting this
8 application, is it required that the applicant click
9 each of the options on the second page of this
10 document that states, "I have read and understood this
11 message"?

12 A That's correct.

13 Q But you're not aware of any other point on
14 this application that is required for the applicant to
15 click in order to submit the application to Herbalife
16 other than on the first two pages; is that correct?

17 A Correct.

18 Q Let's look at your declaration.

19 Paragraph 6, it states:

20 "Herbalife distributor Rules of
21 Conduct, defined as rules, together
22 with the distributor agreement,
23 among other documents, provide the
24 terms and conditions under which a
25 distributor must operate his or her

1 Herbalife distributorship."

2 Did I read that correctly?

3 A Yes.

4 Q So is it your understanding that
5 distributors are bound by the provisions of the Rules
6 of Conduct?

7 A Yes.

8 Q And it is by the provisions of the Rules of
9 Conduct in effect at that -- at the moment; correct?

10 A Yes.

11 Q And going back to Ms. Rodgers' application,
12 let's look at paragraph 4, which you read before
13 talking about the documents that are incorporated; --

14 A Yes.

15 Q -- right?

16 Okay. So -- so tell me, please, which
17 documents are incorporated into an application for
18 distributorship?

19 MR. CATLETT: Form and foundation.

20 THE WITNESS: Any policy document that
21 Herbalife publishes is incorporated.

22 BY MR. MARK:

23 Q And how does Herbalife publish these policy
24 documents?

25 A We have a number of different materials

1 which could be our -- before our rule book, Rules of
2 Conduct. It could be on the membership application.
3 It could be in any other agreement that we require our
4 distributors to sign. It could be in an announcement
5 that we have made to our members about a policy.

6 Q An announcement, an oral announcement or a
7 written announcement?

8 A The announcements would -- do take place
9 orally and -- and written.

10 Q Okay. And are all of these announcements
11 available on myherbalife.com?

12 A Yes.

13 Q Okay. Are all of the policies that bind --
14 let me try that again.

15 All policies to which distributors are bound
16 are found on myherbalife.com?

17 MR. DROOKS: Objection as to form. Legal
18 conclusion.

19 BY MR. MARK:

20 Q You can answer.

21 A I would say, yes.

22 Q So we talked about the Rules of Conduct,
23 that is Book 4; is that how you --

24 A Yes.

25 Q Okay. What are distributor policies? What

1 is that?

2 A Distributor policies are the rules and the
3 clauses on our membership application, clauses on
4 other forms, information included in announcements.

5 Q Anything else that you think fall into
6 distributor policies?

7 A Not that I can think of.

8 Q Okay. And the sales and marketing plan,
9 what is that?

10 A The sales and marketing plan describes the
11 business model.

12 Q And is that also incorporated into each of
13 the applications?

14 A Yes.

15 Q Ordering procedures?

16 A Yes.

17 Q What is that?

18 A Ordering procedures provides members with
19 information as to how to place an order, what time
20 frames to place an order. General information, fax
21 numbers, phone numbers, warehouse information.

22 Q And those are also incorporated into the
23 applications?

24 A Yes.

25 Q And those are part of the documents that

1 form the agreement between Herbalife and an applicant?

2 A Correct.

3 MR. DROOKS: Form.

4 BY MR. MARK:

5 Q And sample forms, what is that? What are
6 sample forms?

7 A There is a section in the book that includes
8 a sample of the various forms.

9 Q The various --

10 A For reference and sometimes some of the
11 forms that a distributor can photocopy it in order to
12 use it.

13 Q And are those sample forms part of the
14 documents that are incorporated into this agreement of
15 distributorship?

16 MR. DROOKS: Form.

17 THE WITNESS: Correct.

18 BY MR. MARK:

19 Q And are those documents the terms and
20 conditions under which a distributor must operate his
21 or her Herbalife distributorship?

22 MR. DROOKS: Form.

23 THE WITNESS: Correct.

24 BY MR. MARK:

25 Q Well, that is what you stated in your

1 declaration; correct?

2 In paragraph 6 in your declaration you state
3 that:

4 "Herbalife's Rules of Conduct,
5 together with a distributor
6 agreement, among other documents,
7 provide the terms and conditions
8 under which a distributor must
9 operate his or her Herbalife
10 distributorship"; correct?

11 A That's correct.

12 Q Okay. So I want to just make sure I
13 understand the universe of documents that comprise
14 those terms and conditions under which a distributor
15 must operate his or her Herbalife distributorship;
16 okay?

17 A Yes.

18 Q Okay. So those documents include the Rules
19 of Conduct; correct?

20 A Correct.

21 Q The distributor policies?

22 A Correct.

23 Q The sales and marketing plan?

24 A Correct.

25 Q The ordering procedures?

1 A Correct.

2 Q The sample forms?

3 A Correct.

4 Q And then other rules and policies --

5 A Correct.

6 Q -- that are available on myherbalife.com?

7 A Correct.

8 Q Okay. As you sit here today, are there any
9 other -- are there any other terms and conditions
10 under which a distributor must operate his or her
11 Herbalife distributorship, other than those that I
12 just listed?

13 MR. DROOKS: Form.

14 BY MR. MARK:

15 Q That you are aware of?

16 A No.

17 Q And each of those documents are incorporated
18 into these applications in their most recently
19 published form; is that correct?

20 MR. DROOKS: Form.

21 THE WITNESS: Can you repeat that?

22 BY MR. MARK:

23 Q Yeah.

24 Each of those agreements are incorporated
25 into these applications in their most recently

1 published form?

2 MR. DROOKS: Form.

3 THE WITNESS: Yes.

4 BY MR. MARK:

5 Q Now, later in these applications, it
6 states -- and if you look at Ms. Rodgers' application,
7 for example --

8 MR. DROOKS: Yeah, that is compound. It's a
9 different --

10 BY MR. MARK:

11 Q If you look at Ms. Rodgers' application --

12 A Um-hmm.

13 Q -- Exhibit 7?

14 A Yes, third page.

15 Q Okay. If you look at the third page, you
16 will see paragraph 12(b).

17 Do you see that paragraph?

18 A Yes.

19 Q And it states:

20 "This agreement, including
21 documents incorporated herein in
22 their then published form."

23 Do you see that?

24 MR. DROOKS: Can I have an exhibit number on
25 that, so we can follow along?

1 MR. MARK: 7.

2 MR. DROOKS: 7.

3 BY MR. MARK:

4 Q Do you see the "then published form"? Do
5 you see that?

6 A I'm sorry, where were we?

7 Q 12(b).

8 A Oh, yeah. 12(b), yes.

9 Q What does "in their then published form"
10 mean?

11 MR. CATLETT: Form and foundation.

12 MR. DROOKS: Form. Foundation.

13 THE WITNESS: To my understanding?

14 BY MR. MARK:

15 Q If you know what that means, yeah.

16 A My understanding is the current form at that
17 time.

18 Q At the time that this application is signed?

19 MR. CATLETT: Same objections.

20 MR. DROOKS: Same objections. Form.

21 THE WITNESS: No.

22 BY MR. MARK:

23 Q So what does it mean?

24 A The most current, whatever is the most
25 current at any date in time.

1 Q Okay. So when it states, "including
2 documents incorporated herein in their then published
3 form," that, to you, means the same thing as "the most
4 recently published form"; is that correct?

5 A No.

6 Q They mean different things?

7 A My understanding is that this refers to the
8 document's most recently published form. So at any
9 given date in time, whatever the current form of that
10 particular document is, is what this is applying to.
11 That's my understanding.

12 Q So "then published form," to you, means the
13 same thing as "most recently published form"?

14 I am not trying to trick you. I am just
15 trying to understand because there is two different --
16 the language is different in two different parts of
17 the application.

18 I am trying to understand if it is intended
19 to mean the same thing or if they mean two different
20 things.

21 MR. DROOKS: It's argumentative.

22 THE WITNESS: I think "most recently
23 published form" can also mean the same as "in their
24 then published form."
25

1 BY MR. MARK:

2 Q Okay.

3 A My understanding of both terminologies is
4 that the distributor is bound by whatever, at any
5 given date and time, whatever the rules are at that
6 time.

7 Q And it is your understanding that "then
8 published form" means the same thing as "most recently
9 published form"?

10 A I don't know how to better describe my
11 answer than to say this includes future versions of
12 the language.

13 Q So "then published form" includes future
14 versions of the documents?

15 A Yes.

16 Q Those categories of documents that we talked
17 about that were incorporated by reference into these
18 agreements, are they the same for each application?

19 Are there categories of documents that are
20 incorporated into certain applications, but not other
21 applications?

22 A No.

23 Q It's the same?

24 A (Witness nods head.)

25 Q "Yes"?

1 A Yes.

2 Q Okay. You talked about the myherbalife.com
3 website in your affidavit in paragraph 7.

4 Do you see that?

5 A I see paragraph 7.

6 Q In your declaration?

7 "Yes"?

8 A (Witness nods head.)

9 Q And you see there is a footnote; right,
10 which talks about myherbalife.com?

11 A Yes.

12 Q Can you tell me a little bit about
13 myherbalife.com. I know, obviously, it is a website,
14 but what is it for? And what is the purpose of
15 myherbalife.com?

16 MR. DROOKS: Form. Compound.

17 BY MR. MARK:

18 Q What is the purpose of myherbalife.com?

19 A Myherbalife.com is a tool for distributors
20 to use.

21 Q Anything else?

22 A It includes the Rules of Conduct. It
23 includes areas on the site where the distributor can
24 track their progress, see how many volume points they
25 have, look at their royalties; and their earnings; and

1 other information for distributors to use in order to
2 build their business.

3 Q Is it an important tool for a distributor?

4 MR. CATLETT: Form.

5 MR. DROOKS: Speculative. Form.

6 BY MR. MARK:

7 Q You can answer.

8 A I would say yes.

9 Q Can you participate in the Herbalife
10 business opportunity without using the website?

11 A If you sign up online, no.

12 Q And it is your con -- well, is it your
13 understanding that you are actually required to stay
14 apprised of the myherbalife.com website, that is one
15 of the requirements to be a distributor?

16 A I would rephrase that a little bit to say,
17 it's my understanding that the distributor has to stay
18 apprised of the Rules of Conduct.

19 Q And the Rules of Conduct are only available
20 in their current form through myherbalife.com; is that
21 correct?

22 MR. CATLETT: Form.

23 THE WITNESS: Can you rephrase that?

24 BY MR. MARK:

25 Q You -- you said that Herbalife -- that

1 distributors are required to stay apprised of the
2 updated versions of the Rules of Conduct through
3 myherbalife.com; right?

4 A Yes.

5 Q Is there any other obligation, in your mind,
6 for distributors to go to myherbalife.com?

7 A Obligation, no.

8 Q Okay. After Ms. Rodgers signed her
9 application, and after Ms. Loken signed her
10 application, the Rules of Conduct were amended;
11 correct?

12 A Yes.

13 Q And they were amended to include an
14 arbitration provision; correct, among other things?

15 A I believe the amendment occurred prior to
16 the date they signed their application.

17 Q The --

18 A Oh, I beg your pardon. You're correct.
19 After they signed their application, they were
20 amended.

21 MR. MARK: I will hand you a document that I
22 will mark as Exhibit 12.

23 (Exhibit 12 marked.)

24 MR. DROOKS: Is that somewhere that --

25 MR. MARK: Yes. I am going to tell you

1 where it is.

2 Q Well, can you identify this document?

3 MR. DROOKS: I would really like to have a
4 copy of it before we start questioning the witness
5 about it.

6 MR. MARK: Sure. Here.

7 Q Can you identify it?

8 A This is an announcement provided by the
9 company.

10 Q What is the date of the announcement?

11 A I don't see a date here.

12 Q If you look at your declaration,
13 paragraph 7, the second part of that, let me give you
14 this -- the second part of that states:

15 "On February 13, 2014, Herbalife
16 also sent a notification to all
17 distributors of the recent changes
18 to the rules, including the
19 addition of the arbitration
20 provision. A complete and
21 authentic copy of that notice is
22 attached hereto as Exhibit B."

23 Do you see that?

24 A Yes, I do.

25 Q Okay.

1 MR. MARK: So I am going to hand you a
2 document that we will mark as the next exhibit.

3 THE REPORTER: 13.

4 MR. MARK: 13.

5 (Exhibit 13 marked.)

6 THE WITNESS: Thank you.

7 BY MR. MARK:

8 Q So I will represent to you that Exhibits 12
9 and 13 that I have handed you together comprise
10 Exhibit B to your declaration; okay?

11 A Yes.

12 Q And if you look at Exhibit 13, is it your
13 understanding that the advisory dated February 13,
14 2014, was part of Exhibit 12?

15 A Yes, that's correct.

16 Q Okay. And it is your -- is it your
17 understanding that this amendment applied to those
18 existing distributors?

19 A Yes, to all distributors.

20 Q Including those that predated the date of
21 this amendment; correct?

22 A Yes, that's correct.

23 Q Okay. And that is because Herbalife retains
24 the right to change the terms of its agreement with
25 its distributors by amending the Rules of Conduct?

1 A That's correct.

2 MR. DROOKS: Objection as to form.

3 BY MR. MARK:

4 Q Can Herbalife make these changes at any
5 time?

6 A Yes.

7 MR. DROOKS: Objection to form.

8 MR. MARK: "Yes"?

9 THE WITNESS: Yes.

10 MR. DROOKS: Legal conclusion.

11 BY MR. MARK:

12 Q Are there any restrictions, to your
13 knowledge, on Herbalife's ability to make these
14 changes to the documents?

15 MR. DROOKS: Objection as to form.

16 BY MR. MARK:

17 Q You can answer.

18 A Can you rephrase the question?

19 Q Are there any restrictions, to your
20 knowledge, on Herbalife's ability to make these
21 amendments?

22 A These amendments?

23 Q Yeah, any amendments.

24 MR. DROOKS: Objection as to form.

25 MR. CATLETT: And foundation.

1 BY MR. MARK:

2 Q You testified that Herbalife can amend the
3 documents at any time; correct?

4 A Um-hmm. Yes.

5 Q Okay. And it can do so -- are there any
6 restrictions on its ability to do so, to your
7 knowledge?

8 A Yes.

9 Q And what are those restrictions?

10 A We are bound by an agreement that we made
11 with our distributors that we will not make changes to
12 our sales and marketing plan in any way that will
13 be -- impact the way that -- that their -- that they
14 have been able to earn with our marketing -- sales and
15 marketing plan.

16 Q Okay. So there is a restriction on
17 Herbalife's ability to amend its sales and marketing
18 plan; is that correct?

19 MR. DROOKS: Calls for -- form.

20 THE WITNESS: Let me say there is parameters
21 as to how we make certain changes to our sales and
22 marketing plan.

23 BY MR. MARK:

24 Q Okay. Are there any parameters as to
25 Herbalife's ability to amend the Rules of Conduct, to

1 your knowledge?

2 A No.

3 Q And when are the changes -- well, let's
4 start with this one, Exhibit 12.

5 When do these changes become effective? In
6 other words, when do they first apply to the
7 distributors?

8 MR. CATLETT: Form and foundation.

9 THE WITNESS: Upon publication.

10 BY MR. MARK:

11 Q Okay. And when were these amendments
12 published?

13 A Well, it states in this advisory that these
14 rules became available in our warehouses and could be
15 accessed online --

16 Q You are looking at Exhibit --

17 A -- around --

18 Q -- 13 --

19 A -- February 13th of 2014.

20 Q Okay. So you are looking at Exhibit 13; is
21 that correct?

22 A Correct.

23 Q So -- so the changes that are reflected in
24 Exhibit 13 first became effective on February 13,
25 2014?

1 A No.

2 Q Okay. When did they first become effective?

3 A When we published them --

4 Q And when did you --

5 A -- online, which was, I believe, in advance
6 of this advisory being published.

7 Q And when was -- when was that?

8 A So let me see, I believe it was in October
9 of 2013.

10 Q And what forms the basis of that
11 understanding?

12 A I just recall that in reviewing materials in
13 preparation for my declaration.

14 Q Okay. So -- and if you look in your
15 declaration, you see in paragraph 7 it states:

16 "This version of the rules and the
17 arbitration provision were readily
18 available to distributors online
19 through myherbalife.com on
20 October 28, 2013."

21 A Correct.

22 Q Okay. So it is your understanding that --
23 that these amendments that are reflected in
24 Exhibit 13, first became effective on October 28,
25 2013, when they were published on the Herbalife

1 website?

2 A That's correct.

3 Q And that is myherbalife.com; right?

4 A Yes.

5 Q Was there any notification to distributors
6 at that time that the rules were changing?

7 A Not -- that I can recall.

8 Q Exhibit 12 is the first notification of --
9 to distributors of this change; correct?

10 A It is possible that we may have made a
11 verbal announcement to our distributor leadership in
12 advance of the advisory being published. So a verbal
13 announcement is very possible in advance of the
14 October date.

15 Q And you said "distributor leadership"; is
16 that what you said?

17 A Yes.

18 Q Who is that?

19 A So our President Team members.

20 Q Okay. Other than -- other than the
21 potential announcement to President Team members, are
22 you aware of any other announcement of these
23 amendments to the distributorship relationship prior
24 to February 13, 2014?

25 A No.

1 Q And is it your -- do you believe that when
2 these new rules were first posted on the website in
3 October of 2013, that those replaced the earlier
4 versions of the Rules of Conduct?

5 A Yes.

6 Q Do you know why it took four months between
7 the posting of the rules in October of 2013 and the
8 February 13, 2014 announcement?

9 A As I recall, we were making quite a few
10 changes at that time, and rather than sending several
11 different announcements within that period of months,
12 I believe we waited to complete our full nomenclature
13 changes before publishing this advisory.

14 Q Okay. And this amendment, which you state
15 became effective in October of 2013, this is the
16 first -- this amendment added an arbitration
17 provision; correct?

18 A Yes.

19 Q And this also added the jury trial waiver
20 provision; correct?

21 A Yes.

22 Q And this also added the class action waiver
23 provision; correct?

24 A Yes.

25 Q And until this change occurred in October of

1 2013, there were no such restrictions in the
2 distributor agreement at the time; correct?

3 A Can you ask one more time?

4 MR. MARK: Can you read it back?

5 (Record read.)

6 MR. CATLETT: Object to form.

7 THE WITNESS: We may have had arbitration
8 provision years before and I am not certain. I don't
9 want to --

10 BY MR. MARK:

11 Q Well, we saw the arbitration provision, in
12 fact, in earlier --

13 MR. DROOKS: Let the witness finish her
14 answer.

15 BY MR. MARK:

16 Q Okay. Go ahead.

17 A Before 2013, we may have had an arbitration
18 provision in our membership application.

19 Q Well -- are you done with your answer?

20 A Yes.

21 Q Okay. Now, in 2008, we saw Mr. Valdez -- we
22 saw in Mr. Valdez's agreement, which was signed in
23 2008, there was an arbitration provision; correct?

24 A Yes.

25 Q Is that what you are thinking about?

1 A Yes. Thank you for reminding me.

2 Q Sure.

3 And then subsequent to that, though, the
4 arbitration provision was removed; correct?

5 A Yes.

6 Q And then it was added again in 2013;
7 correct?

8 A Correct.

9 Q But at the time that it was added in October
10 of 2013, there was no arbitration agreement in effect;
11 correct?

12 A Correct.

13 Q Okay. And I -- and there was no jury trial
14 waiver in effect; correct?

15 A Correct.

16 Q And there was no class action waiver in
17 effect; correct?

18 A Correct.

19 Q And you stated that that change became
20 effective to all distributors in October of 2013;
21 correct?

22 A Correct.

23 Q So what was the purpose of this
24 notification?

25 MR. DROOKS: Objection as to form.

1 BY MR. MARK:

2 Q Exhibit 13?

3 A The purpose of the notification is to make
4 distributors aware that we made changes in our Book 4.

5 Q How would distributors -- is there any way
6 for distributors to know that there was a change to
7 the Rules of Conduct prior to this February 13, 2014
8 announcement?

9 A Verbal announcement to our leadership.

10 Q Other than that?

11 A No.

12 Q Does Herbalife expect the distributors to go
13 onto myherbalife.com and look at the Rules of Conduct
14 on a regular basis to see if they have been updated?

15 A Yes.

16 MR. DROOKS: Speculation.

17 BY MR. MARK:

18 Q "Yes"?

19 A Yes.

20 Q And that is without -- regardless of whether
21 or not there is a notice to do so?

22 A Well, the membership application has a
23 clause that -- that indicates members should go online
24 to stay apprised of -- of the rules, the most current
25 rules.

1 Q And how often are distributors to do that?

2 MR. DROOKS: Objection as to form. Lacks
3 foundation.

4 THE WITNESS: I suppose a time frame would
5 depend on each distributor and how they conduct their
6 business.

7 BY MR. MARK:

8 Q How -- how -- I don't understand.

9 Why would it depend on how the distributor
10 conducts its business?

11 A Some distributors maybe are online more
12 often than others.

13 Q So the obligation to go online to review the
14 Rules of Conduct depends on the distributor?

15 MR. DROOKS: Objection as to form.

16 THE WITNESS: I didn't --

17 MR. DROOKS: Lacks foundation. Legal
18 conclusion.

19 THE WITNESS: Yeah, the distributor is
20 obligated to stay apprised of the most current rules.

21 BY MR. MARK:

22 Q But how does a distributor do that?

23 MR. DROOKS: Calls for speculation.

24 THE WITNESS: They go on myherbalife.com or
25 their sponsor or through trainings that occur in the

1 field or through our events that also include
2 training.

3 BY MR. MARK:

4 Q And that's -- is there a certain amount of
5 times that a distributor is required to do that?

6 A No.

7 MR. MARK: I will hand you a document that
8 we will mark as the next exhibit.

9 THE REPORTER: 14.

10 MR. MARK: Thank you.

11 Q Actually, I'm sorry, before we do that,
12 let's look at Exhibit 12 for a moment.

13 This is the E-mail announcement; right?

14 A Yes.

15 Q And in order to obtain the actual summary of
16 updates that is Exhibit 13, you have to click through
17 to learn more; is that right?

18 A Yes, or a distributor could just be online.
19 Obviously, they can get through it through this
20 announcement by clicking the link, but a distributor
21 could just be online and also get to this
22 announcement.

23 Q Okay. But right now, I am just talking
24 about the announcement that is Exhibit 12. Okay?

25 A Yes.

1 Q This announcement, you receive this E-mail,
2 all you are seeing is Exhibit 12 in the E-mail;
3 correct?

4 A Correct.

5 Q Okay. And in order to see the summary of
6 updates, that is Exhibit 13, you have to click where
7 it says, "Learn more"?

8 A Correct.

9 Q Okay. Now, who is -- who is
10 salvadorrod@herbalife.com? It's at the bottom of
11 Exhibit 12.

12 A He was an employee in charge of pushing
13 these announcements out online.

14 Q Is he no longer with Herbalife?

15 A To my knowledge, he is no longer with the
16 company.

17 Q Okay. Is this E-mail announcement sent to
18 all distributors?

19 A Yes.

20 Q And how -- is there any method of confirming
21 that this was, in fact, sent to all distributors?

22 MR. CATLETT: Foundation.

23 BY MR. MARK:

24 Q If you know?

25 A Yes, I believe so.

1 Q How is that done?

2 A The system that we use to push these
3 announcements out has reporting capabilities.

4 Q Is it like Constant Contact or something?
5 Do you know what the system is called?

6 A I believe it is called ExactTarget.

7 Q ExactTarget. Okay.

8 So that system, then, pushes out these
9 announcements and then it knows whether or not those
10 announcements bounce back or not, for example?

11 A Yes.

12 Q And I assume that a certain percentage of
13 them do, in fact, bounce back?

14 A I assume.

15 Q Yeah. Is there any method by which
16 Herbalife confirms that these announcements are, in
17 fact, sent and received by all distributors?

18 A We have the capability to do so.

19 Q Does Herbalife do so?

20 A I don't know.

21 Q Okay. And what about clicking through;
22 right, where it says, "Learn more," for example?

23 A Uh-huh.

24 Q Is there a way to tell what percentage of
25 people, for example, click through to learn more?

1 A I don't know.

2 Q Is receipt of these announcements a
3 condition to staying a distributor?

4 MR. DROOKS: Objection as to form. Legal
5 conclusion.

6 THE WITNESS: No.

7 BY MR. MARK:

8 Q And, in fact, a distributor can unsubscribe
9 from these announcements; right?

10 A Yes.

11 Q And do distributors unsubscribe from these
12 announcements?

13 A I don't know.

14 Q In order to stay a distributor, do you have
15 to stay subscribed to these announcements?

16 A No.

17 Q Is there anything on this notification that
18 requires the recipient of these E-mails to acknowledge
19 that they have received it?

20 A No.

21 Q And is there anything on this E-mail that
22 allows a distributor to determine whether or not --
23 that allows Herbalife, excuse me, to determine whether
24 or not the E-mail went into spam or not?

25 A Well, I don't know.

1 Q And there is nothing in this announcement
2 that requires the recipient to acknowledge that they
3 agree with the new Rules of Conduct; correct?

4 A Correct.

5 Q Are you aware of whether any distributors
6 actually unsubscribed from these announcements?

7 A I don't know.

8 Q And regardless of whether or not any
9 distributor receives this E-mail, they are still bound
10 by the Rules of Conduct; correct?

11 A Correct.

12 MR. DROOKS: Legal conclusion. Form.

13 BY MR. MARK:

14 Q Is it your understanding that the Rules of
15 Conduct still apply to distributors that do not
16 receive these announcements?

17 A Correct.

18 MR. MARK: Okay. I am going to hand you a
19 document --

20 MR. DROOKS: Etan, at some point when you
21 are at a stopping point, I would like to take a break.

22 MR. MARK: Sure.

23 MR. DROOKS: Can you do it now? I don't
24 want to interrupt, but I see you are moving on.

25 MR. MARK: That's fine.

1 (Recess.)

2 MR. MARK: I am going to hand the witness
3 what has been marked as Exhibit 15.

4 THE REPORTER: 14.

5 MR. MARK: 14, I'm sorry.

6 (Exhibit 14 marked.)

7 BY MR. MARK:

8 Q Can you identify this document for me?

9 A Yes. This is Book 4, which includes the
10 Rules of Conduct, the sales and marketing plan, sample
11 forms, ordering procedures, enforcement procedures.

12 Q And what is the effective date of these
13 Rules of Conduct?

14 A I can't tell you that by looking at this
15 document.

16 Q Okay. If you look at -- this document has
17 been Bates stamped HLF, underscore, 00051 through
18 000184.

19 If you go to the last page, 184, you will
20 see a -- what I think is a version number; is that
21 right?

22 A Correct.

23 Q Okay. What version is this?

24 A Version 29.

25 Q And there is a date next to it; right?

1 A Correct.

2 Q That date is August, 2013?

3 A Correct.

4 Q Okay. So is that the date that this was
5 published?

6 A No.

7 Q What is that?

8 A That's the date that we approved all of the
9 content in this book and sent it to our Creative
10 Services Department for preparation of publication.

11 Q Okay.

12 MR. CATLETT: And just so the record is
13 clear, then, Exhibit 14 is attached as Exhibit A to
14 Ms. Romans' deposition?

15 MR. MARK: Well, that is what I was going
16 to -- that is where I am going.

17 MR. CATLETT: Okay. I'm sorry.

18 BY MR. MARK:

19 Q So can you confirm for me, then, that
20 Exhibit 14 is the same as Exhibit A to your
21 declaration? In other words, this copy of the rules
22 as amended in August of 2013?

23 A Yes.

24 MR. DROOKS: That lacks foundation. Form.

25

1 BY MR. MARK:

2 Q "Yes"?

3 MR. DROOKS: As amended.

4 THE WITNESS: Yes.

5 BY MR. MARK:

6 Q Okay. And this is the version of the rules
7 that we were talking about earlier that was first
8 published on October 28, 2013 on the myherbalife.com
9 website?

10 A Correct.

11 Q And -- and as of that date, this document
12 marked as Exhibit 14 was the -- this provided the
13 terms and conditions under which a distributor must
14 operate his or her Herbalife distributorship?

15 MR. DROOKS: Form.

16 THE WITNESS: Correct.

17 BY MR. MARK:

18 Q Now, if you look on page -- starting on
19 page, it looks like 93, there is some forms. I think
20 they are forms.

21 A Yes.

22 Q Okay. And earlier you recall testifying
23 that there are certain forms that get incorporated
24 into the agreements, as well?

25 A Correct.

1 Q And are these the forms you are talking
2 about with respect to each version of the Rules of
3 Conduct?

4 A Yes. And there could be other forms.

5 Q Okay. And I understand there could be other
6 policies, as well; correct?

7 A Yes.

8 Q That are in effect at the time?

9 A Correct.

10 Q Now, if you look at page 94, you will see
11 there is an application for International
12 distributorship. And when I say "page 94," I am
13 referring to HLF, underscore, 000094. Okay?

14 A Yes.

15 Q Is that the application of International
16 distributorship that was in effect at the time that
17 these Rules of Conduct were in effect?

18 A I am not certain.

19 Q But this form is incorporated into these
20 Rules of Conduct; correct?

21 A Correct.

22 Q And you will see that this distributorship
23 agreement on page 97 does not contain an arbitration
24 provision; correct?

25 A That's correct, but I would like to point

1 out that this is just a sample form and not
2 necessarily the current version of the form that was
3 in place at that time.

4 Q Okay. But I thought you said that this form
5 is incorporated into these rules of conduct?

6 A The distributor application itself is
7 incorporated into the rules. This, though, is simply
8 a sample form.

9 Q I see. So this distributor application that
10 is on pages 94 through 97 is just a sample form?

11 A Correct.

12 Q It is not -- but it is incorporated into
13 these Rules of Conduct?

14 A The distributor application itself is
15 incorporated into the Rules of Conduct. The form that
16 is included in this book as a sample, may not
17 necessarily be the form that was in existence at the
18 time that this printed, simply because of printing
19 logistics.

20 Q Okay. Well, this says, "Revised 7/13";
21 right, this form?

22 A I can't read the date. Sorry. I see 13,
23 but I can't see the month.

24 Q Okay. I will represent to you it says,
25 "Rev. 07/13."

1 A Okay.

2 Q Okay. Does that mean that this form was
3 effective as of July, 2013?

4 A No.

5 Q Okay. What does it mean?

6 A It means that we prepared and agreed on the
7 content of this form at that time; but it still had to
8 go through our Creative Services team for artwork and
9 preparation of publication.

10 Q Okay. And do you know what form was in
11 effect as of 7/13 -- I'm sorry, as of the date of
12 these Rules of Conduct?

13 A No, I don't know.

14 Q Okay. Is whatever form that was in effect
15 as of the date of these Rules of Conduct, the form
16 that is incorporated into the terms and conditions
17 under which a distributor must operate his or her
18 Herbalife distributorship?

19 A Yes.

20 Q But you don't know whether it was this form?

21 A Correct.

22 Q This is Version 39; right?

23 A Yes.

24 Q Is Version 40 the next version of this form?

25 A To my recollection, yes.

1 Q You're not aware of a 39(a) or (b); are you?

2 A No, I'm not.

3 MR. MARK: I will hand you a document that
4 we will mark as Exhibit --

5 THE REPORTER: 15.

6 MR. MARK: -- 15.

7 (Exhibit 15 marked.)

8 THE WITNESS: Thank you.

9 BY MR. MARK:

10 Q I am handing you a document that has been
11 Bates stamped HLF, underscore, 000802.

12 A Yes.

13 Q Okay. And if you look in the lower
14 right-hand corner, you will see there is a form
15 number.

16 Do you see that?

17 A Yes.

18 Q Is this Version 40?

19 A It looks like Version 40.

20 Q Okay. And this was revised -- it states the
21 revised date is 09/13; is that right?

22 A Yes.

23 Q So this form that has been marked as
24 Exhibit 15 was in effect after the date -- the
25 effective date of these Rules of Conduct; correct?

1 MR. DROOKS: Lacks foundation.

2 THE WITNESS: I believe so.

3 BY MR. MARK:

4 Q So at the time, looking at Exhibit 15 and
5 the form on HLF 000097, it appears that the
6 application in effect at the time of these Rules of
7 Conduct was Version 39; is that correct?

8 A It appears so.

9 Q Okay. And you will agree with me that this
10 form states, paragraph 17:

11 "Any claim shall be resolved
12 exclusively in a judicial
13 proceeding in either the Superior
14 Court of the Commonwealth of" -- I
15 am looking at the Puerto Rico one.
16 Let's look at page 00095, paragraph 17, it
17 states:

18 "Any claims shall be resolved
19 exclusively in a judicial
20 proceeding in either the Superior
21 Court or the United States District
22 Court, both located in Los Angeles,
23 California." Correct?

24 A That's what this document states.

25 Q Okay. And that's inconsistent with the

1 provision of these Rules of Conduct that contain an
2 arbitration agreement; correct?

3 MR. CATLETT: Form. Foundation.

4 MR. DROOKS: Form.

5 THE WITNESS: Correct.

6 BY MR. MARK:

7 Q Okay. So as of August of 2013, which --
8 which one was it?

9 Was it the arbitration provision or was it
10 the, "any claim shall be resolved exclusively in a
11 judicial proceeding in Los Angeles"?

12 MR. DROOKS: Calls for a legal conclusion.

13 THE WITNESS: I wouldn't know the answer to
14 that question.

15 BY MR. MARK:

16 Q How would a distributor know the answer to
17 that question?

18 MR. CATLETT: Foundation.

19 MR. DROOKS: Speculation.

20 BY MR. MARK:

21 Q I assume you don't know.

22 A I don't know how to answer that.

23 Q Your testimony earlier about this amendment
24 to the Rules of Conduct being available online for the
25 first time on October 28, 2013, did that also apply to

1 the Spanish version of the documents or only the
2 English version?

3 A Can you repeat the beginning of your
4 question?

5 Q I'm sorry, that was not a good question.
6 Do you recall your earlier testimony that
7 Version 29 of the Rules of Conduct first became
8 effective on -- when it was available to distributors
9 online on October 28, 2013?

10 A Yes.

11 Q Okay. Was the Spanish version of the Rules
12 of Conduct also available on that date?

13 A Yes.

14 Q Okay. Going back to Exhibit 14 for a
15 moment.

16 If you look on page HLF, underscore, 000121,
17 do you remember your earlier testimony about
18 Rule 8(c)?

19 A Yes.

20 Q Is this the rule you were referring to, the
21 one that is headed, "Keep Informed of Herbalife's
22 Policies"?

23 A Yes.

24 Q And now I thought you said that there were
25 two sort of similar provisions in the Rules of

1 Conduct, that both required distributors to stay
2 informed of Herbalife's policy; is that --

3 MR. DROOKS: Mischaracterizes --

4 BY MR. MARK:

5 Q I am not trying to mischaracterize. Is that
6 correct?

7 A It is not exactly what I stated.

8 Q So tell me again, please, if you don't mind.

9 A 8(c), yes, does include language that
10 states, the distributor should regularly visit
11 Herbalife's website and stay apprised of our -- of our
12 rules, keep informed of our policies.

13 But there is another rule that states the
14 distributor must also abide by our rules and abide by
15 the law.

16 Q Okay. Where is that?

17 A Oh, 8(d), "Comply with the Laws."

18 Q Okay. It doesn't say anything about
19 Herbalife's rules, though, there, does it?

20 A This one doesn't. Perhaps, it is in another
21 version of the rules.

22 Q Okay.

23 MR. MARK: I will hand you a document we
24 will mark as Exhibit 15 and Exhibit 16.

25 MR. DROOKS: You already marked an Exhibit

1 15.

2 MR. MARK: I did?

3 THE WITNESS: You said 16 after.

4 MR. MARK: I'm sorry, Exhibit 16 and 17.

5 (Exhibits 16 and 17 marked.)

6 BY MR. MARK:

7 Q So I am handing you what has been marked as
8 Exhibits 15 and 16.

9 Can you identify these documents?

10 A Exhibit 16 is the --

11 Q Did I say 15 and 16 again? 16 and 17. I'm
12 sorry.

13 A So Exhibit 16 is the online announcement
14 where the reader can click, "Learn more," and get to
15 the actual announcement about the Rules of Conduct.

16 Q And Exhibit 17 is the actual announcement?

17 A Correct.

18 Q And this announcement was sent on July 21st,
19 2014?

20 A Correct.

21 Q The only way to see the document marked as
22 Exhibit 17 would be to click on "Learn more";
23 correct?

24 A No.

25 Q Okay. How else would you see Exhibit 17?

1 A A distributor that is online could find this
2 announcement.

3 Q How would they find it?

4 A Under our Rules and Policies tab.

5 Q So under Rules and Policies, it would
6 look -- what would it look like? There would be
7 another tab --

8 A There would be another tab for Advisories
9 and Announcements.

10 Q Advisories and Announcements. Okay. So
11 then this advisory or announcement would be up there
12 at the time?

13 A Yes.

14 Q How long does that advisory or announcement
15 stay on the myherbalife.com website?

16 A Indefinitely.

17 Q Is it still -- it is still there right now?

18 A Which one is this, Version 31. To my
19 knowledge, this one is no longer there.

20 Q Okay. So how long do these announcements
21 stay on online?

22 A In the past, they used to stay on an
23 extended period of time.

24 Q Do you know how long this Exhibit 17 stayed?

25 A No.

1 Q Okay. And part -- it is your understanding
2 that part of a distributor's obligation is to stay
3 apprised of the rules is to routinely check the
4 Announcements tab on myherbalife.com?

5 A The Announcements tab, yes, and also the
6 book. The actual book.

7 Q Regardless of whether or not there is
8 actually -- they receive notice of a published
9 announcement?

10 A Correct.

11 Q And is this announcement sent via the same
12 system that you talked about earlier?

13 A Yes.

14 Q What was it called again?

15 A ExactTarget.

16 Q Exact, E-X-A-C-T --

17 A Target.

18 Q -- Target.

19 And there is no -- and you don't know
20 whether or not this announcement reached each
21 distributor; correct?

22 A No, I don't know.

23 Q Do you know whether it reached the --
24 specifically the plaintiffs in this case?

25 A I wouldn't know.

1 Q Did you check to see if any of the
2 plaintiffs in this case received the announcement that
3 was marked as Exhibit 16?

4 A No.

5 Q Did you check to see if any of the
6 plaintiffs in this case received the announcement that
7 was marked as Exhibit 12?

8 A I may have.

9 Q And what did you see?

10 A I don't recall.

11 Q All right. How did you check to see if the
12 plaintiffs in this case received the announcement
13 marked as Exhibit 12?

14 MR. DROOKS: Lacks foundation.

15 THE WITNESS: Through the department that
16 pushes the ExactTarget communications.

17 BY MR. MARK:

18 Q Can you describe for me, please, that
19 conversation?

20 A That was done through E-mail.

21 Q Okay. So you E-mailed -- do you actually
22 recall E-mailing the department that deals with
23 pushing these announcements through as to whether or
24 not the plaintiffs in this case actually received the
25 document that has been previously marked as

1 Exhibit 12?

2 A I may have E-mailed one of my team members
3 to obtain the information.

4 Q Okay. Did your team member respond to your
5 E-mail?

6 MR. DROOKS: Objection as to form. Lacks
7 foundation.

8 THE WITNESS: I believe so.

9 BY MR. MARK:

10 Q Okay. And what did your team member tell
11 you?

12 A I don't recall.

13 Q You don't recall whether your team member
14 said that any of the plaintiffs did or did not receive
15 the notification marked as Exhibit 12?

16 A Correct, I don't recall.

17 Q But the purpose of reaching out to this team
18 member was to determine whether any of plaintiffs did,
19 in fact, receive the document marked as Exhibit 12?

20 A Correct.

21 Q Okay. Did you make any efforts to see if
22 the plaintiffs received the document marked as
23 Exhibit 16?

24 A I believe I did.

25 Q Okay. And same sets -- same questions --

1 A I don't recall.

2 Q Okay. So you recall asking a team member,
3 the team member responded to you, but you don't recall
4 what the response was?

5 A Exactly.

6 Q Why did you ask your team member whether or
7 not any of the plaintiffs in this case received the
8 notification?

9 A I believe our lawyer asked me the question.

10 Q But it is your -- but it is your
11 understanding that those -- that all the plaintiffs
12 are bound by these rules regardless of whether or not
13 they received notification; right?

14 A Yes.

15 Q And there is certainly no obligation for
16 them to affirm that they have accepted any of these
17 obligations; correct?

18 MR. DROOKS: Objection as to form. Legal
19 conclusion.

20 THE WITNESS: They affirm when they sign
21 their distributor application that they will.

22 BY MR. MARK:

23 Q Right. But I am talking about the
24 amendments. I am talking about receiving the
25 amendments.

1 There is no obligation that any distributor
2 affirmed that they agreed to the amendments; correct?

3 A Correct.

4 MR. DROOKS: Objection as to form.

5 BY MR. MARK:

6 Q Do you know why Rule 8(c) was removed from
7 the rules?

8 MR. DROOKS: Calls for speculation.

9 THE WITNESS: No, I don't know.

10 BY MR. MARK:

11 Q I think I asked this, but I want to confirm.

12 There were Rules of Conduct in effect prior
13 to the Rules of Conduct dated August, 2013; right?

14 A Correct.

15 Q And you saw the applications that you have
16 attached to your declaration, including some in 2008,
17 there were Rules of Conduct in effect at the time;
18 correct?

19 A Correct.

20 MR. MARK: I will hand you a document that
21 we will mark as Exhibit 18.

22 (Exhibit 18 marked.)

23 THE WITNESS: Thank you.

24 BY MR. MARK:

25 Q Can you identify this document for me,

1 please?

2 A Yes, this is Book 4, Version 31, which
3 includes the Rules of Conduct, sample forms, ordering
4 procedures.

5 Q What was the date that these Rules of
6 Conduct governed the distributors?

7 A They became available July 21st, 2014.

8 Q Is that the date at which distributors
9 became bound by these Rules of Conduct?

10 MR. CATLETT: Foundation.

11 MR. DROOKS: Form.

12 THE WITNESS: It is my understanding.

13 BY MR. MARK:

14 Q And how is that your understanding?

15 A That is when we published these rules.

16 Q So if you look at paragraph 9 of your
17 declaration, you write:

18 "On July 21st, Herbalife sent a
19 notification to all distributors of
20 the recent changes of the rules,
21 including the changes to the
22 arbitration provision." Correct?

23 A My paragraph 9 doesn't -- oh, yes, it does.
24 Yes.

25 Q Okay. And that is the notification we just

1 looked at; right?

2 A Yes.

3 Q Now, are you aware of whether these rules
4 were published on herbalife.com before July 21st,
5 2014?

6 A It's my recollection that they were
7 published online on July 21st, 2014.

8 Q Simultaneous with this notification?

9 A I believe so.

10 Q Now, Rule 8(c) is not contained in this
11 version of the rules; correct?

12 A We changed our numbering. So I am
13 verifying.

14 Q Sure.

15 A So we have, in this version, Rule 3.1.1
16 entitled Must Comply with the Rules and the Law, which
17 is on page 84, our page 84.

18 Q Page 84, okay. 3.1.1.

19 A "Must Comply with the Rules
20 and the Law. Members must comply
21 with the laws and the rules in each
22 country where they are conducting
23 their Herbalife business. Members
24 are to review these rules with
25 downline members."

1 Q Okay. Is that the replacement of Rule 8(c)?

2 A I believe so.

3 Q And you will agree with me that as of
4 July 21st, 2014, Rule 8(c), in its form, Rule 8(c) is
5 no longer in effect; correct?

6 A I can't agree to that on the spot because we
7 may have similar language in other documents.

8 Q Okay. But Rule 8(c) -- and that is why I am
9 talking specifically about Rule 8(c).

10 Rule 8(c), as Rule 8(c), is no longer
11 applicable; correct?

12 A Correct.

13 Q Okay. So as of July 21st, 2014, Rule 8(c)
14 is no longer in effect?

15 A That specific rule is no longer published.

16 Q So it is no longer in effect; correct?

17 MR. CATLETT: Foundation.

18 MR. DROOKS: Form.

19 THE WITNESS: I would not say that it is no
20 longer in effect.

21 BY MR. MARK:

22 Q So Rule 8(c) is still in effect as of
23 July 21st, 2014?

24 MR. CATLETT: Same objections.

25 MR. DROOKS: Form.

1 THE WITNESS: The parameter that is set for
2 distributors in Rule 8(c) is still in effect.

3 BY MR. MARK:

4 Q Okay. And is that because a similar
5 parameter exists in this version of 31?

6 A It may be in this version or it may be on
7 the application. So I can't remember sitting here in
8 front of you.

9 Q Okay.

10 A So I don't want to say no.

11 Q Okay. And that is why -- what I understand
12 your testimony that there may be some other language
13 in some other application or somewhere else as of
14 July 21st, 2014, that contains some of the same
15 obligations as what Rule 8(c) contained?

16 A That's correct.

17 Q Okay. But you will agree with me that
18 Rule 8(c) is no longer in existence for purposes of
19 obligations of distributors as of July 21st, 2014?

20 MR. CATLETT: Form.

21 THE WITNESS: No, I don't agree with that
22 statement.

23 BY MR. MARK:

24 Q So Rule 8(c) still is in existence as of
25 July 21st, 2014 and distributors are still bound by

1 it?

2 A The requirements in Rule 8(c) are still in
3 existence and distributors are still bound by it.

4 Q Okay. Show me, please, where the
5 requirements of Rule 8(c), and specifically, the
6 obligation to stay informed of the rules is contained
7 in the Rules of Conduct marked as Exhibit 19.

8 A 18.

9 Q 18.

10 A My interpretation of Rule 3.1.1 states that:
11 "Members must comply with the laws
12 and the Rules and that members are
13 to review these Rules with downline
14 members."

15 And these are the most current rules.

16 Q So the word "rules" is capitalized; right,
17 in 3.1.1?

18 A Yes.

19 Q Does "rules" mean the Rules of Conduct?

20 A My understanding is all policies, whether it
21 be on the membership application, Book 4, the forms,
22 the advisories.

23 Q Is the word "rules" defined in this
24 document?

25 A I don't know.

1 "The Herbalife Rules of Conduct and
2 all other rules and policies and
3 advisories that Herbalife issues or
4 in the future may issue from time
5 to time."

6 Q What page are you on?

7 A On page 111.

8 Q Under Definitions?

9 A Yes.

10 Q Is there any part of this exhibit that
11 requires distributors to stay informed of the rules?

12 A Again, my interpretation of 3.1.1 indicates
13 they have to stay informed because they must comply
14 with the laws and the rules.

15 Q Okay. So it says that they have to comply
16 with the rules, and you interpret that as meaning that
17 they also have to stay informed of the rules?

18 A Correct.

19 Q Is there anything else in this document, to
20 your knowledge, that obligates the distributors to
21 stay informed of changes in the rules?

22 A I believe that there are references in some
23 of the rules.

24 Q But you don't -- it is not your position
25 that Rule 8(c) specifically carries forward to the

1 later revisions of the rule; is it?

2 MR. DROOKS: You can't ask her what our
3 position is. You can ask her understanding.

4 BY MR. MARK:

5 Q Understanding. It is not your understanding
6 that Rule 8(c) carries forward in its form to future
7 versions of the rules; is it?

8 MR. CATLETT: Form.

9 THE WITNESS: I think I have already
10 answered that question. Rule 8(c), the specific
11 language in Rule 8(c), does not appear in this
12 Version 31, but my understanding of Rule 3.1.1 covers
13 what was in Rule 8(c).

14 BY MR. MARK:

15 Q Okay. But that Version 31 replaces earlier
16 versions of the Rules of Conduct; correct?

17 A That's correct.

18 Q Okay. You're familiar with the Herbalife --
19 the home page of myherbalife.com; right?

20 A Yes.

21 MR. MARK: I will hand you a document that
22 we will mark as --

23 THE REPORTER: 19.

24 MR. MARK: -- 19.

25 (Exhibit 19 marked.)

1 THE WITNESS: Thank you.

2 BY MR. MARK:

3 Q Is this the myherbalife.com home page?

4 Admittedly, it is a printout of it.

5 A It looks like it.

6 Q Okay. And do you remember your earlier
7 testimony about the policies that are incorporated
8 into the distributor agreement?

9 A Yes.

10 Q Those are available on myherbalife.com;
11 correct?

12 A Correct.

13 Q And do those include the Privacy Policy?

14 A Yes.

15 Q Does it include the terms of use?

16 A The terms of use, sorry, I am not clear what
17 you're asking me.

18 Q Sure.

19 You talked earlier about the incorporation
20 of the various documents into the application; --

21 A Yes.

22 Q -- right?

23 And you said that those were available on
24 myherbalife.com; right?

25 A Yes.

1 Q Okay. And the Privacy Policy is one of
2 those written policies that are incorporated in here;
3 right?

4 A Yes.

5 Q Okay. And the Terms of Use, do you see the
6 Terms of Use?

7 MR. DROOKS: Of the website?

8 MR. MARK: Of the website.

9 THE WITNESS: Oh, I see here, Terms of Use.

10 BY MR. MARK:

11 Q Yes. Is that also something that was
12 incorporated into the application? The Privacy Policy
13 is; correct?

14 A Um-hmm.

15 Q "Yes"? Is the Terms of Use also?

16 MR. CATLETT: Form. Foundation.

17 MR. DROOKS: Form. Legal conclusion.

18 THE WITNESS: It would --

19 BY MR. MARK:

20 Q Is that one of the written Herbalife
21 policies that provide the terms and conditions under
22 which a distributor must operate his or her
23 distributorship?

24 A It would be my understanding that it is.

25 Q Yeah. And is the Privacy Policy one of the

1 terms and conditions under which a distributor must
2 operate his or her Herbalife distributorship?

3 MR. CATLETT: Form and foundation.

4 THE WITNESS: I am pausing a moment because
5 I don't know if this Privacy Policy is in reference to
6 the website or if this Privacy Policy is the Privacy
7 Policy that we have in place as part of our rules for
8 our members.

9 BY MR. MARK:

10 Q Okay.

11 A I don't know what is behind this.

12 Q So does that matter, then, which one of
13 those two are in --

14 A My understanding would be that it is
15 incorporated.

16 Q Okay. Right. That both the Privacy Policy
17 and the Terms of Use are incorporated?

18 MR. CATLETT: Form and foundation.

19 THE WITNESS: Yes.

20 MR. MARK: I will hand you a document that
21 we will mark as Exhibit 20.

22 (Exhibit 20 marked.)

23 THE WITNESS: Thank you.

24 BY MR. MARK:

25 Q Have you seen this document before?

1 A No.

2 Q You have never seen it?

3 A No, I haven't.

4 Q Okay. Are you aware that these are the
5 Terms of Use that are on the myherbalife.com website?

6 A No, I am not aware of this.

7 Q Okay. Do you see the last revised date,
8 February 2nd, 2017?

9 A No, I see January -- oh, I see after that.

10 Q The last revised date on the first page?

11 A Oh, yes, February 2nd, 2017.

12 Q Who is responsible at Herbalife for revising
13 the Terms of Use --

14 MR. DROOKS: Maybe you want to let her
15 finish her answer.

16 MR. MARK: I thought she did.

17 Q Who is responsible at Herbalife for revising
18 the Terms of Use, if you know?

19 A I don't know.

20 Q Okay. And these Terms of Use, if you look
21 at the first paragraph, it states:

22 "Please read these Terms of Use and
23 the Privacy Policy" -- and then it
24 links to the Privacy Policy --
25 "before using this website or

1 purchasing any product or services
2 from Herbalife."

3 Do you see that?

4 A Yes.

5 Q Did I read that correctly?

6 A Yes.

7 Q Okay. Are you aware that Herbalife requires
8 its distributors to read these Terms of Use before
9 using this website or purchasing any product or
10 services from Herbalife?

11 A No.

12 MR. DROOKS: Mischaracterizes the document.

13 THE WITNESS: I wasn't aware.

14 BY MR. MARK:

15 Q Okay. Let's look at the third paragraph.

16 Do you see the bold language there, "If you
17 do not agree"?

18 Do you see that?

19 A Yes.

20 Q Can you read that, please?

21 A "If you do not agree to be
22 bound by this agreement, do not
23 access or otherwise use this site
24 or participate in any of the
25 offerings."

1 Q So these Terms of Use govern the use of the
2 website; correct?

3 MR. DROOKS: Form. Legal conclusion.

4 MR. CATLETT: Foundation.

5 MR. DROOKS: Foundation.

6 THE WITNESS: What was your question?

7 BY MR. MARK:

8 Q These Terms of Use govern the use of
9 myherbalife.com website; right?

10 MR. DROOKS: Same objections.

11 THE WITNESS: It appears to.

12 BY MR. MARK:

13 Q Okay. And you are the senior director of
14 Member Policy Administration; right?

15 A Correct.

16 Q And you were not aware of this policy?

17 A I have never seen this document with the
18 question you had asked me.

19 Q But it is all on the Herbalife --
20 myherbalife.com website?

21 A Yes.

22 Q Okay. Do you see the fourth paragraph that
23 begins with, "This agreement"?

24 A Yes.

25 Q It states that:

1 "It constitutes the entire
2 agreement between you and us
3 pertaining to the subject matter
4 hereof and supersede all prior or
5 other arrangements, understandings,
6 negotiations and discussions,
7 whether oral or written."

8 Do you see that?

9 A Yes.

10 Q Are you aware of any language in any of the
11 Rules of Conduct that states that it supersedes all
12 prior versions of the Rules of Conduct or any other
13 agreement between the distributor and Herbalife?

14 MR. CATLETT: Form and foundation.

15 THE WITNESS: I don't recall.

16 BY MR. MARK:

17 Q As you sit here today, as the senior
18 director of Member Policy Administration, are you
19 aware of any language in any of the Rules of Conduct
20 that state that a particular Rule of Conduct
21 supersedes any other agreements between the
22 distributor and Herbalife?

23 MR. CATLETT: Form.

24 THE WITNESS: I am familiar with that
25 language, but I am having difficulty in recalling

1 where -- where that would be positioned.

2 BY MR. MARK:

3 Q So you think you have seen it, but you're
4 not sure where?

5 A Correct.

6 Q Is it possible that it was the Terms of Use
7 that you saw it?

8 A I don't believe that is where I saw it.

9 MR. DROOKS: Speculation.

10 BY MR. MARK:

11 Q If you look at the second paragraph of the
12 Terms of Use, you will see where it says -- this
13 sentence begins with, "This agreement"?

14 A Second paragraph?

15 Q Yes. I'm sorry.

16 The second sentence of the second paragraph
17 that begins with, "This agreement."

18 Do you see that?

19 A Yes.

20 Q Can you read that sentence for me, please,
21 out loud?

22 A Second paragraph, second sentence, okay, I
23 see it.

24 "This agreement sets forth the
25 legal terms and conditions

1 governing your use of this website
2 and each independent distributor's
3 platform and each web property
4 collectively referred to herein as
5 the Site, and for your purchase
6 and/or use of any Herbalife goods,
7 services, collectively referred to
8 hereinafter as Offerings. This
9 agreement also provides information
10 on how to become an Herbalife
11 independent distributor or
12 Herbalife preferred member."

13 Q Okay. So you would agree with me that these
14 Terms of Use govern the use of the website; correct?

15 MR. DROOKS: Objection as to form.

16 THE WITNESS: It appears so.

17 BY MR. MARK:

18 Q And you would also agree with me that these
19 Terms of Use govern each independent distributor's
20 platform and each web property?

21 MR. DROOKS: Objection as to form.

22 Mischaracterizes the document.

23 BY MR. MARK:

24 Q Correct?

25 MR. CATLETT: And foundation.

1 THE WITNESS: I believe so.

2 BY MR. MARK:

3 Q And you would agree with me that this
4 agreement also governs a distributor's purchase and/or
5 use of any Herbalife goods or services?

6 MR. DROOKS: Mischaracterizes the document.

7 MR. CATLETT: Foundation.

8 BY MR. MARK:

9 Q Correct?

10 MR. DROOKS: Objection as to form.

11 THE WITNESS: It is one document that
12 includes policies, but not the only.

13 BY MR. MARK:

14 Q Well, this supersedes other documents,
15 though; right?

16 MR. DROOKS: Objection as to form.

17 BY MR. MARK:

18 Q You can answer.

19 MR. DROOKS: Calls for a legal conclusion.

20 MR. CATLETT: Form.

21 THE WITNESS: I wouldn't know how to define
22 that.

23 BY MR. MARK:

24 Q Well, it states that. But all right. It
25 states that it supersedes other agreements; correct?

1 MR. DROOKS: Mischaracterizes the document.

2 BY MR. MARK:

3 Q You can answer.

4 MR. DROOKS: Object as to form.

5 THE WITNESS: I believe we read the word
6 "supersedes."

7 BY MR. MARK:

8 Q Do you want me to show --

9 A Yeah, show me.

10 Q Okay. Sure. It is it one, two, three,
11 fourth paragraph.

12 A Yes, it indicates supersedes.

13 Q Okay. So would you agree with me that this
14 document supersedes all prior other arrangements,
15 understandings, negotiations and discussions between
16 distributor and Herbalife?

17 MR. CATLETT: Foundation.

18 MR. DROOKS: Objection as to form.
19 Mischaracterizes the document.

20 THE WITNESS: I don't feel like I am in a
21 position to answer that question because I am not a
22 lawyer.

23 BY MR. MARK:

24 Q Okay. But are you the head of --

25 MR. DROOKS: That has been asked and

1 answered --

2 BY MR. MARK:

3 Q You are the --

4 MR. DROOKS: -- now for the fifth time.

5 BY MR. MARK:

6 Q You are the senior director of Member Policy
7 Administration; right?

8 A Yes, that's correct.

9 MR. DROOKS: Asked and answered.

10 BY MR. MARK:

11 Q And as part of your responsibilities, you
12 are required to stay apprised of Herbalife's policies;
13 correct?

14 A Yes, I am.

15 Q And this is an Herbalife policy; correct?

16 MR. CATLETT: Foundation.

17 THE WITNESS: Yes.

18 BY MR. MARK:

19 Q Okay. So that is why I am asking you this
20 question because I don't know who else to ask.

21 MR. DROOKS: That's argumentative.

22 BY MR. MARK:

23 Q Okay. So would you agree that --

24 MR. DROOKS: That's not a question,
25 actually. Let's stick with the questions. Don't

1 argue with the witness.

2 BY MR. MARK:

3 Q So you would agree with me, then, that this
4 agreement appears to supersede all other agreements
5 between Herbalife and the distributor; correct?

6 MR. DROOKS: Object as to form.
7 Mischaracterizes the document.

8 THE WITNESS: I did not say that.

9 BY MR. MARK:

10 Q You don't agree with that statement?

11 MR. CATLETT: Foundation.

12 MR. DROOKS: Lacks foundation. Form. Legal
13 conclusion.

14 THE WITNESS: I am not in a capacity to make
15 that determination.

16 BY MR. MARK:

17 Q Okay. Who would be at Herbalife?

18 A I assume a lawyer.

19 Q Okay. You see the reference to Herbalife
20 goods or services -- goods, services in the second
21 paragraph?

22 A Yes, I do.

23 Q What are Herbalife's goods?

24 MR. CATLETT: Foundation.

25

1 BY MR. MARK:

2 Q If you know?

3 MR. DROOKS: Foundation.

4 THE WITNESS: Nutritional products.

5 BY MR. MARK:

6 Q What about Herbalife services?

7 MR. CATLETT: Same objection.

8 THE WITNESS: My understanding of services
9 would be some of the services that we offer our
10 distributors, like use of our website.

11 BY MR. MARK:

12 Q What about events?

13 MR. CATLETT: Same objection.

14 THE WITNESS: I don't know that an event is
15 considered a service.

16 BY MR. MARK:

17 Q Can you purchase tickets for events on the
18 Herbalife website?

19 A I don't know.

20 Q You don't know whether you can buy tickets
21 to Extravaganza on myherbalife.com?

22 A I don't know that.

23 Q Going to paragraph 20, the last page of the
24 document, do you see where it says, "Choice of law and
25 venue"?

1 A Yes.

2 Q That is not an arbitration provision; is it,
3 to your knowledge?

4 MR. DROOKS: Objection as to form. Legal
5 conclusion.

6 MR. CATLETT: Foundation.

7 BY MR. MARK:

8 Q Well, you know what an "arbitration
9 provision" is; right?

10 A To my knowledge, this is not an arbitration
11 provision.

12 Q Do you know what an "arbitration provision"
13 is?

14 A I have a general understanding.

15 Q Well, you stated in your declaration that
16 all Herbalife members are subject to an arbitration
17 provision; correct?

18 A Correct.

19 Q Okay. So I am asking you whether
20 paragraph 20 is an arbitration provision, to your
21 knowledge?

22 A To my knowledge, it's not.

23 Q Okay. Is paragraph 20, to your knowledge,
24 inconsistent with an arbitration provision?

25 MR. DROOKS: Objection as to form. Legal

1 conclusion.

2 BY MR. MARK:

3 Q You can answer.

4 A It is different than an arbitration
5 provision.

6 Q In other words, you can't have both; right?
7 It is one or the other?

8 MR. DROOKS: Objection as to form. Legal
9 conclusion.

10 BY MR. MARK:

11 Q If you know?

12 A I don't know.

13 MR. MARK: Okay. I am going to hand you a
14 document that we will mark as Exhibit 21.

15 (Exhibit 21 marked.)

16 THE WITNESS: Thank you.

17 BY MR. MARK:

18 Q Have you seen this document before?

19 A Yes, I have.

20 Q Okay. Can you identify it for me, please?

21 A It says, "Version 33 of Book 4." The date
22 on the spine is November, '16.

23 Q November, 2016, is that 2016?

24 A It is 2016.

25 Q Okay. Is it your understanding that this is

1 the version of the Rules of Conduct that is currently
2 in effect?

3 A I don't believe so.

4 Q There is a later version?

5 A Yes.

6 Q If you go to page HLF, underscore, 000666
7 for a moment.

8 A Yes.

9 Q Do you see that Footnote 1?

10 A Yes.

11 Q Do you understand what that footnote means?

12 MR. DROOKS: Calls for speculation.

13 THE WITNESS: So it states:

14 "Herbalife has the sole and
15 absolute discretion to change the
16 Rules of Conduct and issue other
17 rules, policies and advisories from
18 time to time altogether the rules.
19 However, the changes in new rules
20 will be prospective, which means
21 they will not be applied to past
22 behavior. Herbalife may impose any
23 corrective action or sanction to
24 address any breach of the rules and
25 we reserve the right to waive fully

1 or partially any breach of any
2 rule."

3 BY MR. MARK:

4 Q Okay. And this is the document that was
5 marked -- and just to make sure we are all on the same
6 page.

7 This document, which was Bates stamped HLF,
8 underscore, 582 through 749 is the document that is
9 referred to as Exhibit G of your declaration,
10 paragraph 11; is that correct?

11 A Yes.

12 Q Okay.

13 So the sentence that says,
14 "However, the changes in new rules
15 will be prospective, which means
16 they will not be applied to past
17 behavior," what does that mean?

18 MR. DROOKS: Calls for speculation. Lacks
19 foundation. Legal conclusion.

20 BY MR. MARK:

21 Q Do you know what that means?

22 MR. DROOKS: Speculative. Form.

23 THE WITNESS: My understanding is that if
24 someone's behavior did X prior to a rule coming out,
25 we are not going to go back in time and say, you know,

1 in whatever month, you did X; and now we have this
2 rule in place; and we are going to -- so you are in
3 trouble for what you did in the past before the rule
4 was published.

5 BY MR. MARK:

6 Q Okay. So -- okay. So if a rule -- so if --
7 I am trying to think if there is a way I can rephrase
8 it because I still don't completely understand.

9 If a new rule is added in 20 -- in, let's
10 say, this Version 33, and that rule makes conduct that
11 predated this amendment a violation of the rules,
12 Herbalife is not going to go back and say, hey, you
13 violated these rules before this amendment, now this
14 amendment is in effect; and I am imposing these rules
15 to your earlier behavior?

16 A Exactly.

17 MR. DROOKS: Objection as to form.

18 BY MR. MARK:

19 Q Is it your understanding that that would
20 apply also to the arbitration provision? And do you
21 understand what I mean by that?

22 A I understand your question, but I can't
23 answer that. Again, I am not a lawyer. I don't know
24 how to interpret that specific.

25 Q So whether or not conduct that predated the

1 arbitration provision, you're not sure whether or not
2 that would fall into -- whether or not the arbitration
3 provision would apply to that conduct?

4 MR. DROOKS: Vague and ambiguous. Objection
5 as to form.

6 BY MR. MARK:

7 Q Do you understand?

8 A I understand, but I don't know how to answer
9 your question correctly -- or to answer your question.

10 Q I don't know what the correct answer --

11 A I don't mean correctly. I just mean I do
12 not know how to answer the question.

13 Q Okay. I just want to make sure it is not
14 because you don't understand the question; it is just
15 that you are not sure of what the answer is?

16 A I understand your question, but because I am
17 not a person with legal background, I don't have the
18 capacity to interpret when arbitration that you're
19 asking me about went into effect or what it covered
20 people before or after.

21 Q Okay. Well, you do state that the
22 arbitration provision was added in August, 2013 in
23 your declaration; right?

24 A Correct.

25 Q Okay. So let's talk about conduct in July

1 of 2013. There is no arbitration provision in effect
2 then; right?

3 MR. DROOKS: Vague and ambiguous as to
4 "conduct."

5 BY MR. MARK:

6 Q Okay. Right?

7 A Again, I don't know how to answer that.

8 Q Well --

9 A We read on the application the clause that
10 spoke about policies being in their then current form.

11 Q Okay.

12 A So I would leave that up to an attorney to
13 define exactly the answer to your question.

14 Q As to whether or not conduct before the
15 arbitration provision would or would not be subject to
16 arbitration?

17 MR. DROOKS: Objection as to form.

18 BY MR. MARK:

19 Q Is that the question that you are --

20 MR. DROOKS: Objection as to form.

21 MR. MARK: Can I finish the question before
22 you object?

23 MR. DROOKS: Your question was complete. If
24 you go on, it is just compound.

25 MR. MARK: It was not complete.

1 MR. DROOKS: Okay.

2 MR. MARK: You objected to form and then I
3 started another question, and then you objected to
4 form when I was four words into that question.

5 MR. DROOKS: I see. So you are withdrawing
6 the prior question?

7 MR. MARK: Yes, I am withdrawing the prior
8 question.

9 MR. DROOKS: Okay.

10 BY MR. MARK:

11 Q So is it your -- so what you are stating --
12 I just want to make sure I understand -- is that an
13 arbitration provision that was first added in August,
14 2013, you're not sure whether or not that would apply
15 to conduct before August of 2013?

16 MR. DROOKS: Objection. Vague and ambiguous
17 as to "conduct." Objection as to form.

18 THE WITNESS: My personal understanding is
19 that it would apply based on the sentence that we
20 spoke about on the member application, which says that
21 the distributor is bound by the policy -- the most
22 current policies in their then form.

23 BY MR. MARK:

24 Q Which is the same, you testified to, as the
25 most recently published form?

1 A Yes.

2 Q Okay. So it is your understanding, then,
3 that conduct that occurred before the arbitration
4 provision went into effect in August, 2013 would be
5 subject to the arbitration provision because of that
6 provision which applies on a prospective basis?

7 A That is my personal understanding.

8 Q If you turn to page 644 of Exhibit 21.

9 A Yes.

10 Q There is the sample form Herbalife
11 Membership Application and Agreement, Version 46,
12 revised April, 2016; is that correct?

13 A I can't see the date.

14 Q Okay.

15 A Yes.

16 Q Other than the date part, is what I said
17 correct?

18 A Yes.

19 Q I will represent to you it says,
20 "Version 46, revised April 2016"; okay?

21 A Yes.

22 Q All right. So -- but you don't know whether
23 this form application was in effect at the time that
24 these rules were put into effect; correct?

25 A That's true.

1 Q And that is because of the Creative
2 Department?

3 A The logistics of printing.

4 Q Print; right.

5 Now, is the -- are the provisions of this
6 Membership Application and Agreement sample form
7 also -- do those also govern the Herbalife distributor
8 relationship as of the time that these rules are put
9 into effect?

10 MR. DROOKS: Objection as to form. Legal
11 conclusion.

12 THE WITNESS: That is a very technical
13 question.

14 BY MR. MARK:

15 Q Well, a distributor gets this packet, these
16 Rules of Conduct; right, when they sign the
17 application; correct?

18 A Yes.

19 Q And these Rules of Conduct contain this
20 sample form, Herbalife Membership Application
21 Agreement; correct?

22 A Correct.

23 Q Are they bound by the provisions in terms of
24 that Herbalife Membership Application and Agreement in
25 the Rules of Conduct or are they bound by the

1 Herbalife Membership Application Agreement that they
2 signed?

3 MR. CATLETT: Form. Foundation.

4 MR. DROOKS: Form. Foundation. Legal
5 conclusion.

6 BY MR. MARK:

7 Q If you know.

8 A I am back to -- I don't know how to answer
9 that question since I am not a lawyer.

10 Q Okay. And if there is a conflict between
11 the application that they signed and the application
12 that is incorporated in these Rules of Conduct, which
13 one controls, if you know?

14 MR. DROOKS: Objection. Form.

15 MR. CATLETT: Foundation.

16 THE WITNESS: I don't know.

17 BY MR. MARK:

18 Q Are sponsors required to train downline
19 distributors about the Rules of Conduct?

20 A Yes, they are.

21 Q That is an obligation under the Rules of
22 Conduct?

23 A Yes.

24 Q And how does that occur?

25 A Training can occur different ways from the

1 sponsor to the member, whether it is face-to-face
2 training, you know, virtual training between them.

3 Q Does Herbalife monitor whether or not that
4 training occurs?

5 And I mean specifically the training with
6 respect to updates to the Rules of Conduct.

7 MR. CATLETT: Form.

8 BY MR. MARK:

9 Q If you know.

10 A We would look into any issues reported.

11 Q Okay.

12 A If a downline made us aware that their
13 sponsor is not providing them with training, then -- I
14 think you used the word "monitor," and actually, we
15 would inquire about that sponsor's business activities
16 and how they are training their downline.

17 Q Okay. But absent notification from a
18 downline member that their sponsor is not providing
19 him or her training as to updates in the Rules of
20 Conduct, is there any other way in which Herbalife
21 monitors training?

22 A Yes.

23 Q Can you tell me about that?

24 A Training between the company and the
25 distributor, but training between a distributor and

1 their downline?

2 Q Yes.

3 A Not that I am aware.

4 MR. MARK: Let's take three minutes. I
5 might be done.

6 THE WITNESS: Okay.

7 MR. MARK: Thank you.

8 THE WITNESS: Yeah.

9 (Recess.)

10 MR. MARK: I don't have any further
11 questions.

12 MR. DROOKS: Do you want to just put the
13 same stipulation on the record that we did this
14 morning?

15 THE REPORTER: Yes, I can.

16 MR. MARK: Okay. Thank you so much for your
17 time. I really appreciate it.

18 THE WITNESS: You're welcome.

19 MR. DROOKS: Thank you.

20 MR. MARK: I'd like to get rough drafts.

21 (Whereupon, the following
22 stipulation was agreed to by the
23 parties and copied from the
24 deposition of Silvia Ramirez:

25 "MR. DROOKS: I propose that

1 the court reporter be relieved of
2 her obligation to maintain the
3 original. The original will be
4 sent to me.

5 "Ms. Ramirez will review it.
6 We will provide you with any
7 errata. She will sign it under
8 penalty of perjury without benefit
9 of a notary.

10 "I will provide the original
11 to you. You will maintain it for
12 all purposes. File it with the
13 court, as needed or appropriate.

14 "If the original is lost or
15 misplaced, a certified copy can be
16 used for all purposes. And if the
17 original is not timely signed, you
18 can use an unsigned, certified copy
19 for all purposes.

20 "And I understand you have a
21 motion pending. So if you want to
22 expedite the transcript, you can do
23 that. We will make every effort to
24 have Ms. Ramirez review it and sign
25 it within 10 days of receipt.

1 "If that becomes a problem,
2 for some reason, we will let you
3 know.

4 "MR. MARK: Well, yeah, so --
5 so I would like to expedite the
6 transcript.

7 "Yeah. Obviously, you have
8 the right to read the transcript
9 and make any changes, et cetera,
10 via an errata sheet. So I don't
11 have a problem with that.

12 "Obviously, I would like to
13 expedite it in light of the fact
14 that we have a response due in
15 20 days, I think. That should be
16 fine.

17 "MR. DROOKS: So stipulated?

18 "MR. MARK: Yeah. Yeah.")

19 (The deposition concluded at 3:45 p.m.)

20 * * *

21

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25

1 REPORTER'S CERTIFICATION

2
3 I, Diana Janniere, a Certified Shorthand Reporter,
4 in and for the State of California, do hereby certify:
5

6 That the foregoing witness was by me duly sworn;
7 That the deposition was then taken before me at the
8 time and place herein set forth; that the testimony
9 and proceedings were reported stenographically by me
10 and later transcribed into typewriting under my
11 direction; and that the foregoing is a true record of
12 the testimony and proceedings taken at that time.
13

14 IN WITNESS WHEREOF, I subscribed my name
15 this 25th day of January, 2018.
16
17

18 

19
20 _____
21 Diana Janniere, CSR No. 10034
22
23
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13
14
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16
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18
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DECLARATION ERRATA SHEET

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

DECLARATION UNDER PENALTY OF PERJURY

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

Signed on the _____ day of _____, 2018.

ROXANE ROMANS

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Page No. _____ Line No. _____ Change to: _____

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Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

SIGNATURE: _____ DATE _____

ROXANE ROMANS

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

SIGNATURE: _____ DATE _____

ROXANE ROMANS

	1131135 Rox	140:6	114:1,15,	113:3
Exhibits	ane.Romans.	000802	19	114:23
	EXHIBIT15	105:11	12(b)	139:22
1131135 Rox	1131135 Rox	00095	75:16	17
ane.Romans.	ane.Romans.	106:16	76:7,8	25:4
EXHIBIT3	EXHIBIT16	01/0	13	106:10,16
1131135 Rox	1131135 Rox	32:14	82:15	110:4,5,
ane.Romans.	ane.Romans.	01/08	83:3,4,5,	11,16,22,
EXHIBIT4	EXHIBIT17	32:4	9,12,13	25 111:24
1131135 Rox	1131135 Rox	06	86:18,20,	18
ane.Romans.	ane.Romans.	35:13	24 87:24	116:21,22
EXHIBIT5	EXHIBIT18	07/13	88:24	121:8,9
1131135 Rox	1131135 Rox	103:25	89:8	184
ane.Romans.	ane.Romans.	09/13	92:2,7	99:19
EXHIBIT6	EXHIBIT19	105:21	94:16	19
1131135 Rox	1131135 Rox		95:6	121:7
ane.Romans.	ane.Romans.		103:22	123:23,
EXHIBIT7	EXHIBIT20	<u>1</u>	13th	24,25
1131135 Rox	1131135 Rox		86:19	190th
ane.Romans.	ane.Romans.	1	14	8:7
EXHIBIT8	EXHIBIT21	37:20	17:22	
1131135 Rox		60:1	94:9	<u>2</u>
ane.Romans.	(67:16	99:4,5,6	
EXHIBIT9		140:9	100:13,20	20
1131135 Rox	(b)	10	101:12	126:21,22
ane.Romans.	105:1	27:17,18	108:14	137:23
EXHIBIT10		63:6,15,	14th	138:20,23
1131135 Rox	0	21 151:25	23:13	142:9
ane.Romans.		11	25:3	152:15
EXHIBIT11	000094	22:23	26:22	2008
1131135 Rox	102:13	28:5,6	15	23:13
ane.Romans.	000097	63:6,15,	99:3	25:3
EXHIBIT12	106:5	22 141:10	105:5,6,	31:19,22
1131135 Rox	000121	111	7,24	33:4,7,
ane.Romans.	108:16	122:7	106:4	10,12,13
EXHIBIT13	000184	12	109:24	35:1
1131135 Rox	99:18	81:22,23	110:1,8,	40:17
ane.Romans.	00051	83:8,14	11	42:21
EXHIBIT14	99:17	86:4 88:8	16	90:21,23
	000666	94:12,24	24:15	116:16
		95:2,11	109:24	
		113:7,13	110:3,4,	2010
			5,8,10,	26:7 46:3
			11,13	57:1 58:2

2011	146:8	52:11	121:21	32:1,4,
26:22		53:1	139:21	13,15
	21st			36:13
2013	110:18	3.1.1	40	39:19
17:22	117:7,18	118:15,18	104:24	65:2,7,11
27:10	118:4,7	121:10,17	105:18,19	68:19
64:21	119:4,13,	122:12	4011-USSP-	73:2
87:9,20,	23	123:12	31	
25 89:3,	120:14,		32:4,14	644
7,15	19,25	30		146:8
90:1,17		14:3	43	
91:6,10,	22nd	31	63:17	<hr/>
20 100:2,	27:10	31:6,8		7
22 101:8	23rd	36:9	4500	<hr/>
104:3	26:7	111:18	7:24	7
107:7,25	28	117:2	46	25:22,23
108:9	35:13	120:5	146:11,20	45:8
116:13	36:10	123:12,15	48	47:13,14
143:22	87:20,24	33	12:13,14	48:1,3
144:1	101:8	139:21	13:3,4,	49:6,10
145:14,15	107:25	142:10	16,17	52:20,23
146:4	108:9	34D	14:6,9	58:11,12,
		13:24		14,18
2014	29	14:13,14	<hr/>	59:6,10
28:16	31:15		5	75:13
82:15	99:24	39	<hr/>	76:1,2
83:14	108:7	104:22	5	79:3,5
86:19,25		106:7	22:23	82:13
88:24	2nd	39(a)	23:1,6,17	87:15
89:8 92:7	28:16	105:1	24:16	7/13
110:19	127:8,11	3:45	35:3,18	103:20
117:7		152:19	36:13	104:11
118:5,7	<hr/>		38:14	7/7/2014
119:4,13,	3		39:23	27:24
23		<hr/>	582	
120:14,	3	4	141:8	749
19,25	19:3,4			67:6
	20:23	4	<hr/>	141:8
2016	52:11	20:8,13	6	<hr/>
139:23,24	53:4,5,7,	30:9,12		771
146:12,20	8,13	51:24		67:6
	3(a)	54:2	6	
2017	39:25	56:13	23:15	<hr/>
127:8,11	44:20	69:12	24:20,22,	8
	55:7	70:23	24 25:6	<hr/>
203		92:4 99:9	29:21	8
7:24	3(d)	117:2	30:5,13	26:12,13
	51:24,25		31:2,4	32:15,16,
21				
139:14,15				

21 47:12, 17,18 48:6 58:13,16, 18	<hr/> A <hr/>	acknowledge s 51:18 60:4 61:3	advance 52:3 87:5 88:12,13 advanced 21:15	133:3 134:13 135:23 136:3,10
8(c) 62:7,8, 10,12,14, 23 63:2 108:18 109:9 116:6 118:10 119:1,4, 8,9,10, 13,22 120:2,15, 18,24 121:2,5 122:25 123:6,10, 11,13	abide 62:5,17 109:14 ability 8:13 42:4 84:13,20 85:6,17, 25 absent 149:17 absolute 39:4 54:16 140:15 accept 61:25 67:1 accepted 115:16 accepting 67:23 68:3,7	action 89:22 91:16 140:23 activities 149:15 actual 65:19 94:15 110:15,16 112:6 Acuerdo 34:2 add 11:22 49:5,9 added 89:16,19, 22 91:6,9 142:9 143:22 145:13	advised 10:23 111:8,10 121:22 122:3 140:17 advisory 83:13 86:13 87:6 88:12 89:13 111:11,14 affidavit 46:6 79:3 affirm 115:16,20 affirmed 116:2 afternoon 6:9,10 agree 19:13 23:17 33:20 46:2 47:19,22 55:9 59:18,24 60:11 63:9 64:23 67:1 98:3 106:9 119:3,6 120:17,21 128:17,21 132:13,18	agreed 104:6 116:2 150:22 agreement 17:10 38:2,5,12 39:6 46:4 54:18 55:18 58:22,25 59:2,13, 14 60:23 68:22 70:3 72:1,14 73:6 75:20 83:24 85:10 90:2,22 91:10 102:23 107:2 124:8 128:22 129:23 130:2,13 131:13, 17,24 132:9 133:4 136:4 146:11 147:6,21, 24 148:1 agreements 10:22 20:25 74:24 78:18
8(d) 109:17				
84 118:17,18				
<hr/> 9 <hr/>				
9 27:1,2,3, 5 117:16, 23	access 22:10,13, 16,19 56:5,8, 18,25 57:5 58:5 128:23 accessed 86:15 accommodate 7:16 accurately 32:10 acknowledge 97:18 98:2	addition 82:19 additional 11:23 address 7:23 8:1, 2 140:24 Administrat ion 9:2,6,22 129:14 130:18 135:7 Admittedly 124:4		
90292 7:25				
93 101:19				
94 102:10,12 103:10				
97 102:23 103:10				

101:24	23 86:11	98:6,16	34:12,22	102:11,15
130:21	87:23	111:9,10,	35:4,8,	103:6,9,
133:25	88:23	20 112:4,	10,17,19	14 106:6
136:4	115:24,25	5 113:23	36:7,13	115:21
agrees	116:2	answering	37:1,5,8,	120:7,13
60:7	America	55:2	9,17	121:21
ahead	9:4	answers	40:23	124:20
45:22	amount	56:15	42:12	125:12
46:8	94:4	63:21	43:12,15,	144:9
90:16	and/or	apologize	24 44:2,	145:20
align	132:6	12:21	4,9,15,21	146:11,23
14:11	133:4	appears	45:9,12,	147:6,17,
altogether	Angeles	59:23	14 46:3	20,24
140:18	106:22	106:5,8	47:11,15,	148:1,11
ambiguous	107:11	129:11	20,23	application
143:4	announcemen	132:16	48:6	s
144:3	t	136:4	49:7,12,	20:25
145:16	70:4,6,7	applicable	13,15,18	21:5,6,8,
amend	82:8,10	119:11	50:10,13,	11,20
85:2,17,	88:11,13,	applicant	16 51:1,	22:2,5,
25	21,22	50:2	14,19	10,13,16
amended	89:8	58:21	52:16	25:19
12:8,14	92:8,9	59:4,7	56:1,5,24	29:3,5,7,
13:4	94:13,20,	60:13	57:4,7,	10,14
14:1,21,	22,24	63:12	11,13,15	33:22
24 15:2,5	95:1,17	68:4,8,14	58:6	36:24
81:10,13,	98:1	72:1	59:7,14	39:11
20 100:22	110:13,	applicant's	60:3,7,	41:19
101:3	15,16,18	64:1	14,22	42:3,22
amending	111:2,11,	application	61:2,6,8,	49:22,25
83:25	14 112:9,	10:22	12,22,24,	71:13,23
amendment	11,20	11:4,5	25 63:10,	74:18,25
81:15	113:2,6,	12:8,11	17 64:6	75:5
83:17,21	12	13:12	66:17	78:20,21
89:14,16	announcemen	14:7,10,	67:24	116:15
107:23	ts	21 15:8,	68:4,8,	applied
142:11,	70:8,10	17 22:19	14,15	83:17
13,14	71:4	23:8,10,	69:11,17	140:21
amendments	89:11	11 24:25	70:2 71:3	141:16
39:2	95:13	26:3,5,19	75:6,11	applies
54:14	96:3,9,	27:6,21	76:18	65:7
84:21,22,	10,16	28:11	77:17	146:6
	97:2,9,	29:18,22	78:18	apply
	12,15		81:9,10,	18:20,22,
			16,19	24 37:21
			90:18	
			92:22	

63:22	91:4,10	27:14	149:12	behavior
86:6	102:23	28:3,18	150:3	140:22
98:15	107:2,9	82:22		141:17,24
107:25	117:22	100:13		142:15
142:20	138:2,8,	116:16	B	
143:3	10,12,16,	attorney		benefit
145:14,19	20,24	10:11	back	151:8
applying	139:4	144:12	14:5	bind
77:10	142:20	attorneys	37:24	70:13
apprised	143:1,2,	8:19	41:4,20	bit
80:14,18	18,22	August	69:11	30:10
81:1	144:1,15,	100:2,22	90:4	34:14
92:24	16 145:13	107:7	96:10,13	79:12
93:20	146:3,5	116:13	108:14	80:16
109:11	area	143:22	141:25	bold
112:3	34:19	145:13,15	142:12	128:16
135:12	areas	146:4	148:8	book
approved	79:23	authentic	background	10:21
100:8	argue	82:21	143:17	11:1,11
approximate	136:1	average	based	40:25
18:14	argumentati	53:17	145:19	41:1
approximate	ve	64:20	basic	70:1,23
ly	43:18	65:8	52:6	72:7 92:4
6:17	77:21	avoid	basically	99:9
13:23	135:21	46:24	9:17	100:9
14:23	arrangement	aware	basis	103:16
15:4	s	11:21,24	9:15 39:9	112:6
April	130:5	12:10	87:10	117:2
146:12,20	134:14	18:16	92:14	121:21
arbitrate	artwork	35:14	146:6	139:21
30:15	104:8	41:15	Bates	books
arbitration	assume	52:1	99:17	20:6
30:19	7:13	53:3,13	105:11	bottom
33:7,18,	63:21	60:10	141:7	59:23
23 45:15	96:12,14	68:13	beg	95:10
46:4	107:21	74:15	81:18	bounce
47:20,24	136:18	88:22	beginning	96:10,13
81:14	attached	92:4 98:5	108:3	bound
82:19	8:23	105:1	begins	35:19
87:17	20:19	118:3	66:21	36:14,25
89:16	22:25	127:4,6	129:23	37:5,6,9,
90:7,11,	23:18,25	128:7,13	131:13,17	15 60:8
17,23	26:9,24	129:16		61:10,22
		130:10,19		62:1 69:5

70:15	71:11	canister	100:12,17	check
78:4	80:2,10	45:2	107:3,18	64:12,15
85:10	93:6,10	capabilitie	117:10	65:7
98:9	118:23	s	119:17,24	112:3
115:12	149:15	96:3	120:20	113:1,5,
117:9	button	capability	123:8	11
120:25	40:23	96:18	125:16	chicken
121:3	57:21	capacity	126:3,18	44:1
128:22	59:22,25	136:14	129:4	Choice
145:21	60:12,16,	143:18	130:14,23	137:24
147:23,25	18,19	capitalized	132:25	cited
boxes	67:10,12,	121:16	133:7,20	51:23
64:12,15	20	carries	134:17	claim
breach	buy	58:9	135:16	106:11
140:24	137:20	122:25	136:11,24	107:10
141:1	<hr/>	123:6	137:7,13	claims
break	c	case	138:6	106:18
7:15,20	<hr/>	6:12	148:3,15	clarificati
48:22	California	20:21	149:7	on
98:21	7:25	41:16	Central	20:5
build	46:18	50:12	46:18	certified
80:2	106:23	112:24	151:15,18	89:22
building	called	113:2,6,	cetera	91:16
8:5,8	21:13	12,24	59:19	class
business	96:5,6	115:7	152:9	36:25
12:1,3	112:14	cases	change	37:17,20
15:18,24	calling	55:23	16:6	38:13
17:14	46:22	categories	19:25	48:7
18:5,23	calls	17:18	50:22	51:24
22:16	35:20	78:16,19	83:24	53:1,4,16
38:18	36:15	CATLETT	88:9	54:2 55:7
39:20	37:11	34:7	89:25	92:23
40:8,9,	38:6	36:18	91:19	144:9
13,17	39:13	39:15	92:6	clauses
41:5,8,	46:5,13,	43:25	140:15	71:3
11,16	16 51:5	48:12	changed	clear
43:4,11,	85:19	49:2	13:17	100:13
21 44:21	93:23	69:19	24:5	124:16
49:22	107:12	76:11,19	118:12	clearer
50:1,5	116:8	80:4,22	changing	32:21
52:5	133:19	84:25	88:6	click
53:20	140:12	86:8 90:6	charge	
54:5	141:18	95:22	95:12	
55:11				

58:8 63:9	44:4	84:10	57:1,5,	146:3
64:16,23	49:12,13	93:18	11,15	147:16,
67:1,10	82:20	97:5	58:1,5,9	19,25
68:8,15	89:12	98:12	61:11,23	148:12,
94:16	144:23,25	107:12	62:24	19,22
95:6	completed	115:19	63:1	149:6,20
96:25	22:5 57:7	125:17	65:15,23,	conducting
110:14,22	completely	129:3	24 66:4,	118:22
clicking	8:14	133:19	7,16	conducts
59:18	142:8	136:13	68:21	51:3
60:11	completes	138:5	69:6,9	93:10
94:20	57:3	139:1,9	70:2,22	confirm
96:21	compliance	141:19	73:4,19	24:1
clicks	10:10	147:11	79:22	49:11
60:13	comply	148:5	80:18,19	100:19
Cody	62:5,19	condition	81:2,10	116:11
27:22	109:17	97:3	83:25	confirming
collectivel	118:16,	conditions	85:25	95:20
y	19,20	37:23	89:4	confirms
39:4	121:11	60:6 61:4	92:7,13	96:16
54:16	122:13,15	68:24	93:5,14	conflict
132:4,7	compound	72:20	98:3,10,	148:10
Commonwealt	43:17	73:7,14	15 99:10,	consent
h	75:8	74:9	13 102:3,	67:16,24
106:14	79:16	101:13	17,20	68:4
communicati	144:24	104:16	103:5,13,	considered
ons	comprise	125:21	15	137:15
113:16	73:13	126:1	104:12,15	Constant
company	83:9	131:25	105:25	96:4
9:3 12:2	con	conduct	106:7	constitutes
13:14	80:12	11:2,12	107:1,24	130:1
82:9	concluded	13:22,23	108:7,12	consumption
95:16	152:19	14:1,14,	109:1	17:14
149:24	conclusion	15 15:1,8	110:15	18:7,12
compare	35:20	18:20,22,	116:12,	Contact
25:17	36:15	24 19:1	13,17	96:4
compensatio	37:11	38:19	117:3,6,9	contained
n	38:6	39:11	121:7,19	19:13
53:18	39:14	41:1	122:1	53:21
64:20	46:5,7,	45:11	123:16	118:10
65:8	13,16,22	50:24	130:11,	120:15
complete	70:18	51:17,20	12,19,20	
		54:6	140:1,16	
		55:15,20,	142:10,25	
		25 56:5,9	143:3,25	
			144:4,14	
			145:15,17	

121:6	11:7	72:2,17,	120:16	create
content	14:22	23 73:1,	122:18	17:18
100:9	16:5	10,11,19,	123:16,17	Creative
104:7	17:16,19,	20,22,24	124:11,12	13:8,15
contention	25 18:8,	74:1,3,5,	125:13	100:9
61:13,14	13 20:2,	7,19 77:4	129:2,15	104:8
contents	23,24	80:21	131:5	147:1
55:12	22:14	81:11,14,	132:14,24	current
context	24:18	18 83:15,	133:9,25	9:7 11:22
15:12	25:8	21,22	135:8,13,	37:6,9,16
continue	28:23	84:1	15 136:5	62:1,4,
54:2	29:23,24	85:3,18	138:17,18	16,23
contract	30:7,20,	86:21,22	141:10	63:1
15:23	21 31:14,	87:21	143:10,24	76:16,24,
controls	17,19,23	88:2,9	146:12,	25 77:9
148:13	33:5,8,	89:17,20,	17,24	80:20
conversatio	14,23	23 90:2,	147:17,	92:24
n	35:6,8,9	23 91:4,	21,22	93:20
113:19	36:4,5,7,	7,8,11,	corrected	103:2
conversatio	8,10,11	12,14,15,	46:23	121:15
ns	37:16	17,18,21,	corrective	144:10
8:19	39:16	22 95:3,	140:23	145:22
copied	41:2,25	4,8 98:3,	correctly	customer
150:23	42:24	4,10,11,	32:5	15:9 16:1
copies	43:1,2	17 99:22	65:17	
21:4	44:11,18	100:1,3	69:2	
48:23	45:15,24	101:10,	128:5	D
copy	46:4,9,11	16,25	143:9,11	
28:22	47:4,12,	102:6,9,	counsel	date
29:11	21,24	20,21,24,	12:22	23:10,11
32:21	50:20,22,	25 103:11	49:5	25:2,3
34:15,24	23,24,25	104:21	country	26:5,21
48:15,20,	51:4	105:25	118:22	27:9,23
23 82:4,	55:22,23	106:7,23	court	28:15
21 100:21	57:9	107:2,5	47:3	31:5,22
151:15,18	58:2,3,	109:6	106:14,	35:13
corner	11,13,14,	110:17,	21,22	61:23,25
105:14	19,20	20,23	151:1,13	76:25
correct	61:9 62:7	112:10,21	covered	77:9 78:5
10:25	63:8,19	114:16,20	143:19	81:16
	64:1,2,5,	115:17	covers	82:10,11
	11,14	116:2,3,	123:12	83:20
	65:6,10,	14,18,19		88:14
	20,21	117:22		99:12,25
	67:8,22	118:11		100:2,4,8
	68:12,16,	119:5,11,		
	17 69:9	12,16		

101:11	73:1,2	departmenta	47:6,8,9	distribucio
103:22	79:6	l	difficulty	n
104:11,15	82:12	9:9,10	130:25	34:3
105:21,	83:10	departments	directly	distributor
24,25	87:13,15	12:6	29:5 42:5	9:19
108:12	100:21	depend	65:24	15:9,16
117:5,8	116:16	93:5,9	66:3,6,	16:2,15
127:7,10	117:17	depends	16,19	17:3,7,9
139:21	138:15	56:2	director	20:25
146:13,16	141:9	93:14	9:1,6	21:5
dated	143:23	deposed	129:13	24:25
83:13	declaration	6:15,19	130:18	26:3,19
116:13	s	deposition	135:6	27:6
day	8:21	8:17	disagree	37:22
36:2,3	29:18	100:14	47:5	38:20
day-to-day	define	150:24	disclosure	40:11
9:15	56:2,3	152:19	59:12	41:10,13,
days	133:21	depositions	60:23	23 42:6
151:25	144:13	46:19	disclosures	43:6
152:15	defined	describe	67:5,7,	50:6,8,
de	16:23,25	78:10	17,25	13,19
34:3	68:21	113:18	68:5	51:9,18
deals	Definitions	describes	discount	52:4
113:22	122:8	71:10	15:23	53:25
December	degrees	description	18:11	54:7
28:16	10:13	10:18	discrepancy	55:19,24
decision	Del	determinati	19:24	56:25
17:17	7:25	on	discretion	57:3 58:5
declaration	department	136:15	39:4	59:13
8:23	9:20,21,	determine	54:16	60:1,4,13
19:10,16,	23,24	97:22,23	140:15	61:2
18 20:2,	10:1	114:18	discusses	62:4,15
15,18,19,	11:21,24	developing	41:11	68:20,22,
23 22:25	12:5	9:7,13	discussions	25 70:25
23:19,22,	13:9,15	dictates	130:6	71:2,6
25 24:4,	22:1	37:3	134:15	72:11,20
13,14,17	34:11,23	difference	dispute	73:5,8,
25:5,7,13	53:25	16:15	24:11	14,21
26:9,24	100:10	35:15	25:14	74:10
27:14	113:15,22	44:23,25	30:14	78:4
28:3,18	147:2			79:23
32:20				80:3,15,
68:18				17 88:11,
				15 90:2
				93:5,9,
				14,19,22

94:5,18,	86:7	document	137:24	150:20
20 97:3,	87:18	19:3,7	139:14,18	Drooks
8,14,22	88:5,9	20:7,11	141:4,7,8	6:24 7:1
98:9	91:20	23:3,5,7,	document's	12:16
101:13	92:4,5,6,	14,18	77:8	16:7,10
103:6,9,	12 93:1,	24:2	documents	23:24
14 104:17	11 95:18,	25:6,9,25	10:19,21	24:3,7,10
107:16	21 96:17	26:16,21	11:17,20	25:11,16,
109:10,14	97:11	27:11,20,	15:12	20 28:24
111:1	98:5,15	25 28:8,	22:22	29:20
112:21	108:8	13 30:5,	28:21	31:1
115:21	109:1	8,12,25	37:25	32:7,12,
116:1	117:6,8,	31:1,6,	38:4,11,	19,24
124:8	19 120:2,	13,24	38:4,11,	35:20,23
125:22	19,25	33:3,11,	13,22	36:15
126:1	121:3	18 40:16	44:13,16	37:11
130:13,22	122:11,20	48:13	45:5,16	38:6
132:11	128:8	52:12	54:9	39:13,22
134:16	137:10	53:11	68:23	40:1,4,14
136:5	148:19	59:5	69:13,17,	42:13
145:21	distributor	66:19,25	24 71:25	43:17
147:7,15	ship	68:10	72:14,19	45:16
149:25	11:6	69:20	73:6,13,	46:5,13,
distributor	27:21	77:10	18 74:17	16,21
's	28:11	81:21	75:21	47:1,6,25
112:2	38:3,5,12	82:2 83:2	77:2	48:2,4,21
132:2,19	39:7	94:7	78:14,16,	49:8 51:5
133:4	40:23	98:19	19 84:14	55:1
distributor	58:22	99:8,15,	85:3	61:13,18
/member	59:1,2,8	16 101:11	108:1	66:11
16:20	63:16	105:3,10	110:9	68:1
distributor	69:1,18	106:24	119:7	70:17
s	72:15,21	109:23	124:20	72:3,16,
17:24	73:10,15	110:21	133:14	22 74:13,
18:1,2,5,	74:11	113:25	double-	20 75:2,
15,17,21,	88:23	114:19,22	sided	8,24
22 62:19	101:14	116:20,25	30:1,2	76:2,12,
69:5	102:12,	121:24	downline	20 77:21
70:4,15	16,22	122:19	118:25	79:16
79:19	104:18	123:21	121:13	80:5
80:1	125:23	126:20,25	148:18	81:24
81:1,6	126:2	128:12	149:12,	82:3
82:17	District	129:17	16,18	84:2,7,
83:18,19,	46:18,19	132:22	150:1	10,15,24
25 85:11	47:10	133:6,11	drafts	85:19
	106:21	134:1,14,		90:13
		19 136:7		

91:25	due	46:4	electronica	event
92:16	152:14	61:12,23	lly	137:14
93:2,15,		69:9	28:23	events
17,23	E	91:10,14,	50:11	94:1
97:4		17 102:8,	59:5	137:12,17
98:12,20,		16,17	60:14	Exact
23 100:24	E-MAIL	104:11,14	employee	112:16
101:3,15	94:13	105:24	95:12	Exacttarget
106:1	95:1,2,17	106:6	employees	96:6,7
107:4,12,	97:21,24	116:12,17	9:23,25	112:15
19 109:3,	98:9	119:5,14,	12:4	113:16
25 113:14	113:20	16,20,22	end	EXAMINATION
114:6	114:5	120:2	60:22	6:7
115:18	E-MAILED	140:2	enforcement	exclusively
116:4,8	113:21	142:14	99:11	106:12,19
117:11	114:2	143:19	English	107:10
119:18,25	E-MAILING	144:1	13:12	excuse
123:2	113:22	146:4,23,	23:20	97:23
125:7,17		24 147:9	31:12,15	executing
127:14	E-MAILS	effective	32:23	60:3 61:1
128:12	97:18	31:19	39:23	exhibit
129:3,5,	E-X-A-C-T	86:5,24	40:1,3	19:3,4
10 131:9	112:16	87:2,24	44:13,14	20:8,13,
132:15,21	earlier	89:15	63:18	20,23
133:6,10,	49:20	91:20	108:2	22:25
16,19	50:22	99:12	entered	23:1,6,
134:1,4,	55:17	104:3	15:17,22	15,17,18,
18,25	89:3	105:25	17:9	20 24:16,
135:4,9,	90:12	108:8	entire	17,20,22,
21,24	101:7,22	effort	48:6,7	24 25:6,
136:6,12	107:23	151:23	130:1	12,23
137:3	108:6,17	efforts	entitled	26:9,12,
138:4,25	112:12	114:21	63:2	13,24
139:8	123:15	egg	118:16	27:2,3,5,
140:12	124:6,19	44:2	errata	14,17,18
141:18,22	142:15	electronic	151:7	28:3,5,6,
142:17	earn	29:11,15,	152:10	18 29:21
143:4	85:14	22 59:12	Etan	30:5,13
144:3,17,	earnings	60:23	6:11	31:2,4
20,23	79:25	64:3	49:17	32:1,4,
145:1,5,	effect	67:4,7,	98:20	13,20
9,16	12:11	17,25		35:3,18,
147:10	39:12	68:5		24 36:13
148:4,14	45:11			
150:12,				
19,25				
152:17				

39:19	22:23		42:10,21	47:10
45:8	23:24	F	female	focus
46:12	24:4		36:21	41:18
47:12,16,	25:21	face-to-	field	folks
25 48:2	58:18	face	94:1	49:21
49:6,10	63:6 83:8	149:1	figure	follow
52:20,23	110:5,8	facilitate	18:16	75:25
58:11,12,	existence	11:23	file	footer
13,14,16	103:17	fact	34:17	32:3 33:4
59:6,10	120:18,24	90:12	151:12	footnote
63:21,22	121:3	95:21	filed	79:9
75:13,24	existing	96:13,17	34:24	140:9,11
81:22,23	83:18	97:8	fill	form
82:22	exists	114:19	43:12	29:11,12,
83:2,5,	120:5	152:13	49:24	15 30:1
10,12,14	expect	fairly	50:9,13	32:4,14
86:4,16,	92:12	16:6	51:1	35:6
20,24	expedite	fall	filled	37:25
87:24	151:22	71:5	34:15	39:8,15
88:8 92:2	152:5,13	143:2	49:15,18	45:21
94:8,12,	expert	falls	filling	46:15,20,
16,24	34:19	10:18	50:15	22,25
95:2,6,11	40:19	familiar	51:16	51:5,6
99:3,6	explain	10:15	find	54:20
100:13,20	13:5	123:18	54:23	66:11
101:12	explanatory	130:24	111:1,3	69:19
105:4,7,	52:7	fax	fine	70:17
24 106:4	explicitly	71:20	16:14	72:1,3,
108:14	38:16	February	24:12	16,22
109:24,25	expressly	26:22	25:20	74:13,19,
110:4,10,	38:1,4,11	82:15	32:11	20 75:1,
13,16,22,	extended	83:13	98:25	2,22
25 111:24	111:23	86:19,24	152:16	76:4,9,
113:3,7,	extent	88:24	finish	11,12,16,
13 114:1,	7:8	89:8 92:7	90:13	20 77:3,
15,19,23	Extravaganz	127:8,11	127:15	4,8,9,12,
116:21,22	a	feel	144:21	13,23,24
121:7	137:21	7:16	five-minute	78:8,9,13
122:10		134:20	48:22	79:16
123:25	exhibits	Felix	Florida	80:4,5,
126:21,22	8:22	23:9	46:19	20,22
139:14,15		35:4,18		84:2,7,
141:9				15,24
146:8				85:19

86:8 90:6	forms	135:16	24:3	64:7 65:3
91:25	38:22	136:11,	43:13	guess
93:2,15	52:8 54:9	12,24	82:13	22:23
97:4	71:4	137:3	glasses	guessing
98:12	72:5,6,8,	138:6	19:5	67:18
100:24	11,13	141:19	Gold	
101:15	74:2	148:3,4,	64:7 65:2	
102:19	87:10	15		H
103:1,2,	99:11	fourth	good	
4,8,10,	101:19,	129:22	6:9,10	H-A-R-B-O-R
15,17,21	20,23	134:11	12:24	10:7
104:2,7,	102:1,4	frame	51:7 55:6	hand
10,14,15,	117:3	93:4	108:5	19:2 20:7
20,24	121:21	frames	goods	22:21,24
105:14,23	forward	71:20	132:6	23:14
106:5,10	122:25	free	133:5	24:20
107:3,4	123:6	7:16	136:20,23	25:9
114:6	found	front	govern	81:21
115:18	55:5	120:8	129:1,8	83:1 94:7
116:4	70:16	full	132:14,19	98:18
117:11	foundation	45:1,2	147:7	99:2
119:4,18,	16:7,10	55:10	governed	105:3
25 120:20	34:7	89:12	117:6	109:23
123:6,8	39:13	fully	governing	116:20
125:16,17	43:25	140:25	132:1	123:21
126:3,18	69:19	future	governs	126:20
129:3	76:11,12	38:25	133:4	139:13
130:14,23	84:25	54:12	grab	handed
132:15,21	86:8	78:11,13	19:5	83:9
133:10,	93:3,17	122:4	graduate	26:11
16,20	95:22	123:6	10:13	27:2,16
134:4,18	100:24		gross	105:10
136:6,12	106:1		53:18	110:7
138:4,25	107:3,18		64:20	hands
139:8	113:14		65:8	32:9
141:22	114:7		ground	handwritten
142:17	117:10		6:23	41:20
143:5	119:17		12:21	happening
144:10,	125:16	general	grounds	11:23
17,20	126:3,18	71:20	6:25	happy
145:2,4,	129:4,5	138:14	Guarantees	7:10,16
17,22,25	130:14	generally		
146:10,23	132:25	10:15		
147:6,10,	133:7	12:1		
20 148:3,	134:17	give		
4,14				
149:7				

Harbor	64:20	55:10		inadvertent
10:5,6	65:13,22	65:14	I	ly
hard	67:23	73:4		49:6
21:4	68:3,7,	84:13,20	IBP	include
28:22	15,20	85:17,25	39:20	9:18 48:7
29:11	69:1,21,	108:21	44:22,23,	73:18
34:1,15,	23 72:1,	109:2,11,	24 52:6	81:13
17	21 73:9,	19 135:12	53:21,22	94:1
he/she	15 74:11	136:23	ideas	109:9
60:5 61:3	80:9,25	herbalife.	9:17	124:13,15
head	82:15	com	identical	included
7:5 10:1	83:23	118:4	14:17	40:20
78:24	84:4 85:2	hereinafter	35:6	45:1 71:4
79:8	87:25	132:8	identified	103:16
134:24	92:12	hereof	38:13	includes
headed	95:14	130:4	identify	55:14
108:21	96:16,19	hereto	19:9	72:7
hear	97:23	82:22	20:11	78:11,13
8:18	101:14	hey	23:6	79:22,23
Herbalife	104:18	142:12	24:24	99:9
8:25 9:4	117:18	HLF	26:18	117:3
12:4,6,7	118:23	99:17	27:4,20	133:12
16:17	122:1,3	102:13	82:2,7	including
17:5,8,12	123:18	105:11	99:8	9:25
18:15	125:20	106:5	110:9	50:24
21:2,10,	126:2	108:16	116:25	75:20
21 22:6	127:12,17	140:6	139:20	77:1
28:21	128:2,7,	141:7	impact	82:18
29:8	10 129:19	hold	8:13	83:20
30:19	130:13,22	10:13	85:13	116:16
33:7,17,	132:6,10,	home	important	117:21
22 34:16	12 133:5	7:23	80:3	inconsisten
37:22	134:16	123:19	impose	t
38:17,24	135:15	124:3	140:22	106:25
39:2,19	136:5,17,	hour	imposed	138:24
40:7,9	19 137:6,	48:22	34:11	incorporate
41:4,17,	18 138:16	hyperlink	imposing	d
20 42:1,7	140:14,22	57:21	142:14	38:1,5,11
43:15	142:12	65:19	improve	39:6
50:18	146:10	66:5	9:18	54:18
52:3	147:7,20,	Herbalife's		69:13,17,
54:4,11,	24 148:1	12:14		21 71:12,
14 59:12	149:3,20	53:24		22 72:14
60:14				74:17,24

75:21	input	interrupt	19,25	111:19
77:2	29:5	98:24	143:25	122:20
78:17,20	inquire	issue	June	138:3,10,
101:23	149:15	122:4	23:13	21,22,23
102:19	instruct	140:16	25:3 26:7	
103:5,7,	46:20	issues	33:12	L
12,15	61:16	122:3	36:2	
104:16	instructs	149:10	40:17	lacks
124:7	12:25	items	46:3 57:1	16:7,10
125:2,12	intended	50:21	58:2	39:13
126:15,17	77:18	Izaar	jury	93:2,17
148:12	interchange	24:25	89:19	100:24
incorporati	ably	27:7	91:13	106:1
on	11:8	29:18		113:14
124:19	interested	36:2,21	K	114:6
Indefinitel	34:13	42:10,21		136:12
y	Internation		kind	141:18
111:16	al	J	44:1	language
independent	9:4 11:5		60:10,18	14:18
37:21	38:17	January	63:9	62:25
52:3	39:19	31:19,22	64:23	77:16
132:2,11,	40:7,9,	33:3,6,	kit	78:12
19	12,17	10,12	41:13,17,	109:9
individual	41:5,8	127:9	23 42:1,2	119:7
15:16,22	43:4,11,	Jennifer	44:2,3,	120:12
16:1	21 44:21	26:20	10,12,14,	123:11
40:10	49:22,25	28:12	16 45:1,3	128:16
41:15	52:5 54:4	Join	50:8,15,	130:10,
individuals	55:11	36:18	17,18,21	19,25
39:10	102:11,15	Jones	51:2,3	latest
information	interpret	10:5	kits	37:5
71:4,19,	122:16	judicial	45:6	Lavigne
20,21	142:24	106:12,19	knew	28:12
80:1	143:18	107:11	21:15	63:6
114:3	interpretat	July	knowledge	law
132:9	ion	104:3	21:8 22:7	62:6,20
informed	121:10	110:18	29:16	109:15
62:4,16	122:12	117:7,18	34:10,21	118:16,20
108:21	interrogato	118:4,7	40:20	137:24
109:2,12	ry	119:4,13,	43:7 50:2	laws
121:6	61:14	23	84:13,20	109:17
122:11,		120:14,	85:7 86:1	118:21
13,17,21			95:15	121:11
				122:14

lawyer	letter	47:15,19	maintained	22:21,22
37:13	25:12	48:9	21:1,3,8,	23:2,14,
115:9	53:6	long	21,22	15 24:1,
134:22	LEVINE	111:14,	22:6,7	6,9,12,
136:18	49:17	20,24	28:21,22,	20,23
142:23	light	longer	23 29:7,	25:9,10,
148:9	152:13	95:14,15	11,15	15,18,21,
leadership	link	111:19	maintaining	24 26:11,
88:11,15	51:12,21	119:5,10,	21:24	15 27:2,
92:9	57:13,14,	14,15,16,	maintains	8,16,19
learn	19,20,22	20 120:18	21:11	28:5,7
94:17	58:8,10,	looked	make	29:1,21
95:7	12 60:16	118:1	19:18	31:3,7
96:22,25	65:22	Los	24:5 39:2	32:11,17,
110:14,22	66:18	106:22	53:10	22 33:1
leave	94:20	107:11	54:14	34:8
144:12	linked	lost	73:12	35:21,25
legal	66:16	151:14	84:4,13,	36:16,20
10:9 12:5	links	loud	20 85:11,	37:14
35:20	66:6	56:19	21 92:3	38:7
36:15	127:24	131:21	114:21	39:17,24
37:11	listed	lower	136:14	40:2,6,15
38:6	74:12	105:13	141:5	42:15
39:14	literally	<hr/>	143:13	43:19
46:5,6,	58:24	M	145:12	44:5
13,16,22	literature	<hr/>	151:23	45:18,20
70:17	40:24	made	152:9	46:1,6,
84:10	local	19:21,24	makes	10,14,17,
93:17	47:9	70:5	142:10	25 47:5,8
97:4	located	85:10	making	48:1,3,8,
98:12	59:25	88:10	89:9	11,14,17,
107:12	67:19	92:4	March	19,25
115:18	106:22	149:12	27:10	49:3,5,9,
125:17	logistics	mail	35:13	18 51:7
129:3	103:19	41:4	Marina	55:3
131:25	147:3	mailed	7:24,25	61:17,20
133:19	Loken	41:17,20	mark	66:12
136:12	26:20	51:2,4	6:8,11,24	68:2
138:4,25	46:11	maintain	7:2 12:17	69:22
139:8	81:9	30:1	16:8,11	70:19
141:19	Loken 's	151:2,11	19:2,3,6	72:4,18,
143:17			20:7,8,	24 74:14,
147:10			10,16	22 75:4,
148:4				10 76:1,
				3,14,22
				78:1
				79:17

80:6,24	133:2,8,	7,13,25	141:15,21	23,25
81:21,22,	13,17,23	114:15,	meant	121:11,
25 82:6	134:2,7,	19,22	16:21	12,14
83:1,2,4,	23 135:2,	116:22	mediate	126:8
7 84:3,8,	5,10,18,	121:7	30:14	138:16
11,16	22 136:2,	123:25	membership	
85:1,23	9,16	126:22	23:8	
86:10	137:1,5,	139:15	66:21	
90:4,10,	11,16	141:5	70:2 71:3	
15 92:1,	138:7	marketing	90:18	
17 93:7,	139:2,10,	38:21	92:22	
21 94:3,	13,14,17	40:24,25	121:21	
7,8,10	141:3,20	54:8	146:11	
95:23	142:5,18	71:8,10	147:6,20,	
97:7	143:6	73:23	24 148:1	
98:13,18,	144:5,18,	85:12,14,	mention	
22,25	21,25	15,17,22	12:20	
99:2,5,7	145:2,7,	99:10	message	
100:15,18	10,23	marking	64:9	
101:1,5,	147:14	25:13,19	68:11	
17 105:3,	148:6,17	match	method	
4,6,9	149:8	24:4	95:20	
106:3	150:4,7,	materials	96:15	
107:6,15,	10,16,20	9:9,14,18	methods	
20 109:4,	152:4,18	10:16,19,	53:20	
23,24	marked	22 13:7	mind	
110:2,4,6	19:4	16:24	32:9 81:5	
113:17	20:13,23	17:1 52:8	109:8	
114:9	23:1,5	69:25	Mine	
115:22	24:22	87:12	53:7	
116:5,10,	25:6,23	matter	mini	
20,21,24	26:11,13	126:12	39:20	
117:13	27:3,5,18	130:3	44:22,23	
119:21	28:6	meaning	45:3	
120:3,23	30:5,13	12:3	52:4,6	
123:4,14,	47:12	122:16	53:21	
21,22,24	49:10	means	55:10	
124:2	59:6 63:5	15:11,18	minutes	
125:8,10,	81:23	17:8 33:4	150:4	
19 126:9,	83:5	76:15	mischaracte	
20,21,24	99:3,6	77:3,12	rize	
127:16	101:12	78:8	109:5	
128:14	105:7,23	104:6		
129:7,12	109:25	140:11,20		
130:16	110:5,7,			
131:2,10	21 113:3,			
132:17,23				

Mischaracte rizes	moved 8:3	negotiation s 130:6 134:15	numbering 13:10 118:12	142:17 143:4 144:17,20 145:16,17
28:24 109:3 128:12 132:22 133:6 134:1,19 136:7	moving 98:24	nod 7:5	numbers 71:21	147:10 148:14
misplaced 151:15	myherbalife .com 10:24 53:23 57:8 65:20 66:6	nods 78:24 79:8	numerous 10:21 12:9 14:2	objections 45:20 46:14 76:19,20 119:24 129:10
mistaken 42:20	70:11,16 74:6 79:2,10, 15,18,19 80:14,20	nomenclatur e 89:12	Nutritional 137:4	
model 71:11	81:3,6 87:19 88:3 92:13 93:24 101:8 111:15 112:4 123:19 124:3,10, 24 127:5 129:9,20 137:21	notary 151:9	O	obligated 93:20
modificatio ns 39:1 54:13		notice 47:4 82:21 92:21 112:8	object 39:15 46:25 90:6 134:4 136:6 144:22	obligates 122:20
moment 41:14 69:9 94:12 108:15 126:4 140:7		notificatio n 82:16 88:5,8 91:24 92:3 97:17 114:15 115:8,13 117:19,25 118:8 149:17	objected 145:2,3	obligation 81:5,7 93:13 112:2 115:15 116:1 121:6 148:21 151:2
monitor 149:3,14		November 139:22,23	objecting 12:22	obligations 65:13 115:17 120:15,19
monitors 149:21	myherbalife .com. 57:2,6 65:16 79:13	number 25:14 35:13 62:22 64:8 69:25 75:24 99:20 105:15	objection 46:19,22, 24 47:1,2 51:5 70:17 84:2,7, 15,24 91:25 93:2,15 97:4 114:6 115:18 116:4 132:15,21 133:10,16 134:18 137:7,13 138:4,25 139:8	obtain 15:23 18:11 94:15 114:3
month 103:23 142:1				
months 89:6,11	N			obtaining 18:10
morning 150:14	necessarily 13:17 103:2,17			occur 93:25 148:24,25
motion 151:21	needed 151:13			occurred 30:22 81:15 89:25
move 23:15				

146:3	14,20	orally	package	106:10,16
occurs	56:4,6,9	70:9	52:6	117:16,23
13:8	57:1	order	packages	127:21
149:4	58:1,23	15:17	52:9	128:15
October	59:13	68:15	packet	129:22
87:8,20,	60:17	71:19,20	147:15	131:11,
24 88:14	80:11	72:11	packs	14,16,22
89:3,7,	86:15	80:1	44:19	134:11
15,25	87:5,18	94:15	pages	136:21
91:9,20	92:23	95:5	31:12	137:23
101:8	93:11,13	97:14	48:14,15	138:20,23
107:25	94:18,21	ordering	66:22,25	141:10
108:9	95:13	38:21	67:3	parameter
offer	107:24	54:8	68:16	120:1,5
137:9	108:9	71:15,18	103:10	parameters
offering	110:13	73:25	paid	85:20,24
24:10	111:1,21	99:11	64:20	pardon
offerings	118:7	117:3	Pamela	81:18
128:25	open	original	10:5	part
132:8	44:4	24:14	paper	44:10
officer	operate	29:7 30:1	21:6,7	71:25
10:10	68:25	151:3,10,	22:2	72:13
omitted	72:20	14,17	29:3,7,10	82:13,14
49:6	73:9,15	outlined	30:2	83:14
one-page	74:10	16:16	34:24	112:1,2
29:25	101:14	<hr/>	42:22	122:10
30:2	104:17	P	44:9	126:7
online	125:22	<hr/>	49:21	135:11
10:23,24	126:2	p.m.	50:7,9	146:16
21:3,8,9,	operations	152:19	paragraph	partially
20,22	9:9,11,12	pack	24:15	141:1
22:3,5,8,	opportunity	38:18	25:4	participate
11,16,18	17:15	39:20	30:9,12	80:9
29:4,14	18:6	40:8,9,	39:23,25	128:24
34:23	41:11,16	13,18,21	44:20	parties
41:16	51:9	41:5,8	67:16	30:14
42:4,8,	80:10	43:4,11,	68:19	150:23
11,17	option	21 44:21	69:12	partners
43:1	50:5	49:22	73:2	12:1,3
49:15,19,	options	50:1,3,5	75:16,17	parts
25 50:4,	68:9	52:5 54:5	79:3,5	77:16
10,14	oral	55:11,13,	82:13	past
51:1,10,	70:6	14 65:15	87:15	
	130:7			

111:22	pertaining	platform	124:13	8:16
140:21	130:3	132:3,20	125:1,12,	prepared
141:16	phone	PMQ	25 126:5,	104:6
142:3	71:21	61:15	6,7,16	president
Patricia	photocopy	point	127:23,24	10:9
26:4	72:11	7:15	129:14,16	88:19,21
48:10	phrases	17:17	130:18	previous
pausing	11:8	20:1	135:6,15	42:3 65:2
126:4	physically	30:18	145:21	67:2
PDF	25:17	33:6,21	portion	previously
66:15	34:12	68:13	62:8,10	49:10
penalty	43:22	98:20,21	position	55:13
151:8	55:24	102:25	61:10	113:25
pending	56:2	points	122:24	print
7:19	piece	79:24	123:3	56:6
151:21	30:2	policies	134:21	147:4
people	place	9:8,14,19	positioned	printed
42:4,8	30:4 36:9	10:16,19	131:1	57:16
49:24	58:19	38:20,23	possession	103:18
50:6	63:25	54:7,10	55:25	printer
96:25	66:24	62:5	post	13:8
143:20	70:8	70:13,15,	10:23,24	printing
percentage	71:19,20	25 71:2,6	posted	13:14
96:12,24	103:3	73:21	89:2	20:6
period	126:7	74:4	posting	103:18
89:11	142:2	102:6	89:7	147:3
111:23	plaintiffs	108:22	potential	printout
perjury	6:12	109:12	88:21	63:11
151:8	112:24	111:4,5	practice	67:13
permitted	113:2,6,	121:20	46:17	124:4
42:8	12,24	122:2	47:7,9	prior
person	114:14,	124:7	predated	67:23
17:9 45:2	18,22	125:2,21	83:20	68:3,7
67:15	115:7,11	133:12	142:11,25	81:15
143:17	plan	135:12	preferred	88:23
personal	38:21	140:17	132:12	92:7
15:19,24	40:25	144:10	preparation	116:12
17:14	54:8	145:22	87:13	130:4,12
18:6,12	71:8,10	policy	100:10	134:14
145:18	73:23	9:1,6,22	104:9	141:24
146:7	85:12,15,	53:19	prepare	145:6,7
	18,22	69:20,23		
	99:10	70:5		
		109:2		

privacy	132:3,20	142:20	89:13	150:12
10:10		143:1,3,	Puerto	puts
124:13	propose	22 144:1,	106:15	34:17
125:1,12,	150:25	15 145:13	purchase	Pyle
25 126:5,	prospective	146:4,5,6	15:18	27:22
6,16	140:20	provisions	18:6	63:6
127:23,24	141:15	64:8	50:14,17	Pyle's
	146:6	69:5,8	52:2	63:20
problem	provide	108:25	132:5	
48:18	7:5 41:13	147:5,23	133:4	
152:1,11	57:12	publication	137:17	
	66:15	86:9	purchases	Q
procedures	68:23	100:10	40:10	question
38:21	73:7	104:9	purchasing	7:8,12,
54:8	125:21	publish	16:2	18,19
71:15,18	151:6,10	38:25	18:11	13:1,21
73:25	provided	54:12	50:5	16:13
99:11	51:20	69:23	128:1,9	31:20
117:4	58:7 82:8	published	purpose	38:9
proceeding	101:12	38:24	79:14,18	45:19
106:13,20	providing	39:8	91:23	54:23
107:11	149:13,18	54:11,20	92:3	55:2
process	provision	62:2	114:17	56:12,16
11:19	30:13,19	74:19	purposes	61:14
34:14	33:7,18,	75:1,22	20:5	68:6
35:1	23 45:15	76:4,9	120:18	84:18
43:10	47:20,24	77:2,4,8,	151:12,	107:14,17
49:21,24	52:10,22	12,13,23,	16,19	108:4,5
50:7	54:25	24 78:8,	pursue	115:9
product	55:18,20	9,13	17:14	123:10
16:2	59:11	86:12	18:5	129:6,18
17:13	81:14	87:3,6,25	push	134:21
18:6,11	82:20	88:12	96:2	135:20,24
40:24	87:17	100:5	pushes	142:22
44:25	89:17,20,	101:8	96:8	143:9,12,
45:2 52:8	23 90:8,	112:8	113:16	14,16
128:1,9	11,18,23	117:15	pushing	144:13,
products	91:4	118:4,7	95:12	19,21,23
15:18,23	102:24	119:15	113:23	145:3,4,
37:22	107:1,9	142:4	put	6,8
45:4	117:22	145:25	146:24	147:13
137:4	138:2,9,	publishes	147:8	148:9
	11,12,17,	69:21	questioning	
progress	20,24	publishing	82:4	
79:24	139:5			
property				

questions	reason	97:19	recorded	9:8
6:13	12:23	113:2,6,	7:6	relates
12:23,24	13:13	12,24	records	15:16
114:25	20:17	114:22	21:7 22:1	16:1
135:25	24:11	115:7,13	34:11,23	relating
150:11	152:2	receives	recruit	9:14
	recall	34:17	15:19	Relations
R	8:2 19:22	45:2 98:9	reference	53:25
	30:23	receiving	72:10	relationshi
Ramirez	33:9 42:9	45:3	78:17	P
8:9	62:22	115:24	126:5	88:23
150:24	64:18	recent	136:19	147:8
151:5,24	87:12	16:6	referenced	relieved
reached	88:7 89:9	82:17	44:19	151:1
112:20,23	101:22	117:20	references	remember
reaching	108:6	recently	122:22	49:20
114:17	113:10,22	8:3 39:8	referred	108:17
read	114:12,	54:19	132:4,7	120:7
32:5,10	13,16	74:18,25	141:9	124:6
51:9	115:1,2,3	77:4,8,	referring	reminding
56:15,17,	130:15	13,22	55:21	91:1
19,21	recalling	78:8	62:9	removed
64:8,16	130:25	145:25	102:13	30:19
65:17	receipt	Recess	108:20	33:7,9,
68:10	55:9 97:2	49:4 99:1	refers	17,22
69:2,12	151:25	150:9	39:19	91:4
90:4,5	receive	recipient	77:7	116:6
103:22	41:8,9,	97:18	reflect	repeat
127:22	10,22	98:2	13:17	31:20
128:5,8,	42:25	recognize	reflected	38:9
20 131:20	43:3,20,	27:11	86:23	74:21
134:5	22 44:3	recollectio	87:23	108:3
144:9	49:25	n	regard	rephrase
152:8	95:1	6:20	21:6	7:9 16:13
reader	98:16	12:12	regular	80:16,23
110:14	112:8	17:21	22:15	84:18
readily	114:14,19	67:11	92:14	142:7
87:17	received	104:25	regularly	replaced
reading	19:19	118:6	109:10	89:3
32:8,12	34:12	record	relate	replacement
reads	42:5	49:2 90:5		119:1
32:13	49:22	100:12		
	50:3	150:13		
	96:17			

replaces 123:15	requirement s 56:13,18 80:15 121:2,5	127:12,17	revision 31:18,22 33:3 35:13	10:21 11:1,11, 22,23 20:6 40:25
report 10:4	requires 97:18 98:2 122:11 128:7	84:12,19 85:6,9 90:1	revisions 123:1	41:1 62:7,9, 12,14,18, 21,23 70:1
reported 149:10	requiring 30:13	restrictions 84:12,19 85:6,9 90:1	Rey 7:25	12,14,18, 21,23 70:1
reporter 25:22 27:1 83:3 94:9 99:4 105:5 123:23 150:15 151:1	resale 15:19	retains 83:23	Rico 106:15	108:18,20 109:13
reporting 96:3	reserve 140:25	Rev 32:4,14 103:25	right-hand 105:14	116:6 118:10,15 119:1,4, 8,9,10, 13,15,22
represent 6:11 25:5,11 26:8,23 27:13 28:2,17 55:8 83:8 103:24 146:19	resolved 106:11,18 107:10	reverse 60:6 61:5,7	rights 65:12	13,15,22 120:2,15, 18,24 121:2,5, 10 122:25 123:1,6, 10,11,12, 13 130:20 141:2,24 142:2,3, 6,9,10
representing 24:7,16	respect 20:19 64:24 102:2 149:6	review 8:22 51:20 53:17 55:12,19 65:14 93:13 118:24 121:13 151:5,24	Rodgers 26:4 48:10 49:12 81:8	120:2,15, 18,24 121:2,5, 10 122:25 123:1,6, 10,11,12, 13 130:20 141:2,24 142:2,3, 6,9,10
request 53:23	respond 21:14 114:4	reviewed 8:21 51:19 60:5 61:4	Rodgers' 45:9 47:11,23 49:7 52:16 69:11 75:6,11	rules 6:23,25 11:2,12, 25 12:21 13:22,23, 25 14:13, 15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
require 70:3	responded 115:3	reviewing 87:12	Romans 6:9	6:23,25 11:2,12, 25 12:21 13:22,23, 25 14:13, 15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
required 52:1 67:24 68:4,8,14 80:13 81:1 94:5 109:1 135:12 148:18	response 115:4 152:14	reviews 47:3	Romans' 25:13 100:14	15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
	responses 7:5	revised 33:3,12 103:20 105:20,21 127:7,10 146:12,20	rough 150:20	15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
	responsibilities 9:5,7 135:11	revising 127:12,17	routes 66:3	15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
	responsible 11:16 21:24		routinely 112:3	15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
			royalties 79:25	15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24
			rule	15,17 15:1,8 18:20,22, 24 19:1 20:18 36:25 37:7,16 38:19,23 39:5,11 41:1 45:11 47:9 50:24

51:3,10, 17,20	108:7,11, 25	71:8,10 73:23	50:18	134:8,9
54:6,10, 17 55:15, 20,25	109:12, 14,19,21 110:15	85:12,14, 17,21 99:10	sending 89:10	showing 67:13
56:5,9 57:1,5, 11,15	111:4,5 112:3 115:12	salvadorrod @herbalife. com 95:10	senior 9:1,5 10:9 129:13 130:17 135:6	side 60:6 61:5,7
58:1,5,9 61:11,23 62:1,2,3, 5,11,16, 20,24	116:7,12, 13,17 117:3,5, 9,15,20 118:3,11, 16,19,21, 24 121:6, 7,12,13, 15,16,19, 23 122:1, 2,11,14, 16,17,21, 23 123:7, 16 126:7 130:11, 12,19 140:1,16, 17,18,19, 24 141:14 142:11, 13,14 146:24 147:8,16, 19,25 148:12, 19,21 149:6,19	sample 38:22 45:3 52:8 54:9 72:5,6,8, 13 74:2 99:10 103:1,8, 10,16 117:3 146:10 147:6,20	sentence 131:13, 16,20,22 141:13 145:19	sign 39:10 41:3 42:4,8, 11,17 43:1 56:1 70:4 80:11 115:20 147:16 151:7,24
63:1 65:14,22, 24 66:3, 6,16,19 68:20,21 69:5,8 70:1,22 71:2 73:4,18 74:4 78:5 79:22 80:18,19 81:2,10 82:18 83:25 85:25 86:14 87:16 88:6 89:2,4,7 92:7,13, 24,25 93:14,20 98:3,10, 14 99:10, 13 100:21 101:6 102:2,17, 20 103:5, 7,13,15 104:12,15 105:25 106:6 107:1,24	run 6:22,24 48:14,19	sanction 140:23	service 137:15	signature 30:4 58:19 64:1,3
	s	scanned 29:4 34:23	services 13:8,15 100:10 104:8 128:1,10 132:7 133:5 136:20 137:6,8,9	signed 19:11 20:2,15, 17 23:11 25:3 33:11 36:1,3 40:16 42:3 43:24 46:3 61:12,22, 24 76:18 81:8,9, 16,19 90:22 148:2,11 151:17
	sales 38:20 40:25 54:7	scans 22:1	set 37:23 120:1	signing 36:24 51:10,18
		screen 58:24 63:13 67:15	sets 114:25 131:24	signs 59:4 60:1
		scroll 58:25	shake 7:5	
		section 67:10 72:7	sheet 152:10	
		sees 67:15	show 121:4	
		send 41:4 42:1,2		

Silvia	Southern	116:8	82:4 86:4	109:10,13
150:24	46:18	131:9	started	121:10
similar	47:10	140:12	145:3	127:21
62:25	space	141:18	starting	129:25
108:25	32:14	Speculative	101:18	130:11
119:7	spam	80:5	state	133:24,25
120:4	97:24	141:22	47:2 73:2	140:13
simply	Spanish	spine	89:14	stating
15:23	13:11	139:22	130:20	145:11
17:2	14:9,14	split	143:21	stay
103:7,18	30:9	18:14	stated	62:4,15
Simultaneous	31:9,10,	spoke	28:21	80:13,17
s	18 35:12	144:10	29:3	81:1
118:8	44:13,14,	145:20	72:25	92:24
sit	15,17	sponsor	91:19	93:20
74:8	108:1,11	43:8,9,	109:7	97:14,15
130:17	speak	10,13,23	138:15	109:1,11
site	30:9	53:24	statement	111:15,
79:23	speaks	93:25	53:17	21,22
128:23	45:16	149:1,13,	61:1	112:2
132:5	specific	18	64:19,24	121:6
sitting	119:15	sponsor's	65:8	122:11,
120:7	123:10	149:15	120:22	13,17,21
size	142:24	sponsors	136:10	135:12
45:4	specificall	148:18	statements	stayed
skipped	y	spot	19:13	111:24
13:10	19:22	119:6	53:19	staying
small	66:15	stamp	64:13	97:3
32:5,6	112:24	33:25	states	step
sole	119:9	34:11	37:18	14:5
39:3	121:5	stamped	38:16	stick
54:15	122:25	34:22	51:25	135:25
140:14	149:5	99:17	62:18	stipulate
solely	speculate	105:11	64:7	32:10,13
17:13	18:19	141:7	65:11	stipulated
43:6	speculating	stamps	68:10,19	152:17
someone's	66:10	34:17	75:6,19	stipulates
141:24	speculation	Standard	77:1	62:3,14
sort	92:16	64:7 65:3	82:14	stipulation
34:2	93:23	start	86:13	150:13,22
108:25	107:19	29:17	87:15	stopping
			105:20	98:21
			106:10,	
			17,21,24	

stops	Superior	21:1	73:7,14	81:14
48:6	106:13,20	28:20	74:9	thinking
strategies	supersede	31:3	83:24	90:25
9:8	130:4	39:22,24	101:13	thought
strategy	136:4	49:20	104:16	54:24
9:13	supersedes	69:13	124:15,16	103:4
studying	130:11,21	94:23	125:5,6,	108:24
13:19	133:14,25	101:7	9,15,21	127:16
14:4	134:6,12,	102:1	126:1,17	three-page
subject	14	115:23,24	127:5,13,	48:12
39:11	supervisors	119:9	18,20,22	tickets
130:3	53:19	talks	128:8	137:17,20
138:16	supplementa	79:10	129:1,8	time
144:15	l	Target	131:6,12,	6:19
146:5	20:2,14,	112:17,18	25	14:12,16
submit	17 24:13	team	132:14,19	22:18
59:7	suppose	88:19,21	147:23	30:18
60:18	93:4	104:8	testified	33:21
68:15	system	114:2,4,	37:15	39:3,12
submits	21:10,18	10,13,17	55:17	40:14,16
60:14	22:2,3,12	115:2,3,6	85:2	42:13,18
submitted	29:4,6	technical	145:24	45:12
26:3,19	34:24	56:13,18	testify	46:2
27:7,21	96:2,5,8	147:12	8:13	48:24
28:11	112:12	technically	testifying	50:5,15
34:22	<hr/>	66:14	101:22	54:15
42:22	T	technology	testimony	55:25
submitting	<hr/>	21:15	28:24	61:12,21
56:4	tab	term	39:10	71:19
subscribed	111:4,7,8	17:2,4	107:23	76:17,18,
97:15	112:4,5	terminologi	108:6,17	25 77:9
subsequent	talk	es	120:12	78:5,6
91:3	143:25	78:3	124:7	84:5 85:3
subsequentl	talked	terminology	thing	88:6
y	50:22	15:7	11:5,12	89:10
51:2	70:22	terms	13:21	90:2,3
succeed	78:16	15:11	16:19,21	91:9 93:4
52:2	79:2	37:23	32:18	102:8,16
summary	112:12	60:5	77:3,13,	103:3,18
94:15	124:19	61:4,11	19 78:8	104:7
95:5	talking	68:24	things	106:4,6
	10:20	72:19	38:19	107:25
			54:6	111:12,23
			77:6,20	116:17

122:4,5	training		145:12	73:13
135:4	94:2	U	151:20	unopened
140:18	148:25		understandi	55:13
141:25	149:2,4,	U.S.	ng	unsigned
146:23	5,13,16,	9:25 10:2	34:25	151:18
147:8	19,21,24,	53:18	46:21	unsubscribe
150:17	25	64:21	52:22	97:8,11
timely	trainings	Uh-huh	57:12	unsubscribe
151:17	93:25	32:2	58:7	d
times	transcribin	96:23	61:19,21	98:6
6:17	g	Um-hmm	66:18	update
12:7,9,15	7:3	12:16	69:4	11:22,25
13:4,9,	transcript	33:16	76:13,16	updated
17,20,25	47:3	37:2	77:7,11	81:2
14:2,20,	151:22	40:22	78:3,7	92:14
23 15:2,4	152:6,8	41:21	80:13,17	updates
94:5	translation	53:12	83:13,17	94:16
title	14:18	63:4 65:6	87:11,22	95:6
8:25 10:8	23:20	75:12	98:14	149:6,19
today	39:23	85:4	112:1	updating
6:13,23	trial	125:14	115:11	11:16,20
7:4 8:14	89:19	underscore	117:12,14	uploads
11:9	91:13	99:17	121:20	22:2
13:24	trick	102:13	123:3,5,	user
17:24	77:14	105:11	12 125:24	66:19
18:15	triggers	108:16	126:14	
21:17,19,	50:18	140:6	137:8	v
20 74:8	trouble	141:8	138:14	
130:17	32:8	understand	139:25	
today's	142:3	7:9,13	141:23	
8:16	true	11:9	142:19	
told	32:24	42:19	145:18	V-I-A
67:18	42:14,16,	44:8	146:2,7	7:24
tool	18 146:25	64:24	understandi	vague
79:19	truthfully	65:5	ngs	40:14
80:3	8:13	73:13	130:5	42:13,18
Torrance	turn	77:15,18	134:15	143:4
8:5,6	31:11	93:8	understood	144:3
track	146:8	102:5	55:18	145:16
79:24	type	120:11	64:9,16,	
train	64:4	140:11	17 68:10	Valdez
148:18		142:8,21,	United	23:9 25:1
		22 143:7,	106:21	27:7
		8,14,16	universe	29:19

34:16	16 40:1	10:9	website	write
35:18,19	48:15	violated	79:3,13	19:16
36:2,13	56:23	142:13	80:10,14	117:17
42:10,21	57:16	violation	88:1 89:2	written
90:21	62:23	142:11	101:9	70:7,9
Valdez's	63:17	virtual	109:11	125:2,20
35:4	87:16	149:2	111:15	130:7
44:20	99:20,23,	virtue	125:7,8	wrong
90:22	24 101:6	36:24	126:6	20:18
Valdezs	102:2	visible	127:5,25	
36:19	103:2	63:11,12	128:9	
variety	104:22,24	visit	129:2,9,	y
41:9	105:18,19	65:16	20 132:1,	
varying	106:7	109:10	14	years
15:7	108:1,2,	volume	137:10,18	6:21
venue	7,11	79:24	withdrawing	22:20
137:25	109:21	witness'	145:5,7	90:8
verbal	111:18	32:20	wondering	yup
7:5	117:2	wondering	60:10,12	53:13
88:11,12	118:11,15	word		
92:9	120:5,6	121:16,23		
verified	123:12,15	134:5		
19:23	139:21	149:14		
verifying	140:1,4	words		
118:13	142:10	14:18		
vernacular	146:11,20	16:4,9		
11:14	versioning	36:1		
version	13:7,10	42:16		
12:10,13	versions	86:6		
13:3,11,	14:15	100:21		
12,16,22,	35:15	139:6		
24 14:6,	36:6 40:2	145:4		
9,13,14	63:16			
20:18	78:11,14			
30:24	81:2 89:4			
31:5,8,	123:7,16			
12,15,16,	130:12			
18 32:23	versus			
35:9,11,	18:15			
12 36:9,	vertical			
10,12	34:2			
37:5,6,9,	viable			
vice	47:1			
	violation			
	142:11			
	virtue			
	36:24			
	visible			
	63:11,12			
	visit			
	65:16			
	109:10			
	volume			
	79:24			
	w			
	waited			
	89:12			
	waive			
	140:25			
	waiver			
	89:19,22			
	91:14,16			
	walk			
	51:13			
	warehouse			
	71:21			
	warehouses			
	86:14			
	warrant			
	55:8			
	ways			
	41:9 50:3			
	148:25			
	web			
	132:3,20			