

ROBERT H. PLATT (Bar No. CA 108533)
 rplatt@manatt.com
 DONALD R. BROWN (Bar No. CA 156548)
 dbrown@manatt.com
 ALEXANDRA N. HILL (Bar No. CA 313249)
 ahill@manatt.com
 MANATT, PHELPS & PHILLIPS, LLP
 2049 Century Park East, Suite 1700
 Los Angeles, CA 90067
 Telephone: (310) 312-4000
 Facsimile: (310) 312-4224

Attorneys for *Plaintiff*
 HERBALIFE INTERNATIONAL OF AMERICA, INC.

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

HERBALIFE INTERNATIONAL OF
 AMERICA, INC., a Nevada corporation,

Plaintiff,

vs.

EASTERN COMPUTER EXCHANGE,
 INC., a Connecticut corporation,

Defendant.

Case No. 2:22-cv-00347-ODW (AGRx)

**FIRST AMENDED COMPLAINT
 FOR:**

- (1) FRAUDULENT
 CONCEALMENT;**
- (2) BREACH OF CONTRACT;**
- (3) CONVERSION; and**
- (4) DECLARATORY RELIEF.**

EASTERN COMPUTER EXCHANGE,
 INC., a Connecticut corporation,

Counter-Plaintiff,

vs.

HERBALIFE INTERNATIONAL OF
 AMERICA, INC., a Nevada corporation,

Counter-Defendant.

1 Plaintiff Herbalife International of America, Inc. (“Herbalife”), for its First
2 Amended Complaint herein, states and alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff Herbalife is a Nevada corporation with its principal place of
5 business in Los Angeles, California.

6 2. Defendant Eastern Computer Exchange (“Eastern”) is a Connecticut
7 corporation with its principal place of business in Westport, Connecticut.

8 **JURISDICTION AND VENUE**

9 3. This Court has jurisdiction over this action pursuant to the provisions of 28
10 U.S.C. Section 1332 because there is complete diversity between Herbalife and Eastern,
11 and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and
12 costs.

13 4. Venue is proper in this Court pursuant to 28 U.S.C. Sections 1391(b) and
14 1400 because a substantial part of the events giving rise to the claims occurred in this
15 judicial district, and Herbalife’s principal place of business is within this judicial district.
16 Eastern and Herbalife entered into a Master Services Agreement (“MSA”) providing that
17 “any and all disputes arising under this Agreement shall be adjudicated in the appropriate
18 state or federal court within California.” Eastern and Herbalife also entered into a Non-
19 disclosure Agreement (“NDA”) providing that “all disputes arising from or relating to this
20 Agreement [shall be subject] . . . to the exclusive venue and jurisdiction of, the state and
21 federal courts of Los Angeles County, California.”

22 **FACTUAL BACKGROUND**

23 **General Allegation**

24 5. In furtherance of a fraudulent scheme, Eastern endeavored to create the
25 fraudulent impression that Herbalife had agreed to order millions of dollars of computer
26 equipment, including by creating a fraudulent purchase order, to reap Eastern millions of
27 dollars in unearned business.

28 ///

Herbalife's Robust Procurement Policies and Procedures

6. Herbalife is a global nutrition company that, through its network of independent distributors, provides consumers with nutrition solutions in the areas of weight management, sports nutrition, and health and wellness. Herbalife has been in operation for over 41 years and is currently a New York Stock Exchange publicly traded company operating in 95 markets globally.

7. Herbalife has robust and detailed written procurement policies and procedures that all employees must follow. Pursuant to these policies and procedures, Herbalife engages thousands of vendors to provide goods and services to Herbalife in a fair and consistent manner.

8. Herbalife's procurement policies and procedures contain extensive requirements. Herbalife's procurement procedures require, among other things, a number of written approvals by specified employees before a vendor can be awarded a contract. Before capital expenditures could be made through a third party vendor, Herbalife's policies and procedures required the following: 1) an approved Project Authorization Request or "PAR"—that is, approval of the proposed total expenditure on the overall project; 2) an approved purchase requisition or "PR"—that is, approval for the specific purchase tied to the project for which there is an approved PAR; and 3) an approved Purchase Order or "PO" for the vendor, tied to the project and purchase for which there is already an approved PAR and PR, which represents Herbalife's purchase commitment to the vendor.

9. The PAR, PR, and PO must all be approved in writing by the specifically designated employees at Herbalife with approval authority. Multiple approvals may be required, including by senior management and the Board of Directors ("Board"), depending on the size of the expenditure.

10. To ensure that all of these required procurement policies and procedures were followed, Herbalife used database systems to record and maintain PARs, PRs, and POs. For example, a PO cannot be issued using Herbalife's Oracle database unless all of

1 the required approvals have been obtained for both the associated PAR and PR.

2 11. The Oracle database sequentially assigns a unique number to a PO based on
3 the date of creation of the PO. Once all of the requisite approvals are obtained, and a PO is
4 able to be issued, an employee of Herbalife typically sends a copy of the PO to the vendor
5 from the Oracle system. All PARs, PRs, and POs, including all written authorizations for
6 such documents, are stored on Herbalife database systems.

7 12. These procurement procedures and procedures were designed by Herbalife
8 to promote transparency and to ensure that projects being bid were within the company's
9 budget, met the company's stated needs, and were subject to fair competitive bidding.

10 **Eastern Signs a MSA**

11 13. On information and belief, Eastern is a technology company based in
12 Westport, Connecticut. Eastern is what is known as a "value added reseller" or "VAR,"
13 which partners with original equipment manufacturers ("OEMs") such as Dell
14 Technologies, to resell computer equipment to end users such as Herbalife.

15 14. In late 2019, Herbalife's then-Chief Technology Officer introduced Eastern,
16 including Eastern's president, Brendan Lynch ("Lynch"), to Herbalife, and Eastern
17 became an Herbalife vendor for the first time. Herbalife and Eastern signed the NDA,
18 effective December 13, 2019, strictly prohibiting the parties from using any confidential
19 information of the other. *See* Exhibit 1. Herbalife and Eastern also signed the MSA in
20 January 2020 dated December 19, 2019. *See* Exhibit 2.

21 **Herbalife Issues 21 Purchase Orders to Eastern**

22 15. Starting January 2020 through April 2021, Herbalife entered into 21
23 different POs with Eastern and paid Eastern over \$15 million in connection with those
24 POs. Eastern, thus, was well aware of the necessity of Herbalife issuing a PO before any
25 payments could and would be made by Herbalife.

26 **Eastern Receives a Purchase Order to Conduct an Analysis of** 27 **Herbalife's Applications**

28 16. Business continuity and disaster recovery ("BCDR") generally refers to a

1 strategy to reduce the risk of technology outages that could disrupt a business. Herbalife
 2 retained Eastern in or around April 2020, pursuant to a PO, to perform an “application
 3 impact analysis” (“AIA”) of Herbalife’s applications, including those that implicate
 4 BCDR. Herbalife paid Eastern for the AIA in accordance with the PO issued for it.

5 17. While Eastern was conducting the AIA, Eastern provided Herbalife a deck
 6 with its BCDR design recommendations, on or around June 18, 2020. The June 18, 2020
 7 Eastern deck made two recommendations for potential BCDR solutions for Herbalife’s
 8 computer systems located in Salt Lake City and Winston-Salem. In the deck, Eastern
 9 stated it would make a proposal “in 4 weeks” to address the BCDR strategy for both Salt
 10 Lake City and Winston-Salem. Notably, both design solutions recommended by Eastern
 11 would have Herbalife commit significant resources to an on-premises, primarily
 12 hardware-focused solution (i.e., use vendors such as Eastern to purchase hardware and
 13 equipment from OEMs like Dell), rather than a cloud-based solution.

14 **Herbalife’s Board of Directors Reviews BCDR Strategy**

15 18. During the summer and into the fall of 2020, a team of Herbalife employees
 16 prepared a presentation for Herbalife’s Board of Directors (the “Board”) on BCDR. The
 17 presentation addressed various BCDR recommendations for both the Salt Lake City and
 18 Winston-Salem locations. The purpose of the presentation to the Board was to present
 19 management’s recommendations related to BCDR and to seek Board approval for funding
 20 a BCDR project, consistent with Herbalife’s policies and approval process.

21 19. The presentation requested the Board to approve \$40 to \$50 million to
 22 address BCDR. The presentation noted that the “cost projections represent estimated
 23 maximum spend, *as no negotiating has been initiated* (of which \$20 million is [capital
 24 expenditures] and the remainder is maintenance and support).” (Emphasis added.) At this
 25 Board meeting, the Board approved a preliminary budget to address BCDR.

26 **A Meeting with Eastern on October 28, 2020**

27 20. On October 28, 2020, a meeting was held at Herbalife’s Torrance office and
 28 attended by Eastern (Lynch and Marty O’Brien (“O’Brien”)), as well as Gerry Berg

1 (“Berg”), Herbalife’s VP of Infrastructure and Operations, and Peter Bray (“Bray”),
2 Herbalife’s Senior Director of Strategy and Governance. Because Bray had been recently
3 hired and had been primarily working remotely at Herbalife, the meeting was Bray’s first
4 time in Herbalife’s office, as well as Bray’s first-time meeting Berg, Lynch, and O’Brien
5 in person. Bray was unaware of the purpose of the meeting.

6 21. As of October 28, 2020, there was no PAR, PR, or PO issued for the BCDR
7 project; therefore, neither Bray nor Berg had any authority to approve Eastern ordering
8 any equipment for the proposed BCDR project.

9 22. Nevertheless, Eastern (Lynch and O’Brien) raised the possibility of Eastern
10 pre-ordering BCDR equipment during the October 28, 2020 meeting. More specifically,
11 Eastern suggested that it purchase equipment from Dell on behalf of Herbalife before
12 Herbalife had approved a PAR, PR, or PO for the equipment. During this meeting, Bray
13 told Lynch and O’Brien that he wouldn’t take such an approach, but that if Eastern
14 nevertheless did so, and chose to pre-order BCDR equipment, that such a decision would
15 be “on them.” Berg and Bray advised Lynch and O’Brien that they were not authorized to
16 approve any BCDR purchase. Berg and Bray explained that the approval would have to
17 go through the proper procurement process at Herbalife.

18 23. Although the Board approved the initial spend, Herbalife’s policies
19 nevertheless require employees to follow its required approval process, which includes a
20 PAR, PR, and PO. Berg and Bray knew well that no one could bypass this process and
21 approve a “verbal order” for the purchase of the BCDR equipment. This was especially
22 so given the significant size of the expenditure. Eastern likewise knew that it must receive
23 a PO, in writing, from Herbalife, just as it had many times for prior orders.

24 24. While Eastern now claims that Bray placed a “verbal order” for tens of
25 millions of dollars of BCDR equipment at this October 28 meeting, without a PAR, PR, or
26 PO, this contention is belied by many facts. Berg and Bray each steadfastly deny that
27 Bray approved a verbal order at the October 28 meeting. Bray was not an executive at
28 Herbalife and had just recently joined the company. Bray certainly could not unilaterally

1 ignore Herbalife's procurement policies and procedures and place a verbal order worth
2 tens of millions of dollars.

3 25. On October 30, 2020, Eastern, without Herbalife's knowledge or
4 authorization, placed an order in excess of \$20 million worth of computer hardware from
5 Dell, supposedly for Herbalife's BCDR project.

6 26. It is abundantly clear that Eastern understood that they did not have the
7 authority to proceed with the order and spend millions of dollars on the BCDR project.
8 There is no evidence confirming or even mentioning this supposed verbal agreement
9 anywhere at Herbalife. Herbalife has been unable to locate even a single email
10 evidencing an agreement between Eastern and Herbalife to purchase the BCDR
11 equipment, and there is no written agreement to this effect. In fact, the opposite is true—
12 documents evidence that Eastern was well-aware of both Herbalife's procurement process
13 and attendant requirements of a written agreement authorizing such a purchase and that
14 the BCDR plan had not yet been approved at Herbalife. It is inconceivable that a deal
15 worth tens of millions of dollars, potentially involving dozens of Herbalife employees,
16 would leave no paper trail at Herbalife. It appears that all communications, if any,
17 regarding Eastern's ordering of the equipment from Dell were conducted on non-
18 Herbalife devices in an apparent effort to conceal the transaction.

19 **Herbalife Issues a RFP for BCDR Strategy**

20 27. Herbalife, unaware that Eastern had placed an order for certain BCDR
21 equipment, began the formal process of searching for a vendor to fulfill its BCDR needs
22 after the Board approved an initial BCDR spend. As required by its policies and
23 procedures, Herbalife conducted a request for proposals ("RFP") process in November
24 2020 for the BCDR project. Herbalife invited vendors to bid on the BCDR project,
25 including Eastern.

26 28. In November 2020, Herbalife provided the vendors participating in the RFP
27 with highly confidential information about its computer systems, including information
28 related to data processing, data protection, and business continuity capabilities, to allow

1 the vendors to fully diagnose Herbalife's needs and provide bids to address BCDR
2 strategy. The bid for the BCDR project was for the entire project, not phases.

3 29. At no time during the RFP process did Eastern ever mention that Eastern
4 had already allegedly been awarded all or part of the BCDR project, nor did Eastern ever
5 mention that it had already ordered equipment from Dell. To the contrary, Eastern acted
6 as if no equipment had been ordered, and Eastern prepared and submitted a response to
7 the RFP.

8 30. Indeed, Eastern's full participation in the RFP process for BCDR—from
9 November 2020 through January 2021—undermines its position that Eastern had some
10 type of verbal commitment from Herbalife in October 2020 to order the BCDR
11 equipment. Even more perplexing, is that Eastern now claims that Herbalife informed
12 Eastern that it had won the RFP in mid-December 2020—which, again, runs contrary to
13 Eastern's decision to order tens of millions of dollars of equipment from Dell in October
14 2020. Eastern's contentions are further belied by email communications between Eastern
15 and Herbalife, which demonstrate that, as of January 2021, there were still discussions
16 between Herbalife and Eastern regarding Eastern's potential bid for the entire BCDR
17 project. Thus, it was clear based on Eastern's conduct that Eastern had not been
18 announced as the "winner" of the RFP prior to October 2020 or at any time whatsoever.

19 **Herbalife Circulates BCDR PAR in January 2021, Further Demonstrating That**
20 **There Was No Approval of the BCDR Project**

21 31. In November 2020, after the equipment had been ordered, Eastern provided
22 information to Herbalife to be used in drafting a PAR to obtain approval for the BCDR
23 project. Such activity demonstrates Eastern's knowledge of Herbalife's procurement
24 policies and procedures.

25 32. On January 20, 2021, after the PAR had been drafted with Eastern's input, it
26 was submitted for approval.

27 33. Given the size of the BCDR project, the PAR required written approval
28 from 15 employees, up to and including both the President, as well as the

1 Chairman/CEO.

2 34. The PAR did not receive approval from all 15 individuals required and,
3 therefore, there was no authorization from Herbalife for Eastern or any vendor to proceed
4 with the BCDR project.

5 **Herbalife Terminates the RFP Process**

6 35. Herbalife decided to terminate the RFP without awarding the contract to any
7 vendor in January 2021 to further assess the proposed BCDR project design. Later that
8 month, Herbalife decided to engage a neutral third-party to review and assess the
9 proposed BCDR project design.

10 36. That same month, Eastern and the other bidders were advised that the RFP
11 process was put on hold. No vendor was selected, and the bidding process was terminated
12 to avoid a tainted process and allow Herbalife to further scrutinize its BCDR solution
13 options.

14 **A Fraudulent PO**

15 37. Dell asked Eastern for proof that Herbalife had committed to the multi-
16 million dollar purchase of computer hardware through Eastern from Dell for Herbalife's
17 BCDR strategy.

18 38. On February 23, 2021 at 2:58 p.m., Lynch sent the fraudulent PO to a Senior
19 Vice President at Dell, for the purpose of falsely confirming Herbalife's BCDR equipment
20 order.

21 39. The fraudulent PO does not exist anywhere in any of Herbalife's files. The
22 fraudulent PO is also not in Herbalife's Oracle database and was not transmitted through
23 Herbalife's email systems to anyone at Herbalife or to any third party. Moreover, there is
24 no record of any actual PO being issued to Eastern on or around October 30, 2020, nor is
25 there any record of any PO being issued to Eastern for any project close to \$20 million,
26 including BCDR. This is not surprising, as there was never an approved PAR or PR
27 issued for the BCDR order; thus, there could not have been an approved PO issued for any
28 equipment order related to BCDR.

1 40. The fraudulent PO included the PO number 1102051762. This PO number
2 was originally issued by Herbalife to Eastern for a completely different project. The
3 original PO was redacted, and new language for the fraudulent PO inserted, to disguise the
4 fact that the fraudulent PO was in fact fabricated. Though not immediately apparent at
5 first blush, upon closer review, the fraudulent PO was also riddled with errors, further
6 underscoring its fraudulent nature. The Payment Terms on page 1 (“60 on Delivery in
7 Full”) do not match the Payment Terms on pages 2 and 3 (“30”). Under the word
8 “Release” on the front page, the text “Page 1 of 3” is missing, but would be included on
9 Herbalife POs. The PO contains vague language rather than identifying specific
10 equipment that would be ordered. Nevertheless, this fraudulent PO was delivered by
11 Lynch, the President and CEO of Eastern, to Dell as evidence that Eastern had an
12 “agreement” with Herbalife to order the Dell equipment.

13 **Herbalife Hires Deloitte to Reevaluate Herbalife’s BCDR Needs**

14 41. In February 2021, Herbalife hired Deloitte to analyze its BCDR needs.
15 Deloitte was retained to make independent recommendations without any financial
16 incentives. Throughout the month of March 2021, confidential meetings occurred
17 between representatives of Deloitte and Herbalife to evaluate the proposed BCDR project.
18 It was made clear to participants that these meetings and the information shared during
19 these meetings with Deloitte were highly confidential. Eastern was not invited to, and did
20 not attend, these meetings.

21 42. At these meetings between Herbalife and Deloitte, various alternative
22 BCDR solutions were discussed. No one who attended the meetings with Deloitte was
23 advised that Eastern had already been awarded the BCDR contract, or that Eastern had
24 already ordered the BCDR equipment.

25 43. At these meetings between Deloitte and Herbalife, different solutions
26 regarding BCDR were discussed, including a cloud-based solution that would render the
27 Eastern equipment purchase unnecessary.

28 44. On March 31, 2021, Deloitte sent an “executive readout” PowerPoint deck

1 to the Chief Information Officer, who then forwarded the deck to her direct reports the
2 next day. The executive readout makes clear that Deloitte was recommending that
3 Herbalife consider options other than a hardware-heavy BCDR solution that would rely on
4 vendors like Eastern and Dell.

5 45. Eastern believed that, with Deloitte's involvement, a different BCDR
6 solution might be selected that would render Eastern's equipment purchase unnecessary.
7 Lynch improperly obtained a copy of the confidential Deloitte deck dated March 31,
8 2021. On April 27, 2021 at 9:27 p.m., Lynch sent the deck to Dell, in breach of the MSA
9 and NDA.

10 **Herbalife Discovers the Fraudulent PO**

11 46. Herbalife was unaware of the fraudulent PO or any order for BCDR
12 equipment placed by Eastern. In July 2021, a Dell executive reached out to Herbalife
13 requesting to speak about a "situation" that had arisen with Eastern.

14 47. The Dell representative explained that Dell had been informed by Eastern
15 that Herbalife had placed a "firm order" via a PO numbered 1102051762 for BCDR
16 equipment. The Dell representative further explained that Dell had built over \$20 million
17 worth of computer equipment based on Eastern's representations. The Dell
18 representative also informed Herbalife that Eastern had refused to accept delivery or pay
19 for the BCDR equipment, causing a dispute between Dell and Eastern. At Herbalife's
20 request, Dell sent the PO numbered 1102051762—the *fraudulent PO*—to Herbalife,
21 which led to Herbalife's discovery of the fraud.

22 **Eastern Settles Its Dispute with Dell**

23 48. Dell and Eastern entered into a settlement and release agreement in which
24 Eastern released Dell from any and all claims in connection with Eastern's BCDR order
25 with Dell allegedly on Herbalife's behalf. Dell did not charge Eastern for the equipment
26 nor did it charge Eastern for any "restocking fees."

27 **Eastern Seeks Compensation**

28 49. Despite its fraudulent acts, and despite being released from all claims by

1 Dell, Eastern seeks to benefit from its fraudulent conduct by charging Herbalife fees in
 2 connection with its fraudulent BCDR order from Dell. Eastern now seeks millions of
 3 dollars from Herbalife in payment for the BCDR project, including equipment and labor.
 4 Eastern also has demanded that Herbalife pay \$2,267,476.86 to account for purported
 5 “restocking fees,” as well as other alleged fees, such as “financing fees,” allegedly
 6 charged by Dell to return the equipment Eastern ordered without authorization in October
 7 2020. No such fees were charged.

8 50. Eastern is also seeking payment for \$1,074,915.62 in tokens and licenses
 9 Eastern purchased from a company called VMware allegedly on Herbalife’s behalf. The
 10 agreement entered into between Eastern and Herbalife specifically provides that Herbalife
 11 is only responsible to pay for such tokens and licenses when they are ordered pursuant to a
 12 purchase order. However, Herbalife has never issued a PO (i.e., Herbalife has never given
 13 corporate approval) to purchase any of the VMware tokens or licenses for which Eastern
 14 is now seeking payment; therefore, no money is due or owing to Eastern for the purchase
 15 of such tokens.

16 **Eastern Has Breached the NDA and MSA with Herbalife**
 17 **by Engaging in Fraudulent and Unethical Conduct**

18 51. Paragraphs 2(B) and 5(v) of the MSA between Herbalife and Eastern state
 19 in pertinent part:

20 Contractor [i.e., Eastern] hereby agrees to perform the
 21 Services in a conscientious and professional manner and to the
 best of Contractor’s ability . . .

22 [Eastern] will perform the Services in a workmanlike manner.

23 52. The conduct alleged herein and above breaches Eastern’s contractual
 24 obligation under the MSA to perform its services in a conscientious, workmanlike, and
 25 professional manner to the best of Eastern’s ability.

26 53. On January 14, 2022, Herbalife advised Eastern that it was exercising its
 27 audit and inspection rights under the MSA to investigate the allegations described herein.
 28 Herbalife provided a detailed list of the documents it sought in the audit. Eastern’s

1 refusal to provide documents is a breach of the MSA. Paragraph 21 states:

2 AUDIT AND INSPECTION RIGHTS. During the Term of
3 this Agreement and for one year thereafter, Herbalife, or
4 Herbalife's designated agents, shall have the right from time to
5 time, on reasonable notice and during business hours, to
6 inspect and audit Contractor's books, records, and other
7 documents as necessary to verify Contractor's compliance
8 with the terms and conditions of this Agreement. Further,
9 Contractor shall provide Herbalife with all necessary
10 documents to verify Contractor's compliance with the terms
11 and conditions of this Agreement.

12 54. Furthermore, the Deloitte meetings, including the PowerPoint deck, qualify
13 as "Confidential Information" under the NDA signed by Herbalife and Eastern. Paragraph
14 2, "Confidential Information," of the NDA broadly defines Confidential Information as:

15 ... any nonpublic, confidential or proprietary information that
16 the Disclosing Party or any of its representatives, employees,
17 agents, affiliates, or financial, legal, or accounting advisors
18 (together, the "Representatives") make available to the
19 Receiving Party in connection with the Services. Such
20 Confidential Information shall include, but is not limited to the
21 following: business and strategic plans, market analysis,
22 business summaries, business processes, financial forecasts
23 and reports, product formulas, ingredients, clinical studies,
24 prospective product designs, pricing policies and methods,
25 vendor and business partner identities, purchasing methods
26 and Information, operational material and manuals, financial
27 data, proposed trademarks or service marks, patent
28 applications, trade secrets, technical and engineering data,
drawings, models, software products, and design and technical
specifications.

29 55. Paragraph 5 of the NDA between Herbalife and Eastern states, in pertinent
30 part, that Eastern (i.e., the "Receiving Party") will:

31 (a) not use Confidential Information for any purpose
32 whatsoever other than evaluation and/or facilitating
33 discussions between the Parties; (b) not copy the Confidential
34 Information, reproduce it in any form or store it in a retrieval
35 system or database without the prior written consent of the
36 Disclosing Party, subject to the exceptions contained herein;
37 (c) keep in confidence all Confidential Information received,
38 and not distribute, disclose, or disseminate such Confidential
Information [sic] in any way to anyone except to the minimum
number of Representatives of the Receiving Party with a need
to know and who are involved in a consideration or evaluation
of the Confidential Information; *provided however*, that such
Representatives have been advised of the obligations to

1 protect the Confidential Infonnation [sic], and *provided*
 2 *further*, that notwithstanding the foregoing, the Receiving
 3 Party shall be liable for any misuse of such Confidential
 4 Infonnation [sic] by such Representatives; (d) use reasonable
 care to protect the Confidential Information, and in no event
 use less than the same degree of care as the Receiving Party
 safeguards its own Confidential Information of like kind

5 56. Herbalife is informed and believes that Eastern used confidential
 6 information gained before, during, and after the bidding process which was a breach of the
 7 NDA. Herbalife is informed and believes that Eastern conspired with an employee of
 8 Herbalife to orchestrate a situation in which Eastern would ultimately be able to win the
 9 BCDR bid and be able to pay Dell for its unauthorized order.

10 **FIRST CAUSE OF ACTION**

11 **Fraudulent Concealment**

12 57. Herbalife incorporates herein by reference each of the allegations set forth
 13 above as though fully set forth herein.

14 58. Eastern falsely and fraudulently concealed from Herbalife that they had
 15 secretly purchased equipment without advising Herbalife and concealing such activities
 16 from Herbalife (nor could Herbalife have discovered them).

17 59. For example, Eastern did not send a single email to any Herbalife email
 18 address confirming or even mentioning that the BCDR equipment had been ordered.
 19 Instead, on information and belief, all communications were done secretly so that
 20 Herbalife would not uncover the fact that equipment had been ordered.

21 60. In fact, in November 2020, O'Brien and Walter Rival ("Rival") of Eastern
 22 participated in email communications with numerous Herbalife employees where it was
 23 confirmed in writing that no equipment had yet been ordered. O'Brien or Rival never
 24 raised the issue that tens of millions of dollars of equipment had already been ordered.

25 61. Eastern also participated in the RFP process in an effort to win the BCDR
 26 project. Eastern had numerous communications with Herbalife in an effort to complete its
 27 RFP for the BCDR project. At no time during the RFP process did Eastern disclose that it
 28

1 had already ordered the equipment for which it was submitting a bid.

2 62. In addition, Eastern provided input for the creation of the PAR, which is a
3 prerequisite for awarding a contract to a vendor. While Eastern worked on the PAR,
4 Eastern never mentioned that it had already allegedly been awarded the contract for the
5 BDCR project or that it had ordered any equipment.

6 63. Eastern attempted to create the fraudulent impression that Herbalife had
7 agreed to order by BCDR equipment by creating a fraudulent PO. Eastern knew its
8 actions to be fraudulent, and Eastern concealed the truth from Herbalife with the intent to
9 defraud and deceive Herbalife and with the intent to induce Herbalife to act in the manner
10 herein alleged.

11 64. At the time of the fraudulent omissions by Eastern, and at the time Herbalife
12 engaged in the actions herein alleged, Herbalife was ignorant of the actions being
13 undertaken by Eastern, believed that Eastern was acting in the best interests of Herbalife,
14 and relied upon Eastern by continuing to hire and compensate Eastern.

15 65. Herbalife did not discover the fraudulent concealment advanced by Eastern
16 until Dell contacted Herbalife in the summer of 2021.

17 66. Eastern intended to deceive Herbalife by concealing its fraudulent activities,
18 including the fraudulent PO. Eastern was careful not to create a “paper trail” of its
19 fraudulent conduct. There are no emails on the Herbalife computer system referencing or
20 even mentioning the multi-million dollar order that Herbalife allegedly placed with
21 Eastern. Eastern’s concealment caused significant damage to Herbalife in an amount to
22 be proven at trial.

23 67. Throughout 2020 and 2021, Eastern acted as if it had not placed an
24 equipment order with Dell. Eastern participated in various BCDR proposals and
25 presentations, the RFP process, and even the PAR drafting process without ever
26 mentioning that it had already placed the equipment order.

27 68. Had Herbalife known of the actions being undertaken by Eastern, Herbalife
28 would have behaved differently.

69. As a result of Eastern's wrongful conduct, Herbalife has suffered and continues to suffer economic loss, and other general and specific damages, including, but not limited to, Eastern's invoice(s) for equipment return, financing charges, and/or restocking fees, among other damages, all in an amount to be determined according to proof at the time of trial.

70. Eastern committed the wrongful acts maliciously, oppressively, and with intent to defraud and permanently deprive Herbalife of its property, and its concealment was a substantial factor in causing Herbalife's harm. Herbalife is entitled to punitive and exemplary damages in an amount to be ascertained according to proof at the time of trial.

71. WHEREFORE, Herbalife prays for relief as set forth below.

SECOND CAUSE OF ACTION

Breach of Contract

72. Herbalife incorporates herein by reference each of the allegations set forth above as though fully set forth herein.

73. Eastern entered into two agreements with Herbalife, the MSA and the NDA. True and correct copies of these agreements are attached hereto as Exhibits 1-2.

74. Herbalife has satisfied all of its obligations under the MSA and the NDA.

75. By engaging in the misconduct and other wrongful acts set forth above, Eastern has materially breached the MSA and the NDA.

76. As a result of Eastern's breaches, Herbalife has suffered and continues to suffer economic loss, and other general and specific damages, including, but not limited to, Eastern's invoice(s) for equipment return, financing charges, or restocking fees, among other damages, all in an amount to be determined according to proof at the time of trial.

77. WHEREFORE, Herbalife prays for relief as set forth below.

THIRD CAUSE OF ACTION

Conversion

78. Herbalife incorporates herein by reference each of the allegations set forth above as though fully set forth herein.

79. Herbalife has an advantage over its competitors because of its confidential, proprietary Confidential Information. Eastern was entrusted with the Confidential Information in connection with its vendor status at Herbalife. Eastern wrongfully converted Confidential Information by improperly and secretly diverting business to Eastern for its financial gain and sharing Herbalife's Confidential Information with third parties.

80. As a result of Eastern's wrongful conduct, Herbalife has suffered and continues to suffer economic loss, and other general and specific damages, including, but not limited to, Eastern's invoice(s) for equipment return, financing charges, or restocking fees, among other damages, all in an amount to be determined according to proof at the time of trial.

81. Eastern committed the wrongful acts maliciously, oppressively, and with intent to defraud and permanently deprive Herbalife of its property. Herbalife is entitled to punitive and exemplary damages in an amount to be ascertained according to proof at the time of trial, which is appropriate to punish and set an example.

82. WHEREFORE, Herbalife prays for relief as set forth below.

FOURTH CAUSE OF ACTION

Declaratory Relief

83. Herbalife incorporates herein by reference each of the allegations set forth above as though fully set forth herein.

84. There is an actual and justiciable controversy between Herbalife and Eastern as to whether an agreement for BCDR services exists and, if so, whether money is owed under this agreement.

85. Herbalife hereby seeks a judicial declaration that:

a. Herbalife and Eastern did not enter into an enforceable agreement for Eastern to purchase BCDR equipment or perform any services related thereto on behalf of Herbalife;

b. Herbalife has no obligation to pay Eastern for any invoices relating to the BCDR project, including HBL4000, 3141, or 3837, which represent Eastern's alleged spend for BCDR services, VMware licenses, and VMware tokens on behalf of Herbalife; and

c. Herbalife has no obligation to pay any equipment return, financing charges, or restocking fees charged to Eastern by Dell (or similar charges).

86. A judicial determination of the parties' rights, obligations, and liabilities as set forth above is necessary and appropriate because Herbalife will continue to sustain substantial injury and damages if it does not obtain the judicial declarations set forth above.

PRAYER FOR RELIEF

WHEREFORE, Herbalife prays for relief as follows:

1. For an injunction restraining and enjoining Eastern, its agents, servants, and employees, and all other persons acting in concert or participating with them:

a. From disclosing or utilizing any confidential, proprietary, or protected information obtained from Herbalife including, but not limited to, information obtained before, during, or after the RFP process, including the Deloitte "executive readout" deck.

b. To return to Herbalife any confidential, proprietary, or protected information or other property or information misappropriated from Herbalife by Eastern.

2. For compensatory and general damages according to proof;

3. For special damages according to proof;

4. For consequential damages according to proof;

5. For prejudgment interest at the maximum legal rate;

6. For punitive and exemplary damages according to proof;

7. For costs of the proceedings herein;

8. For attorney's fees as provided by the MSA and the NDA;

9. For such other and further relief as the Court deems just and proper; and

1 10. For a jury trial pursuant to law.

2
3 Dated: May 16, 2022

MANATT, PHELPS & PHILLIPS, LLP

4
5 By: /s/ Robert H. Platt

Robert H. Platt

Attorneys for Plaintiff

HERBALIFE NUTRITION

INTERNATIONAL OF AMERICA, INC.