Day 1 Part 1:

[01:18:43]

Speaker 1: [Inaudible 00:13:25] Fox and they want us to be a more locked step with MSNBC. And in order for us to be able to effectively neutralize that to a certain extent, we need to hear directly and members of Congress need, want to say we, need to hear directly from our constituents that belong to things like Herbalife prayer groups to say, hey, let me tell you the real story about what's going on here and how this impacts our community, how this affects us economically. And I think that that would have a big impact because you have to--and we have to own a lot of different issues. But we're here to talk about direct selling the day. We need to figure out how we can be more effective in making this place a little bit more locally sensitive and less nationally sensitive. And that really does start with the grassroots. So I would say engaging your members with members of Congress, because I bet you, there are a lot of members here that think that, oh, I probably don't have very many people that are in direct selling in my district, but they probably have a lot more than they ever thought.

Speaker 2: Yeah, we're everywhere. And that's one of the unique advantages of this business, right? We have a lot of companies located in certain places, but they have sellers everywhere, literally every state, congressional district having a heat map, I think I've talked to a couple companies about having a heat map onto where their targeted distributors are. So it's not only getting in those communities, but it's targeting--who knows, maybe there's a ton of direct sellers in Des Moines, Iowa, for example. We have a huge stable there. So I think working within the association and with you to identify those areas so we can get to those members of Congress. But alright, I've gone a little easy on you. We're going to get into a little bit of policy stuff now if that's all right with you. It's been mentioned a couple times for both members of the energy and commerce committee, our main regulators is the FTC and we have a very good relationship with them. They're going to be in about 15 minutes, actually speak to us, you may see them on your way out. Generally in Congress and even as you view your roles on the energy and commerce committee, what do you think your role in kind of interacting with the FTC is, and even oversight of the FTC. I'll start with the Congressman on that one, if you don't mind.

Speaker 1: No, absolutely. I think our role in interacting with FTC is to always make sure that we're putting people over politics. We obviously are going to react to things that we see in the news. And some oftentimes when something makes national news or makes national headlines, constituents, especially if it's something consumer related, constituents will call us and say, hey, what is going on with this? And I'm concerned about this. And we need to be able to address that. I think that as it relates to

direct selling, we need to make sure a again, that we're in close contact with our local companies and local representatives and that we try not to get too caught up in the whole national sphere of things, but really take the time to dig deep, to find out what's going on and to make sure that if there needs to be any sort of changes made to protect consumers better, that we obviously do that.

But you certainly don't want to do anything that is going to hinder or make it harder for individuals in particular, to be able to prosper and grow and make money. So trying to strike that right balance whenever I deal with an organization like the FTC is what I'm always trying to strive for. Because again, for me locally, it's not about the national news or the national stance it's about the local jobs. I mean, if you, all of a sudden remove let's say that we have 20,000 people that are working in direct selling in DFW, I'm not sure exactly what the exact number is. And you take all of that money out of the economy, then you have a problem. If you have a product out there that's not good and it gets a bad reputation, then that's also another way how to get it out of the community, too. Right? So you want to be able to strike the right balance. You want to be able to protect consumers and protect jobs at the same time. And so anytime I'm dealing with any of these agencies, that's what I'm always trying to strive for personally, as a legislator.

Speaker 2: [Inaudible 00:17:58] Congresswoman

Speaker 3: Well, our committee, as you said, jurisdiction over the FTC and that pertains to legislation that's coming before us or oversight or and oversight. This actually came up last night in the energy and commerce committee hearing and Republicans in general on the committee, including myself believe we are concerned that the current FTC commissioner is overreaching. And so there is a balance. We have to have a balance go after bad actors, but let's not go after legitimate businesses. And so when the FTC commissioner wants to take out in their proposed rule some kind of language that says we won't unduly go after businesses. And I'm paraphrasing. That concerns me. I'm like, okay, let's not make this as you said, into a political issue. And I'm afraid that it is. And elections have consequences folks, it does. And so I'm concerned the commission is trying to have too much authority and I'm concerned it's going to hurt small businesses.

Speaker 2: Yeah, just a little bit of background on that Congresswoman, I think it was the FTC strategic plan Congresswoman and for years they've had a sentence in there that they'll protect consumers without, I think the sentence was without unduly burdensome legitimate businesses, or again, I'm paraphrasing a little bit, but I think it's the spirit of it. And the most recent strategic plan that was removed. And it was noticed, and I know

there was a resolution last night [inaudible 00:19:46] commerce committee about that. So just getting a little more and I'll come to you first on this Congresswoman we'll stick with you. There was a bill last year, HR2668 that would talk about the FTCs authority. I think both of you are familiar with this last year in a Supreme Court case on the FTC was Delta blow.

They were taken, they were using the statute for a very long time to collect monetary damages and one company and not saying anything about the company good or bad business practices. But a company said, I don't think you have the power to do this and repealed that Supreme Court. Supreme Court nine to zero said, yeah, actually FTC, you've been for 40 years going beyond your statutory authority using the statute to collect damages. So I know the Supreme Court even said, Congress needs to step in to clarify this, to give the FTC that authority. And DSA, I know we're certainly supportive of the FTC having that authority but with appropriate guardrails. And I think this has become unfortunately, a bit of a partisan issue. And I don't think it's going to go anywhere this Congress, it did pass the house. There was a hearing in the Senate, but I don't think it's going anywhere. But I'll come to you Congresswoman looking for, because this'll come back next Congress. The FTC, I think this might be an unpopular opinion in the room, but the FTC needs this power for legitimate harm to consumers, but there also need to be some guardrails in there before they build an action. So Congresswoman and maybe we're starting a bipartisan agreement up here now, how can you know, you work across the aisle next Congress to make sure that that kind of legislation is passed?

Speaker 3: Well, I voted the way you guys wanted me to vote by the way. The way we can work together is basically what I'm trying to do, my office has called every single Democrat member's office from the energy and commerce committee, inviting them to breakfast, lunch, dinner, their office, whatever they want to do. Only a few have responded. I don't know why the ones that have done I've had a delightful conversation. We may disagree on things and I will never promise not to, just to be soft on him and for debating an issue. But I think it's important. I served in the Arizona state house and Senate for a total of nine years and ended up in the leadership position. And to get big issues done, difficult issues, you need bipartisan support. And even though we can yell at each other and disagree and do things on 10% of the bills, about 90% of the bills, I hope that we can get bipartisan support.

It has become very, very partisan in Washington. I was surprised. I was surprised when I came in how partisan it is, how much vitriol there was. I was in elevator going in between votes from committee last night. And I just happened to be in an elevator, I was the only Republican in it. And I heard all kinds of things like how disgusting we were and how blah, blah,

blah. And I was like we're people, right? We're people, we disagree on certain things, maybe you might not like what we say. But I think it's important that we try to get together. I will work with the Congressman on anything that we can agree on because I do think it's important. And we just have to keep trying, right. We have to keep trying

Speaker 2: You Congressman

Speaker 1: Let me just say this, what I think is really important. You touched on something a little bit earlier about how Debbie and I vote a lot differently. A lot of the things we actually vote on together, I'll tell you a piece of legislation that I'm very proud of, that the president signed back in December Blake Moore, who's a Republican from Utah.

Speaker 2: That's a Utah company in the room and we are very familiar with Mr. Moore.

Speaker 1: Yeah, yeah, yeah. Great guy. He plays on the football team too.

Speaker 2: He's an amazing baseball player.

Speaker 1: He is a good baseball.

Speaker 2: [Crosstalk 00:24:03] baseball game Congressman. You do, right?

Speaker 1: Yeah.

Speaker 2: Yeah, apparently he threw a Republican ringer I've heard.

Speaker 1: So he's good. He's good. He played quarterback in college. So good athlete. Blake and I worked on legislation to create a monument here in DC that is going to honor national Medal of Honor winners. It's going to be a great Memorial, a great monument that tells a story of middle of honor winners in our country. But of course no one heard about that on news. And I'll tell a joke about organization that Anne and Allison know really well. We have a huge NASCAR facility in Fort Worth. Probably a little bit closer to me where position in Fort Worth is in far far north Fort Worth. So probably a little closer to me than it is to Ann and Allison. But always like to say like, no one goes to the NASCAR races watch their cars go around in a circle. Ultimately people really want to see and they hope the drivers don't get hurt, but they want to see these cars crash, right. That's why they're going to the NASCAR race.

And so the things that Debbie and I agree on, you're not going to turn on Fox. You're not going to turn on OAN, you're not going to turn on MSNBC to watch these pieces of legislation that we agree on. You will turn, tune in

to watch this fight. And so normally particularly on the suspension bills, they pass out without any sort of combative nature. We have one member, unfortunately, that's in my delegation that has actually made the suspension bills a little bit more difficult than they need to be. And because he did that, it actually got a lot of national attention, right? And so a lot of the things we actually do work on together, we get things done.

In addition to me being on energy and commerce committee, I'm also on the arm services committee, one of the things that you have never heard about the bill that we work on to authorize spending for our defense, which again is huge in Debbie state and big and Fort Worth Texas and in Dallas where we have tons of defense contractors. It passed out a committee last time only one person voted against it. Since 1950, I believe we've always been able to pass an NDAA bill. You don't hear about that because we're not at each other's throat and fighting over. And there are things in the bill that we disagree with. There are going to be some things in NDA that I do not agree with. There are going to be some things in NDA that Debbie probably does not agree with, but at the end of the day, she's going to be looking out for Arizona. I'm going to be thinking about those 19,000 people that work at Lockheed Martin in Fort Worth. And we're going to going to be able to get that dang bill passed.

I would say when it comes to direct selling, two organizations that you should really think about engaging, and maybe you already have one is New Dems. We're a group of Democrats that are very business centric. And we believe in a lot of the things that the democratic party believes in, but we also think that people need to be able to earn a living, small businesses need to be able to thrive and that we need to keep our economy strong making sure that you're engaging New Dems. The second organization that Derek Kilmer got me into is the Bipartisan Working Group. It's a group that meets in the mornings once a week on Capitol Hill Democrats and Republicans and we talk about how we can find some common ground on a lot of these issues. And I think direct selling will be really the perfect issue for you to join. And if you don't mind, I'll actually make the recommendation that we have somebody from direct sellers come because I think it would be great to sit down and talk about how we can work through some of these issues without them becoming, do what I talked about earlier, so nationalized.

Speaker 2: Yeah, yeah. I think something also that is, and it's great that you talk about bipartisanship, because something that isn't mentioned a lot is, I mentioned the Supreme Court earlier. A lot of those rulings are nine to zero actually at the Supreme Court, but it's the ones that are five to four and six to three that get the most news.

Speaker 1: And the most important thing too speaking of the Supreme Court nine zero decision, people we need to make sure that people can have their day in court. People need to be able to have their day in court. That's why it's there. And we need to make sure that that you have that remedy there and we have a three tiered system for, or not three tiered system, but we have the balance of government like we do for a reason. And our constitution defines it that way, where they're all three co-branches of government for a reason. And you need to be able to have that legal redress when needed.

Speaker 2: Yeah, absolutely. Like also I don't like members of Congress late. I also don't like to make our regulators wait, I see they are here. So we have a few more minutes. Just one last question that I think I want to demonstrate the bipartisanship on this issue with my last question independent contractor status is just so important for direct selling. I think you mentioned it earlier Congressman the flexibility that it gives our sales people to work their businesses. So I'll come to you first on this one, Congresswoman what are your views on independent contractors generally and with the direct selling business model?

Speaker 3: I totally agree with your association. I think you should retain independent contractor status. In fact, I co-sponsored a bill that would make ensure that direct sellers retain their independent contractor status.

Speaker 2: [Inaudible 00:29:37] Congressman.

Speaker 1: Yeah, obviously you want to make sure that people aren't abusing that provision, but we need to make sure that that's maintained. People want to be able to have the flexibility to come to work when they want to make, earn money, when they want to not feel like they are beholden by having a boss and independent contractor status allows them to do that in cases where people are being abused and they're expected to be in the office 40 hours a week and still be a direct seller role if you're expected to do that. And you know that your association with the company is no longer going to be valued. If you don't adhere to that, then you're not really a direct and independent agent at that point. But for individuals that truly are working in independent status, yeah. We need to make sure that we keep that strong. I know that people that do things like everything from eyelashes to driving Uber and they like being able to have that flexibility and that independence status to give them the sort of freedom that they want

Speaker 3: Before we end, can I just compliment the audience? So I want to compliment you because yesterday I spoke to a different conference and a tons of people were on their cell phone scrolling. You guys do not do that. Thank you. Because that is like my pet peeve. Okay. If I'm like up here, it's very insulting to people when they're up here and everybody's

just on their phone. I want to say, why did you even show up to a conference? Just stay home. But you haven't done it. So thank you.

Speaker 2: We will end there. Am I my boss before that's not a [DAFO 00:31:21], you're much more benevolent a DAFO. But my boss before this if you had your cell phone added a meeting, if he even saw you under the table, he would walk over, he'd snatch it from you. And then he said, you're not getting this till the end of the day. So etiquette people, a lesson on etiquette bipartisanship and etiquette. So get a round applause for these great two members of Congress. Thank you so much for your time morning.

Speaker 4: All right, everyone. I'm sure we're all very excited about our next speaker today. We've got Sam Levine from the Federal Trade Commission. Sam has served as the director of the bureau of consumer protection since July of 2021. The bureau oversees the division of marketing practices and advertising among other things. His previous service at the commission was as an attorney advisor with Commissioner Chopra. Sam has familiarity with the direct selling business model and has engaged with members of the DSA staff during his entire tenure at the commission. I think we're all very excited to hear from Sam about how we can all work together to protect legitimate direct selling companies. Give him a round of applause.

Sam Levine: Hi, everyone. I'm going to see if I can lose the mic. Can you hear me? Excellent. Just give me a minute. So thank you so much for the warm introduction and for allowing me to join you today. I'm also going to see if I can move this laptop. Here we go. So I'm really happy to be here and appreciate the opportunity to engage in a dialogue with you. I've had a number of meetings with DSA members, DSA leadership, and it's always a pleasure to hear your concerns and share what's on our mind as well. Part of having a healthy dialogue is candor, and I intend to be candid today. I'll be answering questions after my remarks, and I would encourage all of you to be candid as well. As many of you know, in February of this year, the FTC issued an advanced notice of proposed rulemaking concerning deceptive earnings claims made by many companies in a wide variety of industries, including, but not limited to multilevel marketing companies.

We've received over 1600 comments in response, which is tremendous. All comments are public. The commission's review of these comments is ongoing, and I of course cannot speak about the rule making itself. Today I want to address some comments that were submitted by consumers, regarding their experiences with multi-level marketing companies. The quantity and nature of the comments regarding the MLM industry is striking. And frankly not always flattering. Many of them provide very

accounts of personal experiences and a number of issues come up repeatedly. By now and for some time MLMs should know what the law requires and how to comply with it. My remarks would use the comments we received to touch on certain key consumer protection topics that affect this industry. I have no illusion that these comments represent every consumer's experience with MLMs. In fact, some MLM participants report they're happy with their experiences, and we have comments to that effect.

Let me also be clear that I am not suggesting that any particular company is violating the FTC act or that investigation into any company is ongoing. In addition, as I've said before, there are many different industries where we've seen evidence of deceptive earning claims and we're taking all of these allegations quite seriously. My goal today instead is to use these comments as a lens to shed light on topics that are of interest to DSA members and also to the FTC, such as earnings claims, product claims and compensation structure. Let's start by talking about earnings claims. You've heard a lot from the FTC about this topic recently. The simple reason is that false and unsubstantiated earnings claims cause immense harm to consumers. And to honest businesses, including MLMs competing for talent. We've seen this reflected in the comments we've received. Consumers allege that they joined an MLM because they were promised a better lifestyle, an opportunity to earn income, but ended up losing time and money.

Some explained that they worked around the clock and were left earning less than they would've made at a full-time job. Others told us that they were left in significant debt. We also received comments from consumers who said they lost their homes, their cars, or their retirement savings. All of this unfortunately is consistent with our law enforcement experience. Tremendous harm results from deceptive earnings claims, which harm is only exacerbated in times like these of economic insecurity. I'm hopeful that my comments today will help draw business' attention to what they can do to help prevent this harm.

First under the FTC act, any MLMs and MLM participants that make earnings claims must accurately represent their business opportunity and what a prospective participant is likely to earn. As I think all of the representations must be truthful, non-misleading and substantiated. With those principles in mind, I'll turn to some illustrative comments that we received in the course of our rule making. One commenter said, “I was promised a six figure income. I was promised yearly trips. I really believed everything they fed us. I am in over $50,000 in debt from thinking all the money I spent on my business with, I'm just going to say MLM-A was a good investment. It was the worst decision by listening to my upline

leaders. I put my blood, sweat and tears into this MLM." The commenter alleges that he or she was promised a six figure income and yearly trips. These alleged claims are probably not reflective of what a typical MLM participant earns. Indeed, the DSA itself recently filed a brief noting. The MLMs out, offered the opportunity to earn, "a modest supplemental income", and DSA CEO has written in the past that, "most distributors will not realize replacement income, let alone a lavish lifestyle." This is consistent with information we've seen from various industry members. And in fact, I'm not aware of any MLM where a majority of participants or even a substantial number of participants make significant income. On the contrary, what's typical is that most MLM participants make little to no money. If the promises of six figure income and yearly trips are not true and substantiated, these claims are illegal under the FTC act. And as you surely know, an MLM is liable for any such misleading earnings claims that a makes including claims by its participants.

Moreover, as many of you are aware from notices of penalty offenses, concerning money making opportunities, which the commission issued in October of 2021, because the commission has already determined in a final administrative action that such claims are unfair or deceptive under the FTC act, companies that make such promises without adequate substantiation risk facing civil penalties. I also want to talk about qualified earnings claims and here's what another commenter said. "I joined MLM-B in 2016. When my current boss pressured me into joining and said they would loan me the money for a $1,000 product pack and take the money from my paychecks because I couldn't afford it all at once. My boss at the time told me the company was how she became wealthy and paid for her home, horses, other business and family expenses and made her a millionaire and said, I should join so I could support my family. My boss, and now my direct upline said, I could drive a Mercedes-Benz like her and afford any trips I wanted if I worked hard enough, like she did, I didn't make any money through the company."

In this example, I would like to address the qualified claims that were allegedly made by the boss or the MLM participant. The participant allegedly said the commenter could earn atypical amount, including driving a Mercedes-Benz and going on as many trips as he wanted if "he worked hard enough." I think all of you should be well aware that this type of qualified claim is almost certainly not okay. As mentioned previously, most MLM participants make little to no money. And I am skeptical that a company can gather reliable evidence that shows that the very few who do make significant money worked harder than a typical participant based on what I've observed, being good at sales and recruiting involves a combination of skills including finding customers with money and interest to buy the product and hard work.

Some people of course can work exceptionally hard at sales and recruiting and not make any money. Unless a company can gather reliable evidence showing that the results at the company are different, companies will violate the FTC act. If they imply or state or allow the representatives to imply or state that recruits will earn money if they work hard enough. One other point I want to cover quickly, but it's a very important point in this economic environment is expenses. For earnings claims to be truthful and substantiated, you will need to know and be able to show that after taking into accounted expenses, the outcome you or your participant is claiming is the generally expected achievement of participants. That means that in order to comfortably make earnings claims to prospective participants, you need to know what participants earn, but also what they spend. This is an important point.

Participants unlike a salaried employee, typically have to spend money on their business as we all know. For example, commenters have told us that they had to pay sign up fees, website fees costs for marketing materials like catalogs, cost for new product releases, costs for samples for parties, fees to attend conventions and weekly training calls and travel expenses. If participants in your MLM incur similar costs. Any earnings claims you or your participants make should reflect that I'm not talking about expenses to the dump, but a sound and reasonable basis is required. And I think by and large MLMs have access to that type of information.

Let's turn that to a comment we received about what we call and what we all know as atypical testimonials. This commenter wrote. “Everyone is always renovating their home or moving into a bigger home. They post about buying Gucci and all sorts of expensive items and say, they're blessed, they can buy it to gift it to their down lines as an incentive to make others join so they can experience this too. As we all know, such extravagant earnings are extremely rare in the MLM industry and they create an extremely misleading impression. Consumers can take away from atypical testimonials and lifestyle claims the message that I can achieve that, or that's typical, that's going to be me.

Let me be clear what the FTC has stated many times before over the course of many years. It is illegal to create such a misimpression. If you and your participants, you use lifestyle claims or testimonials that are atypical or unsubstantiated, you are violating section five of the FTC act unless the advertising or presentation also clearly, and conspicuously describes the amount earned or lost by atypical participant resulting in a net impression that is not misleading. Frankly, for extreme lifestyle and earnings claims such as the claims I quoted from the comment we

received, I am skeptical that such a disclaimer exists. If you give potential recruits, a dream of becoming a millionaire or driving a Mercedes-Benz, what can you say to that recruit that will allow them to understand that there's virtually no change to actually achieve that? Today I have not seen such a disclaimer. The easiest and simplest way to comply with the FTC act is to make earnings claims based on what a typical recruit is likely to earn, we all know this. If what's typical is supplemental income, that's what you should say. Or if you don't think that's a great selling point, don't make earnings claims at all. If you decide to take a different path and make lifestyle claims or testimonials that require a disclosure to dispel typicality, it is imperative that you know, through copy testing or otherwise that these disclaimers are effective and they're not being undermined by other claims. I suspect that will be a real challenge.

I just want to turn to a series of comments concerning directions MLM participants said they received from their upline. Here's what one commenter wrote to us. “When I was involved in MLM-D, we were trained to attribute anything positive in our lives to our MLM-D business even when it wasn't true. At trainings, we were told to fake it until we made it because faking the great lifestyle will attract people to the business.” Here's what another commenter wrote to us. “I was regularly encouraged to share how MLM-E had helped me to pay off credit card debts, car notes, or bills to encourage people to join my team. The problem was I was told to share this, even if it was not true. I was frequently bullied and ostracized or insulted if I did not agree to push the narrative the company was financially taken care of me when in fact it was not.”

I find allegations like these and those that I've read are not the only ones we received quite disturbing as they assert that some MLM participants are not only purposefully lying about their income and lifestyle, but are training their down line to do the same while punishing and ostracizing those who failed to follow those instructions. This alleged conduct as alleged in the comments we received clearly violates the FTC act. But remember it is not just MLM participants who will be liable for these deceptive claims. You are your participant’s keepers. Most MLMs have structured their business so that existing participants are responsible for recruiting new participants. The nature of most MLM compensation means that participants have an incentive to recruit and of course, a powerful way to do that is through earnings claims. This is of course not to say that every participant makes misleading or unsubstantiated or earnings claims.

But I have found across different industries that when firms are structured in such a way that can incentivize misconduct, misconduct is the entirely foreseeable outcome. To sum up, it's up to you to make sure your

participants know what the law requires and that they follow the law. Please take this seriously because we are paying attention.

Let's switch gears and talk briefly about product claims. We received several comments in response to our rule, making that alleges unsubstantiated health claims by an MLM. For example, there was one very troubling comment that said, “I'm a physician. And I have had multiple patient’s health harmed by deceptive health claims from MLM representatives, including that a very overpriced juice could cure, of all things, could cure diabetes and be a great income.” Here's what another commenter told us. A training said to send private messages about how MLM-G's products fixed heart disease, diabetes, mental illness, and a bunch of other diseases. They said to send these messages privately because it was not compliant to put them on our public Facebook or Instagram pages. I want to be very clear. Any claims MLM participants make about their products, regardless of whether they're made privately or on social media or in public must be truthful, not misleading and substantiate just like earnings claims.

And it is unlawful under the FTC act to advertise health claims such as that a product can prevent treat or cure human disease unless you possess competent and reliable scientific evidence substantiated that the claims are true at the time they are made. And remember MLMs reliable, not only for the claims companies themselves make, and I keep stressing this they're liable for and responsible for deceptive claims made by their participants. In addition, during the duration of the coronavirus public health crisis, it is a violation of the law to engage in a deceptive after practice that is associated with and I quote from the statute that Congress passed, “the treatment cure prevention mitigation, or diagnosis of COVID 19” or “a government benefit related to COVID 19”. Making such claims could make an MLM liable for civil penalties.

Finally, since my time is limited and I want to be sure we have time for discussion. I'll touch briefly on the law appearance schemes, our focus on earnings claims across the economy and across different industries, I hasten to add does not distract from our interest in ensuring that MLMs are lawfully structured and not operating as illegal pyramid schemes. One thing we have noticed in the comments is that a lot of consumers said that their uplines told them they had to buy products or that their uplines trainers or the companies put pressure on them to buy products. Even if the compensation plan did not require them to make these purchases. Here's what one commenter told us. I was told, I just needed to buy the $160 starter pack and pay a $16 a month fee. They said there were no quotas and no inventory purchasing requirements. It turned out there was a personal volume requirement of somewhere around 75 or $100 a month.

You had to purchase that much products each month in order to remain active, which allowed you to sail recruit and potentially earn commissions. If you failed to meet that requirement, you would become inactive, which usually cause those above you to fall down to a lower rank. And you ended up being with a bunch of angry teammates because everyone's income depends on everyone else's, excuse me. I even had uplands offered to buy products through my account when I couldn't afford it. So I would not go inactive. Here more briefly is what another commenter told us. The only investment I was told I had to make was the initial kit. Of course I was told to buy the biggest one to have the biggest shot of success, best shot of success. And I was told I wasn't required to purchase anything else, but that was not true.

I couldn't earn commission if I didn't spend at least $100 per month. And then there were conventions, conferences, bizhubs all that cost money. These two comments are just a couple examples of these types of comments that we received in response to our rule making. So how exactly did these comments relate to pyramid scheme law? It's nothing new to this crowd to hear the most widely cited description of a pyramid scheme is from the Costco case, which we're all familiar with. Under that case, the commission held that pyramid schemes, “are characterized by the payment by participants of money to the company in return for which they receive one, the right to sell a product and two, the right to receive in return for recruiting others into the program rewards, which are unrelated to the sale of the product ultimate users”. The determination of whether a particular company is operating as a pyramid scheme, as we all know is very fact specific.

At the end of the day, though if participant compensation is driven by recruitment rather than real sales to real customers, consumer injury is inevitable. Even when the MLM offers actual products or a real retail opportunity, FTC law enforcement actions against pyramid schemes are of course multifaceted and fact specific. And the FTC does not take a one size approach, one size fits all approach in its cases, bearing this in mind. Past FTC cases show that one hallmark of many pyramid schemes is a reward system in which the more goods participants personally buy from the scheme and the more goods that the participants recruits personally buy, the more compensation the participant will be able to earn, even if the participant makes little effort to sell bonafide end users outside the MLM, such a reward system encourages participants to buy goods, not to satisfy their own needs or as inventory to resell, but to earn bonuses, commissions, or other rewards from the scheme. These problematic reward systems--this is an important point--do not have to be explicit

practical requirements that participants can or have to purchase products to satisfy plan requirements are just as problematic.

The FTCs law enforcement experience has shown that MLM participants may by product and recruit or pressure other participants to buy product for reasons other than their own or consumers, actual demand. And this is consistent with what many comments received in response to our earnings claims rulemaking have noted to us. All purchases made by MLM participants to stay active in the program or so that they or their upline can be at certain rank or obtain additional compensation are as a matter of law facially unrelated to the sale of the product to ultimate users, which is common sense. Simply put these purchases run a follow of pyramid law. We would encourage any MLM whose participants earn rewards from these types of purchases to take a look at their compensation plan and make any needed changes to bring that compensation plan in line with federal law.

I want to reiterate that the FTC conducts a detailed fact specific analysis before alleging that any multi-level marketing company is an illegal pyramid scheme. This generally involves a comprehensive analysis of a variety of factors, including a close examination of the incentives created by the MLMs compensation structure and whether companies have explicit or defactor requirements in place that compel participants to purchase products. By the time we bring a case, however, we have already gathered substantial evidence that the MLM is operating unlawfully. Let me conclude with this. We want MLMs to follow the law and we want your participants to succeed. I think all of us do. We wouldn't be here otherwise. And in fact, MLMs they play fast and loose, not only harm their own participants, but cheat other MLMs who are playing by the rules, something, I think all of us understand very well.

That is why it's long been the case. The FTC does not hesitate to bring law enforcement actions against companies violating the FTC act. But as you know, we are currently considering going a step further promulgating rules to protect consumers from false earnings claims and ensure accountability for violators. This effort reflects the unfortunate fact that in spite of decades of law enforcement experience and business education around earnings claims compliance has remained a persistent problem in many industries. I hope that might be here today will serve as another reminder. So we take these issues seriously and that we had spent stronger compliance going forward. With that I'm very happy to answer any questions you have. Thanks very much.

Speaker 2: Thank you. Thank you so much Sam. I really stories really, really appreciate it. Boy, you packed a lot in for a very short period of time and we're cognizant of your time. To be orderly here, if you don't mind, what I'm going to do is have all of you text, so Congresswoman Lesco earlier said that she gives out her cell phone numbers. I'm going to give out Brian Bennett cell phone number. Sorry, which is, which is yeah. Brian. Sorry. You didn't know 301-520-5219.

Brian: If the offer stands, I'll give your cell phone.

Speaker 2: 301-520-5219

Sam Levine: Don't make me talk about privacy violation. That's a whole other part of the topic.

Speaker 2: Well, that's a little hot topic. But anyway, if you could text any questions to Brian, then we have a couple here that we will kick off while you were doing this. But first of all, I first thank you very, very much again Sam. Let me preface this. I'm trying to be concise here. Since we wait for some of the questions by saying, this might surprise our audience and it might surprise you. We don't disagree, but we disagree on the prism. And little times we look at that famous. What is that half glass half full? Is it half full or half empty? I don't think anybody. And I'm so glad that we have representatives here from, our Peter Marinello, who you know, from the direct selling self-regulatory council here, some of the statements you, I try to jot them quickly, the earnings that fault or earnings claims unsubstantiated and so forth.

I can tell you there isn't anybody here that's going to take exception with virtually anything that you have said here. But there are a couple things I do want to say while we're waiting, then I will have a question. First of all, I hope you also, your purpose here to give us feedback. So understand not to grateful for the last statements you made about succeeding, believing in the system and so forth, is that where we're all here for. But I wanted to say, I hope you take the positive comments about our industry and the people, we just had a fly in with these members of Congress or people who have had a very successful business. I'm talking about the yachts or anything of that kind, but supplemental income and so forth. I hope you took those comments, our comments that we filed also in into consideration as you referred to alleged things that have been said and

Sam Levine: I'll add those successful participants, [inaudible 01:00:24] other participants.

Speaker 2: Exactly, they absolutely do. We call masquerading and the rest of us. So we're the first we promoted anti pyramid legislation in 50 states. So we're the first to be on board with, we don't want these scams out there, these operations. But it's easy to point the finger. I want to just talk about us and our companies that we're here to talk about. So we completely agree with the principles articulated here, we really do. And I have to tell you that compensation, let me just quickly on this one, compensation for recruitment absolutely is something that is prohibited by our code of ethics is prohibited by our companies and so forth. We want to have recruits. There's no question. That is why the business is built, but it's compensation on the sale to ultimate consumers that we're focused on.

So I think the principles are there now, what we really I think get tripped up on, and I'll be candid here. This is a country of 330 million people. Now I take 1600 comments, not all of them negative by the way. But even if they were seriously, even if it's one comment but there are 330 million people and tens of millions of people engaged in some level in direct selling, by being consumer preferred customers or direct sellers. I'll be up front here, we're going to have problems. Realtors are going to have problems. Target's going to have problems. Everyone's going to have problems. We set up a self-regulatory console here at great encouragement at the commissioner level at great expense to address precisely the things you're talking about. You just spoke this week at the NAD conference, where you praised them and said that this should be piggyback.

Speaker 3: It's a national [crosstalk 01:02:22]

Speaker 2: Yeah. That this is an entity that we need to work and is vital to your work. My question to you in terms of both earnings claims and product schemes, which you know, is a focus of our self-regulatory effort, if you feel the same way about our self-regulation, which is wholly independent, Peter Marinello is here and others who you know, I think, you know, Mary Engel, a former colleague of, of yours at the FTC that's worth the association. If you value that relationship, want to foster that relationship want to piggyback. And is that a way to address many of the concerns that you articulated today?

Sam Levine: I absolutely value that relationship. And in fact, at the conference, you mentioned, I had an opportunity to catch up with Peter a little bit and it wasn't the first time we met, I've read some of the guidance CSSRC has put out. I know the FTC was involved in that. I'm familiar with it. I think self-regulation is so important. You know, there might be a perception that we're at the FTC eager to bring cases eager to prosecute cases. We're not, this is not the only industry that we're responsible for overseeing. We have the entire economy in industries that we don't see problems. We

don't want to bring cases. So if self-regulatory efforts like the DSSRC can help promote compliance in the marketplace. We welcome that, but it's not a substitute when we see problems. And I hear you, these are comments. These are not lawsuits. These are not affidavits they're comments. But when we see compelling evidence of false earnings claims, false product claims cetera, we are compelled to act because it's not just DSSRC. We have a law to enforce as well.

Speaker 3: Right? I just want to emphasize, I'm getting Sam, your time is short with us I'm getting a lot of questions. So all of them may not be asked. So I apologize for that. But one I did want to ask Sam is that I've talked to you and your colleagues at the FTC about lawful compensation structures. And the answer that we get is we rely on the bureau of economics for that, right? Very fact specific, you look at the compensation structure, we get that. But the bureau of economics, isn't going to look at a compensation structure unless you bring an action, right? And the FTC, certainly isn't going to bless a compensation structure and look into the part of it. So how do we square that? Because in a lot of these cases, we do our own economic analysis that many times find it non-problematic. But if you are bureau of economics finds it problematic, then that's where the litigation comes from. So how do we kind of square that with the battle of the economic analysis?

Sam Levine: I mean, one thing to be clear about, I think all of you know this, but a lot of people don't. We don't, our desires can't be executed by FIAT, right? We don't run the economy. If anything, we need to do, we need to go into federal court or bring a case in our administrative proceeding and convince the trier of fact that the law has been broken or the adjudicated that the law has been broken. So if our economists are advising the commission again, our economists don't have the final say they advise the commission. And if the commissioners agree with the economists and decide they want to move forward with the lawsuit, that is not the end of the story. Our economist do not dictate what kind of compensation structure is lawful. We need to go into court and prove it as we are in litigation as we speak. So, you asked sort of what kind of recourse is there. That is what plays out in litigation. But I want to emphasize, again, we don't want to get to litigation. We want compensation structures to be lawful. We want these earnings claims to be substantiated. But if litigation doesn't sue, it's not going to be up to us or economists. It's going to be up to a judge.

Speaker 2: Let me just ask you a quickie then a couple things I wanted to have you react to since you mentioned compensation structure, always a little buzz in Washington and people trying to read things is. Let me just give you a yes, you can give a yes or no. Do you believe multi-level compensation structures are legitimate?

Sam Levine: I think we've seen many legitimate multi levels.

Speaker 2: So you don't believe that single level compensation is the only way to approach it based on some of the statements and actions. In fact that we've taken in the past?

Sam Levine: Our approach is reflected in what the commission said in Costco, which is still good law and is still the law we operate under.

Speaker 2: Good. That's a fair question to say yes. Multi local compensation. I'll take it. You've while…

Sam Levine: Now you were trying to trap me.

Speaker 2: If I had tricked you into answer the question. Yes or no. But the other thing Sam, you sort of, I don't want to put words in your mouth, but obviously there's been a notice already on the rule that's coming out, and I know that your limitations and so forth to speak about all of this that's coming forward, but it's pretty clear to us and conversations and I wouldn't let the audience know that both you and the staff have been very engaged with us and very forthcoming to the extent we've all worked in government, that that one is allowed to do so. So we're appreciative of that. It's pretty clear and correct me if I'm wrong, to the extent that you correct. This is not MLM specific when I say MLM direct selling specific rule, but it will be an earnings claim thing will apply beyond direct sellers.

Sam Levine: Let me clarify quickly. So there's no rule and there's no announcement that a rule will be forthcoming. All we did is ask the public and you've heard some, what some members of the public told us, not all ask the public, whether we should issue a rule, no decision has been made on this, but you're absolutely right that the questions we asked the public were not, and I encourage you to read the advanced notice of proposed rulemaking, we talk about gig economy. We talk about Fran. We talk about all sorts of industries where earnings claims are made. MLM is one of them, but not the only one.

Speaker 2: Okay. That's great. That's enough of an indicator for us moving forward.

Sam Levine: And we brought cases by the way, against gig platforms like Uber for making unsubstantiated earnings claims.

Speaker 2: Speaking of claims since I was encouraged by some of some of the things that you've said here is to be clear, your position speaking to you is that can claims, can be made if they're substantiated and truthful.

Sam Levine: Truthful, non-misleading.

Speaker 2: Non-misleading. Okay. Are you in an accord with the guidance in this regard that has been issued by the DSSRC?

Sam Levine: Well, I don't have the guidance in front of me, so I don't want to endorse a law document. I think the guidance we've put out the cases we've, the complaints we've alleged the cases where we've obtained, judgments reflect the commission's view on what kind of substantiation is required for earnings collect.

Speaker 2: Last thing before I turn to Brian, because we have some other questions on the DSSRC in light of your constructive comments at the NAD conference. Yeah. Would you be willing to work more closely with the DSSRC?

Sam Levine: Absolutely.

Speaker 2: To endorse those types of guidance. So there's more and more clarity. Well but based on your review, of course.

Sam Levine: We don't generally endorse self-regulatory guidance. It's not something we do. There's a reason that is self-regulatory. We do have a very close relationship. I think with the DSSRC, we have a dialogue with the DSSRC and we want the DSSRC to succeed. So if there's more engagement we can do to make sure you're succeeding, then we welcome that.

Speaker 2: Thank you.

Speaker 3: Yeah. Sam, if you have time for a couple more, I think your last comment really stuck with me and you probably know we have a lot of compliance professionals here in the room. You know, a lot of people who their focus is compliant. And we actually lodged a compliance officer's council last year. I think I sent you and your staff a compliance officer's handbook, Katie's nodding. So you're acknowledging you received that. That's great. In bringing these actions for earnings claims for compensation structure, how much deference do you give compliance practices? Because I think your closing comment Sam was you need to do better in compliance. And I think we can always approve. And I think nobody's going to argue with that. But do you give deference to these compliance practices that we can show you that we're, it's not perfect. I think Andrew Smith said to us a few years ago, you know, you're aiming for the nines and not the zeros, so we're not going to catch everything, but how much deference do you give these compliance practices that these companies do have these large compliance departments when you bring in action,

Sam Levine: This is absolutely something we take into account. Look, if you have a participant one participant in a massive MLM, making an unsubstantiated

claim, that is a violation of the FTC act and the MLM would be liable as well. That said, are we going to bring a case when there's one participant making a claim? You know, a lot of this has to do with prosecutorial discretion. And if we see robust compliance procedures very few claims strong measures in place to prevent a dissemination of false and unsubstantiated claims that is not a shield, but it is not. It is something that we will absolutely take into account in deciding whether to allocate our scarce resources to pursuing that matter. We have a lot of problems across the economy. We're going to focus on where we see the most harm.

Speaker 2: I'm going to turn over to Brain to follow up. But I just wanted to say something on the compliance and some of the things that were said here. I can speak to everybody in this room when you mention the, the yacht and the lifestyle and all this other stuff, everybody's stomach returned here. I just want to be clear with you on that, that no one, I've never personally seen it. Peter can speak to it, whatever it is, but I want to say something. And you mentioned earlier about company's responsibilities. Everyone in this room is here to hear you because we are take these responsibilities very seriously. They're not employees, but we have a responsibility through social media, which we're addressing as well, by the way, we are now addressing social media, etiquette and standards that we're going to go out there to do is that any of those types of representations, you made those lavish type things, you got a Mercedes and so forth is just absolutely verbot. And where there's someone's off the reservation. Those are things that we want to be brought to our attention and correct discipline. And many times these companies terminate significant business that is being done in a way that's inappropriate. Just want to make that clear with you.

Sam Levine: I appreciate that. I've seen it. I know that the DSSRC has flagged such claims and the action has been taken, but we continue to see problems. We continue to hear from people, but it doesn't take away from the fact that I know there are a lot of people in this room working very hard to try to make sure that those claims are not disseminated. And I appreciate that and appreciate those remarks.

Speaker 3: I think if it's okay, Sam staff time for one more. I'm going to make it a, but Sam, I make a two part question. So I, that's a misleading claim, Sam, I'm sorry. Let me get two part question.

Sam Levine: Let me guess it's a yes, no answer.

Speaker 3: I'm going to combine a couple of the questions that I received, but you know, you've said this a lot and the FTC said a lot over the years, what is reasonably expected to be earned, you know, average income that could

be average, that could be median. How do you kind of define that? How are we supposed to determine as companies what the average or reasonable persons expect to earn and following onto that is the second part of it. We understand the AMPRM is only just you're asking the public for input, but it did seem like you dismissed the value of disclosures and disclaimers. So I mean, reasonable expected to earn, but if we'd make an atypical claim, are you saying that disclosures and disclaimers can't cure that?

Sam Levine: So let me start by answering the first question. Look, no federal court is defined what it means to be typical. One thing that is clear is that average earnings is not typical because average, of course, doesn't reflect what the experience of the typical participant earns. In most cases, you could have people making a lot that could throw off the whole average. With respect to your second question, which I'm now forgetting Brian, oh, I'm sorry about the disclosure disclosures and disclaimers. I want to be clear, effective disclosures are important thing we analyze to see if claims are still deceptive when I was criticizing or casting doubt in the efficacy of disclosure in my remarks, I was talking about something like this. If you're advertising a giant yacht and a Mercedes-Benz and all sorts of luxurious lifestyle and then you say in 10 point font at the bottom, by the way, you're probably not going to get this yacht or your Mercedes that that is not likely to cure the deception. And this is just common sense. We're all people we're looking at the yacht. We're not looking at the 10 point font at the bottom. So this is just common sense. What is the net impression that people draw from a claim? And if you're flashing a yacht and a Mercedes and this and that, then that impression you get is that you have a good chance of getting a yacht or a Mercedes. And it's very hard for me to imagine a disclaimer that could cure that. But of course, this is backed by fact.

Speaker 2: If I can, yes. You know, we've had this discussion of many, many years. In fact, I remember with Louis Griseman from your staff is years and years ago, can we use Toyota or something like that as a picture. But the point is this, we completely agree with that. And I don't know about the comments and so forth, but Peter or others can speak for it. That is just not the practice of any DSA direct selling company that is in contradiction with our code, our standards and the course law. Just so it's clear. So nobody here is advocating at any shape where, we put a Mercedes and say the little language before. I just want to leave that, as you said, net impression with you.

Sam Levine: Good disclaimer.

Speaker 2: But, I did want to just touch before you leave. I don't know, just want to take this time on the expenses issue. You know, in everything in life.

Couple things to just say on a scenario, we can, that've been brought up a couple times informally in some discussions with staff and we have want to have more discussions about it, to the extent that there is misleading information, meaning that really you're going to be required. And I want to underscore the word required to do these things. We want to have that discussion with you to the extent that individuals independently decide to do certain things to grow a business is also from our perspective their prerogative to do these types of things we can have that more discussion. But another net impression, I want to leave this. There isn't some Trojan horse here, which sort of your remarks suggested that there really is a lot more to these fees and so forth.

You didn't mention our buyback, which is part of our self-regulatory effort to return product you get your money back by the way, and easier to get money back from a direct selling company than many retailers without question and we even used products and things of that kind of return. So I wanted to tell you, there are safeguards that we have in place in our own code and self-regulatory efforts that I know of correct me, somebody here, if I'm wrong, I don't think any conference is mandatory. I don't think any tools are mandatory. Things are available in every type of earning opportunities, such as realtors and so forth to buy tapes and things of that kind many times unrelated to the companies.

Sam Levine: Well, I appreciate that. And let me just conclude by saying this. I describe some comments we're hearing from people as part of our rule making. We also hear from all of you, we hear from you, we hear from BSA, we hear from DSSRC, and we want to hear from all of you, we want to hear what you're doing to make sure your companies are staying into compliance and your participants are staying in compliance. And we welcome the kind of dialogue that I hope this represents. You shared some comments in addition to questions. I think you were candid as I tried to be. I appreciated that. I hope I was going to say, I hope this is the beginning of a dialogue. It's really not. It's the continuation of a dialogue. And I look forward to continuing in the months and years to come. So thanks very much, everyone.

Speaker 2: So much. Thank you

Speaker 4: So much.

Speaker 3: I think we have a 15 minute. We're a little behind, but we have a 15 minute break end. So why don't we reconvene at 11.

Day 1 Part 2:

[04:56:41]

Adolfo: Where it's going. And of course prepare ourselves. When I say response, and I meant what I said. I don't think anybody disagrees with the egregious examples that he made, but I was telling Gordon Hester it's a little bit like I think I used bad analogy, I guess, like everyone's for apple pie. But everyone's recipe how to get there and so forth is a little bit different. And that's where we were concerned that they understand the perspective of the industry and whatever actions they take regarding what is now. I spoke to him on the way out on his way of permiting it a broad earnings claims rule, which is coming down the pike that's for sure that we be prepared. With that, this is an opportunity now to reintroduce our MCs and our conference, principle conference sponsor. Again, Renson Strom, which we're so grateful for your leadership, for your help and for your support. But having John Sanders and Katrina Eshe here is critical. They're now going to give expert analysis on many of the factors they litigations that they've been involved in that have affected our industry. So as you all know, this is largely lawyer's conference, not exclusively. So Evan will be very attentive again. Want to take this opportunity to thank them and the firm for your continuing support with that. John and Katrina

Speaker 2: They're applauding.

Katrina: Well, I hope everybody can hear me. So we actually want to start out by thanking the DSA. Our partnership with the DSA over the past few years has been very, very fruitful. We learned so much from one another, the education, the partnership, it means a lot to us. We want to thank Melissa who without her, this doesn't happen. Melissa and Nancy put this together and we adore working with her well, so yes. And we want to thank Brian and Adolfo of course. And John, thank you very much. All right.

So today we are going to be talking about quite a few different legal updates. A lot's been going on this year, good things going on for our direct sellers. We're going to start with life vantages success in its class action. We're going to talk about some very good recent Supreme Court case law that came out helping distributor misclassification class actions. We're going to talk about some significant class settlements, AdvoCare being one and Herbalife being another. We're going to talk about FTC enforcement actions. We're going to talk about that blunder for the FTC, with financial education services. We're going to talk about the status of Neora and then some wins and advice on distributor poaching actions. So I'm going to turn it over to John to get us started.

John: So I feel a little bit like we're on that segment of NBC news, where they go and there's good news after the FTC comments. So the first one that we're going to talk about is I don't know how many of you, I think that a lot of the industry has been watching it, but there was a class action that was filed a few years ago against Life Vantage claiming that it operates a pyramid scheme. It's very much like the class actions that have been filed against so many direct sellers by opportunistic plaintiff's lawyers. There was nothing in particular about Life Vantage that made it a target or anything that it was doing wrong. It was just plaintiff's lawyers taking advantage and to start off things.

I know that most people in the room know that one of the biggest things that your companies can do to protect yourselves from these consumer class actions is to have a very good airtight arbitration and class action waiver in your distributor agreements. If anybody in this room does not know cold, that you have one of those, you need to get it immediately and get with a firm there's us, there's other people in the room, who can help you, but you have to have an arbitration agreement and class action waiver. We're going to be talking about some of those. So Life Vantage at the time did not have one. And so we went straight into the meat of defending the class action on the merits.

The case was originally filed actually in Connecticut and our firm represents life vantage. We were able to get the case transferred to Utah, which is a much more favorable venue for direct sellers. And it's in federal court there. The case when it was originally filed, had a RICO claim and a securities claim that's the typical pattern for these class actions that have been filed over the preceding years. The RICO claim basically claims that, that you're running fraudulent enterprise and then the securities claim is kind of always done in the alternative if the Rico claim fails, the reason that the plaintiff's lawyers do that is there's the PSLRA, which basically says that if you are operating under the securities laws, if you are operating a pyramid scheme, it's per se a violation of the securities laws and the PSLRA bars, you from bringing a Rico claim, that's a securities claim.

So what we did was we were able to get the RICO claim dismissed, and then it became just a straight securities claim. So that was the procedural posture of the case. And then we went, did some discovery and got to class certification. And what's really significant about this case for the entire industry is we were able to convince a federal judge that not only was, should a class not be certified, but the reasons for the denial, the certification are the same things that many of us in this room have been preaching are not wrong and not fraudulent. Let me explain. So the

plaintiffs argued in their definition of a class, is that what the damage model is you take whatever the person spent on their business with the company, and you netted that versus the checks that they received. And that was the damage.

So if you put in $100 and only got out five, the damage was $95. Okay. But what we argued was that, hey, people consumed these products, and that has to have some value. If I walk into GNC, right? And I have a discount card with them that I pay $20 a year on, and I go, and I buy supplements. I'm not defrauded. I bought supplements and I consumed them. And we were able to show through depositions, and even with the named two name plaintiffs themselves, they admitted that they consumed the products. And so we talked to the judge and we were like, judge, look, these people are consuming the products that has to have some value. And the judge agreed. On top of that, we argued that, look, if I go and I buy something and I resell it, that I'm not defrauded.

And in fact, if I resell it for a profit I've made money. But you would have that person if I bought a $5 widget, and I sold it for $10, this class definition of damages would actually give that person on top of the $5 a profit. They already made. They'd give them back the $5 that they paid for the widget. And so the judge said, no, that's wrong. That model doesn't work. And so what we argued was that, look, you cannot certify a class when you have consumption, evidence of consumption and evidence of hand to hand resale, and you can't determine what those amounts are. And so we proved to the court that, that those two aspects made it impossible for a class to be certified. And it would've been just a wrong damage model. And so why is that important for you all in this room? Well, it sets a precedent that at least one judge has said, if you have a direct selling company in which they have consumable products or usable products and hand to hand resale, that's not tracked by the company. It's going to be really, really difficult to certify a class. And that's really good for a lot of people in the room when it comes to class action, pyramid scheme litigation. So we were very excited to have achieved that Katrina.

Katrina: So the other big realm of class action litigation that we've seen over the past few years is distributor misclassification class actions. So last year when we were all together, we talked about the rise in these PAGA actions that were being filed in California. How many of you out there have California distributors? Like massive sets of California distributors? Right? So there is a statute in California called PAGA private attorney general act that allows plaintiff's attorneys to get inventive, bring these PAGA claims against you. They have one disgruntled distributor that then gets to

represent a hundred thousand California disgruntled distributors. And we can't get rid of the claims because the Supreme Court of California said our class action waivers don't work in that situation. That those distributors cannot waive the right to bring a representative action. It was a huge, it was a way for the plaintiff's bar out in California and really anywhere to make a ton of money. Because when you stack all of the penalties from PAGA on top of one another, you are looking at 200, 300 million settlement demands.

So that was the status. Last year we saw Amway get hit with one, we saw ItWorks get hit with one, Prime America got hit. They were just rampant. Well, this summer in June, we got a very exciting opinion from the Supreme Court of Texas. I'm sorry, the Supreme Court of the United States. The Supreme Court said, no, California, you are wrong. Distributors can waive their right to bring representative actions. And so what does that mean? That means now when a plaintiff's attorney files a PAGA representative action out in California, you guys can go to your class action waiver in your distributor agreement, which you all have, right. You better have that class action waiver, and you can use that to force that plaintiff to go to individual arbitration, and you can get rid of their claim for pennies on the dollar, right?

And then all of the other distributors that remain out in federal court, they have to get dismissed, because they don't have standing to have their action. It is a wonderful opinion for distributor misclassification litigation anywhere. This is what we were hoping for. So some things that we need to take away from this win, don't just sit on it. I want you all to go back to your distributor agreements, look at your class action waiver, because there was some very specific language that came out of Viking River that we all need to be incorporating into amendments to our class action waiver. We need to make sure that we're specifically state, you can only bring claims on an individual basis, individual basis. Very, very, very important here. And also know that this is not the period at the end of the sentence for distributor misclassification litigation like this.

We've already heard that California legislature is looking to try to find finagle ways around this. Try to amend PAGA, to create some sort of artificial standing to try to get around this ruling. So keep your eye on it. We'll be pushing out blogs, but this is not the [inaudible 00:13:51]. Now let's talk about, oh, and then you'll also see this in the coming weeks and months, but Amway and Networks are going to be taking Viking River, filing a motion to compel arbitration on individual basis. And hopefully we'll

have some really good case law very soon out there for you guys to hang your hat on for PAGA. Okay.

So let's talk about the next step you're in arbitration, right? And you've got individual claims in arbitration. Well, the nasty plaintiff spar has tried to figure out a way to make your life extremely, extremely difficult. What they've done is they'll file mass arbitrations. So for instance, the plaintiff's far out in California filed like 12,000 or yeah, 12,000 individual arbitrations against Uber, like in a span of a week. They'd think they did 40,000 against Intuit or something like that. So they're trying to come up with inventive ways to put a ton of pressure and expense on companies that employ independent contractors. And they're doing it through this mass arbitration. So let's get innovative. Let's try to find a way to counter them. These are very innovative, new steps that some of our clients are starting to put into their distributor agreements. And we'll talk about some of the pitfalls we might run into with them, but let's talk about what they are first.

First, consider adding a bellwether provision to your agreement. Essentially, what it says is only a certain number of similar claims even if you've got 10,000 claims that were filed, only 10 of them can go forward in arbitration at I any given time. Those 10 are your bellwether cases. And until they finish, nobody else gets to go. You have to have a carve out no matter what that would allow an individual to show so substantial hardship or reason why they should be moved to the front of the line. So you can craft these bellwether provisions. They're not tested very well yet. So we'll see what's out there on that here in just a second. That's one of the approaches you can either do the bellwether provision alone, or you could try to wet it with a batch arbitration provision. So essentially instead of having, $100 individual arbitrations that you're paying the administration fees for, which is ridiculously expensive, you say, no, these arbitrations have to be batched together in batches of 50, they will proceed all together. And we're only going to pay one administration B. So you're trying to lessen the expense of the mass arbitration.

New and a little scary because of states mostly like California. So California, of course, they like to find things unconscionable and they find things unconscionable a heck of a lot. So we already had one decision come out of California on these provisions where a bellwether provision was found unconscionable and rendered the entire agreement unenforceable. So that's kind of scary. But that doesn't mean to just not use them, get inventive with your council. You could create a carve out for California and say that this doesn't apply in California. You could use venue your venue provision to try to limit exposure to an unconscionability finding. You could also, I mean, there's a lot form selection clauses. You can do a lot. So get inventive with your council, really look at utilizing

these. They might not be right for you, but they might be perfect for you. So start having that conversation is what we'd recommend.

John: And I would just add on just quickly when it comes to arbitrations in California, obviously California, is a very hostile jurisdiction towards arbitrations, right? And this conscionability analysis is often used to strike down arbitration provisions. And so what you really want to do is you're trying to strike a balance between having a provision that is going to protect the company, but also make it past the conscionability concerns. And that one case that Katrina went over the McClellan decision, what it said was that it had a bellwether provision that basically would require for batches to go through, but they had to go through in order. And so the first 10 cases would go to arbitration and then once those concluded, another 10 could go and then another 10 and another 10. And what the court found was that, that if there's enough arbitrations, somebody could be denied justice because their case wouldn't be heard for however many years.

And so the batching idea still works, but the bellwether type analysis might not work. And so you just had to be careful about it. And then one of the ways to do it as Katrina mentioned is to actually have a certain arbitration provision that applies to your California residents and a different arbitration provision that applies elsewhere and more friendly jurisdictions. The other thing that I will say that we can encounter this year, that when it comes to arbitration is not many people know about it. And we actually found out in the midst of, of an arbitration is that the AAA to try to get around conscionability arguments when it comes to employees that arbitration imposes an unfair cost on an employee and independent contractor is that because under the commercial rules, under the AAA, the parties split the fees and the plaintiff files, the administrative fee, and then the parties split the fees from there on thereafter.

And then that subject to some sort of reallocation at the end of the arbitration. Well because that was being used as an unconscionability challenge, when your arbitration provisions adopted the commercial rules of arbitration, the AAA put an asterisk to rule one or two of the commercial rules that says if the arbitration arises in an employee style relationship, and it could be either an employee or an independent contractor specifically, it says that it strips the arbitrator of any right to reallocate fees and requires the employer to pay all fees of arbitration. And that's what some of these California plaintiff's lawyers were using in the cases that Katrina was mentioning where against Uber 12,000 arbitrations were filed. Well, if it's AAA arbitration and you can argue that the footnote applies, then it's free for the plaintiffs to file.

And the company's got to eat 12,000 arbitration administration costs. So it is something to watch and to be careful about. And I will just say in the many, many arbitrations that we handle all the time, we do it before AAA and GMs we would recommend to everybody in this room to change your agreement to select GMs as your administrator. I don't know how many of y'all are familiar with GMs, but a system, an administrative system that is a competitor of the AAA that is to use neutrals are almost all exclusively former federal judges or state court judges. And we just found that the neutrals to be of a much better quality, and we've also found the administration of the cases to be much, much better than the AAA.

Yeah. Okay. So next there have been a couple significant class action settlements that have happened in the direct selling space. The first one being AdvoCare as many of you know. AdvoCare settled its FTC matters quite a while ago. But I don't know if many of you know there was also a parallel class action that was filed against AdvoCare claiming that AdvoCare operated a pyramid scheme. And obviously that case got a whole heck of a lot trickier when AdvoCare entered its consent judgment against with the FTC and settled the FTC because there were mere image allegations. And arguing that, that you don't operate a pyramid scheme when you just settled those same types of claims, the FTC makes it problematic. That we actually represented AdvoCare and the class action we did not represent AdvoCare with respect to the FTC representation.

And the good news of that that AdvoCare was able to settle was we creatively argued before the judge that look that because the allegations are mirror image, if you allow the class to go forward, you will be double rewarding people because these people are going to be paid out by the FTC and they're all and yet these plaintiffs lawyers are wanting to also pay out on the same claims on a class basis and that's just wrong. And that argument gained a lot of traction with the court. And we had a lot of pressure from the court to try to achieve some sort of a resolution. We were very fortunate to have a very good mediator a former federal judge named Royal Ferguson. And we were able to strike a deal on behalf of AdvoCare and settle the class claims for only 10.5 million.

And there were some really, really great things for AdvoCare in that settlement. Number one, in order to participate the class settlement, each individual distributor had to actually opt in and make a claim. They had to prove what their supposed damages were according to an equation. And any amounts that consumer, the distributor received from the FTC would

actually reduce their take from the class pool. And then on top of it, the settlement the class pool was settlement fund was reversionary. What reversionary means is that the company commits to a certain amount of the fund, then you figure out what your, what we call a take rate is. And typically in these, these class actions where the distributor actually has to affirmatively come and make a claim, there are very, very few claims made shocking because not everybody that participates in a direct selling company thinks they've been brought it.

And so we experienced a very, very low take rate and FTC offsets with respect to those who did participate and all of the money that isn't used toward settlement actually goes back to the company. And so it was a very, very good result for the company that otherwise had kind of a trouble on the horizon because of the FTC settlement. Herbalife also recently settled a class claim. The gist of the class claim was that distributors were being tricked into buying expensive tickets to monthly events and conferences. And the distributors were being told that participation at those conferences and things of that nature was critical to being successful in the company.

And it was kind of a fascinating procedurally because the case was originally filed in Florida for four distributors got sent to arbitration poor individual claims state in Florida and then like the class claims went to California. So it was all over the place. But the attorneys handling that for Herbalife did a good job and ultimately right before a class certification ruling that got the plaintiffs worried the Herbalife entered into a 12 million class settlement fund with no admission of fault or wrongdoing. They agreed to certain stipulations when it came to the promotion of events, that event attendance was not mandatory. And any representations by distributors that attendance was mandatory were prohibited. The communication mistake that attendance is not mandatory tickets purchase for events were refundable, and they can be canceled within 24 hours of purchase.

So those were the stipulations. And one thing that's similar from between the Herbalife case and the AdvoCare settlement that we know is as litigators is incredibly important when you're going to do a settlement on a class basis. Remember that when you settle on a class basis, just because you reach an agreement with a plaintiff's lawyers doesn't mean that the judge is going to approve it. So what both the Herbalife settlement had and the advocate settlement had was really, really good mediators who were former federal judges who had a lot of sway with the presiding judge. And I don't mean to implicate that there's some sort of impropriety

going on. It's just that when you have a sitting federal judge being told by a former federal judge, that we work the heck out of this settlement, and this is a good deal for everybody, and it's fair to consumers, the presiding judge is going to be much, much more likely to approve that class action settlement. And so consider that if you're ever in a class action setting, and you're looking to settle something that the selection of the neutral who's going to mediate the dispute, you want that neutral to have the ear of the judge, who's going to consider the class action settlement. And then the last thing is I think one more slide. No, Katrina,

Katrina: The one thing I would say about the Herbalife settlement is when I read it, my key takeaway was, okay, these are five easily identifiable things that most of the companies here could easily do to make sure that they don't end up with claims like this in front of them. There wasn't, I mean, the settlement wasn't onerously difficult. And I just think it's something that everybody should consider, if these things would work for your company implement, them get those off the table as potential pressure points for you.

John: In addition to your class action wave.

Katrina: Yes. Okay. Let's talk about the FTC. I was so pleased with this success story. I was very impressed. So financial education services they do credit repair services. That's what they sell. And they do have a multi-level model doing that. They got hit with an emergency TRO filed by the FTC back in May, and the next day, they ran to the court, the court said, all right. Yeah, sure. You can have your TRO, I've got enough here to give you a temporary restraining order with that. TRO came a freeze on not all only these company assets, but like the principles of the company's assets. There were cars being repo at this point in time. It was rough. And the judge appointed a receiver, which makes it extremely difficult to conduct your business if not almost impossible.

So judge enters the TRO and sets the hearing for a month later. Well, FTC did a darn good job of getting ready for that temporary injunction hearing and putting together a packet essentially that made it very clear that that an injunction wasn't warranted here. Very important, these consumer testimonials or declarations that they put in front of the judge, they were declarations of their agents saying, hey, not only have I not been harmed, I have actually I've got a great business here. I'm doing great that this company is not hurting me. I am an entrepreneur, and I am being able to do amazing things. Super important when you have a judge that has just been told by the FTC that how horrible this company is and how nobody's making money and all the other bad things. So lesson, when you're dealing with the TRO, make sure you've got really good testimonials from

some of your top level earners. Some of your mid-level earners, people that are willing to say they love the business, they're earning money from the business, they're consuming the product, whatever it is. Okay.

And then number two, have an expert have an expert at the ready. Real is really my recommendation, know who you're going to go to. That expert needs to be able to get into your data quickly and be able to show the FTC in an expert report that you do not have the hallmarks of a pyramid scheme. You don't have inventory loading. Let's look at the data. The expert can say, there is no indications of inventory loading here. We've got BKU retail sales end user sales that can't be questioned. All of that stuff is going to have to be put together very quickly in a nice little package for the court before the TRO hearing. And that's exactly what FES did.

The judge, I read the transcript because the order was less than like, you couldn't tell anything from the order really. But the judge in the transcript probably spent about four pages, hemming and hawing about how is there any harm here? Like you guys have not FTC, you have not shown me any harm. All I have in front of me are testimonials of people that say that they're earning money and they're happy and things are good, right? And so the judge said, sorry, FTC, you haven't shown me any real evidence of harm to the public. And actually in my opinion, the public is more harmed if I enter this TRO, because then I'm harming entrepreneurship. I'm harming people's ability to go out there and run their businesses that they want to when they want to. Great ruling. And it was all because of those testimonials I would think.

And the judge also said, FTC, I'm sorry, but this is a very complicated area of law. And I don't think you've proven to me that you're more likely than not to win you. Haven't brought forward enough evidence to tell me that you are likely to be able to prove this is a pyramid scheme down the road. Wonderful opinion. TRO was vacated. The preliminary injunction was denied. The asset freeze was pulled. Now all FES has is the monitorship. And I mean, that's certainly not a receivership. The monitors are just watching to ensure that things don't go off the rail. Unfortunately FES now has probably two years of litigation down the road in dealing with the actual claims. But at least they're not doing that with a receiver in a temporary injunction hanging over their head. So wonderful. Successful.

John: I just add Katrina one. So one of the things that obviously in a TRO is it's an ex-party application, meaning it doesn't give the other side the opportunity to be in court and to answer. And I actually was in [inaudible 00:34:48] in Virginia two weeks ago and listening to some federal judges

talk about injunctive relief and things like that. And one of the things that was said from the panel is they get really, really angry when somebody comes in on a TRO and a certain vision of the case is presented. And then the other party comes in three days later on a motion to dissolve the TRO with affidavits. That just totally contradict what that party said to the judge in the next party matter. And some of the judges said, your chance of getting a preliminary injunction almost goes to zero at that point, because you have no credibility with the court. And so we think that this FES case, that is not a good result for the FTC. And it's probably likely to chill the FTC using this kind of unilateral power to go in and freeze the assets of a company and seek a TRO without the company being able to respond. So it probably will have a chilling effect. So go ahead.

Katrina: Yeah. And another thing that it brings to the forefront is a couple of our clients have asked of us to put together what we call TRO go backs. You can talk to your favorite attorney, whoever about it, but it's always a good idea to have the materials put together that you would be ready to go into court with to fight if and when the FTC comes knocking. That doesn't mean that the numbers won't change. Like you create templates of what it is you would need, you know what expert you would plan to go to. You make sure he understands your data that way if and when it happens, plug and play and you are ready to get in front of the court, you're not dealing with a 30-day window for a temporary injunction hearing. You're in dealing with a five-day window. So it's something to consider as you move forward.

John: And one other thing on that recall that when the FTC uses this power, they seize everything. And so you don't have access to your own data. And so some of our clients have actually decided to store their data with our firm an entire backup that's done like every six months, so that if the FTC ever does come, we have the data it's all there. And we immediately call our expert and we start to crunch it and respond.

Katrina: Okay, Neora. It's right on the, it's on the doorsteps, right? It's going to trial next month. The MSJ hearing is next week. And I mean, most things are under seal, so there's not a ton to share. But I do know based off of pleadings and other things and including the DSA Amicus brief that one of their key arguments is that, or the FTCs key arguments is that personal consumption is not compensable. That would hurt pretty much everybody in here that has a product if the FTC were to, or sorry, if Judge Lynn out in the Northern district of Texas were to agree to that. It's highly unlikely because the law says the exact opposite. There is a ton of federal court case law that she's going to be able to hang her hat on to tell the FTC they're wrong. So we we're handicapping that pretty darn well and hoping that it turns out the way we think it should.

The DSA filed a brief on this very issue. An Amicus brief, the FTC, opposed it with some very colorfully worded language in an email. But the court said, no, no, I want to read this. This is something that I want to read. And I will tell you from experience typically when an Amicus brief is opposed, the judge will read it, but deny it, like not allow it to be entered. The fact that Judge Lynn entered that is it's telling it's very telling. So like I said, summary judgment hearing next week, trial's going to be in October, our blog will be going nuts during all of it. So just stay tuned, we'll keep you up to date.

John: So the last section that we're going to be talking about is basically distributor mobility. And obviously during COVID lots of companies really experienced an uptick in revenue and success. But now a lot of companies are experiencing some declines as those declines continue. You're going to have some distributors who think that the grass is greener at another company or something like that. So we have seen some traveling distributors, if you will who are not happy about just leaving a company, but also want to take downlines with them most of the time in violation of distributor non-solicitation agreements and things of that nature. We litigate a lot in this space, both for direct selling companies, but also for other companies.

I personally litigated these cases on behalf of Texas instruments, game stop, all sorts of companies, Samsung and non-solicitation cases are a very unusual creature. There's some very specific tactics that you need to take when you litigate these cases. And one such example was the Beamer which is a direct selling company. They had a two distributors leave and form a competing company and then try to poach a whole bunch of distributor base. When you go into one of these cases, it is incredibly important to be very, very methodical and to know all of the facts before you file. Because you're going to go in and you're going to ask a court for a TRO. Okay.

And sometimes it's going to be ex-party other times the court's going to say, hey, have you called the other side to see if they've got a lawyer who can show up and answer the TRO. But the last thing, as I said before, you want to do is to tell the judge in the TRO things that are not true or are stretches. And so Beamer got a great result in that case. The TRO was granted. And then we worked with the other side to actually resolve the case and to get the other side to agree to a permanent injunction, which gave Beamer a lot of runway to be able to deal with the new competitor.

On the other hand, we've also seen cases where the complaint was not put together thoughtfully. The judge denies the initial TRO and the whole thing becomes a mess because these cases, if are all about the quick

injunctive relief, and you want to go into court, just absolutely swinging in the never stop swinging and hit them with discovery and expedite a discovery and that they just, they move, if you move quickly enough, the other side never has the ability to kind of catch back up. And the last thing that I will say is that there is a new tactic that defendants, including our firm are using in these cases when we're on the defense side. If you have an agreement, so almost all of your agreements that have arbitration agreements are going to have a carve out for injunctive relief. Let's say that, notwithstanding the arbitration agreement, any claim seeking immediate injunctive relief can be heard by a court of competent jurisdiction.

And at the same time, your agreement is probably going to say that you adopt the AAA rules. Okay. The problem with that is that the AAA rules require that any dispute about the scope of arbitrability be heard by the arbitrator. And so if you go in for in juncture relief and the other side makes an argument that the complaint alleges something that should be an arbitration, no matter how frivolous that argument is, a court must decide that that issue has to be heard by an arbitrator. Okay. And so what that does is it stops the speed of the injunctive relief. And once that injunctive relief is delayed, your entire case is thrown off. So what your arbitration agreements need to provide is that the arbitrator should hear disputes about the scope of arbitrability, because it's very rare that an arbitrator decides that something shouldn't be an arbitration. But you want for injunctive relief to say that claims seeking injunctive relief and injunctive relief alone, that if a dispute regarding arbitrability is raised about those claims that the court considering the actual remedy of injunctive relief has the ability to decide the scope of arbitrability. So it's just a new tactic that people are taking. So just a tip. So I think that's everything. Okay.

Katrina: You know, we recommend they're little things that they can make a big difference in the exposure that your company faces, and it's almost all tied to what does your agreement say? What do your policies and procedures say? What does your arbitration and class action waiver agreement say? Take a look at those and see these--will these be made available to everybody? Okay. Yeah. Once I remove the notes. Yeah. Let's not put that one on there. No, no, anyways, but this will be made available to you. Take a look at your agreement in like in light of these things and really question whether you might need some tweaks.

John: So are there any questions I know we got to go eat lunch, but…

Katrina: What will be around all day?

Adolfo: A couple things I want to ask three points, but the last one that be a question that I think would be all interested in. A couple things I want to, this is excellent advice. First of all, let me start with the legal part. The arbitration part was all news to me. And that is excellent advice from the in juncture relief. I mean, that is really, maybe it's known to many of the litigators here, but that is key in terms of something being tripped up without thinking it through. So really appreciate that. But terrifically insightful. One of the things I wanted to sort of extrapolate from this, this has to do with the TRO issues, which are top of mind, but I sort of wanted to bring it back to some of the FTC comments this morning about testimonials, not on point of litigation. But you saw the reference to 1600 comments. And I let me become my comment. There are 330 million people in the country and tens of millions involved in direct selling and those 1600 were not including ours were not all negative.

Now I don't care if it's one, we're going to address the question, but it goes to our moving forward in terms of we're doing at DSA and collectively about the testimonials on the other side, because. When you hear Sam or something, and he'll give that speech to members of Congress and to others and their audiences, oh my God, that's just terrible. It's important that we hear the testimonials on the other side. For those of you who were around 15 years ago, we had 18,000 testimonials in terms of the business opportunity rule, which was a record of the FTC. And I think was fundamental in turning things around. I'm extrapolating it from the legal analysis that you do from the judge. But the judge is no different than the court of public opinion and certainly Congress where this might end up being a hot debate.

So I wanted to make that comment as we move forward, it's constructive and illustrative about what we need to do. The specific question has to do Katrina, because we spent some time talking about the Neora case and principles on it and you hinted without going into, but I want you a little more detail that you think, you sounded optimistic. So I wanted you to explain why you're optimistic. And of course, what we've seen is you well know from the depositions in the case, quite alarming statements by FTC experts that are really contradicted their previous expert testimony. So I wanted to have a sense of why you think that case you have the optimism that you have.

Katrina: We have the case law is on our side. So you're dealing with the judge Lynn out in the Northern district of Texas and John and I could talk about her all day long, but she is by the book. She likes to have a place to hang her hat and not get overruled. And Neora has put together that. They can point to case law, numerous cases, [inaudible 00:48:47] the recent life vantage opinion that says personal consumption is you can compensate

for that. You have to compensate for that. Uni level is not necessary. We can pay upline based off of sales of those below them. There is solid legal precedents for Judge Lynn to hang her hat on and she will do so she doesn't want to get overturned. I mean, I have, I do not have visibility into everything that's going on, on the other side. And I don't think I could share it even if I did. But I am optimistic that we're going to get some good rulings from Lynn.

Adolfo: Well, that's just terrific news. And before I open up to any other questions, the, with just a quick question on the sort of for Sam that yes or no, do you believe in multi-level compensation that we've all been rattled after the AdvoCare settlement. But this particular case, if you take it to its conclusion, why their own expert is there is no multilevel compensation.

Katrina: They are speaking out of both sides of their mouth, right? There is no doubt they're expert right now is taking positions that say, multilevel marketing cannot be done, right. But you heard Sam stand up here and say it can, they don't jive.

Adolfo: Exactly.

John: And I will say something that we've been preaching for a while is that, you know, we think that companies that have the minimum volume requirements in order to participate in the compensation system and allow those minimum volume requirements to be satisfied through the distributor's own consumption, those are the companies that the FTC is targeting. And for companies that are willing to take the risk and either go one of two ways, we've talked about this at other conferences, either have a compensation system that has a minimum volume requirement that can only be satisfied through retail sales or do away with your minimum volume or do away with your minimum volume requirement. And for the companies that have adopted the former we've seen success because the distributors are able to go out there and find somebody to sell 75 bucks worth of stuff every month. And so when it comes to that, we think that, that certainly companies are great to look at that and to focus on it and see if you could convince your sales department to take a chance and change the compensation system and make yourself less vulnerable to an FTC attack.

Katrina: Yep. That's the gold star, make it all about retail sales.

Adolfo: I don't know if you have any, but I do a quick, sorry about quick comment. I wanted to make, since you put up the slide on Herbalife, and I don't know what the, who was either John or your Katrina either of you, but you said these are easy principles. The five I'd like to have that part of the discussion tonight at the GCC dinner. Yeah. Because we talked about this

I go back to the FTCC discussion. You saw one of those points, I think it was mandatory attendance and training and that FES fees you know, Sam's a very bright guy as you you've seen, he's not working exclusively on direct selling. So they're turning to things they've done in the past and they've seen despite this comment about the 1600, so that's front of mind. So many of these things Peter's here, are prohibited by our code of ethics. I mean, in terms of hidden fees and things of the like. But I think probably fleshing that out. I'd like to get ahead of issues if we can, because this is going to be a process and certainly a point of discussion since your advice, is that correct? That some of these things should be adopted?

Katrina: The thing we liked about this settlement is that these aren't really hard to do in any way, shape or form they're things that companies really should be doing.

Adolfo: Appreciate that. Okay. Well thank you very much to both of you. This extremely delightful. John, you mentioned lunch and I've seen the buffet line. So I'm assuming the lunch is in here, the Buffet's out there and it begins at noon or so. Now but before everybody leaves at 12:30 Brian? at 12:30 during lunch, we will have our keynote speaker for today in terms of we've had great speakers. I think they're all keynotes. Senator Marsha Blackburn of Tennessee will be speaking at, at 12:30. So we're looking forward to that. Thank you all very much.

Adolfo: There votes. In fact, they're taking a vote in a few minutes. For the Senator just to be here, it's huge for us. So thank you very much. It demonstrates her support. I am not going to belabor what was going to be a longer introduction other than to tell you, obviously she represents the state of Tennessee in her first term. The first woman elected from Tennessee before was represented the seventh district of Tennessee. I had a great pleasure to work with her and know her from those days back in the house, she is the co-chair of direct selling caucus that was founded, right, I think seven or eight years ago and the house. So she is a champion for our industry. We are absolutely delighted to have you. Thank you, Senator. And thank you very much.

Marsha: Thank you. And yes, indeed. So, pleased to join you all. And we do have a vote series on the board right now. Jamie Suskin who handles your issues in our office is here and she can answer questions if you all have questions about things that are happening. Let me say this and start with the FTC, because I know this is an issue for you all. We had a hearing this week with Lina Conn and I think she got an earful from some of us about our frustration with how she is trying to go outside of her authority and manipulate the economy and create a more government centric government control of the economy. And for you all, as you're dealing with

us with this, I think it's important to note just as we talked about in our meeting yesterday, that what you're dealing with at some of these agencies with this administration is people who have never worked in the private sector.

They went to college, they went to work with the government agency. They're now in a position of authority, they are theorist. They have zero practical experience. So they are thinking that if they take control and if they change this, and if they do that, then they can have utopia. You and I know government does not solve problems, government right now creates problems. And it is the private sector that will move forward and solve problems. It is the private sector that creates jobs. And as I say, freedom, free people, free markets. That is how you solve problems. That is how you create a productive economy.

Now with that in mind, then this is how they're coming to try to restructure an industry. They don't know anything about, and they don't appreciate the forces that are coming into this industry with the gig economy. See they can't, they look at you and they can't figure out why in the world you would want to work for yourself or work on straight commission or be your own boss. When, if you were normal, you could just go work for a government agency and get a paycheck and have your benefits paid for and get three weeks of vacation every year. Now, when I was at Southwestern, my sales manager used to say, if you work hard all summer, and this is when I was in college, if you work hard all summer, if you work those 80 hour weeks, if you knock on these doors every day, if you get your pre-approach, if you do your follow up, then you can have Christmas every single day. And that is something that drives many of us that have that entrepreneurial spirit that want to be our own boss. But that is foreign right now to people at the FTC who are happy with nine to five and a government retirement.

So realize that that is what you are doing on. Now, we've done a couple of things to help you. I sent a letter, I was joined on the letter by Lumus Lee and Bron. We're looking at this advanced notice of a proposed rulemaking on the earnings claims. We talked about this a little bit yesterday, there again, you know, they say they're doing this so they can combat fraud, but there again, they don't understand that here's your gross, here's your net. And this is what it takes to invest in your business. This is what it takes to build your organization. This is what it takes to guide your team. So they just don't have that understanding. They also do not understand it, that the direct selling association self-regulate and that you've put time, effort, energy, and resources into being able to self-regulate and their rulemaking

didn't even mention that you've sent 15 cases their way in the last three years. That you want the industry to be healthy because a healthy environment and a healthy industry means you are going to be more successful. And you're going to be able to have a bigger organization that is going to be prosperous and productive.

But even though the cases you've sent them, they have not touched and they did not mention it, they still are coming at you on that issue. So the FTC is something that we're going to continue to work on. Senator Lee and I also have a bill to pull them in when it comes to this trying to claim civil authority that the courts have told them they do not have, and they can't move into those civil penalties. So he and I are going to continue to work on that issue. Now, a couple of things we're watching very closely. I know credit card fees, swipe fees are important to you all. We are monitoring that as I continue to tell my friends in the retail industry, this is something they are going to have to work out with the banks that is not something Congress is going to solve for them.

I also know that you all are concerned about online privacy and data security, how you hold that data. We are looking forward to next year as I'm the chairman of consumer protection and data security after Republicans win the house in November. And we restructure ourselves in January, see optimistic care, we're going to do this. And then we will be able to work on that privacy issue so that we have federal preemption when it comes to online privacy. And we have one regulator with one set of rules for the entire internet ecosystem. And then you can see a reworking of your financial service, privacy rules, which would simplify things for you all as you grow your organizations and as you grow your businesses.

Another thing we talked about yesterday is we visited was the impact of the inflation reduction act and that with this push that they have to go in and regulate companies that hit that, that grow they're organized as LLCs, which I'm sure most of your entities are. You're a pass through and you hit that gross of 400,000. And as you look at a filing with husband, wife, and you're running a second business, maybe you have built an Amway or a Mary Kay or an Arbonne or some other business that gets you to that gross. When I'm talking to Tennesseans, they know that these 87,000 IRS agents aren't going after the big guys, the billionaires that have departments, legal departments and accounting departments, they're coming after the small and mid-size guys. And so we are continuing to work to make certain that we reroute that money that they want to spend on 87,000 IRS agents. And indeed this week, my Tennessee colleague

Bill Haggerty and I introduced a bill that would put that money into cops on the street to get this crime issue under control.

All right, Leo is calling time on me. Can I take a question or two? Two questions? All right. Before I have to go vote, all right. We don't want them to close the floor on me. I need to go vote now. All right. Anybody got a question? Yes. This gets into the authority. She's trying to take outside of what authority she has been delegated. And this is part of the issue that we are working on. The FTC is very arrogant in their ignorance of how the private sector works. I'm delighted you had the opportunity to hear from the FTC. We are on opposite sides of many issues at this point in time, but to have a point counterpoint, I think is very helpful. Anybody else? Any other question going once, twice y'all are wonderful. Keep it up.

Adolfo: Let me say a couple things because there wasn't a question. First of all, thank Senator spent an hour with me, with us yesterday. She's educating us in many cases. This great Senator knows more about direct selling frankly than a lot of direct sellers. She's once said more than once that if I had not been with Southwestern, I might never have gotten into public service. You've said that more than once. She's absolutely remarkable all of these issues, conversant and committed. We're so honored that she was the founding member of our direct selling caucus and we will continue to support you in every way we can. Thank you. Thank you so much. Thank you.

Katrina: All right. Our next panel is compliance officer's handbook. Now the DSA established a compliance officer's council last year to create a forum for compliance officers across all of the member companies. And the idea was to share best practices and come to a baseline that everybody can abide by and hopefully stand the radar, FTC, Tinall those other wonderful people out there. So the first deliverable of the council was a compliance officer's handbook. It's a comprehensive assessment of best compliance practices across the industry. Like I said, it creates that floor for us all to start using, to build from. We are now ready to release it. It is actually available and you can get it at the QR code that's up on the screen. So please do so. Now what this panel is here to talk about is that handbook. They were on the ground floor of putting it together and we're thanking very much for all of their work on that. And also, before I turn it over to the panel, I'd also like to say thank you to Momentum Factor for providing a wonderful lunch. That was great.

Travis: Thank you for that introduction. Additionally, in addition to the QR code, if you have a program at your table or in front of you there is a QR code on the inside page. If you just open that up, you can scan that and follow along. I do encourage everybody to scan that and follow along. I think the presentation will make a little more sense if you're able to kind of look at

some of the material that's involved. First one, I introduce myself. I'm Travis Wilson. I'm the director of business development for Momentum Factor. Excited to be up here and share the stage. I'll let you go ahead and introduce yourself.

Rena: Hello. Rena Schultz. I am the senior director of compliance with singular.

Jemima: Hi everyone. I'm Jemima Wexler. I'm the group vice president of compliance for Beachbody,

Alyssa: Alyssa Newfeld, GC at Life Vantage.

Travis: Perfect. Thank you. And I'm grateful for the opportunity to be up here and share the stage with these presenters. They represent obviously a wealth of knowledge as I consider the number of distributor complaints and communications, you probably fielded throughout your career. I am both odd and grateful that I don't have your job. They have contributed to their time to create a handbook that will provide valuable guidance for not only this people in this room, but for companies outside the DSA. This handbook is being made available to the general public, any company, even if they're not a member of the DSA, this handbook is available to them. So those of you that may work with colleagues that are not yet members of the DSA, I would encourage them to become members, but if they're not, we still would like to share this resource with them. I'd also like to take this opportunity to recognize others who helped to create this handbook who are not on the stage. I know many of you are actually out in the audience today. Thank you for your contributions and your work to make this happen.

I personally love the concept of the DSA, putting out a tool for direct selling companies to use to have best practices. It signals to the world that we take compliant seriously, and that we want to be a law compliant abiding group. Before we dive into some of the content, I thought it would be helpful for our panelists to maybe answer what was the goal in creating this book? I'll let, whoever wants to go first. Jemima.

Jemima: Okay, well first I want to say that I love Travis's socks and I'm a little bummed I didn't have a similar pair. So props to Travis on your striped apparel and that I hate microphones. So we have all talked as we've gotten to know each other over the years, obviously people that are in compliance, specific groups, attorneys, other members of your legal teams and various people on your staff. And we all realize that the more we communicate, the better we work, the more efficiently we get problem solved. So we really have started to create this sort of environment of better communication that it's not in. I work for this and you work for that,

and so we can't talk to each other, but we're better together. So that sort of brought about more conversations and the thought of having something that was an easily digestible, universally applicable tool that could help with any number of things, whether you're coming in fresh to compliance and have no idea how to have certain things in place or whether you're looking to improve your current standards, whether you're facing specific business challenges, as we all have over the years and various points.

It's just a great sort of reference point. I think to your earlier comment, just to clarify, I think it's obviously the DSA, especially extra props to Brian for his leadership in this whole process, but we want to make sure that it's a tool that's applicable to your point across the board and that it isn't a DSA guideline, but that it's a tool for our entire industry.

Travis: Love that. Any other comments on the goals of creativeness?

Alyssa: I think also the nice thing about this is there was feedback from many, many people in different companies, a lot of experts. So even I, as I was going through the final product was rereading it and thinking, oh, that's a best practice I hadn't thought of. And so even the seasoned compliance and attorney groups in here, I think it will do well to read it just because it really does represent kind of the best of all of us.

Rena: Yeah. And just to add to that you know, just like what you guys were saying is, I had to create a compliance department and I would've loved to have this book and there was things that you're missing and we all meet for a compliance round table. And there was so much information from those that I was like, I got to start doing that. I got to do this. And so hopefully the goal of this is that it's kind of like a nice checklist. Again, it's not mandated, but it's a good reference and checklist.

Travis: I love that. You know, we provide a tool to do monitoring of social media accounts for direct sales companies. And I can't tell you how many demos I get in and the companies have zero compliance and have no idea where to start. So this is a great tool. And Brian did mention to me earlier that this is available on the DSA website public facing. So if you don't have the QR code and can share it, feel free to go to the website and access it there. The first section of the handbook that was really loud, sorry, is creating your compliance team. Alyssa, I think you were most instrumental in providing that section. Can you provide a little more insight on what that section was about?

Alyssa: Sure. I'd be happy to. So I don't actually think that page is going to be news to anybody in this room, everyone here is very seasoned. So I'll go through it pretty quickly. But obviously the key to any compliance department is having buy-in throughout the entire organization. That

means your board, your senior management, all the way through your organization internally and your field. And so I think that tone at the top is critical for any successful compliance organization. And then the second is having that set of core values, every established company is going to have their vision, their mission board and their core values. And I think that legal and compliance are constantly kind of that litmus test of the moral code and the integrity. And it's our job to constantly bounce that back and reshine those values of the company when we're advising internally and externally to the field. I think one thing that I've learned through the years is it's really critical when you create those values, you treat like for like, so no exceptions for the more high up sales leaders or exceptions for one reason or another, just really make sure you're treating your core values the same throughout the entire organization.

And the other was, this was interesting. And I think you were just mentioning Travis when you work with some new clients, the brand new company, I don't even have a compliance department. How do you set up your compliance department? And I think a lot of companies in here are already fully established and grown, but when you look at CCOs or compliance, sometimes they don't even report into legal. Sometimes they report up to the finance or HR straight up to the CEO. And I don't think there's one right or wrong way, every company and organization's different. I think the critical point is that you've cut the buy in, however, which way you report. And then my final kind of moment in that intro was the key relationships. And I think we all know it's absolutely critical that you develop that dialogue with your cross-functional departments inside your organization and the sales leaders outside the organization. If you don't have the buy-in throughout your compliant, you can draft and have the most beautiful, robust compliance department and policies and handbooks. If you don't actually execute and have that buy-in to execute it's useless. I think that's pretty cool.

Travis: Yeah. I love that explanation of a top down approach to compliance that everybody from the top levels all the way down to the bottom has to have that attitude of that, this is a critical part of risk mitigation in our company. Some of the companies that I've seen have even done something as creative as sales department’s bonuses are contingent upon compliance. And so therefore…

Alyssa: I love that. Let's take note of that

Travis: Makeup notes. Eric is writing it down. I see that. Great. Well, thanks for that insight, Alyssa. I appreciate it. The next section in the compliance officer's handbook is establishing policies and procedures along with

standards of conduct. Jemima, I think that was the section that you spent the most time.

Jemima: Well, I must say I did not create our policies and procedures. I walked into a job that I think had Jonathan fully disclosed what my job would be. I probably wouldn't be sitting here today in all candor. To Alyssa's point, we have obviously like many of you, we have core values and one of our core values is courageously forthright. And I think Jonathan would agree that I often fall back on that one probably to my, not to his liking necessarily because I share more than I should with him, but he's a good listener. So I think in terms of establishing policies, the reason I sort of took that section on was just looking at how walking into an organization, whether you have a very basic set of rules, like a, just a skeleton sort of code of ethics to start with, or whether you have a full on novel. I will say we fall into the novel category.

I envy those of you who have the five or 10 page document we've tried and not yet gotten there. But looking at how you can establish something that's digestible for your field, because as you look at opportunities to make sure that you're not only doing things right as a company, but using that example to represent to your field how they should be operating their businesses, if they can't understand the policies that you have in place, and they're not easily trained to and easily referenced with current examples and not something that's just quoting chapter and verse of law. I don't see that as an effective tool in a way to inspire you, not only your teams to understand it from the corporate side, but also for your field to support it as well.

So looking to create a standard of guidelines, that's current best practice enforceable, but also mindful especially to your point, Alyssa, that it's enforceable across the board, that there isn't like, here's what applies because you've been with us forever and you are diamond princess superstar or whatever. I know we all have different titles. But no matter your time with the company, no matter your rank achieved, no matter your income, be it typical or atypical. As we love to say, it's still something that you can have in place refer to, and really create a living document. So that you're always pivoting as needed as there's industry changes. As there's often regulatory changes that we're all looking to work through.

Alyssa: Jemima. One thing we've been kicking around, because I'll admit our PMPs are like 60 pages, long something crazy. I find that in our compliance department, we're often dealing with the same sections over and over again. And so we're talking around a lot of companies have a

long form and short form compensation plan. Why not have kind of a long form and short form PMPs and create a quick cheat sheet of here's your critical sections on nonsolicit and online sales and the same things that we cite over and over again in our compliance letters to just kind of have it for sales and for the top leaders to kind of push down through the field, because no one's going to read the 60 pages agreed until they're in trouble.

Jemima: Agreed, agreed. And I know you've done, I know Brian you've presented on this before and Alyssa you've spoken to this as well, and Eric as well, you've created some great reference tools that are more digestible. And I think to your point, we've tried to do that in our situation. We have an FAQ that's searchable for our field, both really for customers and our distributors and really making that key policy language in plain English and where they can easily reference certain keywords so that they know what they really do need to reinforce from the top down when they're talking to their team. And also reminding them that the policies are really for everybody and getting that understanding that they're not just there so that we can like call them up and scare them, but they're there to protect their business and make sure that they have a great opportunity to have a longstanding, fruitful relationship with their company.

Travis: Yeah. You know, I think about that and I think about the update that Winston strong has provided before lunch with many of the additional guidance and language that maybe should be in our policies and procedures. How do you balance that? The balance between providing policies and procedures that are easily digestible for your field to understand, but still protect the company against obviously what has become a more and more litigious environment?

Jemima: Yeah. I think obviously your communication, your ongoing communication with the field, again, both internally and externally is critical. And I think we all do that in a number of similar ways. It's always making sure that the priority is on what's topical. If there is something that is more urgent in terms of certainly illegal, like a true regulatory change or a litigation matter, that's drawing a lot of attention in the field, just so that there's some understanding of why certain things are important, but it's also talking about what your risk tolerances company to company, right. And clearly that differs organization to organization. Sometimes it's the product or service that you offer. Sometimes it's the size of your market. Different things may drive what you're willing to meet in the middle on. I won't say settle or not enforce, but certainly I think that we all look at things differently as we talk about different ways. And this is also part of the latter part of the document, but different ways that we look at auditing disciplinary enforcement, different penalties and actions, what's driving

that decision. How are we reevaluating? How we're making those decisions and being fair and equitable across the board?

Travis: Sure. Yeah.

Alyssa: Well, and I think we have to remember though that the PMPs are part of the contract that we make with the distributors. So that's partly why ours is so long because we have to have the contract there to lean on from a legal perspective when we need to enforce. However, in applicability in the field, no, one's going to read that 60 page contract. So that's why the short tips, the short training on the key provisions is key, and I think any company would struggle with getting their contract with the distributors down to 5, 10 pages with what the risk that we deal with on a day to day basis. So ultimately we have to remember the PMPs are our contract with the distributors.

Travis: Sure. Yeah. I can't help but think of every time my phone does an iOS update and I have to read terms and conditions that are 60 pages long, I wish they could do.

Alyssa: And you scroll to the bottom and you just click and move on.

Travis: Yeah. You know, as I read through that section of the handbook last night, one of the things that stuck out to me was one of the pieces of advice that was provided was that the executive team and management team should be reading through the policies and procedures at least annually, I think. And maybe even more often, do you feel like maybe you want to speak more to that or…?

Alyssa: I take that one

Jemima: You want me to take that one? I I'm a real proponent of discussing things with the executive team on a regular basis. That's probably not as much as they want to talk about it or they would like to talk about it less. But I do think it's having those conversations and over the years learning how those key communications can really propagate support for your policies, I think it's brought our team into a situation where there's at least a recognition of why we're so passionate about what we're trying to communicate, and we're not just waiting for trouble, but we're actually trying to be proactively engaged. We really have tried to focus on the idea that when we reach out to a distributor, whether they're brand new or they've been with us since day one, like we're here to partner with them and be a proactive advisor of sorts to them, a mentor to them, a colleague to them. Because once you have those foundational relationships built, even if it's through a difficult conversation or even a disciplinary matter in the end, I find that longer term, those are the people that are coming back

to you with more questions, they're supporting your policies. They're even communicating with other members of your executive team to get feedback, which I think just drives the better conversation universally between everyone.

Travis: Yeah. I wrote this down from the, as I was reading it, distributors will mimic the behavior and adherence to PMP that they see from the executives. It's not enough for your compliance department to know the PMPs, all executives and management should know it. In that as well some of the key points that it said to review was the enrollment process, the purchasing process and the returns process any further guidance on those for me?

Jemima: I think for us and probably for everyone, it's just a matter of consistently looking through, checking through as things change, both just in trends in our industry, but also obviously with more official changes, making sure that your enrollment is simple and clear, that appropriate disclaimers are obviously in place, that agreements are relevant current. We go through just as a matter of practice routinely to make sure that if there's something else we're seeing a bunch of other companies doing, we're trying to figure out where that applies to us. If that's something we should also consider. And I think that's really that kind of collaboration between all of us has really created an environment where we can ask for support from other organizations and also help each other out sort of in times of challenge without feeling like there's any sort of defensiveness or feeling that like we're crossing something in terms of confidentiality. We're reliant on each other to hold each other up.

Travis: Sure. Great. All right. The next section was training and education. I actually think this was a section that was provided by other collaborators. So we may have to kind of work together to work on that one. One of the things that I did read as I was going through that last night is that the certification programs that these are certification programs and learning tools for employees establishing a strong proactive education strategy, empowers distributors to confidently share products and assures their first interaction with compliance is not to discuss a violation. I love that. Too often our compliance departments I feel are viewed as this heavy hand, that's coming down, preventing distributors from earning money. That's not who we are. Would one of you like to feel that how it's creating that relationship with compliance early on help is helpful?

Rena: Yeah. 100%. I mean, I'll talk more on my section, but it is about relationships with distributors and communication. We recently, as nice as we can be for compliance, right. I mean, no matter what you're still, I mean, I always tell my team, you can give someone a hug and slip them a hundred dollars bill, and then as soon as you say, but that post has to be,

has to come down. I mean, you're the enemy, right? So we've tried to shift our process and just like you said, we collaborate so much and I've reached out to so many people to, hey, what do you got going? You know, what do you do for onboarding? Do you have a required training so that it's not the first, you're not getting a letter saying you did something wrong. It's more of like, let me educate you.

Sometimes getting buy-in to do that especially during these times right now, it's hard, right? A lot of times your C-suite doesn't want to, they just, hey, you've got to make sure we're compliant, but we're not going to do it on onboarding. So something that we've shifted and it's actually been really great. Over the summer, trying to encourage our field to share their stories, our team took on, we called it, my team lovingly called it project bold. And then we're just trying to get the distributors be more bold. So we took, certain leaders and I mean, we made hundreds of calls and called each leader and it was just starting out as, hey, this is so and so in Compliance, just wanted to reach out to you. We want to hear your story. What's your story? Let's think of some ways to share it and unfiltered just tell me. And they're like, really? I mean, I can be non-compliant. Yep. As long as it's on this phone call

Travis: This is the safe spot.

Rena: Yeah. But the nice thing with that is we saw so many of our leaders, all of a sudden started sharing. They were sending us snippets, they were sending us testimonials. And so it kind of shifted, instead of being so reactive, I kind of split the team as we still have to take care of those cases and get them down Peter and Howard. But we also focused more on the proactive part and it was great. So instead we have started now to implement instead of just sending that first letter, we are now when a distributor hits a certain rank, we call them and say, hey, congratulations. That's so awesome. Because they get calls from sales. Right? But that's awesome. You know, if you're not sharing, you're not building, let's talk about your story. And people were shocked. They're like, you're calling me just to help me. Like it's really just to help me. So I think that's the training part is so important, but it's more of your communication from the beginning that it's not to tell them to take down a post. It's not to slap them on the hand. It's more of like, hey, did you know that this is what we do and we're here to help you and it's crazy, but we kind of have to be compliant/marketing. It wasn't like that 15 years ago, but…

Travis: So yeah, I think back to a webinar that Rayna Jensen did a few months ago where the story that she was sharing was that, and I hope it's okay that I'm sharing this Rayna, but…

Rena: We'll find out.

Travis: Yeah. I think she'll be okay with this. But the concept was that we're all in this together, right? Like we're not shutting down your ability to earn money. We're preserving the opportunity for everybody to succeed, including Rayna, right. She's got kids and her job depends on the field being compliant. If they're not compliant and FTC shuts them down, we're all shut down. So creating that culture of compliance with the training and education. One of the other points that I wrote down on this item was that rank and advancement is sometimes, should be, or could be tied to the demonstration of learning compliance concepts. I don't know if any of your comp plans are implementing that, where in order to achieve a rank, you have to demonstrate that

Jemima: It's a really good idea

Travis: Is it?

Jemima: I like it. I like it. We we've talked a lot about and learned from others about certain things that they're doing to sometimes gate off certain levels of perhaps bonus potential on certain levels that you have to go through some kind of mandatory training before you're eligible for part of the compensation plan that might come into things that leadership. I think what we've found for ourselves as far is that as much as we have a focus on our entire field, as we're looking at claims, coming in and questions coming in and concerns being raised or ideas being raised about how they'd like to see fundamentally some kind of policy adjustment in certain areas, we really are continuing to target our leaders, getting involved in their team calls and their mastermind calls, showing them the value of having a conversation about compliance.

And it doesn't have to be scary, but their distributors on their team can actually ask questions or isn't any, nobody's recording and noting who asked what, but that we're really advocating for them. I think to the points that both Alison and Rayna have brought up, you're advocating for their business to be better. And in turn the company and our brand reputation, which is important, not only to the corporate team, but to the field to be better, to be stronger, to be better respected. So those kind of communications, those kind of ongoing leadership. I love the idea of like reaching out when ranks are achieved. I think years ago, they had compliance call when people hit a certain achievement for the year and there were a lot of people to call. And so they split it up between sales and then they handed at the time, it was just myself and one other person in Compliance. They handed us each list and the people I called, I had probably 12 people to call. No one picked up the phone. And so I went

and made like let's make another call [crosstalk 01:42:03] when I liked it's good. I'm not calling you, like I'm not trouble, call me back.

Alyssa: So one thing we've done Travis is we call our distributors pro one, pro two. Pro five is kind of our rank where they hit five. And they're really becoming true entrepreneurs, starting to become true leaders and starting to build organizations. Twice a year, we fly them out to Utah and snowbird. And because we partner with sales, sales, lets my team get up there and train those brand new profiles in person, stay up in snowbird with them for two days, have meals, snowboard, wisdom, ski with, you know, just create that relationship because you're right, they won't pick up the phone if they think Compliance is calling, but they'll talk to you on the slopes. So I think every organization needs to find a way to get in touch with brand new distributors and get in touch with distributors. They're starting to become leaders because they're going to create an organization, you want them to train at organization correctly. And the third thing for me that I would love too, is we all hold corporate events and we often have our field come up and speak. And I would love required speaker training before you're on the corporate stage.

Travis: Oh yeah. That's a great idea.

Alyssa: And you're representing us on at our corporate event where we have full responsibility. I would love my team and we have our code of speaker ethics and whatnot, but just that quiet reminder of you're on main stage. Here's the bumpers.

Jemima: Yeah. That's a great point. We both at our annual event, which is as many of us have several thousand people in attendance, but we also have a leadership event which is a smaller, more intimate crowd. But having the process of going through their presentations, watching them in rehearsals, it's a good opportunity not only for them to ask questions, but it is a good opportunity to avoid the, I'll center myself, but the holy crap moments that might come up on stage. Pardon my French.

Alyssa: Eric puts a headset on at our rehearsals and can hear everything that's being rehearsed and then gets back in their ear right after, as they're coming off. Gives them the feedback as a rehearsal before. Doesn't mean we don't stand by the wires on the day of just in case we have to pull them, but it is a helpful tool to have compliance there when you're rehearsing for those corporate events.

Jemima: And on some level, I think whether they're willing to admit it or not, they do appreciate it because they feel like they're getting, especially at leadership events, they're getting guidance, they're getting even more attention from corporate.

Alyssa: And they don't get flapped on the wrist after either.

Jemima: And then we'll tell a few jokes at the end and then they'll be fine.

Rena: Well, and sometimes even your field can joke about it. I mean, I've had times going over presentations and saying, okay, we really can't talk about how you built this big pool. And so it's funny that we have, our owners don't think it's always funny. I do. But they'll be on stage and they'll say something and you know, we've had someone share weight loss results and it was fine. It was totally compliant. But then she's like results not typical. And she'll look at me, she's like, did I do that right? Or… I mean, it's in the middle of an entire event. And people will say things like I've even had someone reword their statement and then like call out in this big event saying Rena how'd. I do. I'm like, oh my gosh. I think it's funny though. But they joke about it so that it's known like, hey, I want to share this, but I can't. So I'm going to be compliant. And I think it's awesome when you see a leader or someone that's presenting, that's like in the spotlight and they're doing it compliantly and I love that they call it out too. Because then it makes other people think, oh, like one day I'm going to do that. And so they're a little bit more aware about compliance.

Travis: And I love the concept that they have a relationship with you, that they feel comfortable joking with you about compliance. And I think that's the overarching theme of this whole section is developing a relation with chip with distributors where their first contact isn't caller ID Jemima from compliance. I'm not going to pick this up. But knowing that Jemima's actually their friend and there to help them.

Alyssa: I'll always pick up the phone for you Jemima.

Jemima: Thanks a lot.

Travis: Okay. Our next section is effective communication and I think that was yours. Okay.

Rena: Yep. So again, I think this is the section that to say, this is not mandated, right? I mean, there's some things that, you know, yes, everyone needs policies. You need to enforce, you need to monitor, you need to train. This is just basically everyone that's in here that's on that round table, this is us because we all talk about it. We talk about how important communication is. Even if you're just how you share the information, some things to keep in mind, right? It's not just that first letter of, hey, you got to take this down. It's the proactive it's newsletters. We do things like newsletters. We do compliance dos and don'ts, live trainings. We even got marketing to give us a slot on our Facebook or on their Facebook page to do a training monthly.

So it's things like that, how you communicate to distributors, but it's also the importance of how important that documentation is, right? Sending that letter, what points to hit on in those letters, just to say, hey, you got to take this down. I mean, it's important to state, what are your expectations? We need you to respond. We need you to do this in this timeframe. So I think that's important. And really, I think the biggest part of this section is another part we talk about is relationship with the field. I cannot tell you how important it is. I was joking around last night, but 15 years ago when I started this, I was part of a company that is no longer around and this dawned on me, but it was basically first letter, second letter, third letter. I mean, we were suspending terminating and me just getting my start in compliance, I was terminating left and right.

And I finally just sat there and thought, what if we run out of distributors? And I really did. I mean, just even asking the question, like what can we do to not terminate? So something that's been great and that's helped a ton, and again, I'm talking to so many of you, we all do this very well. Is building relationships with the fields. I think the biggest part is having compassion for the fields. When you hear their story, it's listening to their story and not telling them, you're just sending them a letter and saying, take it down. And they're like, but no, like I really had diabetes and it, I mean, they just have these amazing stories, but when they know that you appreciate those stories, I mean, they're using your products. Even though it's not compliant, it's our products.

And so just even have compassion and recognize them and tell them, you know, that is so awesome. I love it. That's a big piece of it and it starts from the top. We just said this, it starts from the top. I've had to work really hard to create relationships with our top leaders. And I will tell you, it is like having a compliance team of hundreds now, because what happens is they respect you, they know you have their back. So when my team sends a letter out to a new distributor getting started, of course they're going to go to their upline, they're upset and they don't get it. And then their first thing is, oh, don't worry. They're awesome. Just take care of it. So you've got a compliance team basically out there helping you to get certain things taken care of.

And it's just, again, it's the training. You get invited to do certain things with the leaders. I actually got invited to a sales trip which was crazy. A lot of people were like do compliance, usually go to those trips. But it was awesome. I mean, I had distributors asking us to come. Me and Chris that's Chris, that's our general council. He used to be a distributor. So I get

why they ask him but they invite us on these excursions. And as we're out on this boat, they're asking questions like, hey, with our new product, what do you think if I said something like this and it's just, that's so awesome. So I think it's, it's super important.

Travis: I love that before I joined Momentum Factor, I was the VP of finance for a direct sales company in Utah. And I never got invited on any of those trips. You mentioned that you worked really hard to develop those relationships. Can you maybe provide some best practices of how you were able to develop those?

Rena: Yeah, absolutely. So when I first came to Zingular, they had, they didn't really have a compliance department. They just took someone and he was kind of the police and just sending letters out. So I already came into something that wasn't good. And it's not possible for everyone to do, but I called leaders one by one. Our C-suite was amazing. I think them speaking on my behalf, like, actually, what's the word I'm looking for? You know, like preaching the importance of compliance. And so they see, okay, sales CEO, they all appreciate it. So let's give her a chance. So you know, I did as many trainings as I could. I just started calling leaders, I mean, on my own and just introducing myself and making that relationship and it wasn't just, hey, I'm calling about a non-compliant post. It was just, hey, I want to introduce myself. This is what I can do for you. What can I help you with? And it just gets around too, right. They start knowing that you're actually a nice person, you're human. and I think even having your team, when we do trainings, I try to bring like different members of my team. I try to show pictures of my team so that they know it's not an automated system. Yes. How we find it is automated, but you actually, you have a person who cares about you and without you guys, we wouldn't be here. And we know that, so it's a real person and then they start connecting faces and it's just building that relationship.

Travis: Love that. Yeah. That's great. Okay. The next section is monitoring and auditing, your sales force. I thought maybe the first line on that section says the following: effective and robust compliance programs need to be proactive, not reactive. There must be overt monitoring of company and field comments, claims, and actions to discover violations. And as I thought about that, I think this concept is not only practical, but more importantly, strategic. If companies are waiting for letters from the FTC and other regulatory groups, they put themselves in the crosshairs already. There will be increased scrutiny. And I believe an obvious strategy is to have that robust compliance program that prevent companies from ever being targeted by regulatory agencies. Is there any feedback from the panel about being proactive versus reactive and what that means to you?

Alyssa: Well, we heard from the FTC this morning during the Q and A saying, we do take into consideration a robust compliance program. If it's a company's trying to do the right thing and enforce, they do take it into consideration. I think that's your answer right there. You know being proactive and showing that you have a robust compliance program can go a long way doesn't mean it's Bulletproof. But you certainly have to be proactive. If you're reactive then, I mean, I sometimes joke that as a lawyer I'm needed on the front end, but if you don't listen to me on the front end, you'll need me on the back end. So, I'd prefer that we help the company on the front end and not deal with the back end when the FTC is actually sending you a Sid. So I think that's a no brainer to be proactive and to show that you have a robust compliance program. And also younger compliance departments need to remember, you need to document, you need the paper trail. You need the evidence that you are enforcing. It's not enough to just say, oh, I made a call. And your company does a really nice job of helping our company track that case, open the file, show all the data, show what we did to enforce close the case. And we have all of that evidence there if we need it, if the FTC ever were to come knocking, which won't happen in knocking

Jemima: Yeah. And it's just, I think along those lines, it's the ability to communicate clearly with them and learn from the feedback that you get as you're working more proactively, you're not just waiting for the other shoe to drop. But as you're getting comments back from the field in response to what you're asking them to do, you take into consideration, is your message clear enough? Is it simple enough for them to understand? Are you somewhat to what you mentioned earlier, you give them specific guidelines to work by dates, by which things need to be resolved, explaining why they're receiving this and having that conversational back and forth. So it is more of a learning opportunity, even though you're asking them to clean something up. And I think it's also to your point of communication as you pointed out, it's that you're human in their human.

People get, so understandably, emotionally vested in their business and they take things very personally and I'm sure we've all been on calls with either the other person screaming or crying one of the two or both . And I think just like sharing that, it's like, it's okay, there's resolution here, there's an ability to fix this, to move on, to not make the same mistake hopefully in the future, but that you're here to support them. And that you're human too. Like, I have a, I won't share it here, but around a cocktail maybe , but I have a great story that, that I went through in a previous job outside of direct sales, where like I made a big mistake in paperwork and it could have been really terrible. And I had to just be like, I made a mistake. I need help fixing this.

And I went to my bosses at the time, scared that I was going to be fired after two weeks on a job. And they were like, great, you came and admitted what happened, let's fix it. This is how, and this is how to prevent it in the future. It's the same thing with your field. No, one's perfect. We're all going to make mistakes. We all have the opportunity to learn both internally and externally. But those communications, those relationships, that confidence that your leadership has in you both from a corporate side and from a field side, it's critical to you continuing to have a really strong dynamic effective team.

Travis: Love that. Thank you. One of the sections in there, actually in the handbook and there's a little bit of self-promotion here, but it does come from the handbook, is the use of third party monitoring services. And just for again, additional disclosure, that's exactly what our company does and not meaning to self-promote, but knowing that all three of you up here use our service again, not trying to sell that. But can you maybe tell us what that experience is like of using a third party and how that helps?

Jemima: I'll just say when we were first approached years and years ago, I really dug in my heels. I was pretty sure we had this. Even though I knew I couldn't be up 24/7 with my team looking at every piece of the internet. And admittedly, when we got to the point where we were in agreement that this is a tool that we needed to use and implement, regardless of who it came from, then there was that holy crap moment of like, when they turn it on, what are we going to find? That's been sitting there for umpteen years and what are we going to do? But it's such a good learning tool. I feel for our team, we've learned so much from seeing more of a variety of what people are posting, because we do get so many more results. And there's just the diversity of how people approach what they're saying. And it gives us a better platform by which we can train more effectively and sort of curb certain trends that we're seeing more effectively. That's so key.

Alyssa: I mean, for me, the data reports. Where is the risk? Yeah. Which type of claims, and then you tweak your education and training to that risk and every company's different. Is it products or is it income or is it both, what type of things are they saying? And then you just hone in on that and train and educate on that to prevent those from repeating. So the data to me is critical and the reach, you're only how many people with the software, obviously you have a much broader reach than you would otherwise. And I think a lot of companies in here are global and it's hard when you're corporate US, making sure you either have those solid or dotted lines to your international markets, but also having the software in the right markets to continue the monitor. I mean, we always just talk about US FTC, but a lot of us are global companies. And there's risks abroad as

well. And there's only so much you can do from sitting in your corporate seat. So that to me, it's critical if you have a resource.

Jemima: And it's a good reminder. We're all going through the same challenges. I think, as we talk as different compliance leaders and attorneys on staff and such, what are we facing? Are you seeing a trend of X? Whether it's another company, whether it's a certain kind of claim.

Rena: But it's also, it holds every distributor responsible. So you said earlier, keep it even across the board. Right? And so one thing that I like about it is it comes in and my team knows, I don't care if it's this person or this person it's the same policy. We're going to like move on all of them. And I think it helps too, because I mean, not to scare our field, but I teacher fields about it. I actually let them know what kind of system we have I do because I joke, but I get Facebook requests from distributors. You become friends with them and then they want to be your friend on Facebook. And then they're like, crap. I just friended compliance. What am I doing? But they reach out and they say it all the time. They're like, hey, we're compliance friends. Or we're Facebook friends now. So don't stalk me or don't get mad at me. And I mean, obviously it's, I have to tell them, I'm like, I have a system that does that so that they know they're not being picked on. They're not being targeted. It is an automated system. And just don't do it, like you don't. Yeah, just don't. So I think it helps. It's fantastic.

Jemima: Yeah. They know the guardrails, they know the guardrails better. They know the tools that we're using. They know the conversations that we're having. I think for one thing I know we were talking about, or I think when Katrina and John had presented in part, they were talking about sort of the distributor challenges of people going company to company. And I know we've all gone through that at various times, but having those eyes and ears among us as companies, it's so much easier when those sorts of challenges arise, that you can call somebody else and be like, hey, I don't mean to be a total like jerk, but like, can you tell so and so to stop, blah, blah, blah, if it's appropriate, you know? Or even, I mean, to the point of between online monitoring and the support that we get from the DSSRC, just having those kinds of support tools to ask questions and pose potential issues and get sort of, are we all on the same page here? Or am I completely missing the boat here? Is there something I'm not enforcing strongly enough or I'm being too heavy handed in? Like what's appropriate. Because we're all seeing different trends at different times in our field. And I think that collaborative environment and that communication and those outside resources are key.

Travis: Yeah. Yeah. And that's a great segue into our final segment here, which is reporting and investigations. So again, that was a section I think that was worked on by a group, maybe not any of you specifically and something

that I frankly don't have a lot of experience in when things do finally get to that level, that somebody's not responding, they refuse to respond to friendly emails and those relationships, and it gets to that level. What are some of your best practices in handling it? Once it gets to that point?

Rena: Upline, that's the biggest part you call that upline.

Jemima: Upline and sales. I'll be the sarcastic for those of you who don't know me. You don't need to roll your eyes. But holding back pay is always a great motivator for them to call you back. I think we've learned to find more creative solutions to not scare them away, but seek a solution that will work for them. But I would much rather have to take the approach of holding back a bonus potential or putting pan hold temporarily, just so that they realize that it's not just like, it'd be really nice if you call me back, but this is serious enough that we want to preserve your business. We want to get you on the right path. We had an executive for years who used to always say, there was always an opportunity to course correct. And I think it's a really relevant term that we probably still use a lot is just, it's not 99% of the time, it's not something that you can't fix. We do have the occasional random, you got to go and you got to go today. But thankfully that's very, very infrequent and most people are genuinely appreciative once they get past that awkward first moment, they're appreciative of the help.

Alyssa: Yeah. I think it's critical too, to just manage expectations. Rena was saying like, you have letter one respond by this time, they don't respond. Here, comes letter two, or phone call two. You now have this deadline or your account's going on hold. Account goes on hold, letter goes out your account's on hold. If you do not respond, you account will be, I mean, just managing expectations because you've built this whole trust partnership with the field and the upline and the down line and internally with sales. So if you're managing every expectation along that enforcement process, and it ultimately ends in an account being terminated, we compliance have done everything we can to salvage that relationship and they chose not to salvage it. And so you kind of release the blame off of compliance for a terminated account, as long as you're communicating and managing those expectations on enforcement.

Jemima: Yeah. Yeah. I think that the relationship that you have with your internal sales team, I know it's admittedly been one of my biggest challenges to have just a solid, always open door, like good, bad and indifferent let's chat and keep each other informed. But the effort has been completely worth it because it just creates an opportunity for them to not only speak for those who feel not necessarily competent enough to speak up for themselves in the field, but it's a really good way for them to advocate for us when things are challenging with a particular leader especially. Take

some of that initial sting away, like I'm going to come to you first and try to see if we can encourage you to make this change or let's get on the phone altogether. So that you, the field person, or the representative feels like they have an advocate sort of in their corner and it's more conversational and less secure or threatening to them.

Alyssa: I think any chance you can have compliance and sales on the call or in the room together on a critical matter that is so helpful on every front. If you have both representatives in the discussion, those have been my most effective enforcement.

Travis: And like we discussed earlier, hopefully that's not the first time that they've talked to Compliance.

Alyssa: No, that's when you're really like, yeah. Okay. Really?

Travis: We're really serious. One thing that I'll add with the reporting on that too is so many of the companies that we work with that have come in with a small compliance program are attempting to document this on like a Google sheet. And so they've got a list of incidents and there's maybe…

Alyssa: Maybe try to document it.

Travis: That's true, but they've got a link to the offending post. And the distributors now taken that post down to destroy evidence and make sure that you've got procedures in place to collect at every point, every phone call that you have, every email that you send, every step of that investigation is documented. So that if you do get to that unfortunate point, there's an audit trail that you can fall back on.

Alyssa: And I think we mentioned this in the handbook too, but the DSSRC is a huge leverage point for both education and enforcement. Education side, we have the guidance from the DSSRC we often say, hey, the DSSRC talks to the FTC. Like this is our line of communication to what we're training and enforcing for. It's a huge tool that we use both internally and externally on training the education and enforcement.

Jemima: Yeah. If I'll just say again, if you haven't had the DSSRC out to chat with you, like proactively in a fun way [inaudible 02:07:35] But I'm telling you, it's one of the best tools you have available to you. There is no question you cannot ask. There is no difficult conversation that can't be had. And I think for us, when we had them come out, they met with our legal team, but they also had the opportunity to see other team members. And I think it's just an opportunity to be like, oh, okay, here's somebody who's actually trying to like advocate for us. Not that they can't be firm on their expectations and help us in situations that are needing more urgent

attention. But if you haven't please do please. Make use of Peter and Howard are both incredibly accessible and very willing to help. And I think it benefits all of us, no better your role.

Travis: For sure. That's why we love him. We've got about five minutes left. I thought we could leave the rest of the time first in Q and A, if there's anybody that has some questions, if not, we can be finished. But I thought we'd give that opportunity.

Jemima: Adolfo you have something to say?

Travis: Jemima was only one who can say that

Adolfo: I'm only doing this because they're going to have some questions here quickly. But you sort of tied it in, was going to say at the end anyway. But I wanted to say a couple things tying back to our earlier chat with friends from FTC about the use of social media tracking that was going on in the marketplace and it isn't a plug. I think this is the fourth time. I'll say it. But for years why and large DSA in terms of the code of ethics and nothing, anything wrong with it, it was before a lot of before social media was so prominent actually, we relied on the code of ethics, reactive complaints coming in. I don't know how many times we've said our companies take care of the complaints. We have 200 complaints a year.

For a long time, this was even problematic. And it’s certainly the last 10, 15 years become impossible to say reactive is not enough. There's that's the reactive part of it, the proactive. Jemima’s point about we got this covered. That was sort of what we were saying at DSA in a years ago, with respect to our code of ethics administration under our code administrator who did some proactive, we didn't have it covered. Therefore that's what the DSSRC is all about. We don't have it covered on the both. Well, I'll focus in on what I really want to make on the proactive side of what's really going on in the marketplace. And you heard it before here. I guess I want to turn the question really, since you posed it, about social media monitoring services, how many companies do not have one? Okay. It's not a requirement.

The DSSRC is there for that reason. But Alyssa’s point was the following is you heard what Sam said today, if you want to, FTC is not the law, but it's a regulatory agency. Not that they're it. What they say, we don't have to agree with and they're not pronouncing law, just their opinion. The more we do to demonstrate that we are monitoring what's going on and have good faith, it's not the Bulletproof. I think you use that word. It's not

bulletproof, but it's certainly Inia of not being a scam or fraud. Most scammers, most frauds. Most individuals masquerading as direct selling companies do not have compliance departments are not doing it proactively. So that was my question on it. It's not a requirement, but it's absolutely excellent advice is just where the world is today. And in fact, really why the DSSRC exists as a new the next chapter in the code administration process. So I'm going to commend our wonderful panel for that, those insights. With that. I hope there is a question. So I give you the opportunity. I don't think time. I meant what I said, but I wanted to be you're that good? Yes.

Travis: Well, thank you for your time. Please put your hands together for our panelist.

Katrina: Take that. I'm going to give it to John. Thank you. [Crosstalk 02:12:31] Thank you.

Jemima: We couldn't have done that without you for sure.

Katrina: All right. Our next panel today is the federal trade commission earnings claim, a NPRM. What's next? So everybody knows this is a huge issue. The industry is facing right now. It's going to be continuing for the next few years. Nothing's going to happen quick with this and our next panel is going to tell us what we can look forward to in the process. And kind of when the key next steps are going to be. We've got Linda Goldstein from BakerHostetler. John Jackman from Herbalife. We've got Justin Powell from Market America and John Villafranco from Kelley Drye.

John: Hello everyone. Can you hear me okay? Yeah. Really happy to be here. Thanks to DSA, thanks to Katrina and Winston and Strom our principal sponsor. And, we thought maybe we would just have Adolfo start asking questions now, before we even got started. So we would have time. But we'll save you time Adolfo don't you worry. Alright, we're going to talk about the earnings claims rulemaking that's going on. And I think it's really important to level set, right? I mean, something that people think about the FTC is this monolithic entity it's on Pennsylvania Avenue, it's got that big sculpture up front. But there's a temporal element to everything in life, right? And the FTC is not a static institution. I mean, there was a time when you could advertise cigarettes on TV and they didn't care about that. I mean, there's always a lot of change. So to understand direction where the FTC is going, you have to kind of understand where they are right now.

And where they are right now is they're in a kind of crazy place for anyone who has practiced in this area for a long time. And we've got a great panel here and we have Linda Goldstein, Linda and I have practiced for the FTC

for a very, very long time. And we've seen all sorts of things from really good policy to like head scratching shenanigans. And we're seeing a little bit of that now. And Linda's partner Daniel Kaufman is a former acting bureau director, and we've got a former bureau director in Jessica Rich, and both of our firms have been, it's been a flood, like an Exodus of FTC staff that have been leaving and we've been hiring and scooping them up and it's happening for a reason. So I thought maybe where we'd start before we get into the earnings claim rulemaking is with Linda. And to ask her to describe a little bit about the current climate at the FTC.

Linda: Thanks, John. It's crazy times out there. And I think actually the best it was worth the trip this morning to hear the Senator describe them as arrogance in their ignorance. I'm going to have a plaque that made and put it maybe I'll do it on a dart board so I can throw darts at it after I get off the phone with them. But is this echoing? Oh, maybe it's just me. Anyway. It's the most aggressive enforcement we've seen. Certainly I can say in my entire career and it's really manifesting itself in a number of ways. The enforcement is ramped up, but it's ramped up sometimes in ways that seem almost unAmerican. Where, I mean, prior losing their authority under section 13B, they were going in for asset freezes. Now that they've lost their authority to get monetary relief under 13B they've said, and Sam Levine didn't say it here, but he said it earlier in the week at the NAD they're doubling down.

I mean, basically what they've said is it is not going to stop us from getting money. We're going to get money in every case. And we are seeing it in some of our cases, even where the relief they're asking can't really be tethered to a violation. So we'll be in settlement discussions. And then they'll say, we'll settle this for 250 million. And we'll say based on what. And they'll say, we're just going to refer to it as a money judgment. And so how do you even negotiate against something like that? Some of the other ways it's manifesting itself, the investigations themselves are a horror show. So it used to be, you would have meetings with staff. You could have some discussions before they would make a determination. Now they will send massive CIDs companies that we've been working with are spending multimillion dollars just to respond to the CIDs because the requests are so massive.

They may sit on it for two years and then come back and say, okay, we've decided we're going to sue you, but you have 30 days to negotiate. We used to be able to get that to six months, nine months. And now they're extending in two week increments, maybe just to hold the lever over your head, either settle for what we want or we're going to sue you. And again, Sam said earlier this week, they would rather litigate a case than settle on

terms that they don't think are adequate. And the other thing we're seeing that I think is really frightening. And I think the Senator alluded to this as well. They are really trying to essentially influence or manipulate marketplace conditions. And we're seeing them do that in the injunctions they're seeking in order to settle or the relief they're seeking in the cases that they're litigating.

So they are looking for things like bans on certain conduct in the privacy area. We have several cases where they're looking to ban companies from sharing data at all. Even if the consumer consents I don't know what company in today's world could manage without the ability to share data, even with consent. And that's sort of the ignorance of market conditions that I think the Senator was talking about. And then the last thing I'll mention and sure John will want to amplify is the expanded net of liability that they have basically said that from their vantage point, everybody in the food chain is potentially liable. Even executives at large companies who do nothing more than what the typical CEO does, which is sitting at a very high level, looking at strategically what the company is doing and making sure that the company is making money. They're just relying on the fact that technically that CEO has authority and in their minds, that's enough to hold them liable. So it's really, really a scary time out there.

Speaker 8: Yeah, just to amplify and a couple of things that Linda said. Linda and I were at the NAD conference. Maybe some of you were there also earlier in the week and Sam spoke at that conference and he was much more aggressive. He came out like with some haymaker at that conference, one thing he said was, five years ago, one of my predecessor bureau directors spoke to this group and said that we're not going to go after big national advertisers. We're going to go after fraudsters and the small guys. And I'm here to tell you that that's not what we're going to do. Like we're a big game hunting. And so there are a lot of big names in this audience here. And this is an FTC that is going to want to try to make an impression and instill some discipline in the marketplace by making an example of big names.

Linda mentioned alternative theories of liability. I think most people here know or should know maybe about the AMG Capital Management case. I won't get into it in great depth, but the Supreme Court took away, well, the FTC never had it, but they declared that the FTC did not have authority to get monetary remedies under section 13B. So as Linda pointed out, what they're doing now is they're looking for any possible theory that will support their ability to get money, that they can then give to consumers, to redress alleged injury. And so they're trying to tether, as Linda said, their complaints, their theories to the health breach notification rule, ROSCA,

FCRA, I mean all sorts of statutes. And these are really tenuous theories that they're advancing. And the one thing I will say about that, that is interesting to me is I think unlike any other time in my 31 years of FTC practice you can win because they are advancing theories that are untested and they're novel. And when they go into federal court, as you read, if you're following them, they don't, they they've been losing occasionally. And this is an agency that is historically very accustomed to a lot of discretion from judges. So we talked a little bit about what Sam said at NAD, but let me, I think it'd be a good idea as we level set to talk about what Sam said here this morning, and maybe John or Justin, you might have some reactions to what you heard this morning.

Justin: So not a lot new, which I don't think is a surprise to anyone here. I thought it was interesting, he seemed a lot softer than what I hear is going on behind the scenes at the FTC. And I'm not the right person to speak about that. But you know, it seemed fairly collaborative and kind of the same old information. One of the things that jumped out at me and this is not a new issue either, and that came up in Herbalife actually, where he said, it's a violation of the FTC act to say that you can make money if you work hard. And I know, like I get their argument of what they're saying, but you know, also, I mean, isn't that the American way, right? So those types of things, they just like, I know he said, I don't think you could provide a study or any support for that. And I think couldn't, you find support to show that people who work hard make more than those who don't work hard. It just another one of those illogic things. So that jumped out at me.

John: Yeah. My impression was similar to yours, Justin not a lot new here. Adolfo, I think you actually did a great job of pressing a little bit and saying no one in the room thinks that it's okay to show the mansions, the car, the exotic cars and all that stuff. Even with the disclaimer on the bottom, we all get that. So that's the way I look at it, clearly one end of the spectrum. But then to jump to the other end of the spectrum, and to simply state you can't say anything above typical because we, the FTC believe that disclaimers are ineffective. And we're going to get into that later in this discussion, which seems, where's the substantiation for that type of claim? That's the other end of the spectrum. And so I could easily, any of us could have given the example, if our distributors in our respective companies, let's say they earn around a hundred dollars a month. Is it really misleading to have an atypical claim where someone said, you know, last month I made $150? Now it's not typical. Most people can earn $100. But I had a good month.

I don't think that's misleading and I don't even think Sam would say that. So then the question is, well, where do you draw the line from both ends

of the spectrum? If the discussion we're having in this room is about whether we should show yachts and mansions and all that, that's a different discussion. And I understand where Sam is coming from, but I don't think that's the discussion. What is okay? There's a long history of the FTC coming out for years. We'll show this in a minute where you can make atypical claims, as long as you let people know what they can reasonably expect to achieve. It's got to be clear and conspicuous.

So that's where I want to know where we can go. And again, shout out the last panel, did it shout out to Peter and Howard and the DSSRC, you guys are giving us clearer guidance as to how to draw those lines in the middle. And that's where, you know, I was excited today. I was hoping I'd get a little bit more clarity. I didn't quite get there. I still have a few more questions as to what can we say? Can we not make atypical claims? I don't know.

John: It's a little disappointed. He wouldn't endorse the entire, like 47 pages of the DSSRC code, you know? Right. I hear on the stage. I thought that was a good, good ask. But Linda, how about you? What did…?

Linda: Yeah, I think one thing I would like to add that I think, I mean, we're seeing it and we'll get into the rulemaking in a few minutes. We're seeing it in the rulemaking, we're seeing it in a lot of their enforcement actions. And I think maybe what's most alarming. There are a lot of alarming things, but it is that, that inability to provide any clarity or definition, that's sort of a defining tenant of the FTC at the moment. So then what happens is they bring an enforcement action against you and you in good faith believe. And in fact, you may rightfully believe that you are complying with the law as it exists today because the law, as it exists today is you can qualify or modify any claim with a clear and conspicuous disclosure that is well established NAD precedent.

But what they're doing is they're coming in and accusing you of not doing what they think the law should be, as opposed to what the law is. And that's part of that sort of abusive authority that I again, I think thankfully the Senator talked about, but that's what's making life with this FTC so challenging for businesses because you can no longer count on the fact that if you're following all the rules, the rules that are set out in in our self-regulatory program, precedent that the FTC has set itself or that courts have established in cases that have been litigated, that is no guarantee that they won't come hard after you if you're not doing something they think you should be doing. Because again, so many of these actions are designed to really affect marketplace conditions,

Villafranco: Right? Because I mean, the law is you cannot engage in unfair and deceptive acts and practices. That's section five, that's the law. And there are cases that interpret that. And then there's staff guidance and the guidance is not the law. And talk about a temporal element that guidance frequently changes. We heard earlier this week the associate director of ad practices say that in order for an audio claim to be or a disclosure, an audio, I'm sorry, a disclosure to an audio claim for it to be clear and conspicuous, it has to be made in audio. That is not the law. That is just their current interpretation of the law. I mean, you could certainly, you could imagine an audio claim and a giant boldface written disclosure that would make that, that would properly qualify that claim.

So you really have to kind of scrutinize and judge for yourself, whether the law is being violated, where you are in the law. Another example is their dietary supplement guide, which came out in the early I think it was maybe it was 2004 or so, and now they're running from it like crazy and defendants are citing it all the time. So the guidance does not have the effect of law. One thing he said this morning that I thought, and Brian, I was really glad that you cleared it up. He said, the company are responsible for all the claims of your distributors. And that is ridiculous. That is not the law. I mean, the law does not impose strict liability on the companies. I mean, the law does, and we heard from that great panel on compliance right before this one, I mean, the law does impose a requirement that you have proper procedures in place and that you're monitoring and you're training and you're enforcing in your workforce.

But it doesn't require you to ensure that every single statement by every single distributor in every single corner of the planet earth is compliant with what the FTC has to say. In other planets as well. Yeah. I mean, but what the law does require they would have to advance a theory of third party liability. And Brian asked that question and he shifted his answer. I think. I think very clearly he said, initially, he said, well, no, you know, if you have good compliance, I mean, we're going to exercise discretion. Well, it's more than just exercising discretion. The law would require them to show that there's a means and instrumentalities theory, or there's a common enterprise theory in order to establish that, that the company is liable for that random claim that maybe contradicts your policies and procedures that was made by a distributor.

Okay. We are supposed to talk about the earning's claims rulemaking. So let's talk about that. And I guess, let me just say first, because one question that I would have if I was in the audience is like, when is it going to happen? And the answer is, well, I want to hear what these guys all

think, but I'll just tell you one little reference point this week, they came out with a rule on government impersonation. And it was extremely non-controversial, it's a notice of proposed rulemaking on that after the AMPR. And it was extremely non-controversial. I think there were two comments submitted that was it. Nobody is in favor of impersonating the government out there and filed a comment. So it took them nine months to get that rule in place. So that'll give you a little bit of perspective about the pace of rulemaking and what to expect. But let me start with Linda and work our way down. I'm interested in your predictions on when we're going to see an NPR on earnings claims.

Linda: So if you, actually, if you look historically at the average length of a rulemaking, it's actually been somewhere between six to 10 years. I don't think any of us think that this rulemaking is going to take that long because it seems to be a priority, at least for some people at the commission, even though Sam made some side comment to the effect that, well, maybe we won't even have a rule. But really the length of time depends on the complexity of the rule and how many comments they receive and how many issues are at play. So the government imposter rule is really at one end of the spectrum. The issue's pretty simple. You, you can't pretend to be something you're not, and they receive very few comments. They're tackling a lot of issues in this rule. We're going to get into some of the comments that DSA filed, but there are first amendment implications and suggestions that they prohibit the use of any disclosures at all.

There are questions as to whether the record they're relying on even supports the need for a rule because none of the enforcement actions that they've cited in the record are cases where there were attempts to make adequate disclosures. All the cases they cited were very egregious cases. So there's a lot of legal issues and legal defenses to be made against this rule. And the rumor on the street is that they also fully anticipate litigation on this rule. So I think it's going to take, I think it's going to take a couple years. I mean, I think optimistically, we're probably looking at three years on a short end of the stick and potentially it could go even longer. I mean, they've also, they've thrown a lot up on the wall and they've got a lot on their plate.

They've got the dot com, disclosure guides, the testimonial and endorsement guides. They're going to get into the privacy rulemaking. And as John mentioned, there's a mass exodus from the agency because so many folks are just really unhappy with what they're seeing happen. So I don't want to, that's a guess. I mean, if they it's possible, if they decide this is a top top priority, they put all their resources behind it and it can happen sooner. But just from a process standpoint, they've got to go through all these comments. They've got to do all kinds of analysis. Then they've got

to go through another round of issuing the actual notice of proposed rulemaking, which would put the meat on the bones. And then we do the same thing. We file our comments, they have to do analysis. They have to do an economic analysis and do all kinds of reports and that's going to take time. So this is a long, long process. There's also opportunities to request hearings by interested parties. So that's another way that the process can be slowed down. So I think we have to, it's obviously a huge cloud hanging over our heads, but I don't think it's imminent.

John: With all due respect, Linda, I'm going to respectfully disagree, I'm banking and betting on the fact that they're not going to move forward with this rule at all. I also think the Jets are going to win the super bowl. I'm betting on that too. So I don't know. Actually I have nothing to add. I totally agree with Linda. I don't think we know. But your guess is as good as mine.

Villafranco: I like Linda's prediction just to clarify, there was the question, when are they coming out with the notice of proposal

John: When are they the notice of proposal rule?

Villafranco: Yeah. Because I mean, I like Linda's…

Linda: Oh, I was talking about the rule. I think that the final rule. But I still think it's going to be a while before they come out with the next notice, because there's just so much to

Villafranco: A while, like how much is a while? You're guessing we all know

Linda: Yeah. Maybe, maybe two years,

Villafranco: Two years.

Linda: But please don't all write to me if I'm wrong.

Villafranco: What about I'd say at the very earliest would be 2024, maybe the winter of 2024. That's my guess. And I have to say, I mean, I actually have spoken to someone in the agency about it and they expect to litigate this and they expect to litigate this against us and so they are going into this carefully, you know, they are going to do their very, very best because this, all this is subject to judicial review, as you know, and this will be litigated just like the TSR, the telemarketing sales rule was litigated. This will be litigated. There's no doubt. And we're going to get into the DSA comment. I represented a coalition of fairly large MLMs that submitted a comment. Those comments were put in with the idea that we were going to be litigating this down the road.

So they're going to be proceeding very carefully in division of marketing practices. But one thing I wanted to mention is as many of you may know the chair, Lena Conn there she implemented a number of changes to the rulemaking process in July of 2021. And interestingly, the chair of the FTC has the right now to serve as the chief presiding officer over the rulemaking or delegate someone to serve as the chief presiding officer that is intended to speed things up. It used to be that the chief presiding officer would be completely independent. So there would be an entirely, an independent review of the rulemaking record. That's not going to happen anymore. They eliminated the staff report and the post record comment period, there was some other things that they did.

They no longer have to state with particularity, they took that language out. So that might mean that they're not going, they don't have an obligation to submit in their minds, quantitative and qualitative evidence that would support and establish the extent of the problem, the forces that cause the problem, the reasons that prevent a market resolution and efficacy and the efficacy of their proposed remedy. So they changed the rules and the entire purpose was to try to speed things along. That's the idea. All of those changes were intended to promote speed. And you know, I think that it's, while they think they're trying to remove obstacles in the way it just seems to me that it's presenting additional targets when this is subject to judicial review. And I wanted to read a DC circuit quote that I think was it's from the children's rulemaking efforts from a while ago.

But here's what the DC circuit had to say is that Congress intended to have affected parties fully participate in the proceeding. The proceeding itself, can't be window dressing for the benefit of a court passing on a final trade regulation rule that was in stock long ago before its tentative models were displayed in the notice. And I think that in that instance, the DC circuit had a real issue with what the FTC did. And so I expect we're going to be, they're going to get slowed down considerably as we proceed. And I'm very confident actually, when it does come time for judicial review, that there'll be really aggressive efforts by many of people in this room and to really go after the rule. But let's talk about the DSA working group. Now, John, maybe you can kind of walk us through what went on there and yeah. You want to come up here?

John: Yeah. That'd be great. By the way, I should tell you, I feel like I know you guys very well now, since I've been on stage for 20 minutes. My most embarrassing moment was high school. I actually fell off the stage during a play. And so when I saw that first panel and the chairs were like all up on the edge, I was really nervous. I'm still a little nervous, so you're going to catch me. Right. All right. Perfect. So we're going to talk just a little bit

about the DSA response. And before I get started, this is kind of like the academy award speech. There's a lot of people seriously to thank for this. I mean, Brian, you led this initiative and did a great job. Linda, Daniel, I mean major contributors to this and everyone at the DSA and a lot of you in the room, a lot of your colleagues all contributed to this. So I really had nothing to do with it. I just have the honor of being able to present today, what the final product was.

Linda: But that's actually not true, but go ahead.

John: Thank you. Okay. So two key questions I have, or we have. One is a rule needed and we'll answer that in a second. And then if we are going to move forward with a rule, even if we feel like it's not needed, okay. So you guys know where I'm going with the first question. What should the rule look like? So with regards to the first question is a rule needed? I put the FTCs position as they stated it in the notice you can read there, right? Despite the commission's aggressive enforcement program, deceptive earning claims continue to proliferate in the marketplace. The FTC continues to receive widespread reports from consumers and informants of misleading earnings claims.

All right. So there's a proliferation of non-compliant claims according to the FTC. Well, the first question we had is based on what? Every claim needs, what? Substantiation. So if you're going to say that that's a truthful claim, where's the substantiation? We didn't see that. The second thing is just because you're getting reports doesn't mean there's a proliferation of non-compliant claims, right? The police get calls all the time about crime, no one calls and says, hey, I'm good. There's no crime here. Great job. And maybe some people do, but for the most part, you don't get those calls. The police only get calls when there's problems, but that doesn't tell you the whole picture. If 99.9% of the world is crime free and 0.1% there's crimes and they're being reported. That's all they're seeing. So it tells a different story, right? There's no substantiation for the claims that there is proliferation of false and misleading claims in the marketplace.

And they didn't provide any substantiation. And just because they're getting calls that doesn't prove anything. But what we do have is our own narrative. And again, DSA provided this information from the DSSSRC. So we looked at what they are looking at over a three year period. And as you can see here, they looked at over 900,000 URLs, approximately 300,000 a year. And of those 900,000 URLs, they focused on 784. That's what they found potentially deceptive claims. So when you do the math don't ask me, I went to law school. I'm not a math guy, but it's 0.0008% of all the claims that they looked into, those are the potentially deceptive ones. And

then the numbers get better, 325 of those they actually open cases on it. So not all 784, but they opened cases on 325, approximately half, 55.4% were earnings claims.

So now we're down to 180 out of the original 900,000 URLs. And of those 180 problematic claims, 85% contain, no disclaimer or a disclosure. Again, it's still a problematic claim, but it's not the most egregious of claims. So again, it just shows us that in our opinion, we're not running wild. Okay. Now one false misleading claim is still one too many, and we need to clean that up, but we have other ways of doing that. And so in my opinion, and the opinion of the coalition, the numbers are low for other reasons. Well, what are we doing? The direct selling association, there are key principles out there to ensure that all participants understand what reasonable expectations are and that they have consumer protections.

So you can see there's provisions prohibiting false deceptive, or misleading earnings claims there's provisions that require companies to present independent Salesforce members with sufficient info to enable a reasonable evaluation of the opportunity to earning income, provisions related to substantiation for all claims that are made. And like Adolfo said earlier today, inventory repurchase agreements. As far as the DSSRC is concerned, we talked about the numbers. These are even more recent numbers. So again, what I showed you on the first slide was what was presented when we provided our comments. But since then, you can see that number of 325, it's grown to 350. And they've done a great job of identifying those claims and most have been taken down there's 2025, as you can see that were more than half of those were earnings claims and those claims were either taken down or modified.

And for those that continued to be a problem, right? And by the way, I shouldn't have said that. A lot of these are not problematic. I mean, they're problematic, but it's not intentional. Okay. There were some misleading claims that are out there without the intention of doing it. So just like the last panel said, the DSSRC does a great job in coaching, educating training. But there's still some bad claims that are out there even after that. And they may refuse to do anything. So the DSSRC has referred 17 cases so far to the FTC. Now, I don't know what happened to those cases, but again, it's another sign that self-regulation works DSA and all the provisions that are required of all of us as companies it's working, we have small number of cases because this is the important thing.

The FTC, the DSA and the DSSRC--We need an acronym that just flows a little bit smoother. There all have the same goal. I don't think anyone in

this room, I mean, correct me if I'm wrong. I don't think anyone in this room wants anyone to feel misled in any way, shape or form. We want to make sure that all of our independent Salesforce leaders can speak confidently and compliantly about the business opportunity. So that's where we question whether or not an earnings rule is even needed. The second argument from the FTC was, yeah, we need one because like John said, and others had said today, they lost in court. The Supreme Court said you can't use 13B authority to seek the remedies that you're seeking. And so, as you can see here, they clearly said that, well, we got struck down so we need this rule.

In AMG management, the Supreme Court ruled that the commission may not seek equitable monetary relief under section 13B of the FTC act for violations of the FTC act or other statutes enforced by the commission. And as you can see further down a second quote, in addition, a rule would enable the commission to seek monetary relief for consumers harmed by deceptive earnings claims, as well as civil penalties against those who make the deceptive claims. Now, we didn't even say this, but this is just my personal opinion. You shouldn't be using a rule to give you the authority that was already struck down in course, right? I mean, you're just kind of writing your own rules. My kids did that. I'd be like, no, you can't do that. We kind of make the rules. You're not allowed to do that. So don't try and find another way around it or a loophole.

But what we did say is there's already existing tools that the FTC has at its disposal to ensure that deceptive earning claims from the marketplace are removed very quickly and to collect money from consumers. So you can see the four options here, they can still file administrative complaints under section 19, and they can obtain monetary relief after the administrative action is complete. They can also under section 13, seek conjunctive remedies, okay. Nothing is prohibiting them from working with states to file actions as well. Right? The Supreme Court ruling only applies to the FTC, not to the states. Penalty offense authority letters. We've all seen them. We know that they mean business. And again, they're using that as one of the tools in the toolbox to quickly remove deceptive earnings claims and to seek civil penalties from the companies who are in theory, allowing these misleading claims to exist and finding warning.

Finally, the warning letters, especially we saw it with COVID very effective. If the goal is to remove the behavior, then these are all effective tools and they really don't need this rule to further do what they're looking to accomplish. The numbers are already low. It's not a problem in the marketplace. So a rule is not needed. Having said that we shifted gears in our comments and said, if you do move forward with a rule, that rule

should reflect what the law has clearly established. So let's talk a little bit about disclosures. The FTC has said in the commission's experience, we have not seen probative evidence that disclaimers effectively cure atypical claims. In commission enforcement actions, where defendants have argued that disclaimers or disclosures cured any deceptive earning as claims courts have repeatedly found. Otherwise.

Now I'm going to start with that second sentence. Okay. Because I have a problem with that sentence. I'm going to read it one more, or just the key words here where defendants have argued that disclaimers or disclosures cured any deceptive earnings. That's not the purpose of a disclaimer, a disclaimer and the FTC has said this time and time again, a disclaimer cannot cure a deceptive claim. If I say looking to make millions of dollars and live my lifestyle. And then I put a disclaimer on the very bottom saying limited to top 1% results, not typical. Most people earn $100 a month, that's going to be misleading because the claim itself is misleading. I think we all agree with that. So it just fundamentally doesn't describe the purpose of a disclosure, which is to qualify an effective claims. Now it's got to be qualified in a certain way, clear and conspicuously, right?

The other examples that the FTC pulled when they say, and I'm going back now to the enforcement actions, the first part of that sentence and commission is enforcement actions were defendants have argued all this stuff. They found some really bad examples. They found examples where it, there was no disclosure, right? That's obvious a problem where the disclosure was not clear and conspicuous. It was completely buried or the disclosure was ineffective. It was a misleading claimants in and of itself. So results, not typical, but I know you, you're not typical, right? That's problematic, but they didn't show one single case where there was a clear and conspicuous disclosure showing how effective it was. They showed only really, really problematic claims in their examples. And that's not what we're talking about when we're looking at effectiveness of disclosures.

So going back to that the second sentence now in, I apologize back to the first sentence, in the commission's experience, we have not seen probative evidence that disclaimers effectively cure earnings claims. That was a Twilight zone moment for me, because everything the FTC has said, and I'm not going to go through all of this, but you can see for yourself time and time again, the FTC has put forth principles saying that you can make atypical claims as long as there is a clear and conspicuous disclosure, letting people know what they can generally expect to achieve. In fact, they even came out with.com, disclosures that tell you how to do that. The four PS, right? We all know them, prominence presentation, placement, and proximity. They're giving you the guardrails right there. It's

a great document. Here's how you can make a clear and conspicuous disclosure so that your claim can be qualified, not cured, right? Not a deceptive claim that can be cured, but how you can qualify your claim. It's great. We all rely on that. So it's for them to then just say, disclaimers are completely ineffective. We have evidence supposedly of that, which we haven't seen. That's a head scratcher for me. It goes against their own guidance that time and time again, you see the last case there are national dynamics. Again, it's an older case, but it's FTC clearly stating that atypical claims can be made with a clear and conspicuous disclosure.

So the last point I want to make is, again, we're thinking about if a rule needs to come out, if they're going to move forward with it, what else to consider. One should be this huge jurisprudence on advertising, dealing with effectiveness of disclosures. But there's other considerations that we talked about in the guidance and in our feedback. First amendment, okay. You're messing with the first amendment. We all take our first amendment very carefully, that's why it's what? The first amendment, right? Freedom of speech should be very cautious. I mean, you should be very cautious if you're looking to limit freedom of speech.

So there's restrictions on commercial speech, we all know has to be closely scrutinized and narrowly tailored. Okay. Well, if you're removing, if you're just going from a proposed rule that basically just says, all you can do is talk about what's typical and you can't make atypical claims. That's not really narrowly tailored. That's ignoring this whole fact that you can make atypical claims with a clear and conspicuous disclosure. So that's something that needs to be taken into consideration, as does the impact, or should I say the burden to other companies. First of all, this rule only applies to earnings claims. But again, the premise is that disclosures and disclaimers are ineffective. So why are direct selling association companies, gig economies, why are we be being singled out here?

If disclosures are ineffective, wouldn't it impact any company that relies on disclosures? We all see commercials. We know that health insurance companies, telecom, automobile manufacturers, right? Travel agency. I mean, everyone uses disclosures. It's been around since, you know, for hundreds of years in advertising, why are we being singled out? And if I'm those companies, I'm worried about this rule too, because again, it's all based on the premise that disclosures are ineffective and they rely on it. So A it's enough, it's unfair that we're being singled out. Two, where are they going to stop after this? You can't have a rule that says it only applies

for earnings claims. If the whole rule is based upon the fact that disclaimers are in effective, it's going to have to affect other companies that rely on disclosure that rely on using disclosures and disclaimers to qualify their claims.

The next thing is net impression factors. So again, FTC has a huge, huge history of talking about what net impression is. And I think we all know, right? It doesn't matter what the FTC thinks. Doesn't matter what I think with all due respect for my panelists or all of you. It doesn't matter what you think. The takeaway message, the net impression as to what people understand. It's based upon the reasonable consumer, that we're roomful of doctors there be the reasonable doctor in the room. These are claims that are being made to the general public. So again, where's the data showing that the general public who sees these claims that they're being misled in some way, with a clear and conspicuous disclosure. Haven't seen it. In fact, John Villafranco's going to talk in a minute about the contrary consumer focus testing that he led that shows the exact opposite. That consumers, when provided with a clear and conspicuous disclosure, they're not misled. They understand it. They read those disclosures.

Two more quick points, company compliance. You heard it from the last panel. John talked about it as well. We have an obligation again, we're all in this together. No one wants distributors to be misled. So we have to have a culture of compliance, right? We have to have rules, prohibiting false and misleading claims. We have to have really good training, right? You heard the panel, great ideas training to make sure everyone, all the force members know what those rules are. And it should also be at higher level as they move up in their marketing plans. Like you heard so that when they can make those claims those higher, more risky claims, they understand how to do it in the compliant way.

Are you monitoring? You better be? I'm glad we asked that, the question was asked, who's not doing social media monitoring. You have to do that. And then you have to have real enforcements as well. So why, if you have this and you've got a robust monitoring program, why would you be punished for the acts of a few bad individuals? Again, as long as you really are doing your best, that should be something that should be taken into consideration. And last but not least self-regulation works, right? You guys saw the statistics, you saw the numbers. Those guys are doing a great job, but they also works too because it's about training and education. And for all the talk that we do about what is misleading and what isn't, they're rolling their sleeves up, and they're giving practical earnings guidance. That document, if you haven't looked at it, please do

because it really talks about not just that you can make an atypical claim if you have a clear and conspicuous disclosure, but how to do that.

They give tons of examples and kudos to them. I'm not just saying this because they're in the room. But I personally know, as I know, Jonathan does, everyone in this room, they've worked with us, they've gathered our feedback. We're partners in this. Why? Because again, we share that same goal of wanting to give people realistic expectations. Having our independent sales force leaders speak confidently and compliantly about the business opportunity. So in closing on this part, the whole, you know, our position was a rule is not needed. There's not this proliferation of unsubstantiated claims and misleading earnings claims in the marketplace. That's not happening. We have data to show otherwise. This shouldn't be used as a tool for the FTC to get 13B authority in. And if a rule is going to happen, let's have it reflect years. I'm talking about hundreds of years of advertising jurisprudence, right? Disclosures can and are effective with clear and conspicuous disclosures. Plus don't forget those other factors because a rule like that, that's, in my opinion, quite draconian is seriously going to impact first amendment. It's going to place a big burden on everyone. And it negates the great efforts of self-regulation in this area. So back to you John.

Villafranco: Oh, good. Thank you. I got that. Thanks John. And the DSA comment was excellent by the way. Really, really great. And I'm sure if you haven't read it, I'm sure that we can get it or John and Brian can get you a copy. I want to just talk very briefly about the coalition comment. I mentioned that we put together Kelley Drye submitted a comment on behalf of eight MLMs. And as far as I know, it's the only comment among all of them that were submitted that actually had qualitative and quantitative data to support our position. And what we did there was we tested the proposition, which was in the AMPR that a significant minority at a least of consumers do not even see or understand disclosures.

And that was in, they cited Michael Mays' report that was done a number of years ago. And he's Mike, Mike's an expert from, or he's now retired, but he was from American University at the time. And it was pretty clear to me that he went way out on a limb on that proposition right there. And I think it's a real problem for the FTC to contend that that consumers don't see or understand disclosure. So the coalition comment it focused on a number of other things, the procedural and substantive requirements that the commission has to meet in order to support a rulemaking under magmas. As John talked about the FTCs long history of relying on disclosures expressly requiring disclosures, first amendment concerns, and then third party liability principles, which I touched on a little bit earlier,

but really the centerpiece was the Kingsley study. And there's Barbara right there.

Kingsley Climb is a very respected research firm. They've actually done work for the FTC in looking at the comprehension of privacy notices. And Barbara is a really, I think, a fantastic expert if you ever have needs in this area. She just very quickly, only a couple minutes on this. What we did was we created a fictitious MLM called UBU. I came up with that name myself. I was pretty proud of myself with that one. We actually had some t-shirts made and everything it was…And we had what we did. We created three stimuli an actor playing in the park, an actor presenting tickets that she brought with earnings and an actor with a shake discussing the positive aspects of being a distributor. They were in various lengths. And the way that Barbara designed the test there, she would have with each stimulus, she would have a note, there would be no disclosure, it'd be a written disclosure and then there would be an audio disclosure in various modalities.

And I can send you it, I'm very happy if you want to email me, I'll send you our submission, that includes Barbara's report. And what was really interesting. And I'll just jump to the chase here. And I know Justin has read this, so Justin, I'm going to ask you if you have anything you want to add after I mention this. But you can see here that the overwhelming majority of participants were able to identify typical earnings to a statistically significant degree with most iterations of each showing comprehension of disclosures between 80 and 90%. And what that means is that it varied between the different modalities, the different stimuli. But then what we did was, what Barbara did was she then went a step further and she because of course, if someone is going to avail themselves with a business opportunity, they're going to have to go through a registration process. They're going to be almost certainly in every instance, confronted with an income disclosure statement.

There was a mock up in her survey design where after someone would see these videos, which were intended to look like a TikTok video or an Instagram video they would then, if someone said, got the answer wrong, then they would be taken through the registration process. And when we did that, you could see 91.2% of survey participants were able to identify the typical earnings of a participant and for that particular, for UBU distributor. And so that was we thought powerful evidence. I mean, I think by any survey expert would say that when you get a result where only 8% or so, a little bit more than 8% are playing back a wrong answer, that that's noise and it doesn't support the contention that that consumers aren't seeing the disclosure. So I don't know, Justin, if you had anything that you

wanted to add, because I know that you, you are one person who has read that.

Justin: Well, you know, I'd say my take away from that is that disclosures work. You know what I mean? And I think we, all of us need to come together and do more of these qualitative and quantitative studies because there are so many like other questions that still need support and substantiation to defend our positions. I mean, going back to what you and Linda said earlier about the FTC is enforcing the law as they want it to be not as it is. And the law is what's the reasonable consumer to think and net impression and when a claim is made, is it truthful? Is it misleading and is it substantiated? And if the disclosure is working, then it's not misleading. So that's something we need to think seriously about.

John: Yeah. I'll just add too. They work, we saw that is great experience. But also on the flip side, I know we tried to get some information out there from the FTC as to what they are looking at, their studies to find out why they feel disclosures are ineffective and they really weren't forthcoming with that. I know it was a FOYA request and we still haven't seen that data. The other thing is like you said earlier, John, there's different types of disclosures. There's written disclaimers, there's audio. So I agree with Justin, the testing is great. We know what a clear and conspicuous disclosure is, but does it make a difference if it's on screen, do you say it, do you flash it when an atypical claim is made or do you leave it on the screen the whole two minutes?

There's ways of disclosing typicality, like you said with your words rather than you know, a disclaimer on screen. So it'd be really interesting to know more about that too. And like, again, I think we're all in this together. I got out of litigation because I didn't like it was so adversarial. When there's a problem, we work together to fix it. And so it'd be great. I mean even if the FTC had a genuine interest in wanting to do testing as well and we could play with different variables and get to the same result, which is disclaimers are effective, but maybe there's better ways of disclosing in certain manners.

Linda: Yeah. I was just going to add to that. Maybe just moving towards kind of what's next, that even though we all gave this optimistic view that this is not imminent and we have time, that time goes very quickly and you can see just from this one study that data matters. And if there's one thing, the staff will constantly tell you when they're in the process of doing a rule making is give us the data, give us the data, give us the data. We had a very, very short timeframe to do our initial comments really very short. And we're predicting what we might have, but we really don't know. So we don't want to kind of rest on what we have. I think the goal for DSA moving

forward is to use the time as productively as possible to try to get as much data as we can from our members or things that we can generate internally.

And so we will continue to reach out. But I can't emphasize enough how useful some of that data could be. Particularly if we end up in litigation, I can tell you from experience that when the FTC tries to do a survey, historically, they don't do it very well because they kind of try to do it on the fly and they try to do it without spending a lot of money we can and we will do better. But we're really going to need to start thinking about it now. And I do recall one rule making this. This is going to really date me, but it was in connection with the 900 number rule and the FTC wanted to require disclosures in some ridiculous font size. It was like 18 point type or something. And we did a survey showing that there was no difference between the visibility of the disclosure in like 10 point type or 18 point type. And they actually backed off in the final rule. They backed off from that prescriptive a requirement. So we're going to be working. We don't know how long we have, but what, however long we have, we're going to be hard at work trying to develop as much information as we can.

Villafranco: Well, and I suppose it's possible that a company, one of the 1100 companies that received the notices of penalty offense authority could potentially require some survey work to support their position because obviously, I mean, the commission's view is that they can move forward under their, with their penalty offense, authority. I mean, even without the rule making right now and we could spend another hour. I know Linda and I have talked about it many, many times about the infirmities of their theory on their under penalty offense. But we won't do that, but, it is conceivable to me that one of the companies in this room at some future time and not distant future is going to hear from them and the FTCs going to assert that they have the right to civil penalties under their penalty offense authority, and the base. And they're going to have an issue with the quality of a disclosure and a claim that's being made. I think we're just about, we got five minutes. So we could take any questions or Adolfo.

Adolfo: I don't have any questions for this distinguished panel. No, I'm kidding. While you do a couple things, we do have a couple minutes, just two comments. And then I want to ask you a question each of you that I think is important for us to hear, but first is to the future of the rule and the timeframe and so forth. But those have been around the old hands here at DSA. The last time we had this process, it took exactly as all of our panelists that said the five to six year process and probably going to be that I don't think it is the number one priority at the federal trade commission. I don't think it's the chair woman's priority. I think Facebook, other things in privacy antitrust are the top of the list that said, it's the

usual course. Daniel will talk later about this. It probably will be that front timeframe.

Secondly, to Linda's point quickly, lest anybody have any thoughts that we're not on top of this is it's exactly our focus in terms of our research functions and resources necessary. We're going to take whatever resources are necessary and we are anticipating this to be that five and six year process and building up that data and all that's necessary to back up. We've seen here some conclusory statements by the state, by the commission. We intend to back up our statements with data that can be refuted if they can, or other experts. Here's the question, while you think of a question, this is great after you watch this presentation, everybody's pumped up, like while we're doing everything we can, it sounds like all their weaknesses and so forth. This is our case, but just for a moment, role play you're at the FTC philosophy, political philosophy aside about everybody should be an employee. And the rest of it is where do you all see if you were sitting? Many of them talk to them. We all talk to the FTC people, is where do you see the weaknesses in our industry right now that would lead them to believe this type of draconian, if it is remedies are necessary, just you work there.

Justin: You know, I think you kind of saw that today with the presentation Sam Levine gave, because they, they point out those extreme examples and they're out there and we can't have a perfectly clean internet. And so there are going to be claims that are egregious, there are going to be claims that are not properly disclaimed. Those are the ones that are going to take to court. They're not going to take to court the claims that have good disclaimers that are conspicuous and work, right. So we've got a weakness in just that we have an independent sales force that is motivated and some of them are not completely where they should be.

John: Yeah. So a couple points. I agree with that. I think, I don't know if there, I don't know, honestly all of us at DSA, we don't. Oops, there we go. I don't know what is going on. Thank you. As far as our compliance programs, are we consistent with one another? You know, there's some that are up here and there's probably some that are down here. And so they're going to cherry pick just like they do the claims. They're going to look at some of the less robust programs and saying, this is why we need a rule because you know, not everyone is doing the same thing. Maybe not everyone has the same resources and whatnot. The other thing that we didn't touch upon is the costs, we heard it today, and I don't know if anyone's really disclosing costs.

I think it's very tricky because like you said, Adolfo, there's not a lot of mandatory costs, but we don't know exactly what each company has going on. So it's one thing if you have to buy the product you know, a hundred dollars and you sell it at $125 and you said, I made $125, I think we can all agree that's misleading because you actually made $25, even though you've got 125 in your pocket. But we haven't really established guidelines and standards on that. And I think they're going to pick that apart. And if we don't address it.

Adolfo: I think before you, as an excellent comment, just panel knows this, but certainly this expenses idea cost is not the first time we've heard it publicly, it's not the first time I've heard it privately from them. And they've talked everything from gasoline cost to this, to the rest of it to, I'm not sure how it all shakes out. But it isn't just the requirements of mandatory conferences that they're talking down to the cost of home fax machine and so forth.

John: Internet access.

Adolfo: Yeah. So, okay. That's been done. Linda.

Linda: So I think the weakness might come from something else Sam said at the NAD earlier this week. He said that their biggest priority is really where there is a great degree of harm to pocketbooks. And even though we're talking about very small numbers, they have brought some cases where the impact of the allegedly deceptive practices were significant. And so I think they may try to play that card to some extent to say, yes, we understand. But it's not uncommon for the FTC to try to establish rules based on the egregious activities of small actors. That's often what leads to rule making. So I think we have to, I think our numbers are great, but I think we have to recognize that they may look at it from a different perspective and say, yes, it's a small group, but the impact of harm from that small group is larger.

Adolfo: Sorry, John. Yeah.

Villafranco: I think those are three really good answers I have love there. And one better than the other. But I want to just really say something about what John just said, on the compliance side. And I realize I'm preaching to the choir here. This is the compliance audience, but I've always felt like every head of compliance should have to have a tattooed on their arm, training, monitoring and enforcement, training, monitoring enforcement. You know, I think that it's so absolutely key. And John's point about that some companies might not be making the commitment in terms of budget or time commitment to training monitoring and enforcement, I think is a really excellent point. And DSA has got a great program. Linda and I are very

much involved in it, a certification program for compliance professionals. And if there's anyone on your team that hasn't, it's so easy to get involved, it's a really I think a very well thought out program and we have had great success in educating people. If you have anyone on your team who hasn't done it, they should do it.

Adolfo: Thanks.

Villafranco: It's on the front page. Yeah.

Adolfo: Thanks for, thanks for that.

Villafranco: I want to plug back cause you know, Brian, Melissa have been really key in getting that off the ground and it's a great program for anybody who's in compliance at any level. And what are we doing it next? It's…

John: December.

Adolfo: December. And as we know, I don't think that's really a priority for scams and masquerading the sellers' compliance and compliance training. So just participating in being part of it, says something, it speaks volumes. Any last minute questions? Okay, here we go. Ed. I see you Ed, Ed, anyone. Thank you.

Ed: My name's Ed Burbok.

Adolfo: I'm going to take this Ed. Identify yourself.

Ed: Great. Thank you. My name's Ed Burbok and with the pleasure, my colleague, Rob Johnson, we represent Neora in the lawsuit that's going to trial next month in Dallas, summer judgment hearing next week. And our colleague, Jake Ferguson is here with us also. But the question, first of all, the panel, that was a great presentation. It was very excellent, very detailed, really appreciated. But the question for the panel is with regard to the guidance set had been issued by the FTC that you cited, did a great job of going through the various guidance. What do you do when the FTC comes back and says, we're not bound by our guidance?

Villafranco: We were…

Justin: Glad, I'm glad I'm not in your position.

Villafranco: I would simply. I don't know if that was the question. I think that was, yeah, that was a mic drop, actually. That's okay.

John: Well, by the way, there was some case law in there as well. You know, national, and again, you just sitting at you in the penalty offense letter. I mean, I learned some, I didn't know about national dynamics case. It's a footnote and you actually look at that case and it's very clear. But you know, a clear as day and that's why I highlighted there. You can make atypical claims as long as you can, including conspicuously disclose what generally expected results are or endorsement, testimonial guidelines, very clear on their dot com disclosures. This is it. That is guidance, but we'll say, wow, I guess you were want for a hundred years. Like, no, it doesn't make sense.

Justin: Well, it just goes back to them enforcing what they want the law to be versus what it is

Linda: Yeah. I mean, really you just, you got to kill him in court. That's what you got to do.

Villafranco: Well, I think we're over. If anybody has questions you want to chat, we'll be around after this. So thank you for your attention. We really appreciate it all.

Speaker 10: All of us would be out of work, right? I mean, so we've talked a lot about earnings claims. We haven't spoken that much today about products claims and starting with Mr. Levine this morning, who I'd never seen speak in person before. So I was very glad to have that opportunity. We certainly talked a little bit about pyramid schemes sort of on a superficial level, but we haven't drilled down much. And so I was talking to Brian Bennett about what we would do today. And I said, you know, I've been doing this well since 2007, when the FTC sued BurnLounge, that's my genealogy and direct selling. So for 15 years I've been talking about pyramid schemes and I litigated them the BurnLounge for seven years and then the ninth circuit.

And since then a whole bunch of class actions have been filed, but I'm going to confess in front of this very August group. I don't really know what a pyramid scheme is. And that's a little bit tongue and cheek, but not really.

Daniel: You know it when you see it, right?

Speaker 10: Well, Potter Stewart said that I'm not sure. I mean, my clients hope I know it when I see it, but there, there are a lot of tea leaves. A lot of things we look at that push us one direction or another, well, this is going to make you more vulnerable to an allegation of pyramid. If you took this out of

your plan, this would make you less vulnerable. So there's this sort of hand that goes back and forth, but where's the line. And we've all looked at the companies that the FTC has chosen to file suit against. Well, even before BurnLounge. But, but since then there's been maybe a half dozen of them or at least that have been actively litigated.

And for some of them we looked at Vemma, why was Vemma sued? Well, we all have our theories. Why was Neora sued? I don't even have a theory on that one. I don't think their plans are any better or any worse than a lot of my clients who haven't been sued. So these three gentlemen have been kind enough to give us three to join, join me up here and give us three very different perspectives on this. I'm going to let each of them introduce themselves and just tell you who they are, who they work for, and maybe just 30 seconds on your connection to direct selling, because I think where they come from is going to be very interesting in the context of what we're going to talk about for the next 45 minutes. Dan.

Daniel: Very nice to see everybody Daniel Kaucman. I'm a partner with BakerHostettler. I joined the firm about a year ago after 23 years at the federal trade commission. So that might be some connection to this industry as a deputy director for the equivalent of Sam Levine for most of the past decade, Mr. Andrew Smith, David Blick, Jessica Rich worked closely with all of them. I'm sure you've heard almost all of them speak. So I've seen virtually every one of the cases we'll be analyzing and had some role to play in them. And I apologize for that, but I'll be hopefully [inaudible 03:23:24] inside FTC perspective on that. So very, very, very good to be here.

Bronco: I’m Bronco Jovanovich. I'm economist principal at the Bardwell Group. I stumbled to direct selling when I think [inaudible 03:23:42] agreed to work on FTCs Herbalife investigation, which I thought would last several weeks and I'd be done. And I've been doing work in this area since

Speaker 10: Kevin.

Kevin: Kevin McMurray, I'm chief legal officer at Young Living. I'm actually approaching my one year anniversary at Young Living. I've been in the industry since 1996 and sometimes it feels like it's been a lot longer but it's really been a great journey for me. And I've thoroughly enjoyed working with so many of you on many different levels and just glad to be here.

Speaker 10: All right. So let me sort of just lay the land a little bit and I'm going to apologize in advance. We have way too many slides, so we're not going to spend a lot of time on the slides we put them all together and it add up to like 40. I said, oh my gosh. And we didn't have time to really weed them

out. But they'll be available afterwards on the DSA website. So you'll have an opportunity. So if I flash by something you wanted to read, don't worry about it. You'll have the opportunity. So I'm going to start out with, well, what's the law. You would think pyramid scheme, it's against the law. It's illegal. It's fraud. There should be a nice detailed statute that tells us exactly what is and what isn't a pyramid scheme. And then we can all pull that statute out and we can like the copyright act or the antitrust laws. And we could, well, actually the antitrust laws is a bad example, because that is also a brief statute. But we could just take a look at this every time we have an issue on pyramid schemes, we could pull it out and read the two or three page statute that would tell us exactly what it is and what it is. So here's the two or three page statute. Where is there? What am I doing?

Sorry. I thought I had this all wired there. It’s there, there's the two or three pay statute. Okay. Basically we all know it by heart FTC act section five, unfair deceptive acts or practices. That's what we know. All right. So the statute's not going to be very much help. So what do we then do? Well, we go to this case that we all know and love called Koski happens to be almost 50 years old. It also happens to not have been, can you get that on slideshow Bronco? So it's a little bigger. Great. Thank you. So we all know Costco, at least we know it by name. Most of us probably also know it wasn't even a court case. It was an administrative FTC action. And so Costco basically draws the line between section five and a pyramid scheme because it has a sentence in there which is on the slide that basically an operation of a pyramid scheme not defined is a violation of section five.

So that's not much more help is it? So then we get to, what's called why is this not? Okay. There we go. The Costco test. Okay. So the Costco test is quoted in every single legal decision that talks about pyramid schemes. And I've read it probably 500 times. I'm trying not to exaggerate. No one talks about the first prong of the test, which is that pyramids characterized by payment of money for the right to sell a product. No one really focuses on the first prong of that. Everyone talks about the second prong. The right to receive in return for recruiting other participants into the program rewards, which are unrelated to the sale of products to ultimate users. All right. Ultimate users. I think we all know what ultimate users are. That would be someone who actually ultimately consumes or uses the product.

Rewards unrelated to the sale of products. Well, if I paid you $100 just to sign somebody up, that was just in my comp plan, that would be a reward unrelated to the sale of would violate the second prong of the Costco test. But what if I only paid the commissions on product sales? What if I recruited somebody? And at the time they enrolled, they bought a product

paid a commission on the product sales. Is that a violation of Costco? Well, to me that seems like a payment related to the sale of a product and that's the position that we took in BurnLounge and we lost. In 2004, I'm going to actually go through this slide very, very quickly. The FTC issued staff advisory opinion on the issue of internal consumption. It said for the first time publicly. And it said many times since that internal consumption is not necessarily an indication of a pyramid scheme, that if you actually have a distributor who buys the product to consume it and uses it, that would be a legitimate sale. The staff advisory opinion then also went on and talked about--why is this?

Okay. All right. So then we go to, we jump ahead 10 years to BurnLounge. We all know the sentence in BurnLounge that talks about the legitimacy of internal consumption. It's the way most of us who are litigators have used that case. But BurnLounge also has a couple of other ninth circuit decision. Also has a couple of other interesting statements in there. One is the legitimization of what the FTC has said publicly over and over again that not all MLM businesses are illegal pyramids. So that's a good thing to site for. So why did BurnLounge lose? Well, I'm not going to defend the company. I'm not going to defend the case. I'm not going to talk very much about the business model. But my reading of the ninth circuit decision is that the court concluded that BurnLounge's focus was on recruitment and not on product sales.

Now I personally don't know what's wrong with focusing on recruitment, as long as it's done in a straightforward and non-fraudulent manner. And there's no misrepresentations about the business opportunity. But the court in BurnLounge disagreed and there's a lot of law. I'm going to see a little bit more of it in the next couple of slides that says, if a company focuses on recruitment, it's a bad thing. It's probably a pyramid scheme. And the ninth circuit affirm the district court's finding that the focus, the program was on selling the product and that the rewards were paid mostly for recruitment, not for product sales. I will just give you one data point of fact, and then I'll move on from this. BurnLounge only paid commissions on product sales. It did not pay fees for recruiting people unless the steining up of those people was accompanied by a purchase of a product. But the court thought otherwise I don't know if the court thought the product was a facade for recruitment, a hidden recruiting fee. We'll talk a little bit about that within the next hour.

So then we get onto a document, which I actually think is a very, very interesting document and I'm sure we all read it when it came out in 2018, but I would advise everybody here to go back and refresh yourself on this guidance that the FTC issued for multi-level marketing. And I just think

there's a lot of pearls in here. And you see a lot of the same language in this guidance that you saw on the ninth circuit BurnLounge decision, and you saw in other contexts. And basically where a compensation plan incentivizes recruitment it is a bad thing that speaks to the illegality of the business model. And there's another theme that really creeps in loudly in these guidance and that's the product sales have to be in response to consumer demand. So something that will help you prove that your program is not a pyramid scheme is showing that this consumer demand for your products that's independent of the business opportunity. So what, how does the FTC distinguish?

I know I'm not pushing the wrong button. How does the FTC distinguish between a legal multilevel marketing company and illegal pyramid? Well, we all know it's a fact based inquiry. We heard that again this morning and in the guidance is actually a very useful sentence that says the commission will focus on how the company is structured as a whole, how it operates in practice. And it considers such factors such as marketing representations, participant experiences, the compensation plan and the incentives that the compensation plan structure provides. So that's not real specific, but at least it's better than section five. It's starting to put a little bit of meat on the bones. Two cases that the FTC has filed since that guidance not talking about Neora because you really haven't been any decisions in Neora yet that have spoken to the substance of what a pyramid scheme is.

There've been pleadings and motions and things, but the judge really hasn't issued anything yet that definitively talks about what her view is of what a pyramid scheme is or isn't. There's lots of contentions and lot of interesting things in Neora pleadings. But the FTC sued a company called success by health two years ago in Arizona and that company was largely shut down at the beginning of the case as happens often. But not always in FTC litigation. And just two quotes that I found of interest in the judge's order issuing a preliminary injunction against success by health. The judge there he said SBH is sales, videos and transcripts, and I'm going to paraphrase a little bit, show that defendants focus overwhelmingly on recruitment. Again, there's that focus on recruitment as the path to commissions and profits. The importance of retail sales are drowned out by the drumbeat of constant emphasis on recruiting.

So again, there's that proposition that recruiting per se is wrong. And it doesn't really speak to whether this fraud or misrepresentations or earnings claims made in connection with the recruitment it's the recruitment itself, which the courts have been focusing on. And the other

quote that I found interesting in the preliminary injunction decision is that there's an admission that the profits that SBH might earn through retail sales are trivial and that the commission plan is actually driven by the bonuses. And then the court describes the top bonus in that particular plan, which required the recruitment of over a hundred thousand people. So this particular judge, again, was focusing on the emphasis of the, on the recruitment and didn't really pay much attention at all to the products.

And the last case I just want to mention in passing, you heard about this earlier from Winston and Strom is the financial education services case. Now I read that decision and that transcript a little bit differently than our prior panelists. This judge and Bronco was actually the expert on that case. So he can speak much more fully to this than I am. But my reading of what that judge did and did not do was that the judge really didn't pass much of a judgment on the legitimacy or illegitimacy of FES's business model. Basically what the judge said is that the FTC didn't have any facts. It hadn't taken any discovery yet. It never served a CID so it hadn't carried his burden yet of showing that the model was not legitimate. But again, this judge in setting out the test, I'm sorry. So we don't even have an opinion where this judge talks about what a pyramid is, but the FTC file briefs in support of its injunction motion. And you could see, this is not a court order. This is from the FTCs brief on the preliminary injunction.

Basically the FTC, again, talked about the bonus plan and the payment of rewards, incentivizes recruiting rather than focusing the time on selling products. And the last thing I'm going to burden you with is the statements in the FTCs memorandum that the agents are heavily incentivized to recruit other potential agents. And then this last comment, which I found very interesting, and I've been talking to the Neora lawyers a little bit about what the FTC is doing in the Neora case on this. And I was actually flabbergasted by this statement, even if the service is offered by FES delivered real value to consumers, it doesn't matter. It's still a pyramid scheme. And the FTC is taken the position in FES. And I understand in Neora also that the value of the products really don't matter, which I find astounding because I always thought if you had real products being sold in response to real consumer demand for a fair price, that you were on the right side of the law, but the FTCs taken a different position.

So that's sort of the lay of the land. Daniel's going to talk now a little bit about his perspective on this from inside the agency for 25 years. What I didn't know, but I found out in meeting Daniel over the telephone is Daniel actually supervised the lawyers who I litigated against in the BurnLounge

case. And by the way, they did a fine job obviously so why don't you take it away?

Daniel: Great.

Speaker 10: See. I can just, there we go.

Daniel: Okay. So just going to talk a little bit generally about some of the complaints we see in the industry. And it's interesting, I often talk to people and there's a focus on, we want to look at the FTC orders, what can we do in the orders in order to be compliant? And from my duty FTC, the orders are so heavily negotiated. There are companies that will come in caring about these five issues, not other issues. So although I think there is some security in sort of seeing an FTC order and saying, well, we're pretty much on all on all corners of that, I don't know. I've always think there's mixed value. There's also a lot of orders that you wouldn't want to touch with a 10 foot pole given the content.

So I want to talk, look a little bit at the complaints. And for starters though, one, one thing to say, the agency's incredibly partisan right now, except this is definitely one of the areas where there is actually bipartisan support at the [inaudible 03:39:31] earnings claims and on direct marketing, all type of them have issues and concerns. So this is not one of those areas where we're sort of necessarily seeing partisan divide at the FTC. So what I decided to do is take a little bit of a closer look at sort of some of the complaints, but we'll say the agency is evolving over the last year and a half. I mean, there was a lot of chaos when chair Conn took over. I was actually really glad that we're finally hearing Sam say positive things about self-regulation.

There were statements coming out of the commission last year that were incredibly disheartening, basically saying, you know, any industry sponsored self-regulatory body is inherently problematic, which of course makes absolutely no sense. So very glad to see they're turning the corner there. And I think that was actually my biggest takeaway today and at NAD was that is a relief. So I just want to take a look at some of the complaints next slide. And some of this is going to be in sort of captain obvious category. But I looked at some of the major cases in the last decade, 12 years or so. And what do they have in common? And the first thing that jumps at you is it's really not all about the structure. Every single, virtually, every case had a focus on earnings claims and the ability of the agency to sort of bring in the earnings claim component.

Although it's not technically part of the structural count really does a really strong job of painting a picture. And of course bringing an independent basis for reliability. So you see earnings claims almost always in counts. You also see there's always a focus on the compensation plans being confusing or convoluted. Convoluted is the preferred word of choice by players was actually working through them. And I candidly say when I was at the agency and I would look at these plans, I was reviewing sort of staff's recommendations. I would have to have a glass of wine and then try to read it. I had a hard time maybe, actually, maybe that wasn't helpful, but I kind of got it. It was really hard as someone not steeped in the industry to understand it, there was a perception and maybe wrongly so that if us lawyers can't understand that surely the participants can.

So I question whether that's true, but it is again a commonality you see in that. And finally a high turnover, constant theme in a lot of these complaints. Again, not necessarily related directly to the structural issues, but relevant and something that they do point out quite a lot. So then I found one other big commonality, and this is probably the least fun one, really bad documents and really bad stuff that they put in there that aren't necessarily from the company, they can get distributors, but they're really effective at strengthening the agency's case. And also immediately rebutting the company's argument. You know, when you have someone saying, number one, recruit number two, recruit number three, recruit kind of hard to say the emphasis isn't on recruitment and it's on legitimate sales in response to real demand.

Now I know things are taken out of context, you've got the rogue person, but the FTC uses this to their advantage and they use it to their advantage really well. I didn't pull any of the comments about obviously the earnings claims or their plethora of sort of really bad documents you see on earnings claims, but it is just really that reminder that this has a very important role to play in virtually every single one of the direct selling cases that you'll see. So my next couple slides, I looked at some of the more structural commonalities I will confess my first two slides I thought I was coming up with some sort of distinguishing feature. The first two slides are sort of all the same thing. There is the focus on the business model and really digging into how does one make money selling the product and the inability, when you look at it on a day to day basis on a sort of dollar spent dollar sold basis, just virtually impossible to make any significant money from actually selling the product.

So that's a theme we see a lot limited profit, our margins also rules that restrict sales. I would say a lot of lawyers scratch their heads when they

see sort of restrictions. And I understand why there are some restrictions, but lots of restrictions that make it more difficult to sell the product. Again, it's hard for lawyers looking at it in the outside to sort of see, well, if you're going to encourage retail sales, don't you want to broaden it. Then there's other issues about sort of comparative products that are out there. Is there a story and a compelling story about why people should be going to this distributor to purchase the product when they can get it on Amazon at maybe a dollar less or $2 more where is that story about there being a compelling need for this product, from this distributor and from this company? And of course on threshold that that may limit sales commissions.

Again, it's something else that's sort of pushing against the story you want to tell, not the story you want to tell. That's always a bad phrase to use that I'm really good at creating my own bad documents, but the narrative, the narrative, it's not a story, it's a narrative. Next slide. So looking more about sort of just the recruitment versus retail. And there's a lot of focus in materials you look at about how to recruit and guidance and training about how to recruit less so on how to solve the product. And that's, again, another commonality you'll see that lots of information and support and training on that far less so about actually selling the product encouraging samples to be given away quite frequently, robustly and really no again, it's discount or incentives that really won't drive the retail business, seeing that it is certainly more helpful. Sometimes they talk about retail sales, just mitigating participation costs, which I think is maybe just a gratuitous slap. But that seems to be sort of a focus as well. And again, the emphasis of recruitment of retailing and then of course, compensation at of the end of day for recruitment poor thing, what do you think it's potentially making or retailing.

Then you have some more purchase trends. There's a lot of focus in a number of these complaints about sort of looking at the purchase trends. And there's a general sense that the purchase trends are tracking the compensation timelines. So people are making the purchases, different people are making the purchases at those pivotal moments when they need to make the purchases to get the rewards, whatever it might be. But there's really a close analysis of the purchase trends and looking at them and do these look like purchase trends that are being made organically in response to retail demands or are these purchase trends that we're seeing in response to other outside factors in order to get compensation. And in most of these, you're seeing the trends are inconsistent with retail demand and are more consistent with personal monthly requirements or other purchases that are being made to meet thresholds.

And finally one more slide just overall powerful incentives to recruit more participant's lack of tracking the purchases. That's of course, probably less of an issue now than it was a while ago. And of course, high concentration of awards among a small number of distributors. The other big picture thing at flash going to the section five issue there are other areas that are pure section five, where's a lot more clarity on what it means. And part of it is just the number of cases there aren't huge numbers of complex, interesting, challenging cases involving MLMs. The cases are, I don't want to say few and far tween, but every year, once a year, as opposed like data security and privacy, half a dozen every year easily, you can look at those in develop themes in a better understanding, a lot harder in this area. So it's good to have this panel and talk about these issues.

Speaker 10: So Daniel, every single one of my clients comes with the same question, how do we stay off the radar? What can my company do or what should my company not do so I'm not the next Vemma BurnLounge, AdvoCare, Neora.

Daniel: So I agree with Sam, they're not looking to have lawsuits in this. Well, actually, maybe I don't... Take that away. I actually think they would love to have another case in this area. So I'm not going to, I be asking on that. Deal with your complaints, I mean, so many FTC cases start with significant complaints, keep complaining whether it's to the BBB, the FTC, or their members of Congress. If you're not resolving complaints, if you're not resolving them generally, well, I'm not saying throw money at everyone who complains, but look at it closely. Is you're connected to your customer service people understanding, trending complaints. The FTC really looks at that stuff cares about it deeply. And also in terms of compliance and monitoring again, great to have a program. But I'm not telling you to fire people and terminate people, but if you haven't fired and terminate people, that's not going to help your compliance program. So that is always the first question. Great program. How many people have you let go? Really important. But complaints is one takeaway, focus on your complaints, customer service, you get a good relationship with BBB and be responsive to them. Because those are all really, really good ways to [inaudible 03:48:44] again, they might go after you anyway, but if you don't want to give them ammunition.

Speaker 10: Well, thank you for that peak behind the curtain. So our next speaker is Kevin. So Kevin's role in this I call boots on the ground. And it's actually the thing that got me most interested in this panel is in this topic for this panel in the first place. So many of you are in house compliance, in house lawyers, you are in the hot seat every day. The sales department calls sales are down. We're going to run a promotion some field member calls and said, you know my bonus isn't big enough. Why didn't I advance in

rank? Or what can I do for this it's time to review your comp plan? Somebody says, well, we want to give a special bonus for buying 20 filters this month. Can I do this? Can I do that? And Kevin has been can I name the companies, Kevin? Sure. Kevin's been Sana LifeVantage and now Young Living Essential Oils.

Kevin: And Shaklee.

Speaker 10: And Shaklee.

Kevin: And Unicity.

Speaker 10: Kevin has been a senior lawyer

Kevin: TadLife.

Speaker 10: Yeah. Can't hold a job. Huh?

Kevin: It was my experience in the air force.

Speaker 10: So Kevin and his team are the ones that feel these questions every day. And I know you feel these questions every day. So we thought we would just go through some almost like speed dating, go through some topics very quickly. And just talk about Kevin, what your reaction to are to some of these issues, how you deal with them, which ones you think you can't compromise on because it'll put your company in jeopardy, which ones you think you can, you have a little bit of wiggle room on and which ones push the needle to the left and which ones push the needle to the right. So the first group of things we have up there are starter kits, enrollment, packs, bundles of products, as opposed to selling products individually. Why don't you just talk a little bit about how you view those issues in the context of whether or not it makes your company more or less vulnerable to an enforcement action?

Kevin: Right. So my comments obviously are not related to any one particular company that I've worked with. So these comments are just general in nature and obviously many of you lawyers and compliance professionals out there are as much experts on this as I am. So don't let me be the last word on anything. But when you're talking about the starter kit, obviously some companies will offer those. Some companies actually say that it's a mandatory re required purchase, but with that, you need to make sure that it's being offered at cost or that it's a very nominal cost to begin with. And what you, I think the bigger problem you get into really is with the enrollment packs or the bundles of products that are often sold, right?

Because many times you'll see these being offered in large, large packs so that people will be able to use the products as samples, or they'll be able to take those products and then sell them to other consumers. But one of the problems with those large packs obviously is that they carry with it commissionable volume and it looks in many cases like you're trying to push people to buy a huge pack and spend $5,000, $2,000, $1,000 just to get in. And you want to avoid, obviously the perception that it's a mandatory purchase, right? And because you don't want to have anybody buying something that they're required to buy. And the only reason then that they're buying it is to qualify for a commission. So that's something you want to avoid.

Speaker 10: So you think it's all right to require the purchase of a package of products on enrollment.

Kevin: I wouldn't say it's okay to require the purchase of the bundle or the pack. I think what you need to do is you just need to be very careful. One thing that you want to look at too is are these same products available, say a la carte, right? We talked about that before. And if you're getting a value in connection with that bundle, for example, you buy the bundle and each one of the individual products is carrying with it maybe a 10% discount or a 20% discount, then there's a better value to buying it in a bundle and people should be able to do that. And just long as you're not requiring it as a means to participate in the marketing plan.

Speaker 10: So and you think of it, isn't really another way of looking at the issue. What is the motivation of the person buying these products? Is the motivation to advantage you in the compensation plan or is the motivation to buy products, to consume as an ultimate end user? And I guess we're just saying is some of these things can be characterized as being more complaint oriented than consumption oriented.

Kevin: Yes, and I think anything can be abused, right? I mean, obviously if you have certain levels of product bundles it may not be mandatory to buy those, but if you find that your sales field is pushing one pack in particular all the time, and the reason for that is because there's more commissionable volume associated with that bundle, then I think that's problematic.

Speaker 10: So how expensive can these packages be? I mean am I in trouble if I'm charging $5,000 for a required purchase of a package of products?

Kevin: Well, if it's required. Yeah. I think you're going to be, I think you're treading really thin ice there.

Speaker 10: What about $100? Can I require someone to buy $100 product

Kevin: Again I think it's with the requirement, as long as it's not something that's required…

Speaker 10: I have a client over and there in that corner, I'm not going to name them, but to become a distributor that you have to buy a $5,000 machine. Is that okay?

Kevin: Well, I think it depends. I mean, if it's something that is absolutely necessary to do the business…

Speaker 10: No, no, it's a consumable product. It's a household product. They keep in their kitchen. They only buy one. They don't buy them every month, but become a distributor. You have to buy one. Is that okay?

Kevin: All right.

Speaker 10: I don't know. I mean, so these are questions so I guess I'm really…

Kevin: I don't know that I would necessarily put a mandatory requirement on anything.

Speaker 10: Right. Okay, so that's your perspective. I know there were companies out there that have mandatory product purchases to enroll as a distributor. So this is sort of the same general theme bonus programs, promotions, recruiting, contests, best start bonuses. Right? What do you think about these issues?

Kevin: So, one thing I think that we, and Daniel is talking about this and you talked about it, but with respect to the incentivizing recruiting, I think the big deal there is, and what I've always tried to do is I just always tried to advise my client that look, as long as you include the requirement to sell in connection with the recruiting effort, there shouldn't really be an issue. Now we know, but based on what you've told us already, that there's never, I guess you would never say that there's any safe Harbor, so to speak, but at the same time, I've always tried to structure these incentives or these promotions in such a way that it's like, okay, it's okay, if you want to bring people in, as long as you're not incentivizing the act, the mere act of recruiting or enrolling people, but you're incentivizing the ultimate sale of products. So bring two people in who purchase X amount of products. And then you'll earn a commission or you'll earn a bonus.

Speaker 10: What about just bring two people in?

Kevin: No.

Speaker 10: No. Because that would be, I mean, signup, that’s signup bonus, right? That would actually violate the first prong of [inaudible 03:57:00]. Contest to focus on recruitment. You're saying they would have to be tied to product sales to stay on the right side of the line there. So you wouldn't depose a program that incentivizes recruitment per se, as long as it was also tied to product sale, right?

Kevin: Yeah. I think there has to be some recruiting, right? You, I mean, obviously you want to build a sales organization because the more people you have in your sales organization, at least in theory, the more selling is going to occur and you would earn more commissions that way. So I'm not, definitely not opposed to recruiting. I think you need to enroll people.

Speaker 10: And this last point's almost to throwaway.

Kevin: But one thing I was going to say, but you don't necessarily, one thing you want to make sure of, you don't want to make your plan or your marketing plan contingent on recruiting or base solely on recruiting because it's kind of like, look, I want to be able to join this company. I don't want to get involved necessarily in all the multilevel stuff. And I want to be able to sell products and I still want to be able to earn a commission that way. So what about we do that?

Speaker 10: What about rank advancement though? A lot of companies require a certain number of signups in your down line to advance in rank. Is that okay?

Kevin: Well, again, I think it needs to be tied to product sales ultimately. Okay. So as long as you're tying it to sales, I don't know that it necessarily matters. Although I know we've heard some discussion on the point that the FTC doesn't necessarily like people earning commissions on, on levels that are so far removed from the original sponsor.

Speaker 10: I'm so glad I don't have your job.

Kevin: Yeah.

Speaker 10: Brought a consideration. We've already touched on some of the selling products and packages and not a la carte, product pricing, considerations, expensive products, the intrinsic value of your products, commissions disproportionate to the product price. You sell a hundred dollars product, you get a $200 commission. Your price is competitive in the marketplace. If they don't buy your widget, is there another midget? The target is selling that's priced approximately comparably to your product because otherwise you could be accused of paying a hidden recruiting fee. And I guess this last sentence, maybe that's a good summary of this set of issues, which

someone buy the product, but for the business opportunity. So what do you think about these issues?

Kevin: Well, I think this is where it becomes very important to have, I think in my opinion a preferred customer program or some type of a customer program that you can actually use to establish or show that there is consumer demand for your products. And ultimately at the end of the day, I think in some respects, it's all a marketing thing. I mean, you need to be able to convince the consuming public that your product is worth what it is, and you're selling it at a particular price and why you believe the consumer should pay that price. I mean obviously we deal with at Young Living, for example, we deal in essential oils primarily, and you can obviously go to Walmart. You can go to target anywhere you can find essential oils anywhere anymore. And they're a lot cheaper I admit. But at the same time our marketing statement is that they're not the same. I mean, we have very rigorous testing and other protocols in place to make sure that the oils that we're offering are very high quality and they're different from the oils that are being offered at Walmart.

Speaker 10: And you, I mean, you could buy a risk watch for $10 or for $10,000.

Kevin: Yeah.

Speaker 10: Compensation plan incentives, we don't really have time to deal with this because we need to move on to Bronco. But something that I've been thinking about a lot since yesterday is these monthly qualification requirements. And the fact that a lot of companies just refuse to let go of the concept that you have to buy a certain quantity of products every month to stay active and qualified. And then those companies allow the distributor to buy those products themselves is distinction between blind products and selling products. It seems self-evident, but a lot of us in this room use those words interchangeably. You have to buy or sell products. I think, I mean, if I had to make a prediction of where this industry is going to have to go to survive this regulatory scrutiny we're under is we're going to have to move towards an area where you're only going to, if you're going to have qualification requirements, it's going to have to be tied to selling products. And I just predict we're moving in a direction where we're going to have to give up on allowing a distributor buy the products themselves in order to stay qualified. Kevin, anything else before we move on?

Kevin: Yeah. Lot's been said about autoship programs, right? Oh yeah. And I think the FTC doesn't like them, that's probably pretty obvious, but I mean, I personally, I know most companies have some type of a subscription program or an autoship program. And I think the keys there are just making sure that it's number one voluntary that you're not focusing on the

fact that it's a great idea to meet your qualifications, but rather it's a great idea to have in place so that people don't miss getting their products that they need or want every month. And so there are other issues tied to that, but as long as it's, it's something that's voluntary, distributors can change it, or customers can change it easily, cancel it easily, that sort of thing. I think it's less likely to be a problem.

Speaker 10: And of course we all know that the Herbalife consent to pre prohibits Herbalife from having autoships. So obviously the FTC thought that was an important element in the route and the changes that Herbalife made to their plan right after the consent.

Kevin: And Bronco had some really good ideas on that too. I know when we were talking about that earlier about offering, perhaps only offering it in the case of customers, as opposed to distributors.

Speaker 10: Right.

Kevin: That sort of thing.

Speaker 10: Pay to play safeguards against inventory loading. So our last panelist is Bronco Jovanovich and he's with the Bardwell Group. And Bronco and I first sort of met over zoom over the telephone, I guess, about six or nine months ago. And we've had this really interesting dialogue. I'm sort of an egghead and he's a guy who analyzes data for a living and we've had a lot of interesting exchanges. So I've had a few clients that have brought Bronco or someone that with similar credential in to look at your database, look at your buying patterns of you're selling patterns, your recruiting patterns of your distributors, what are the data show? And are there things in your data that make you more vulnerable or less vulnerable to an allegation that your business model is illegal? So Bronco's going to give us for free what he normally charges a lot of money for.

Bronco: You know, so as an economist, my perspective is a little different than those of lawyers. And often time when we analyze companies' compensation plans in their data, we do have a little bit of a kind of FTC cut because we are skeptical, right? Like we want to understand what incentives are and what type of data these incentives are going generate. So normally when you start analyzing a company and the question should be well, is this a legitimate MLM? Of course we have no idea what the legitimate MLM is because there is no really guidance on the MLM side, tell us like, well, if your volume is at this point, or if you follow certain requirements on your compensation plan, you're fine. Right?

And so instead we ask what's a pyramid scheme. And so I would love to tell you that from economic perspective, that question is much more clear than from legal, but unfortunately it's not. So often the expert weaknesses on the side of the plaintiff, either in class actions or working for the FTC start with this economic interpretation of the pyramid scheme. And really all it is a chain letter, right? You are going to buy in, and then you are going to convince someone else to buy in and you are going to get percentage of their payment. Right. And you're going to convince them to do the same.

So there is no products, right? You're just trying to pretty much have a transfer of wealth from the people who are joining later to people who join early enough to be paid out. And you can see that in a very small print that's exactly what Givens who was FTCs expert in the financial education services case. That is key characterization of the MLM. Okay. So maybe we'll have better luck now with Costco, right? We can maybe, as an economist, we will have better idea what [inaudible 04:06:44] means. And unfortunately that two is not the case. We go to the next one. Because in fact, you need to state what your interpretation of cost per case is to make it in any way operational, when you deal with the data analyst.

And so opinions there differ Dr. Gibbons again in financial education services said that the sent that the cost could really means that the central requirement for pyramid scheme, that you have this endless recruiting chain. And on the next slide, you will see a very different interpretation from our favorite economist [Vandernet 04:07:30] who pretty much puts the puts the sales to final customers as a forum. Right? So if your rewards are based on recruiting and not on a sales to final customer, that's assigned that the second prong of Costco teams is satisfied. So what we now left with now that we have this understanding of what the economic and what the Costco interpretation are. So we fortunately got a paper from the FTC economist last year was since David Gibbons and couple other quarters told us how they assess the pyramid scheme.

And so there are couple of ways that they do that. And the first and the one that's used most commonly is simply analysis of compensation plan, right? Then promotion materials and the distributor training. In fact, in many cases you will see that the compensation plan is the only analysis that they put forward. And they claim it's enough to conclude that the company is a pyramid scheme. So I would argue that we do need the data, right? You have to keep in mind that compensation plan offers certain incentives. And so expectation means that you will see those incentives materialize in the data. And so if the hope is the data will show

that the incentives that do appear in the computation plan are not present in the data that's kind of a solution thinking, right.

Then there is something seriously wrong [inaudible 04:09:28] with the data or the compensation way. The next and kind of really the most curious of the model is the simulated participation scenario. We actually had no idea what it was until recently, and then David Gibbs, again, in a potential education services told us what it was. And it's very funny analysis. So you're going to start with one person, and you're going to assume that they recruit, say two distributors and maybe three [inaudible 04:10:03] here. So then every distributor, that first distributor recruited is going to repeat the process. At the end, you're going to be left with maybe 100 distributors. And the claim is, well, the person on the top did really well, but everyone on the bottom did really poorly. And of course, the problem with this approach is that you can assume all kinds of things, right?

You can assume why not assume that they recruited 10 customers and only one distributor. And the further problem is that why do we assume that everyone on the bottom is actually hard? Because if there is a product and product does have a value, then they can sell the product and recover the cost that they have to cover in order to become distributors. But what then becomes evident is that the assumption is really the product gets no value. And if you look at the, actually, I'm not sure how you know, how publicly available these things are, but in some class actions really the methodology that the defendant's expert use is simply to assume that there is really no value to the product whatsoever, right? So whatever you paid to the company is your loss.

You got absolutely nothing [inaudible 04:11:37]. And so if you make that assumption, this scenario does really show lots of harm. Finally, there is a distributor data and again, there are several analysis there we see. Sometimes we do assume that you actually can sell everything that you purchased. But they will then show that the profits that you earn through these sales. So that markup would be like a very, very small percentage of total payments. And that anyone in the plan is actually much better off recruiting people and collecting commissions on their sales for actually purchases than being engaged in selling the product.

Speaker 10: Bronco, we have a three minutes left and you have a lot of slides to…

Bronco: [Crosstalk 04:12:40] Yeah, actually, I'm going to just tell what we generally try to do. So we try to look at the data, see, well, where does this volume go? Where did this start go?

Speaker 10: If someone looked at their data, what would you tell them to look at to see if they had a flashpoint?

Bronco: Yeah. I mean, if you don't have custom program, I would tell you, get that first and then let us look at your data because that's really the only way that you can say that there is impact genuine demands for your product. That is absolutely not part of the either bone spine, which we see in a data a lot and/or that is maybe just a personal consumption, which you really can't necessarily say whether that's genuine demand for the product or again, just purchase that means requirement for advancement in the a flash.

Speaker 10: So, but how do you tell they're looking at the data from an economist standpoint, if somebody out here was going to take a look at their data and they wanted to see something that indicated whether or not the purchases of products were being motivated by consumption or by the compensation plan, what would they look at to try to give them an indication of how they're doing?

Bronco: Yeah. So if the purchases are right at the thresholds necessary for either maintaining activity requirements or advancing in plan that's pretty much bonus buying.

Speaker 10: So if you have a 100 PV every single month, and coincidentally, everyone's buying a hundred dollars' worth every month, that's a bad factor.

Bronco: [Inaudible 04:14:38] Fact, if you then have a flag in a data that tells you that was purchased through autoship, and then your compensation plan says that, or it is a convenient way to ensure that you meet these requirements that that's available.

Speaker 10: Okay. Obviously we could talk for another hour on this. I hope this was sort of interesting. I would like to take a few questions if we just have a few minutes anybody? Yeah. Rob Stand up loud. Rob's on the New York trial team, by the way

Rob: Question for Daniel. In your slides, you identified as a commonality of the FTCs cases, this concept of high turnover. And clearly it's something that the FTC finds to be very significant, be when they're running their stats, they always run a survival analysis. My question is, why does the FTC find that significant? How does it relate to Costco and whether or not rewards are connected to sales or products to end users?

Daniel: I think it relates to is there a successful retail model? I think if there was a successful retailing model, you perhaps wouldn't see as much sort of

people turn. I think that's part of it. But you're right. I don't think it directly relates to Costco, but I think it does relate to sort of the universe of other issues that are at play.

Adolfo: Any other questions, quick questions? Oh Josh.

Josh: Thanks also for Daniel. So the panel talked about preferred customer programs and I've had conversations with lawyers and employees who used to be at the FTC really calling into question whether the FTC believes that PC programs are valid or legitimate, what was your experience on how they view those programs?

Daniel: It depends on what the numbers are showing. Are there enough purchases being made through the preferred customer program to sort of look at that and say, you know, what? That's a healthy, robust program, or is it sort of 15% of the sales are going to PCs and 85% so distributor. So I do think the numbers matter a lot there. I think also the lack of the existence of a PC program is problematic. But it really is about we got the program, how's it doing? And are we actually seeing real sales generated there?

Bronco: Put a customer, there's program often no distinction in terms of the fees or in terms of discounts between distributor and customer. And so there is no incentive for a customer to sort accurately into that category and not take option value of maybe selling something at some point earning money by declaring themselves as a distributor. But in fact making no effort whatsoever to actually place product or period of [inaudible 04:17:59]

Adolfo: Okay, we're going to have to thank, but before we we're going to have another, I'm going to just announce here sort of a legal conference too, at some point here. Because just this panel subjects alone requires a lot more discussion. I mean, I'm serious. The compensation plan issues we barely touched on brought up all the time by the FTC, what are you trying to hide? None can make heads or tails of them. We have to confront them, ask about confronting these issues on recruitment let me be very clear. We have been pushing back. I don't think recruitment is a dirty word, I think is a good word. And now somehow I don't want to go on as rabbit hole. We did it as a panel here, but we said it before, if you have sales, our business model is about recruitment. So if it leads down the, as they have suggested in the Neora case one, their prongs are different to ultimately attack the concept. They do not like multi-level compensation period. So we have to push back on recruitment. There's nothing wrong with it. There's nothing wrong with internal consumption. We can substantiate it. We have buybacks, we have preferred customer programs. We can do better and we can do better on comp plan. So we will have a

follow up on this for sure. Great. Thank you. Thank you to Larry and our distinguish guests.

Adolfo: Okay. Don't go away our last and most [crosstalk 04:19:22] star.

Katrina: All right. I want to invite our next panel up. Do I see our peeps yet? Here we go. All right. So we've spent the day talking mostly about domestic issues facing the direct selling channel. And now we're going to end the day by taking it abroad a little bit. We're going to talk about the same types of key issues that we've been talking about all day, but how are they affecting your businesses abroad? Because I know all of you guys, or most of you guys do have y'all have branches abroad, y'all have sales abroad. Some of you have large, large sales abroad. So this next panel is going to take us through kind of what's going on the international front and how everyone's adapting. So I'll let everyone.

Speaker 8: Thank you. I think I'm miked up, but do you have—everybody has a mic?

All: Yes.

Speaker 8: Bonsoir. I'm, Laha [inaudible 04:20:58], I'm working with the European Direct Selling Association. It's 10:15 at night in Brussel. So my body clock is a bit off. But I'll try and share with you what's going on in Europe right now, and really invite you to see what's happening in the US, not in isolation. We are facing similar challenges in Europe, similar issues. There is a lot of commonalities on topics that Brian and I are working together, but also what is expected of your company is really no different. And the expectations towards, for example, having a robust compliance program would apply to any other market you're operating in. So really that's what I will, you know, share with you now and give an EU update. My colleague Lewis will cover Canada and then Francesco will do Mexico just after. I will just pass it on each other as you, we see there is indeed commonalities between what we are facing in all our markets. Maybe I'll just start and run through the presentation and then we'll do the rounds of introduction.

So just a few words of context and policy. The two priorities that the European commission between 2019 and 2024 are working on are the digital transition of the EU economy and the grain transition of the EU economy. I know the topic of grain transition is maybe not as prevalent in the US as it is in Europe, but it will impact all the companies that have businesses in Europe right now. When it comes to the digital transition if you follow the news, if you look at you are following data and privacy and maybe platform regulation you might have heard of DSA DMA, digital services act, digital markets act, which is the first really global, well, I mean, multi-country, but with maybe the addition to be a global attempt as regulating platforms and platform economy there is a lot of dialogue and I

will come back to that in my presentation between what the European commission is doing, the FTC, your different government representatives, they are in constant dialogue. We're very fortunate that we also have that dialogue with the [inaudible 04:23:20] but I would really invite you to see the regulatory developments in the US, not maybe as a US source, but maybe with inspiration to what's going on in the EU.

The first proposal I'm going to talk about is what is called improving working conditions for platform work. It's a long and ambiguous tract, but it is about independent contractor status. This is what it is about. The European commission came up with a proposal last December, which is really, again, the first attempt to try to define that EU level, what is a platform worker or an independent contractor, and what is not. Because as you may have heard as lawyers, there has been several court cases and decisions across the EU and end up with different conclusions as to what an independent contractor is. The objective would be with the commission proposal to have at least a common baseline and understanding as to how to approach that issue so that companies can operate across borders in the EU internal market.

So what the commission is trying to do, and the way they're approaching it is what they call a reputable assumption of employment, and really put the burden of the proof of whether or not the person is an independent contractor, not on the employee or independent contractor to be requalified, but on the company to defend themselves. That is due to problems of competence between EU countries and the European commissions. So this is the approach that we have taken it's really about issues, and misclassifications, it's really to address platform work. And it is rules on declarations, right of redress sanctions that would go along with that. And also an aspect of social protection that would be linked to it. In the proposal from the commission and that is important for the discussions you're having here the focus is really on, on demand work.

Because the discussion has been open, it is being extended to maybe cover people like in the direct selling sector. But that's not the initial intention by the European commission, the way the European commission has approached that, you have the ABC test in California. Well, this is the European equivalent. We have five criteria that have been put forward of which the commission is proposing that if you meet two of those five, then there would be a presumption of employment. So you have effectively determining or setting upper limits of remuneration, requiring the person to have a specific appearance or uniform supervising the performance of the work, verifying the quality of results restricting the freedom, including through Ascension, to organize one's work and restricting the possibility to build a client's base or to perform any third party. We had a very constructive engagement with the European commission when the

proposal was drafted and we got the reassurance that in that particular proposal, direct selling companies would not be covered. And we were not the objective of the proposal by the European commission.

Now, for those of you who in law school might have done EU policy, you may know that when the commission puts a proposal out, it's not the end of the game. It's actually the beginning because the European parliament and the council of the European Union have to take their own position on what the commission is proposing. And then they go into negotiations, which we call tree logs. We are currently in the process where the European parliament is defining its position on the platform work proposal and the European council. So various member states are defining also what their negotiating position will be. The discussions in parliament, I would say, are not going in a direction that would be favorable to the commission proposal, which we like the parliament is taking a completely different approach.

The discussions are led by an Italian socialist MEP who is very active on labor law and social rights. She's got a strong support from the greens, a strong support from the extreme left, some support from the extreme rights, which are more like populous parties in Europe and also the general conservative side. Also seeing that everything to do with the gig economy is actually challenging SMEs in Europe, which they want to protect. So wanting to be pushing the bar very much on definition of capital work for that particular reason. On the side of the council to make things even more simple every six months, the council presidency rotates, and we have what we call presidency trios. The current trio is France Czech Republic, and then Sweden.

France was the first country that led the negotiation and ended up to a first reading, which was close to the commission proposal. Again, something that we welcome very much. Czech Republic is now leading the discussion. The first big meeting was actually this week. So we have some indication as to where the discussions are going. Now, interestingly, the next country, Sweden. As you might have heard Sweden as elected for the first time in its history, the far right party to lead the government coalition in the country. And they have announced that if the proposal is passed onto the suite, that they would scrap it because they don't believe it's the competence of the European Union, meaning you would end up with different rules in different EU countries. If the council is not supporting the commission proposal. So in terms of timeline, you have in brown, what's going on in the parliament, in orange, what's going on in the council. If we miss the deadline of December for the general approach of the council with the Czech Republic, the tree log would then take a totally different taste I would say if Sweden is in charge.

So a lot of people in Brussel are hoping that Czech Republic will be able to conclude the negotiating mandate and then Sweden will have no choice, but to negotiate on the basis of the mandate. So this is a little bit where we are the. It's approaching very fast, the tri logs in 2023 that would mean implementation in 2024. And I would believe that the US are looking at what Europe is trying to do in informing discussions here on independent contractor.

The other thing I wanted to bring to you is what is called the review of digital fairness and basically our current EU consumer law rules fit for the economy post COVID. And the commission has identified a number of issues that they want to be working on dark patterns, consumer vulnerability, influencer marketing contract cancellations, virtual currencies. You have the list over there. Interestingly, the EU and the US have twice a year dialogue. One is an informal dialogue. One is a formal dialogue last March. Our commissioner [inaudible 04:30:54] met with Lina Conn and they discuss the European work on dark patterns. And I will live with those who are interested the list of topics that they have been discussing, which are basically what is on that slide. It translated last week with the FTC, putting out a report on dark patterns. And you will see there that it touches on things such as messaging consumers and disguising ads. So influencer marketing, not disclosing that they are commercial content and not private content making it difficult to cancel subscriptions or charges. So auto orders that we've just discussed, borrowing key terms and junk fees in long disclosure statement that confuse people and tricking consumers into sharing more data. Those are the four priorities that have been identified, not by just the commission, but also the FTCs [inaudible 04:31:51], which we know they have regulatory dialogue.

Now, the next thing which is happening. So this is sorry, the timeline again, there was a consultation at EU level on the digital fairness. We have a very important meeting on the 25th of October. Saudi is a member of what's called CPAC, the consumer policy action group. And that's the structured dialogue between business consumer organization and the European commission. There's only five business representation in the whole of the EU that have been allowed to be participating. And Sanja is one of them. That's a very important platform for dialogue and where the commission has to share with us everything that they're working on. And so we're looking at your proposal again in 2024. Now in terms of issues, which we've talked about today, and I know there's a presentation about the DSSRC tomorrow. But also in Europe there will be a revision of the ultimate to dispute resolution directive.

That means if you say you have self-regulation, there are a number of boxes you have to tick for that self-regulation to be considered robust. The last directive was on 2013. This is the benchmark against which our

current systems in Europe are being assessed. We do not have a DSSRC in Europe. The systems are different and I would say the robustness of the system is also variable. And there is in all frankness, a large number of countries in the EU who do not meet the criteria's from 2013. Those criteria's are going to be revised and improved, which means that collectively as an industry, if you have a business in Europe, the requirements under which your self-regulation is going to be considered efficient are going to change, and that will require investment and assessment as if the solutions we are currently providing are fit for purpose.

And now the last thing I want to leave with you, and again, I haven't touched on data and privacy and everything that's coming on. I'm just focusing on the top three things is sustainability and climate initiatives. So we had the first package of proposal last March. We're expecting a second package of proposal for this November. This will impact not just direct selling companies, as I said, everyone doing business in the EU. And this will impact absolutely every single aspect of doing business, whether it's your sourcing, your manufacturing, your packaging, the logistic choices, and transports, the information you provide to consumers when it comes to the grain credential of your products or the climate impact or the improvements you've made to your supply chain to meet environmental challenges. Recycling and reuse, and also corporate reporting for the companies that are listed. All that will change for all these, the requirements were be upped and all companies will be judged under that new lens.

So what our role is in Seldia is to similarly to what the [inaudible 04:34:58] does is to be the interpreter between the direct selling companies, the European commission, the European parliament, the council and sharing back that information to our member companies. So it's a lot of information, and there is a lot of things going on. So we're trying to make that as simple as possible. We've created an exchange platform where the companies that are members of Saudi can just click on the topic if they want to get what's the latest stages of the discussions on privacy. And by clicking one of the stages, they would have the answer. So that has been our role. If you are interested to know more, just come and talk to me, and if you have questions about what's going on in the EU also, I'll be around tonight and tomorrow. So please don't hesitate. Thank you.

Lewis: So whoa. Okay. My name's Lewis Reddick. I'm a partner at Galing WG in Canada. I'm here to give you a brief update on Canada. I'm going to try and do it in 10 minutes or less. I'm a pretty fast talker, a little bit of micro machine. So I apologize. Those who know me already know this. So I'm not going to give you every update ever in Canada because there's lots of updates. So I'm going to focus on four key ones. I do want to make before

I even start that, make it very clear. I know it's hard to believe to everyone in this room, but Canada is not in the United States.

You all laugh, but every one of you are in a company that have come to me or your other Canadian lawyer and treated us like Canada is an extension of the United States. It is not, we have our own laws, we're an independent country, we're mourning the queen, deal with it. So now first update is on the competition bureau. There's been a lot of updates in the last 24 months. So on the competition bureau, the competition bureau as many of you know issues, opinions on whether a comp plan is a compliant, comp plan or likely to result in an investigation of an illegal pyramid scheme. If you have no idea what I'm talking about, you have bigger problems. See your Canadian lawyer, but let's, let's just work on the assumption you do. How the competition bureaus kind of evolved its interpretation of what would receive a positive opinion or not.

I think from a key update perspective, you have to understand that plans that have got positive opinions in 2008, would've had trouble maybe getting a positive opinion in 2012, then in 2017, and now it's 2022. And if a plan obtained a positive opinion before, and it has not changed, then the opinion is good. But if it has changed, you might have a problem, call your local Canadian lawyer. On product regulatory there's been a very significant, robust kind of regulatory update in almost every product category except regular consumer products. So for natural health products is a lot of companies are in the natural health product space, the natural health product regulations were recently amended. There is now plain language labeling. So if anyone who doesn't know a natural health product is a subset of drugs in Canada, which is a little different than dietary supplements in the United States, which is subset of foods.

So the updated labeling requirements is going to involve kind of similar to the United States, kind of like a supplement fax box, but it's not a supplement fax box. And also there's going to be allergen warning requirements. On foods there's been a major amendment that came into force called the supplemented foods. So some of companies in the room would have what's called a temporary market authorization because they had a product that deviated from the food and drug regulations and therefore applied for that deviation. So this would be a food that would otherwise not be permitted to have a fortification. So we're not talking like a meal replacement, but has been fortified. So I think like a chewing gum with vitamins and minerals or vitamin water. We brought Red Bull to Canada, so Red Bull one I'm going to stick to.

Right. So, these were all in the category of a temporary market authorization, technically illegal, but basically got a special authority. And now the amendment makes them officially legal, provided they come

comply with these new amendments. It's a pretty big deal in Canada, probably not so exciting for Americans. But if you have these types of products, that's important. The other one is if you sell food in Canada is front to pack labeling. So Canada is one of the few countries in the world that will now require a warning on, health Canada, won't call it a warning. I call it a warning. But basically looks like a warning on the front of the pack, if there is more than, for most products, if it's more than 15% sodium, 15% saturated fat, or 15% sugar.

There are variations to that. So for some products, it's 30% for some products it's less, I'm just giving you the short updates. Another update is or important note is on alternative dispute resolutions. So in Canada last year, the Supreme Court of Canada ruled in a major case against Uber's arbitration clause, basically upholding a lower court decision. In that Uber case there was an alternative dispute resolution that required the driver to dispute it in the Netherlands. Court said that was BS. Then the Supreme Court said that was BS. So what does that mean? It meant that the plaintiff, this was a class action, but the plaintiff was able to take Uber to court. It means it wasn't confidential, it wasn't behind closed doors. So this to me, I think has major ramifications for our industry specifically I'm very used to seeing enrollment agreements or policies procedures that say you have to arbitrate in this one city, typically in the US, typically salt lake city or somewhere in California or somewhere in Texas.

The reality is the best practice in Canada would be well, if the goal is arbitration, the best practice in Canada would be to allow for an arbitration in the home jurisdiction of the independent contractor. By doing that you eliminate the argument that the alternative resolution's unconscionable, which is the way the Supreme Court ruled. And then the other point of update really because it's frankly so important to my American counterparts is the employee versus independent contractor situation. Like the United States, this is always a tenuous situation, is the individual independent contractor, is the individual employee, it's about control. It's probably not as intensive a situation in the United States, but it's important to remember that the United States could spill over into Canada. One thing that I think is an outcome oriented aspect of this that we need to keep in mind, is that in Canada there's new legislation, Ontario.

So if anyone hasn't heard of Ontario, it's the largest province in Canada that represents I believe it's about half the population. So it's the industrial engine of Canada. And it was the first province to pass a law that made it illegal for an employment contract to contain a non-compete clause. There are some minor exceptions for like C class executives, but the general rule now under the new legislation, which is called, because I'm going to screw up the wording, working for workers act. Now what's interesting in Canada to keep in mind, is Canada in the current environment today. And it

evolves like the United States but in the current environment today doesn't really matter which political Stripe the politician is, whether it's conservative party, liberal they tend to be worker friendly.

So this is a conservative government Ontario that passed this legislation. And the other piece to remember is Ontario's often the first province to pass certain legislation, and the other province is to be more standard copies Ontario. So it starts in Ontario then spread. So we do expect that this type of restriction may spread throughout Canada. And the last piece I just want to throw in there is, and it's kind of part and parcel of all of this is it's very important in your contracts from a Canadian perspective to require, or to allow for termination by the ISC. And this might be obvious. But without that right to terminate, there's a higher risk that that a court will rule that the individuals, that dependent contractors, we have this kind of middle zone and with a dependent contractor status it allows for notice basically severance, right? It gives them that to those types of rights. So it's very important that you're careful about setting out your contract and how you set out your contract to keep it truly IC oriented, independent contract oriented to keep your business going the way you want it to go. And that's Canada in less than 10 minutes.

Francesco: Well, hello everybody. My name is Francesco [inaudible 04:44:35]. I'm partner in law firm in Mexico City. And I'm going to try to beat Lewis and do Mexico in five minutes. Not sure if I'll make it, but I'll try. So now in Mexico, we are in the fourth year of Andres Manuel Lopez Ordos presidency, which is as he calls it the fourth transformation of Mexico it's been a real change in the government and the way government views legislation interprets a lot of side of the business. But thankfully direct excelling industry has not been focused of what is now some industries has suffered significant changes. We've had some few close calls. The first one similar to Europe was digital platform regulations, and there were two issues there, taxation and independent contractor. They ended up not getting into independent contractor status.

They recognized that they were independent contractors. So that was positive for everybody or for all industries. And they did end up passing legislation, but only as it regards to tax. So they passed a beneficial taxation regime for people earning income through digital platforms. They however that there is sufficient language in those or in that legislation that is, that makes it non-applicable to direct sellers. We have seen a tendency of some companies, especially with COVID to open like marketplaces or direct selling companies trying to get into marketplaces, trying to get into e-commerce. And some of that may play into or affect those types of industry. But let's say the way usual or normal direct selling companies do business in Mexico is not affected by that regime. We also saw an attempt a tax reform with an attempt to formalize or to try to bring into the taxes

system. All this informal economy that in Mexico is extremely large, they made a real effort to do so by putting out a program a tax incentive program where a person earning around $175,000 annually can pay up to 2.5% of their income, which is substantially lower than any other thing out there. And we have seen some direct sellers distributors getting into those regimes. So, in that perspective if your companies, if you have companies doing business in Mexico, you're probably getting pushback from Salesforce, trying to get into this regime and there has to be made some changes. Mexico is very formal, so invoices that are issued electronically need to be sup exchanged for that transaction.

So you need to change a little bit of your setup to be able to allow for those incentives to operate. So that's another important point. As far as arbitration, which Lewis you touched on we have not had any new additions or any new cases in arbitration. We do allow for arbitration under our contracts, Mexico adopted [inaudible 04:48:37] model law has made a member of the [inaudible 04:48:39] convention has all the regulations set up. We've not had the case. It is in our indirect selling regulations that disputes must be resolved in countries. So I would think that if your arbitration clause has a forum selection clause outside of Mexico, that would be a problem you would have to choose to have your arbitration, the seat of arbitration to be anywhere in Mexico, not provincial, but just anywhere any place in Mexico would be I think sufficient.

Lastly I want to touch on a new issue that has been recently going on, which is independent contractor status. The independent contractor status as I said, has been recognized in Mexico for I think, 15 years with a Supreme Court president. We are now seeing a new wave of audits from the social security Institute, which is looking for funding for additional revenue and looking into contracts to see if they can make a case to challenge that independent contractor status. Now I don't want to concern anybody, but I do think it's time right now to review contracts, to make sure that the contract is of the standard. A lot of what Laura said about independent contractor or what we call subordination, which is that standard, not having a schedule, not having to follow orders, not having to spend a determined amount of time working not doing in a territory and being able to do it for other companies. So non-exclusivity is the standard. So if your contracts are not up to standard are not up to these standards, I suggest that you review them. I think, and that's the update for Mexico.

Adolfo: Thank you so much to our panel. But I just wanted to say just a couple things. As you've heard it during the course of the day, and we heard it yesterday from Senator Blackburn, by the way in a meeting, she was bringing up the EU. She was talking about the EU representatives, the platform workers, things that Laura has been talking about and how they

are related impact. Nothing is being done in a vacuum here in Washington. Nothing's being done in a vacuum anywhere in the world, much less here. And even in our conversations with the FTC, just so everybody knows it shouldn't come as a surprise. The comments that we often get are well, if those are the standards that work overseas, and you have businesses in Canada and the EU and Mexico and everywhere else, whether it be product, packaging requirements, ingredients controls on the product side, which we haven't talked a lot about today. Or social benefits, unemployment issues, things that we think are, we always focus in as being either a state issue or federal issue.

It's not lost on them. And they're looking at this frequently. In fact we are going to put on a conference where we're going to invite regulators from overseas through the DACF at some point to talk about what's going on in collaboration. So we cannot approach nor we approaching these things in a vacuum. So this is not just an update, which I think is useful for all of our companies, just about everybody in this room has operations overseas of what's going on, but also its impact on us. So really deeply appreciative. This panel was, was important for this reason, every market overseas important, our Asian markets but the EU market is the largest market collectively, I believe when, in terms of the us trade relationship. So it's usually important what's happening there, regulatory side EU issues are going to be impacted, as I said here. And of course, two neighbors Mexico and the United States, which we always looked at very closely. We might not can Canada…

Lewis: Canada is forgotten again.

Adolfo: No, I was going to say Canada. I was going to say Canada. Canada is not part of the United States, but it is attached. We're attached as is Mexico. So you're both attached. If it makes you feel any better Lewis, a lot of Americans think we're becoming part of Mexico. But I'll leave that aside. You can just sort of think about that one. And that will be a good thing. So oh, whoa. Oh, wow. Okay. Okay. As you can tell, it's almost five o'clock so, okay.

Yeah. So, so anyway now to the good things that we're going to have a cocktail reception here that's going to start right now, right outside here. So everybody's earned it and hope it's an opportunity to network and talk to our, our panel. And then just a reminder tomorrow, we start off at 7:30 breakfast and our program begins at 9:00 AM. So we're looking forward to continuation tomorrow. A lot of more on a lot of the subjects we talked about today. We're going to be here from some people from the hill, right,

Brian tomorrow as well. So we have additional Capitol Hill presentations and our DSSRC will be speaking to us. We said they've been the subject of a lot of discussion throughout the course of the day. So thank you very much for a great day and looking forward to seeing that the reception. Last thing on the dinners, I will say some of you have been extended invitation that parts of the GCC, the general council's committee council, and the compliance council, there are two dinners. So you'll receive those invitations. That will be at six o'clock following the an hour ahead following the reception. So thank you very much for a great day.

DAY 2 Full

02:49:41

Adolfo: Between our breaks and at lunch, but we thought we'd get started to try to stay on time as much as we can today. Well, first of all, I hope everyone had a productive and enjoyable day yesterday. It was jam packed I know but I thought the content in our speakers, which was a combination of outside speakers, congressional speakers, experts, of course, lot of interest in the FTC comments. And then of course the industry executives that gave so many insights. So, we hope to continue with that momentum and great contributions today. So, we're looking forward today. It's again, that combination we're going to be talking about today a lot on compliance and our self-regulatory efforts. We're going to be really ending our program with a great presentation on that as well. And then sandwiched in between going to have the perspective of Congress again, you'd have some congressional staff who are really key joining us. Now we're going to start with our first panel for today. I'd like to, before we do, thank Chef and Stone for the great breakfast. So, thank you very much for that and their generosity. And I'd like the first panel to join us up here. It's a panel on compliance from the top down, bottom up top down, every in which direction we've heard of. That compliance issue come up at every session I believe. So, this is the crowning moment where you can put it all together for us. So, we're going to join our -- there we go, Mike. Good to see you. You always look so youthful. So, I will turn over the microphone to the moderator of the panel to make the introduction for the front here. You can do it and thank you very much again for the great breakfast and for joining us.

Mike Brent: Great. Thank you Adolfo. Good morning everybody. So, the topic of this panel is top down compliance. We heard great content yesterday, great information as we always do at this conference. But what we really want to talk about with this panel, is how do you take that information back and keep it not just in your office, behind your closed door, but instill it in the culture of your organization to where you're ensuring that your organization is adopting these concepts and compliance. So, you're protecting your company. So, I've got with me just Jacintha Parker from Arbonneand Dan Whitney from USANA and Erin Barta from Mannatech. Why don't each of you introduce yourself and just describe your background with each of your companies before we get started.

Erin Barta: Yeah, sure. Again, I'm Erin Barta. I'm the general counsel at Mannatech. I've been with the company since 2006, in the general council since 2013.

Dan Whitney: I'm Dan Whitney. I've been with USANA for 21 years now. So back in 2001, I started in customer service went to compliance and also helped with market expansion.

Jacintha Parker: I guess Dan started when he was 10. So, Jacintha Parker from Arbonne, been with the company for nine years. I'm a senior director for compliance.

Mike Brent: So Erin, we're going to start with you. As the GC at Mannatech, getting buy in at the executive and board level is critical to ensuring your company's success, ensuring that it can continue to operate in a compliant and legal manner. How are you able to get Mannatech's executive team and board focused on legal compliance issues when they're focused on running the business of the company?

Erin Barta: So, at Mannatech, our board of directors, we have an associate compliance subcommittee of our nominating governance and compliance committee. And we have quarterly reporting requirements to that subcommittee. We report on statistics that we get from our field watch program. We also report to them on things that are happening in the channel, regulatory activity. We keep them apprised of any issues. We see bubbling up through the reporting that we get from field watch. One of their big focuses especially during the pandemic was COVID claims. So, they were very interested in seeing what percentage of claims we were seeing come up through social media. They were very interested in keeping apprised of what we were doing from a training perspective to ensure that we weren't going to get caught in the web of people that were unfortunately getting the warning letters at the time. So, I think that reporting requirement keeps them apprised. And we also our non-gov committee also has compliance attached to it. So, we do talk about what we're doing internally, following our own corporate policies and procedures to ensure that we are keeping ourselves off the radar. Then with respect to my counterparts, I try to speak their language, especially with the CFO I talk in terms of dollars and budgetary constraints. So, you can ask me to cut legal spend but there is this litigation going on. In case you haven't read the papers lately in Europe, we keep them apprised. Keep my counterparts apprised of what's going on so that they understand that spending little money up front from a compliance perspective is going to save money down the road when it comes to litigation costs. And then just keeping everyone apprised of what's going on, updating them. So for instance, coming back from this conference, I will share with them some of the things we got to hear from Ed BArbonnek yesterday, for some of us that were in the GC dinner. And just keeping them apprised so that they understand that these are real issues. It's not just me talking about the boogieman out there. This is happening and let's just all be aware of what's going on.

Mike Brent: Yeah. So Dan, next questions for you. As important it is to get by at the executive level is just as important to the compliance mindset needs to permeate every level of their organization. How do you make sure that USANA and ensure that all department heads and their employees understand the legal and regulatory issues that the company needs to abide by?

Dan Whitney: Great question, Brent. I thought about this yesterday when the FTC walked in and I could see people just sit up straight, notepads are coming out. And I started wondering if they had come into a sales and marketing conference, would they even be noticed? Would people even pay attention? We really understand this stuff. We don't necessarily love the FTC but we love this stuff. We love this area of the business and so we pay attention. But it's understandable that our colleagues in other

departments don't always get that same excitement. And so really, as cliché as it sounds, it's all about the tone from the top. I remember very clearly being at our Asia Pacific convention and Kevin Guest, our CEO pulled out a hundred dollars bill and said, I'll give this to anyone. This was about five years ago, anyone who can name all four of the company's values and I'm telling you back then not everybody could get it. There were hesitation. There were people who would get one or two and miss one, but there's not a person in the company today that doesn't know those values. One of which is integrity. And so that's just really stuck with people. Not only do they hear about it but they see the involvement. Kevin Guest obviously has a very prominent role with the DSA. I don't know if some of you remember our president, Jim Brown was at this meeting a couple years ago. And so people know they're out traveling, they're involved in these discussions that that's important to them to see that engagement. Other things we've tried to do are really show our presence at meetings. We got time at our convention this year and so employees see that, they see that this is a priority of the company. We have some required trainings that employees have to do and go through and understand product claims and income claims. And there's always a good way to get their attention if you decide to go public, that can really tune in people's interests to the ideas. So, those are some of the things we do.

Mike Brent: That's great. Jacintha, when we were talking about preparing for today's session, you shared with me that one thing you do at Arbonne, is you share with your executive team, some key risk indicators to keep compliance top of mind with the executives that are Arbonne. Do you want to expand on that and share what you meant by that?

Jacintha Parker: Sure. So, it's very much similar to what Erin said. So, as a compliance team, I don't have key performance indicator, so I figure, okay, I'm going to flip it. I'm going to do a key risk indicator for them. So, been doing that for the last few years. It's a one page I sent it every quarter I track for the past. So, during that quarter, what I would track is the cases that we deal with and I divide up into high risk, moderate, and low. So, what kind of cases we're looking at? I also look at audit. What kind of audit are we doing? Anything that stood out during that audits, the last three months of the audit. I also provide them with information on the type of training that we have done in that quarter, whether it is internal or external training what kind of training we've done. And another section that I track is field engagement. How's our team engaging with our field? We have a very robust social media platform that our compliance team created. So, we are very active on it. We grow our Facebook group very organically. And what do we do during that quarter? How many videos have we created? How many trainings? How many calls do we engage with our top distributors? So, those are some of the things that we track. And then what I also have within that one page chart, it's my top three or four compliance concern based on all the matrix that I see. I put together three or four compliance concern. I have a monthly touch base with my VP of sales for each market. So, during that every month we do talk about what I'm seeing, I share with them, what I'm looking at, what are some of the things that I'm seeing in their market. And the top three or four concerns for that quarter what I would do is I ask for partnership, I ask for their help. I'm like, hey, here are some of the concern that I'm seeing in this particular market, especially in your market, here's what I'm seeing. Can you help me with this? Can I jump on one of your calls with your top level consultants? Can you talk about this topic at your monthly call with your top level consultant? So, these are some of my ads and it's just a lot of partnership that I do with them. And so that's my one page key risk indicator that I track every month.

Mike Brent: That's great. So Erin, I believe, it was either shortly after or shortly before you started at Mannatech, Mannatech had gone through some regulatory scrutiny with the Texas attorney general. What are some of the things that you and Mannatech learned from that experience and what types of changes did the company make to avoid the repeat of that experience?

Erin Barta: Yeah. So, as some of you may know back in 2008, we entered into an agreed and final judgment with the Texas attorney general. I had gotten to the company right at the end of 2006. So, right in the middle of it. I think one of the key things we realized is there was not a systematic approach to compliance at that point in time, we had a compliance department that was pre-field watch. So, a lot of what we were doing was very ad hoc, trying to do our best to search websites that people may have popped up or social media platforms and seeing what was out there, but it was very difficult and the company was growing pretty rapidly at the time. And I think things were happening too quickly and there just was not like I said, a systematic approach to it. So, we implemented systems. We used a platform that was really for brand protection as opposed to what we see with field watch and integral shield now. But we did the best we could right with that. And I think one of the other lessons we learned was that if you don't give the field what to say, you will chill them. And they will be terrified and they won't want to represent the products or they'll be too scared to give their story or testimonial. So, I think we had taken a very heavy handed approach with respect to compliance. But I think at that point in time, I mean, hindsight's always 2020, but at that point in time, it was really an existential moment for Mannatech. I really don't think the AG's office expected us to come out of it, frankly. And I do think that we had one conversation. My predecessor had a conversation with the FTC and nothing really came of it from the FTC again. Because I think the heavy handed action that was taken by the AGS office again, they probably thought, oh, nothing for us to do here. This is going to take care of it. It speaks a lot to the fact that we have great products, we've got associates and customers, long term customers that have been with us since 94 that are still purchasing. So, I think the fact that we weren't able to give them good guidance on what to say. We almost became adversarial not only to the field, but to some of counterparts and sales and marketing. Not that we necessarily were blaming one another, but I think they were looking at legal as a hurdle, as an impediment to success. And we're never going to get back on track if legally, you don't tell us what to do and say. And we're like, well, you know what not to say, so go from there. Well, it just became adversarial. So, I think we've done a better job partnering with our counterparts over in sales and marketing and that's made a big difference. But like I said, hindsight's 20/20, I think it was an [audio silence 00:17:13 – 00:18:02]. But anyway no, there we go. But anyway, so I think that was the key takeaway is you, you've got to be able to give the field something to say or they won't say anything at all. And that did happen to us and we've come out of it. But it was a difficult moment.

Mike Brent: So Dan, we spent a lot of time talking about the companies that have been in trouble with the FTC and face regulatory scrutiny. But there are a lot of companies that have never been in any kind of trouble. And it can be a challenge to get the executive teams on those companies to prioritize compliance and devoting resources to compliance issues when the company is never faced regulatory scrutiny. What advice would you give to companies that have never faced regulatory scrutiny or at least the compliance teams and legal personnel for those companies when they're trying to get their executive team to prioritize compliance when the company has never faced a compliance event?

Dan Whitney: Yeah. Really good question. It's understandable that they might not want to make the investment. When I think of this question, I think of mountain biking. And when I say that is well, do any of you follow Justin Powell on Facebook? Do you follow him? The guy's amazing if you don't you should because he sings karaoke and Chinese on stage at convention. He's a huge mountain biker, which I always follow. I'm way into the mountain biking, but Justin, let me ask you, do you ever worry if you're going to fall on your mountain bike? Yeah. Thank you. So, in mountain biking, it's not if, like Justin said, it's not if you fall it's when and how bad, and sometimes we want to share that message. Yes, it hasn't happened yet, but it's going to and it's going to be really bad. And I don't know that that always works. In part because our executives have a lot of competing priorities. Think in your mind right now all the

people, all the different departments outside of our group that are approaching them. There's ESG issues, diversity inclusion, there's cyber-attacks. There are HR benefits. All these people have a similar invested interest in their department that they're trying to sell to the management team and show the urgency of it. And so when you keep that kind of their scope or their perspective in mind, it helps you really approach them better.

There was a Harvard guy, John Carter, who did a study on getting buy-in. And he said that 70% of efforts fail organizational change efforts because you don't get proper buy-in. And he said, the real problem is people try to do a sell-in, meaning it's a sales pitch. You develop your own reasoning, why this has to happen. You come up with this airtight case on why it's going to work and why it's needed, and then you go try to sell it. And I think the difference in what he said was a critical component of getting buy-in, is that there you have to have co-creation. There has to be involvement in creating that process of buy-in. So, instead of saying, this is what we're going to do, and this is why it's going to work. It's asking them, what do you think about this idea? How can we improve this idea? And you get that buy-in before you go and pitch your idea to the executives and then that's going to be a more effective approach. Some other things that that really help is just really explaining the current environment, look at all the issues that the industry's facing right now. Those are actual case studies. I thought those slides yesterday of actual case studies were super helpful to see those. Get mid-management other people bought in on it, use the third party, have your executives contact the DSA, the DSSRC, have them speak to other people. Apparently we can even send a home fax to Adolfo's house and he'll probably respond to the home fax. But really just try to quantify the risk that are there and even run them through a scenario, if this were to happen, this is what it would look like. This is how it would go. And again, so much great case study right now to show those points. So, those are some ideas.

Mike Brent: So Erin, this is kind of a part two question. The question I just asked Dan. A lot of you familiar with the AMG [inaudible 00:23:25] management decision. It's been a [inaudible 00:23:27] decision, it was mentioned a few times yesterday. It was the Supreme Court rule that the FTC not seem [inaudible 00:23:34] monetary carry to lead under section 13B of the FTC act. But now outstanding that rule in the FPC does retain the authority to Institute a regulatory enforcement action, taking the [inaudible 00:23:48] of a receiver. And it can do this on the ex-parte basis. And we've seen it before most notably against Thema in 2016 and unsuccessfully in that financial service that discussed yesterday. But that continues to be a very real threat. And it's a playbook that [inaudible 00:24:15] has used over decades against companies that in this industry. So given that reality, Erin, what actions can and should a company take to be prepared for such action?

Erin Barta: Yeah, as we've been coming to these seminars and meetings we've received really great advice from a litigation perspective from yourself, from Katrina, from John and others. But I think we need to start thinking in terms of what our counterparts are also doing to be prepared. Think of it in terms of your crisis response plan or maybe your data breach response plan. Have your internal phone tree of who you're going to call first as these things bubble up to C-suite, the board, any executives that have responsibility over certain areas, keep them apprised of this is happening. We just got this. If you have a board, you're chairman of the board keep informed the chairs of committees. For outside, obviously you'll have your go-to person from a direct selling perspective. If you're a public company, you got to keep in touch with your SCC council and find out what disclosure obligations it would raise for you. PR firms, are your sales and marketing teams or whomever has responsibility over PR, do they have a relationship with someone that's going to be able to help you with a communication plan? And then your international operations, what's the reputational risk with respect to your other markets what's going to happen. We are in a position where our largest market isn't the United States. So, we want to

make sure that it isn't going to damage or harm our other markets especially our largest one, which is South Korea.

And then also be looking at other areas that you may not be aware of especially as it comes to risk. We do, probably every two to three years, we do an enterprise risk survey. And it's not only for obviously FTC or FDA risk. We're a dietary supplement company, so we have that alphabet soup to worry about as well. But we have different buckets that we look at, there's international, there's director, senior manager director level, VP, and then C-suite and board. And it is very interesting to see what these different groups view as risk and where things may bubble up. Because especially at the senior management director level, they may have more of an on the ground view, whereas the bird's eye view, doesn't see what people in the day to day business who are really managing the day to day business see. And that gives you a lot of insights. And then as we've seen again, we've we heard from [inaudible 00:27:36] and Ed last night at the GC dinner, talk with your counterparts and treasury and finance. What are their relationships with their banks and their credit card processors? Because if you're deemed a reputational risk by those organizations, you may find yourself without a bank and you may have 30 days to get a new credit card processor. So, what are you going to do? What steps and actions are you going to take if that in fact does happen? Have conversations with your counterparts and find out, hey, if X, Y, Z happens, what's your biggest worry and concern? And just have those conversations periodically to talk about what you're going to do as a management team, if something like this happens to you. I think those are just some things to think about. It's not just as a compliance team or the legal team, what you're going to do, but make sure that your counterparts know what they're going to do if something like this were to happen.

Mike Brent: Now, one thing I would add is I think companies really need to understand is the impact of what happens if the receiver is appointed by a court. When the receiver effectively takes complete control and ownership of all of your company's property. And I thought I knew the extent of what that meant as a lawyer until I started talking to these companies that have been subject to that and go read these orders that appoint the receiver. Your property is immediately beyond out of your control. So, it didn't like you can withdraw a bunch of money and go give it to your law firm, but then at that point, you can't. So, you're planning for an event like this has to happen before an order to appoint. So, when you're talking about preparing for something like that, the planning has to happen before the order is signed. So, it's something this happened. You have to prepare for that contingency. I have at my law firm, a partner who does SEC that's [inaudible 00:29:55] work appointed receiver and some regulatory enforcement action by the SEC. And I've actually on two occasions with clients that I did not think I was getting through to had him meet with them explain what happens when he gets appointed to, as a receiver over companies. And I think the two meetings, the longest meeting lasted 13 minutes because they didn't want to hear anymore. It only took them 13 minutes to convince them this is something they don't want to ever have happened to their company. So, we hear appointment of receiver. That sounds bad, but it's really bad. And it's too late if you're not prepared for that to happened your company. So, I think yesterday there was I think one of the ones strong lawyers talking about they have [inaudible 00:30:47] they take their client's data and keep a copy of it. Those are the kind of things that companies you think about that once the receivers appointed that data is the receiver's data. The money, the bank accounts, the receivers, you can't give it to the law firm [inaudible 00:31:04]. So, those are the kind of things you need think about before the receiving point. So, Jacintha I wanted to go to you next. And this is a question that we've all dealt with from all of us that are working in legal and compliance. And that is, this you've told me we can't do this but all these other companies are doing it. Why can they do it? And you're telling me we can't do it. How do you deal with that objection?

Jacintha Walker: Well, that never happens at Arbonne. So, I think I like to position my team as a compliance team that wants to be creative and be a solution for consultants. We're not a department of no, and we hear that a lot. Compliance is a department of no, I'm like, no, that's not who we are. We're here to partner. So, I always approach this as an opportunity to educate consultants and even with our internal team, because it's really important to help your internal team understand the why behind certain things. It really helps them make decisions in the long run as for consultants. So, if it's a product claim we'll always say, well, I don't really know much about that company's specific product. And there may be a reason why they can make such claims and I will explain why Arbonne cannot make such claims. And then I would also ask them, what claims are you trying to make? And maybe I can find a product within Arbonne and just says maybe you can make similar claims on this particular product, but we can't really make the claim that you wanted to make on the other product. So, that kind of educate them and help redirect them. When it comes to earnings and lifestyle claims we always train them to understand that the way that we set up our policies and procedures is based on FTC rules, based on DSA, based on DSSRC. So, that part of the training is really baked into everything when it comes to our earnings and livestock claims. And then we would also said, maybe the compliance department are not aware that the distributor is making such earnings and livestock claims. So, if you're so inclined, you can contact that compliance department I'm sure they will really appreciate it to know what their distributors are doing. I think as peers, within this room, I would always appreciate a call, a heads up to say, hey, I see this from one of your distributor. You might want to take a look at it. So, we always do that. We'll tell that to our consultants. And then another thing that we'll do is ask the consultants to explain to us when it comes to earnings and livestock claims is like, can you tell me why it's okay to make such a claim? And I want them to explain it to me and then from there, I use it as an opportunity to educate them and explain to them why their reasoning it's not compliant and just kind of redirect them. I think for me, it's just building that relationship and that trust with your field. It's so important. For them to know that I'm not here to ask you to take everything down, I'm not here to say no to everything, but I'm really here to help you. I'm here to protect your business. I'm here to explain the why to you I'm here to help solve your problem. So, that's my approach.

Mike Brent: So Dan, if you identify an area in your company that is non-compliant, how do you address that issue with your company's management and how quickly do you try to correct that particular area of non-compliant? Is it something like where you pick your battles or tell how do you handle that type of issue when you identify a problem?

Dan Whitney: Yeah. Great question. How do you address it with management? I think a key distinction here is having someone in compliance or legal be a part of management. So, that it's not we're this distant group. And occasionally we come in when something's on fire, you're part of management, you're sitting at the table, you're sharing the information that you learn from events like this and cases going on. So, one is really trying to make sure or secure that spot at the table. And so you can have those discussions, but we try to do a lot of the things that have been discussed in quantifying risk and running them through scenarios or things that happened but there certainly is a priority discussion. I remember a book from Bob Iger. He's the old CEO of Disney and he said that he started a magazine well, while he was at Disney and it was a successful venture, it made money. But not very much. And he said one of his colleagues and mentors approached him. And he said stuck with him because he said, be careful to want to be the best manufacturer of trombone oil because the world only consumed so much trombone oil a year. And the message really was, yes, that can be a good idea. Yes. Maybe there's something, an issue that needs to be addressed, but prioritize. Don't go to the well for everything immediately, make sure you really are taking a step back, consider how this thing that you're non-compliant in is going to fall into the list of priorities. Recognize that maybe this is an issue but we know

there are other things that could be larger issues for us to face. And so really think about your request that you're making be reasonable. Again, all these competing business priorities that come into play, but certainly we need to address them, but we also need to have that business perspective of where those non-compliant areas fall in play some fall in priority.

Mike Brent: So, now I want to ask the panel some questions about some specific topics that companies deal with. Just sent the monitoring earnings and product claims obviously have become a big issue and FTC they've made it clear it's going to hold companies responsible for claims made by sales representatives. I think yesterday Adolfo, you asked the question, how many companies here use a third party model service? And I think everybody here and [inaudible 00:38:51] justified everybody utilize. They utilize the service. So, companies are doing that, which is great, but I think companies maybe are struggling with how they deal with the non-compliant consultants. How does our Arbonne deal with the non-compliant consultant? And do you terminate your consultants and what's your process for arriving in decision on whether to terminate or not?

Jacintha Walker: So, I think like almost everyone here, we have a monitoring platform that we use to look for non-Compliant claims, claims that are problematic. Our consultants also self-report and our team whenever they have time, they will just search the internet with stuff. And so that's kind of our basic of how we find on non-compliant claims. And when we do see one we'll look at it. We'll assess it to see if it really is non-compliant because just because it's something that comes up through the monitoring platform, it doesn't mean that it's non-compliant. You just got to review it. And then not only do we review that one single post, we actually would go through that consultant's social media feed to look for if there's other non-compliance posts for that particular consultant. And then what we'll do is we will then reach out to the consultants and educate them on the things that are non-compliant. Our goal is really not to ask them to take it down. Our goal is to partner with them and says maybe you can do it a different way. We just kind of teach them how to edit their posts to make it compliant. And there are some posts just cannot be saved. It's only at that point that we say, for this particular post, you really need to take it down because of, we will explain to them the why. And then if it's a self-reporting by somebody from our consultants, we'll look at it. And if we feel like that post that was reported is compliant, we actually use that opportunity to speak to the person who reported and just explain to them why this post it's compliant. We think that's also a good opportunity to educate that person. And for us, if it's your first offense, after a conversation, after we work with you to change and add the post, we'll send you a training. We'll make you go through a training to understand the why. And if it's a repeat offender, we would then escalate it internally. We have a committee that that meet once a month and we escalate repeat offenders to them, and we just kind of follow our process. If it's somebody that keep doing it and even after multiple attempts to educate and the person still doesn't do anything we could put them on a probation, we could find them. Third time is a charm. Third time you are out, if you don't follow out rules, we're pretty strict about that. I think that's how we handle. It's just a step level process that we do.

Mike Brent: Erin, the FTC has said that it wants companies to be able to demonstrate that an actual consumer demand exists for products and services that the company sells. Without getting into the issue of personal consumption versus outside of retail sales, what are some of the business practices your company has in place to be able to demonstrate that your company needs compensation plan emphasizes sales of product services to non-distributor retail customers?

Erin Barta: Yeah, so we have implemented a preferred customer program where you can just come in as a customer pay retail fine. That's great. But then we also wanted to implement a program where

we have preferred customers they're eligible for loyalty points. They can opt into receive emails about products, promotional emails. We want to demonstrate that we have that classification. I mean, I know you said you didn't want us to touch on personal consumption but I think one of the key things we did was we went through a customer associate segmentation process where we had associates that were behaving like customers. And they probably came in because of a price break or maybe when they were approached, they weren't told that they had the option to just be a customer and they signed up, but all they wanted to do was purchase the products. So, we put that category into different tranches, where people may be just individuals who just purchased maybe a few times a year. And we reached out to them first and invited them to, hey, you're behaving like a customer, let's put you over here. It's not going to change anything. Your account number doesn't change. Nothing for you changes but we're just going to refer to you. You'll receive preferred customer emails instead of associate emails. And we think this is going to be more beneficial to you because we're actually going to target you with things you might be interested in, because you're not an associate. Then we went to the next level people who may be purchased more frequently, but again, weren't signing anyone up. We looked, they weren't attending our conventions or meetings. They were literally just buying product. And so we did the same approach with them, reached out to them, hey looks like you're more of a customer again, nothing's going to change for you, but we're just going to classify you as a preferred customer. You're still going to get your loyalty points. Everything's going to be the same but we want to classify you over here. We found that for those groups, that first group that was maybe purchasing more in frequently, we actually had people purchase. We actually had people not only say, hey fine, great. I want to be a customer, but you know what, man, I want to, I want to buy Arbonne toast again or I want to buy whatever product they were purchasing again. And so we actually saw an uptick in sales, which I thought was really interesting that that maybe from a down line organization, the upline associate was seeing, oh, this person isn't really active. And there may be focusing their time on people that were more active. And weren't maybe doing customer service “right” to this person.

So, then we saw that as sort of a training moment about how to engage with someone who's a customer, make sure you're paying as much attention to your customers as you are to your associates that you are training and mentoring to build their organizations. So, we use that as an opportunity to say, hey, remember to have these touch points with the folks that are buying the product. And I think that segmentation process really kind of opened our eyes to things that, if you have that touch point with the customer, they may buy. Put the link in there, put your bit URL that we give you, that goes to your website when you're communicating with these folks. Just make it simple for them to buy the product, make it easier. We're also looking at ways of putting a QR code that will go back to the associate who made the sale. So, that it's that much easier for a customer who just wants to buy the product to do it and take them directly there. So, we're always looking at ways to make it easier for the customer to buy a product. Because I think as most of us know, every, the more you have to click as just somebody who wants to buy the product, if we're making it hard for the customer to buy the product they're going to drop off. And you see that, I think it's 50% per click is the drop off, I think, is the statistic. I may have that wrong but there is a drop off with every additional click that a customer has to make will drop off. So, if we want the customer to buy the product, make it easier for them. And so that's what we're trying to find ways to just make it simpler for somebody who just wants the product to buy the product, instead of just going through all of these pages. Oh, here, here. No, I don't want to do that. Oh, I don't want to be an associate. I want to be over here. I mean, we just made it too difficult for someone who literally just wants the product. So, I think that's what the learnings are, but if you give that simple touch point with maybe just a bit URL for them to go and make a purchase, they'll do it.

Mike Brent: Hey, we got time for one more question. I'm going to pose to you Jacintha, this relates to income disclosure statements. And I know we heard some discussion yesterday about the new earnings role and when it comes out that may impact how companies use income, make income disclosures. But as things currently stand, I think every company has an income disclosure statement that they feature and provide to their sales force. How does our bond train its sales consultants on the proper use of its income disclosure statement?

Jacintha Walker: So, I'm going to go briefly into what we put in our income disclosure statement. So, for us we're [B Corp? 00:49:55] and transparency, it's like really important for our bot as a B Corp. So, what we put in there, you heard yesterday FTC says that average is not typical. So, we actually have average and median, we show average and we show median. So, whichever numbers you like to look at, that's where it is. We also provide the typical earning state number for all consultants at all level. Cancellation policy is really important to us. I want to make sure that that is on the first page. We have a two page IDS. So, cancellation policy we want to make sure it's front and center, it's once you see all the numbers, the next line is your cancellation policy. And then we also talk about typical expense. It's impossible to track every distributors, how much they spend that kind of stuff. So, our position is here are some of the conferences, some of the events that we highly promote that we encourage our consultants to attend, because we think that those training will be good for their business. So, we will have a typical expense section where we talk about each of the training and the events that we encourage them to take. We mentioned like for this event, it's how many days, you are responsible for your own flight, your hotel, your meals, or if there's certain events that meals are covered, we mention that how much is the registration fee? So for each event, we put it in there. We also talk about all the different incentive and how many people actually register for the incentive and how many actually earn the incentive. So, that they understand that not everybody get to go on a trip. So, that's what's in our IDS and how we promote the IDS, I think for me as Dan say earlier about buy-in. Buy-in from the executive is so important that they talk about it. That IDS is part of the business tool. It's for the protection of the consultants. IDS training is baked into sales, compliance, training, everything. And what we also do is to make things easier. I think it's important to not just tell your consultants why IDS is important. It's important to actually tell them how to solve the problem. Do they know where the IDS is? Do they know what it is for? Do they know how to use it? So, we actually create stickers, like digital stickers. We take the IDS, everything that's in there, you can break it up into different parts. We have digital stickers that they can download. We also put them in Arbonne Instagram account. All these stickers can be found, so when you're posting, you need to put your IDS in there. You can just go on Instagram, download it. We create training how to training videos on how to use those stickers. We run contests. We run contests in terms of create compliant posts and use those stickers. And we enter into a drawing and you earn Arbonne products, Arbonne swag, that kind of stuff. So, we just really want them to actively use the IDS. I think that's what we do.

Mike Brent: Yeah. I think we're out of time, but thank you for [inaudible 00:54:01] not only to thank the panel [inaudible 00:54:11] a couple of minutes that we have outside [inaudible 00:54:13]. So, that was just fascinating. You said about the part of it. I just wanted just take, if I can, one of my critical survey. How many of you do what Arbonne does to have the second time and anticipated expenses that one can assume will be heard part of the opportunity. I think this is a good subject for further discussion, not saying to you anything, but this is just some of this is really new to me as well because I don't think it [inaudible 00:54:51] is in industry. And I think this is a really wonderful sharing [inaudible 00:54:55] I really appreciate following up on that. The second thing I wanted to mention, we don't really have time to [inaudible 00:55:04] is, like Erin mentioned the international aspects of it. Margaret Weiner, our former board chairmans here and serves on the TSA guidance committee from [inaudible 00:55:20] as

well, we are looking at this, our DSSRC as well [inaudible 00:55:26]. We do have to approach our DSSRC monitor kind of global basis, in my opinion. And we're going to be working with our colleagues in Europe, WTSA to make sure that that's done, we have a model. So, I wanted to assure you, because most of your working internationally that this is not a silo [inaudible 00:55:47] say that. Lastly, that it's not a fixed, but we have a sales and marketing conference coming up in Salt Lake, beginning of November 2nd, I believe in Salt Lake City. This started this panel, which I think was great was how to get buy-in from your corporate C-suite order, directs, whatever. I find this opinion, you touched on that Erin, I think boards of the department of no and all the answers [inaudible 00:56:17] it's legal. Not saying people are children, but when you do take the medicine, a little sugar goes a long way with it. I really believe that we need to, and I think it's true a job to explain why this is not no, but it's yes. This is a way to really get our sales forces saying this is protecting you, make sure other people you're playing by the rules, make sure that other people, nothing, I hate worse than the GW Parkway when they pull ahead of me. I'm that long line. So, this is a way to say everyone's been -- That was embarrassing. This is being treated equally. Anyway, I wanted to say this, because I think this is part of the sales getting the sales people as much as the C-suite enthused about this as the sales advantage. And certainly treat our consultants to see as such. With that, thank you very much to our panel.

Adolfo: We could all hear you though, Brent. I think its funny just seeing the other department of no, you know what your response was? No, we are no, not their department of no. So, not funny. So, well we're going to just go right in, bring up our next panel. I'm excited for this one. You'll notice it's five of them. I joke with them on a planning call. I didn't think all five of them would say yes, actually. So that's why we have five of them. This kind spread it out, invite a lot of people, but I'm going to invite them up. They're walking up here right now. Evan Armstrong from the retail industry leaders association, Merrick Lekko from congressman's office, Jim Beretti from Whittler Mendelson, Matt Summer from Senator Brunt's office and Glen Spencer from the US chamber of commerce. It's this independent contractor issue is going to be a lot. And we have people commend me sometimes they say, Brian, you're very plugged and you know a lot, I talk to them. So, I'm going to give them all their credit for knowing this. And these are really the experts on the issue. So, I'll let them take it away.

Evan Armstrong: Well, good morning. Good to see everybody. [Inaudible 00:5835] gotten to speak at this conference a couple times in last few years. Last year was virtual so it's great to be in person with everybody getting back into the conference routine. Great to be joined by my panelists here that I know very well and Brian's point I think we can cover the waterfront on the independent contractor issues that are happening right now and what we expect over the next year or so. So again, I'm Evan Armstrong, vice president of workforce policy for the retail industry leaders association. Also chair the coalition for workforce innovation, the DSA is a part of that focuses only on independent contractor issues and educating policy makers on the hill. So, really glad have the panels here. We're going to kind of run through a couple topics. I'm going to give them really easy softballs. So, you guys can think of the fast balls to throw them in the Q&A session. So, I think top of mind for us the most imminent threat on the independent contractor front is the rule from the department of labor that we are all expecting sometime before the end of the year. So, Jim Beretti from Whittler has worked closely on the litigation that the Biden administration, the Biden DOA has been fighting on the IC rule the last couple of years. So, he'll give a little background on that and kind of why we're at the point we are now with the department and their efforts to pursue an additional rule making. So, Jim maybe give us a little background on how we got here and where we're going.

Jim Beretti: Sure, good morning. Good to see everybody and welcome to what feels like the first day of fall in DC. It's been a long, hot summer, so I hope you're enjoying the change of weather. Jim Beretti

with Whittler Mendelson. And we are the firm that brought the challenge to the Biden administration's actions on the IC rule. But let me first just set the table. So, in January of 2021 the Trump administration department of labor publishes a final rule on proposed independent contractor status under the fair labor standards act. Notably this is the first time in the 80 plus year history of the FLSA where we have a regulation, one standard in one place up until then it really was you court supplying various multifactor tests sometimes consistently, sometimes less so, never quite sure which factors to wait. So, it was rather confusing for the employer community. Trump administration proposes a cleaned up rule. I think we were all very supportive of it, provided clarity, provided certainty. And that rule was scheduled to go into effect I want to say March 7th or eighth of 2021.

Well, the Biden administration comes in and among the first things they do is say, well, this rule is not yet effective. It's been published, it's got an effective date out there. But we are going to first propose delaying that effective date, because we want to look more closely at the Trump administration rule. So, they proposed a delay and not surprisingly concluded that yes, we should delay this rule. They then after the delay said, well, upon reflection, we think the rule should just be withdrawn in its entirety, rescinded. What do you think about that? They proposed that for comment, people commented and surprise, surprise the Biden administration said yeah, upon reflection, we think the Trumper rule should just be withdrawn in its entirety. And that's what they did. At which point coalition for workforce innovation and some others joined in a lawsuit down in Texas where we challenged the administration's actions. Now, it's well settled. New administration, you can revisit old regulations, you can revisit old policies, but there are rules. There are things you have to do. The administrative procedure act says you have to justify why you're looking at a rule that hasn't even yet become effective. You can't say it's failed in practice. It hasn't become effective yet. It's not simply enough to say, well, we see the world in a different way. You need to rationalize the decisions you've made, the decisions you did not made. Why are you moving forward in this fashion? So, we brought a challenge at the administrative procedure act in the district court in Texas and got by any definition, my colleague [inaudible01:0236] Baskin, he's one of our top litigators, we got a grand slam home run decision from the district court. Held that the Biden administration's proposed delay of the rule was unlawful. It's rescission of the rule was unlawful. And sometimes you get those decisions that leave you in a sort of, okay, well where are we now judge? And this judge was like reading the tea leaves and said, so I hold that this rule, the Trump administration IC rule went into effect on its scheduled date. It's retroactive to that date back in March. And that is sitting in the room today the rule we are still operating under the FLSA.

Now subsequently the department of labor has indicated that they plan to issue another independent contractor rule. And they have appealed our district court decision to the fifth circuit down in Texas. So, that decision is pending on appeal. But the department has now gone in several times and said we've asked the appeal score to uphold the appeal in abeyance because we think it may be mooted. We are going to be coming up with a new rule very shortly, which may moot this entire case. So, that's the status today. The appeal is being state at least until December 7th. The department is expected to make status reports every 60 days. I think our next one is due around October 8th. At which point, it's maybe that they say, well, we've already published a proposed rule or at a minimum, they may tip their hand a little on what their timing is. But as Evan indicated, I would be very surprised if we did not see before the end of the year a new proposed rule for independent contractor status under the fair labor standards act. I'll let Glen sitting next to me, get into some of the details of what that might look like, but it will not surprise anyone in this room to say it will not be the friendly [inaudible 01:04:21] in what we thought was a very good and workable standard that was proposed by the prior administration. We expect it'll be much more in the place of just about anybody who works is going to be deemed an employee, not an independent contractor. So, with that said, Glen or Evan, I'll turn it back to you. Yeah.

Evan Armstrong: Well, Glen, why don't you maybe give a little color on what the Trump era rule tried to do sort of coming up with the piece factors and then what do we expect the new rule to focus on.

Glen Spencer: So, the Trump rule, as Jim alluded to really provided clarity around how you define an independent contract. It took two primary tests that you would look at. One was a control factor. I think the other was the opportunity for earnings and loss. So, those two primary factors would be used to determine an IC relationship. And if you met both of those pretty strong in indicator that you're a contractor. If you made one and you missed one, then it would look to a different set of tie breakers. And so it provided a great deal of clarity. So, you could literally look at your workforce and say, okay, yep. I meet one and two. We're good. Or I meet one, I don't meet this one, but I meet three of the tie breakers. We're good. And you would know the problem with the economic realities test is you all know too well is no one factor is weighed more than the other. There's sometimes you use this factor. Sometimes you don't, it's pretty unclear as to whether you've got an independent contractor relationship or not. So, right now we are living in that world where the Trump rule is still in effect. So, the department could go two ways with this new rule that they're going to issue at some point. I think one way would be, and this is the way we hope they go is to simply say, we are reverting to the status quo prior to the Trump rule, being in effect, which brings you back to the basic economic realities test. It's not great, but at least people are kind of used to it. Maybe they put some scaffolding around it in the form of the rule. We could probably live with that. I don't say we'd be thrilled with it, but we could probably live with it.

I think in the first year and a half of the Biden administration, before the Trump rule got put back into place, the types of cases we saw regarding independent contractors were sort of the blatant ones. I mean, Jessica, who's the wage hour administrator, acting administrator always made the point about, well, here's this dishwasher we found in a restaurant, no matter what test you use, this person would've been an employee, not an independent contractor. Those tended to be the kind of cases they were going after under that undefined economic reality test that we're using. And we were okay with that. We don't support misclassification either at the chamber. So, the idea that here's wage hour going after the blatantly bad actors who were clearly misclassifying employees, that's okay. So, that's one way they could go. They could take that standard they'd been working under, put some scaffolding around it and we're good to go. Second way they could go and I'm a little worried this is where they wind up is to take that David Wild administrator's interpretation that some of you probably remember from 2015 and turn that into a rule. That would be a much more restrictive analysis of independent contractor relationships. If you remember back from that AI very early on, it says that, the fair labor standards act should be interpreted broadly to encompass as many workers as possible and make them all employees. It repeats that assertion numerous times throughout the AI. It goes with a six factor economic realities test, really emphasizes particular elements of that test and deemphasizes other elements. In particular, it looks at the way in which a worker is critical to the operations of your business. So, is that worker integral to your operations? And if so under that AI, that should be weighted much more heavily than other factors. It kind of deemphasizes the control factor a little bit. So that it slants everything in the direction of almost everybody should be an employee. And so that's a second way they could go. They could take that AI off the shelf, dust it off, put some rule making apparatus around it. And that's what gets issued. That would be a much more concerning development to us. That's where we really start looking at, are we going to litigate again? Like, is there going to be more litigation around this now?

Speaker: Spoiler alert, there will be more litigation. I should just say it's question of who is going to sue. Sure is God made little lawyers and little green apples? There will be more litigation. I've never heard that. So, somebody's got to pay for these suits.

Glen Spencer: So, there will be some litigation around that. If that's the direction they go. Now, somebody may sue even if they go back to just, this is how we've been doing it for a year and a half kind of thing, we might not, but somebody will.

Evan Armstrong: Can I just dive in there a little bit? So, I think there was a lot of agreement that the updated rule provided clarity. It was generally a positive rule. I know the chamber comments were quoted in the final rule, along with CWI and many others. But everybody in unison was said, egregious misclassification should be addressed. I mean, I think that's always been the first step. I think the frustration is the department has demonstrated the ability to apply the current Trump era rule effectively to address misclassification. So Glen, why don't you talk a little bit about that and sort of does that undermine, and maybe Jim, if you have a thought, does that undermine their desire for a new rule?

Glen Spencer: Yeah, I think it does. I mean, the wage hour division's been putting out press release after press release, after press release saying thousands of dollars gathered for this worker, hundreds of thousands for this class workers over here. So, clearly they've been able to do the type of enforcement they want to do under the existing rule. And they were able to do it before the Trump rule came back and both circumstances, they were fine. So yeah, that raised the central question of, do you actually need a rule at all? Now, I will say in conversations with the solicitor over at DOL, she assures me that we will have no cause for concern, when this new rule gets issued, that will there'll be no need to sue. So, I told her repeatedly, I will believe that when I see it. As you know, Jessica, who's the acting wage administrator has been nominated for that full administrator spot. We told her the same thing. Like I'm not going [inaudible 01:10:44] from the Chamber's perspective on your nomination, much as we get along well, but I'm not going to do a letter of support because I don't know what's in that rule. Like I can't put out a letter saying, yes, you should confirm this person. And then two days later we get an IC rule that all our members hate. So, and that Jessica's nomination, I think is also, what's holding up the release of the rule a little bit. It's been sitting over to OMB for a long time. We don't know when it's going to get kicked out of there, but I don't think the department wants to issue that NPRM prior to her getting confirmed and me to state here, I think she will be confirmed. Mansion has already said, he's going to vote for her on the floor. There hasn't been a whole lot of opposition. So, I do think she'll probably wind up getting confirmed.

Jim Beretti: Yeah. I agree. I think, when it happens, maybe harder. There's a bunch of things the Senate needs to get done on its plate. There's also now been a focus on trying to get some of these nominations through, particularly with the possibility that they may come back in January with the Republicans controlling the Senate. I will say, we did, I think take a well-earned victory last for syncing the nomination of David Wild, who was the author of those AIs for the administrators' interpretations. He was the wage and hour administrator under the Obama administration. Very smart man, very upfront man just seized the world very differently than we do, but really had pushed the envelope in the pro employee, anti-independent contractor about as far as you can go. And I think it was maybe the first of the administration's nominations that went down because we convinced Senator Mansions, Senator [inaudible 01:12:15], one of names…

Speaker: Senator Kelly.

Jim Beretti: Kelly. That this person and was just a little too far out of the mainstream to serve in the department. So, that sometimes it's really a matter of just running the clock. They were expecting Wild to be in place by now. And I think they were expecting to move forward. I don't think they anticipated his nomination going down, they put Cynthia up there and now we'll see. We'll see what happens next. So, I believe at some point she'll be confirmed before the end of the year, but it may be as the New Year's Eve bells are ringing or whatever the last hours of the Senate session are. And then they'll take it from there but I don't think she's miles away from David Wild but I think she's at least got a little more of an open mind. And certainly in terms of taking stakeholder meetings and others has been at least approachable. But as you said, Glen we'll know when it gets published in the federal register. We believe it when we see it.

Evan Armstrong: When we see the new IC rule and the new overtime rule, we'll see how far away she is from David Wild. Shifting over, let's get our folks from Congress involved. Matt, your boss had Jessica Luman in front of him at the committee hearing for her nomination. Can you talk about that and then sort of generally just speak to Senator Brunt's position on independent contractor, independent work, kind of what he's focused on this Congress?

Matt Summer: Well, absolutely. So yes, we we're ranking member for the committee hearing not this past week, but the week before. We expect her markup at a committee to be next week so Wednesday. I feel like she's going to get out of committee possibly with one Republican vote. We'll have to see on that. During the hearing, he really focused on independent contracting in the gig economy. So, one of his questions was around the ABC test. And if she felt that the ABC test could be instituted by DOL who regulatory order, she said no. So, that was a good sign, but I do think she'll be skirting that line pretty closely. So, we'll have to see on that. His focus has really been the gig economy. He views independent contractors as small business entrepreneurs. We've had a lot of meetings with direct sellers and hearing their stories about the value they hold in flexibility, entrepreneurial opportunity. He wants to preserve that and that's one of his biggest priorities.

Evan Armstrong: Wasn't me. That's a good one. Sorry, go ahead, man.

Matt Summer: No, and so he's in a unique rule as he's the ranking member of the subcommittee unemployment workplace safety, as well as being on the labor HHS props subcommittee. And so that's going to give us, depending on what happens here in November, the potential for a lot of oversights, a lot of using this positions to slow down the IC rule. And then as that comes about, if we feel that it's bad enough potentially using a congressional review act disapproval to hopefully slow that down as well.

Evan Armstrong: So, well, your boss has been a leader on the CRA, so we appreciate that. Well, great. Well, I wanted just to follow again, just, I know Senator Brunt pretty active legislatively on issues around the pro act or his response to the pro acts. Can you talk a little bit about the work that you've done on that?

Matt Summer: So he also gosh, a year ago now. Over a year ago now for the pro act hearing that he had. He was also ranking member for that. And he's concerned with the bill overall feels like it would really tip the scales one way. But I think the gig economy and independent contracting was the biggest piece for him. The ABC test is very concerning the impact it would have on anything from your truckers to your direct sellers, to your financial advisors, the list goes on. The gig economy has really flourished out of COVID. We've seen, I believe the last number I saw was 1.3 trillion that the gig economy has

contributed to the nation. 60 million people have been an independent contractor at one point in stifling that especially coming out of the pandemic would be a disaster we think.

Evan Armstrong: Absolutely. I mean, I think there was a New York Times article that said even in a historically tight labor market, individuals are still choosing independent contractor work, gig work and all the polls suggests because of that entrepreneurial flexibility that they have. So, I think even the New York Times is going to say this is a positive development. And I think the polls and everything is for supporting independent contractors and those types of work. And I do think Jessica Luman, the department, the administration are against popular opinion on this issue. So, I think as long as Senator Brunt and others and the chamber are promoting and supporting the independent work I think it's going to be a winning issue. But we'll have quite a few battles over the next couple years, certainly on the regulatory front, as we discuss. Merrick, I want to bring you in here just, Congresswoman [inaudible 01:17:35] has been really championing the issue for several years on the ED and workforce committee now ED and labor committee soon to be ED workforce committee again. Kind of talk about her work on this and sort of how she's evolved and thinking about it, what her legislative priorities are and just kind of where she?

Merrick Lekko: No, absolutely. For her, I think, she came to Congress as, at the time, the youngest Republican woman, I think the youngest woman elected when she was, I think she was 30 years old when she was first elected. So, she brought that perspective of what the millennial generation wanted. And she realized that the flexibility and the opportunity to be her own boss to have that kind of limitless potential was something that really appealed. And then I think now more recently she became a new mother and as a working woman, she understands that flexibility and really having that control over your opportunity to earn and to set yourself ahead in the economy that is so important for her. And she believes that that resonates with a lot of her colleagues and a lot of the industries across whether it's the gig economy or in a rural district like hers so many traditional businesses that rely on independent contractors just to do their core function. So, she's been interested and has brought that lens to it since she was first elected. First, real quickly on pro act, I'll just make a quick note on the house. The house Democrats have passed it and they even have gotten a handful of Republicans to support it. But one thing they haven't done is they've never done an up, down vote on the ABC test. That policy I think is widely unpopular in the public. And I think that some Democrats would probably oppose it. She's offered amendments to try to strike that out of the bill. They've never let that amendment have a floor vote. So, I think we would've won that vote. I frankly think that even with some Republicans crossing over and supporting the pro act for who knows what reason, but I think that the ABC test is unpopular. And I think the democratic leadership knew that. And so I think that there is a little bit of a distinction that those who supported the pro act, maybe aren't there on the ABC test. And I think that that is probably good news for folks in, I think that presents an opportunity to put forth some new solutions.

So, as far as what she's interested in doing, and hopefully knock on wood, a Republican majority I think one thing that a lot of her conference and her members are interested in the Republican conference is harmonization. A clear federal standard across all federal laws, whether it's DOL, IRS, for the NLRA, all of these should have the same set of rules and it should be a clear and consistent test so employers and business can understand and workers can understand, what is an independent contractor? What is an employee? Make that consistent, make it easy to understand. So, you're not going to be treated as an employee under one federal law from one agency and an independent contractor under another. That makes no sense. And so I think harmonization is a first principle that a lot of Republicans are around.

She's introduced a bill in the past that would insert the common law kind of right to control tests in the FLSA and so that would kind of supersede what, I'm sorry, what DOL is doing now. And so I think that's one approach.

But I think with that now we're thinking even further of the Trump rule was so positive. And I think that as my colleagues talked about having those two key factors was, was really valuable and giving that clear direction to businesses on what constitutes an independent contractor, what constitutes an employer an employee, it was really important. And so I think we're thinking through, do we need to be even clearer and actually put in statute some of these specific tests, what we want that test to look like? So, it's not vulnerable to a future unfriendly administration to try to reinterpret that. So, I think harmonization a clear standard that really protects the independent contractor model and makes it clear line. And frankly, I would say that those on the other side of the aisle it'll make it easier to go after those who are intentionally misclassifying when you have that clear standard. And so I think that that's kind of the first principle that she really wants to try to work up with her colleagues on the ED labor committee, across the Republican conference on achieving. I think hopefully we can again, keep making appeals across the aisle and seeing if there's can be some common sense and a way for it on, on that harmonization approach.

The second thing though something that she's worked on with Mr. [inaudible 01:21:33] a member from Texas, a Democrat, is trying to create somewhat of a middle option. Evan actually had not been recently about this proposal calling in a middle way. And I think that that's a good way to frame it where there's something that's a little bit in between a pure independent contractor and an employee. And what it would do is basically be based on the premise of choice. Workers, the vast majority want that independence. And so we want to respect that and give them away to kind of sidestep all the classification test and say, I want to be an independent worker. And with that, they're going to have the right to choose when they provide their services, the right to work for multiple entities. But when you sidestep those tests and say, okay, they chose into it, they opted into it. They're going to for certain be not a employee and an independent worker for the purposes of tax code and wage an hour, then you open the possibilities for the business to provide if they want to provide some workplace benefits, some skills training, other things that would normally they'd be hesitant to provide because you could wade into crossing that line into an employee relationship. We would create that possibility. And so I think that's valuable and I talked to some folks from the direct selling industry. And I think the first of those two would be really important for you. I think harmonization a clear standard if it's like the common law rules or if it's like the Trump rule that provides the certainty that the direct selling business is an independent contractor. But I think having this second one there is important because if we can create something that's somewhat in between creates space for some modernization in these industries where it's a little more of a blurred line where workers want some of these benefits. I think that's valuable not only to have that, but also to create an alternative that we can maybe bring Democrats along to and say, hey, it's not just ABC test or bust because right now that's the only…

Evan Armstrong: All right that wins there. There we go

Merrick Lekko: And do what California did and put the ABC test into place. So, I think as we're thinking about things like harmonization, we also need to put preemption on the table

Matt Summer: And real quick on that, I would just say that the alternate pathway we have the worker flexibility and a choice, the bipartisan bill it does offer a preemption. And so in that piece then across the aisle, we worked for a preemption. And I think the interesting thing on that is some Republicans will say,

what about state's rights for a preemption? The nice thing about that second concept is that it isn't a blanket preemption. It's not overriding the state's ability to regulate. And I think that's important to some, but what it does is putting individual freedom and choice a step higher than that. And it's saying the individual can choose to say, I'm going to opt out and that's going to opt me out both of federal and state and local wage and hour tax provisions that might prevent me from engaging in the economy the way they want to. So, I think the nice thing about that is it provides a little bit of a different twist on preemption that it's not federal government telling states, you have no authority to regulate on this, but what it can do is saying, give it that choice to the individual, let them decide how they want to engage in the economy. And I think that that is a potential way to break down some of the resistance that we will sometimes and rightly get from those states rights folks on the Republicans side of the aisle. So, but again, agree that my boss is from New York, right now they don't have too restrictive standard, but that could always change. And I know there's a lot of blue states that have restrictive standards. So, I think that that is a very important piece of the discussion.

Evan Armstrong: We're always looking to make sure that we can prevent California from going everywhere else. So, yeah, that's always the key. Well, want to switch back over to sort of the administrative regulatory side, because one thing that is very clear about this administration is President Biden said he wants to be the most pro-union president in the history of the United States. I think he is on his way to doing that trying to look at every facet of his administration and how they can improve or help organized labor. And I think we've seen that at the department of labor will continue to see it at the department of labor. But we're also seeing it at the NLRB probably most forcefully. There's a case a currently pending where I think it could get a decision in Atlanta opera anytime, but they're looking to change the way they look at independent contractors under the national labor relations act. So Jim, you want to talk a little bit about what the board is doing and kind of what we expect from there.

Jim Beretti: Yeah, no, I mean, no great surprises. During the Trump administration, they had the super shuttle case, which was again a decision on independent contractor status this time under the national labor relations act. And there it's particularly important because if you are an employee with subject to certain exceptions, but if you are an employee under the NLRA, you have the right to join a union or to refrain from joining a union. But if you are an independent contractor, you do not. So, plainly it's been a focus of the board particularly now with two members who come directly out of organized labor who were union lawyers before they got there to revisit that standard, that super shuttle standard, the cases the Atlanta opera, where they propose do we want to revisit super shuttle? Do we want to restore the prior standard? But I think we talk up here about harmonization. We're not the only ones who think that way. We just think about it differently because yes, across the Biden administration, the department of labor, the national labor relations board, in fact a sort of sub-category is, there's independent contractor status under the NLRA. And then the general counsel who's really been very transparent in her. She's very upfront, she intends to push the envelope but making it an unfair labor practice to even misclassify someone, even if you think you're doing it right. It's one thing to say, I'm going to intentionally misclassify this person so they can't join a union. It's another to say, hey, we looked at all the tests and we think these guys are ICs. She would have that be an unfair labor practice. If you did your best and still got it wrong. So, that's where the board is.

I was asked recently EEOC, that's the federal agency that oversees title seven of the civil rights act, Americans of disabilities act, ADEA, age discrimination. They have been in an unusual position throughout the administration in so far as while they have a democratic chair. The five member commission is still three Republicans and two Democrats and owing to the weird way in which their statute is written. One of the Republican members, former chair, Janet Dylan, her term technically

expired in July, but she's able to sit in that seat and sort of hold over status in lesson until a successor is confirmed. So, that successor has been nominated went through the Senate committee. She was bottled up in committee unclear if they're going to try to bring her to the floor this fall, but this is all backdrop to say that at some point it may be this year. It may be early next year, but at some point the EEOC will get a democratic majority, or maybe not depending on what happens in the Senate. But if, and when they do I fully expect that they will also seek as DOL has done, as the NLRB has done. They will also seek to revisit joint employer status, independent contractor status, because like under the NLRA, if you're an employee you're protected under title seven, you're protected under the Americans with disabilities act. If you're a contractor, you aren't. So, when you're a hammer, everything looks like a nail, an EEOC, where civil rights is concerned is the big hammer. So, I fully expect if and when they obtain a working democratic majority, they will wait into this space as well. Because we've seen that it's migrating across all the various agencies including I think even FTC is getting in the game now.

Evan Armstrong: Yeah. Before we go to the FTC, just to speak to the nomination process, Matt, kind of what is your status report on whether the EEOC democratic majority will happen this year?

Matt Summer: Yeah, so Ms. [inaudible 01:29:11] she was 11 to 11 in committee. So, all Republicans voted against her, all Democrats voted for her which means they would have to schedule time to do a discharge vote and go from there. I'm cautiously optimistic that we can convince maybe some Democrats to join us in our opposition. I think we have all Republicans against her. I have no doubt [inaudible 01:29:37] has said that when they get the majority at EEOC, they will be doing joint guidance on independent contracting. I also know that Ms. 01:29:40] on previous interviews has said that independent contracting is one of the biggest barriers to employment equality in the nation. So, I have no doubt they'll also be jumping into this space. So, encourage you to reach out to your members and really stand against Ms. [inaudible 01:30:02] because I have some serious concerns. My boss has some serious concerns and we'd like to not see or get across the finish line.

Evan Armstrong: So, and I think the interesting thing about this dynamic is most Republican senators aren't steeped in EEOC issues. The nominee may come to the floor. They don't think about it too often but I think there's been a lot of behind the scenes lobbying on certain key Republican senators that this nominee represents a sea change at the commission. To Jim's point, there's a host of different policies that the commission will pursue once the majority is in place. So, her nomination is actually very pivotal in terms of several items, including IC guidance that may come from them. So, we're continuing to watch it closely, but to Matt's point and folks who have good relationships with Senator Mansion, good to touch base there and sort of weigh in on it. So, but I think Jim mentioned, the whole of administration approach, we got DOL, EEOC, NLRB, but we got FTC as well. So Glen, what do we expect from the FTC? I know they just had an announcement last week.

Glen Spencer: So, just real quick to follow up on Jim's point about the general counsel at the NLRB, she's actually gone so far as to say, if you inform your workers that they're independent contractors, that's going to be its own separate, unfair labor practice. And I asked her directly at conference we were at in Montana a couple weeks ago, I asked her directly. So, if you've done the legal analysis, if you've had your attorneys look at the relationship and you made a thoughtful determination that yes, under the statute, these are independent contractors. And of course I had to inform them of that because that's what they are. Are you going to consider that an unfair labor practice? You said, well, yeah. If we come in later and decide that they're not independent contractors, yes. And the fact that you told them they are, that's going to be a separate, unfair labor practice. So, she's pretty serious about all this in a way that other general counsels really haven't been but to the FTC. So, we're in labor world, we look at the

NLRB and the department of labor and the EEOC, that's kind of where our focus has always been. Well, there's a new player in this debate and that's the FTC, not an agency I've ever had to care about or look at or think about. But suddenly we do. And anyone who works in labor issues really does because they're taking an extremely aggressive and expansive approach to their mandate.

And just last week, they came out with a new policy statement, which said that they believe that they have the authority to regulate independent contractor relationships, particularly in the gig economy, but more broadly as well. And they base their view on the idea that no matter how you classify somebody as an employer and independent contractor, they're still consumers. And because we have the authority to regulate consumers, we have the authority to regulate your relationship with independent contractors. To me, that makes absolutely no sense. To me, this screams out major questions, doctrine if there's ever litigation around the FTCs authority here. So, I just made no sense to me at all, but that's their view. Their view is extremely expansive. And in particular, what they're looking at in this context is are there unfair and deceptive practices being pursued when you advertise for workers? So, anything you tell them about earnings, anything you tell them about the freedom they'll have to operate on their own. Anything you tell them about hours and the ability to work for all that. That's what they're really focusing on is what they consider to be unfair and deceptive practices and recruitment. Again, to me, this is a vast expansion and an unjustified expansion of their authority, but that's the road they're going down.

Speaker: I think this administration's keyword is attenuated. They're looking at every attenuated grasp of power that they can to make new novel arguments. I think the FTC is clearly an example of that.

Speaker: Yeah, I was just going to pipe in and say on that front, I think FTC is definitely over it skis a little bit here. They've been doing it with respect to non-solicitation and potentially non-compete agreements and they recognize, it is one thing to say, we are going to come into this space, but when you've been an agency enforcing a statute that's largely, we've been unchanged for decades. And for the first time in history, you say, ah, we think now that we can regulate independent contractor status or that restrictive covenants, you can't go work for my competitor for two years in a geographic region. That's an unfair trade practice. I think their legal authority to do so is shaky. So I suspect as, you know, as they move forward on this again, as Glen said, we have a new to worry about. But hey, more lawsuits…

Evan Armstrong: Well, Jim, I'm going to stay with you and then we'll open it up in our last few minutes for questions. But I'm sure a lot of folks in the room are convening with council. Hey, we got all these new policies that we're going to have to deal with the federal government. Now kind of what are you at Whittler, how are you consulting with clients about, should they overhaul all their operations, all their policies internally because of the wave that's about to hit them?

Jim Beretti: I think we're advising a measured approach at this point. We'll see what happens with a potential new IC rule, see where the board goes. But for many companies too, if my business is built on an independent contractor model, maybe I make some changes in how I do things to make sure I'm as safely in that camp as possible. But I do not have many clients to say, okay, we're going to fold. And while we've built a business based on an independent contractor model will convert them to employees. I will say I have seen companies that do businesses in numerous states where they say we are an independent contractor model in 48 out of 50 states, but we're not even going to try in California. We're just going to make these folks W2 employees it's particularly under the PGA act and the sort of private attorney General's private right of action in California. It's simply not worth the risk to try to run this small number of employees. So, we are advising folks. I don't think anybody yet is ready to sell the farm

but the winds are blowing and we'll see, we'll see what the DOL rule looks like. We'll see what the board's decision is if and when the EEOC gets around to something. But I think there were very few who were willing to say, we're going to completely revamp our business model in the way we've done business. Maybe the more conservative small sea approach is to say, what can we do to maximize our ability to make sure that an independent contractor status is the correct status and is upheld with challenge.

Evan Armstrong: Yeah, I think same conversations I'm having with our retail members and try to remind folks that the pendulum is real. We're now clearly going one way with the current administration, but there's always an election coming up and sometimes those have consequences for the pendulum going the other way. So, I think not overreacting, I think to Jim's point, but guard yourself, provide some additional guidance and rethinking of some of your policies, but I think you don't have to fold just yet. And we'll see kind of how it shakes out over the next couple years.

Matt Summer: And my boss likes to say help is on the way to those who are struggling under the current regime of one party rule help is on the way. A different perspective hopefully will be in Washington next year.

Merrick Lekko: Let me just make one quick point about what Jim said here. So, it may be that under California's test, you think it's hopeless to classify somebody as IC. But it's a little bit of a dangerous game to play, to have people classified one way doing the same job in 48 states and another way doing the exact same job in 50th state. There are some potential tax code issues there. In the way the IRS will analyze those relationships. So, it may be that you have to do that, but you need to be careful with that.

Evan Armstrong: And interestingly, the client I'm thinking of has in fact got an IRS determination that no, no, under federal law, these folks are plainly ICS. They just made the decision in California wasn't worth risking the state law. And they said, well, is that going to do us, if in Wisconsin, we go to say there IC and say, well, they're employees in California. And the answer I think a supportable answer is no they're employees in California because California's state law makes them employees. Yeah. Wisconsin state law does not even, New Jersey's state law does not. But we'll see.

Speaker: I guess that's the safety, if you've already got the IRS…

Speaker: That certainly made the decision easier. But even in the absence of that, I think we can make strong arguments.

Speaker: I think we got about five minutes left, any Q&A? Yes. [Inaudible 01:38:36] The question, if those you didn't hear in the back of room is really, is there a concern if we go with a choice oriented model and an individual chooses to be an independent contractor versus an employee? Is there going to be the possibility of an employer pressuring that person to choose the IC model? And I will tell you any opponents of the legislation will say, oh my gosh, yes, every employer is going, they're going to threaten to kneecap them with baseball bats if they choose not to be independent contractors. But there are always ways we can address those problems before they happen. I do agree with you though, that insofar as something we really haven't mentioned this morning is the IC context or whether it's employee rather, or independent contractor, it has consequences for the worker. It has consequences for the employer, but there's a third party at the table, and that is the state. And particularly now with the economy sort of staggering a little bit these states are looking at big budget gaps, deficits in their

budgets and what do they do? They say, well, if someone is misclassified, that means we're not getting the workers' comp, we're not getting the state payroll taxes. So, there has definitely been an effort particularly the more aggressive and bluer states to step into this arena, not solely because we have the concern of our workers at most at heart, but also to their view. We're leaving money on the table in Albany and Trenton and all the others. So, as particularly if there's not much moving along on the federal level, if we sort of, we've seen this in a range of measures where the feds can't do something or don't do something, or is gridlocked that does not stop states from moving ahead. And that's frankly, one of the challenges we face, which is trying to stay on top of that. But I think the point you raise is an excellent one

Evan Armstrong: Matt, I was going to going to add, because I want to ask you, yeah. That I actually was going to ask a variation of Joe's question. So I just wanted take the opportunity just to do it. And that has to do with this election issue. We talked about that, I think a couple days ago. An election issue just if we can and the panel can comment on this. My understanding and I hope is the case that is the election issue is something you're trying to address for this gray area of this whole gig economy and people that we're not quite sure we have legislation of course, pending in Congress, HR5038, that's the preserving the direct seller independence act, which makes clear that direct sellers are independent contractors. So, the election, I think option and that's why I want Merrick particular because I know it's legislation you're contemplating doing, is an excellent idea for those areas where legitimately people, don't the duck test. We're not sure exactly if the Uber driver is this or that. But what I would hope we have support for is not only that legislation, but the concept of any election are for those areas where independent contractor status is not clear, but you don't get to all of a sudden where you are an independent contractor, say you're an employee sort of touching into Joe's question.

Speaker: Yeah. So, that I would say, I think the first thing we've talked about is a clear standard. And for those industries where it's clear cut traditional independent contractor relationship, that's what we want to protect and preserve with a clear federal standard. I think the second option it could be for those gray area cases. It could be if they just want to create a relationship that has some pieces of what would be kind of more of a traditional employee relationship. And so again, it's a choice that cuts one way. It's only a choice to opt out of employee status, not to opt in. But to the question of, is there concern about maybe pressure, maybe the business only wants to work with these under a worker flexibility agreement. The bill we have now has some structure to that. There is some criteria you can't convert existing employees to that. And there's criteria that the worker retains the right to accept and reject tasks. And when they want to work and they can work for others. And there's pretty clear language setting up that language. So, you can't have the same level of control that you would want over an employee. You can't just say, well, I'm only going to work with you if you flip to this work flex, we create some guardrail. So there are some core features of an independent contractor with that. And so if the entity says, look, we're only going to work with those who do these work flex agreements. They can try to make that choice and do that when they contract going forward. But what they're going to be giving up is that right to control that they have with employees. So, it's not a pure upside for a business. We think it creates a structure for a fair balance where there can be maybe some more involvement on things like training and benefits, but it still has that core feature of flexibility and independence. So, it's not pure upside for them to say, we're going to take get rid of current employees because they're going to be seating control of that individual.

Speaker: Yeah. I mean, I'll say I'm not as enamored of the kind of worker choice type legislation that says you can opt into being in. It's not saying it's bad, but I'm just not as much of a fan of it as I am a fan of the absolutely clear test. I think if you have a very clear test in place, similar to what was in the

Trump rule, that kind of obviates a lot of those gray areas, because it's much more clear to everybody whether you are or not an independent contractor. I can envision scenarios under the other formulation where you wind up with a lot of litigation around, well, were you coerced or were you not? Did the business try to make you sign the -- that's where you get kind of a gray area there. So, I think if you've got a completely clear federal test in place for whether you are or not an independent contractor that take takes care of a lot of the other issues that we're trying to work around. Federal, yes. I would like to see some strong preemption in there too.

Speaker: We have one last question. [Inaudible 01:45:33-01:46:58]

Speaker: It's a good state of the status as to where we are.

Speaker: Yeah. If I'm remembering my language from the Trump rule correctly, it sort of addresses that because it talks about how, if the only way that you can increase your earnings is by working more hours, then you really don't have the opportunity for profit loss. So, that I think would kind of get at the scenario you're painting.

Speaker: Well, thank you for the panel. I know you're very busy.

Speaker: We hope you enjoy the fire drills.

Adolfo: We have our last panel and we have the last panel last because that's the way to keep everyone here. Like I told Peter and Howard, our DSSRC panel. Before we you don't really need much of an introduction. So, I'm going to just take a couple seconds to see for our previous panel. A lot of information was thrown out here and we've had a lot of discussions. I want to leave this we have legislation that we are going to push hopefully in a Republican Congress next year. And I say, Republican Congress, this will definitely be able to have an opportunity to move legislation to bipartisan. And I want to underscore that legislation to ensure that direct sellers are recognized under federal law as independent contractors. This interesting debate about the gig economy, I spent a lot of time with Merrick that was up here beforehand is great, but all these things about options and so forth, I wonder underscore what Joe said. If direct sellers are not, I may not say the same thing, Joe. So, I appreciated if direct sellers are not independent contractors, then frankly, folks, there are no independent contractors in the United States. And I've said it repeatedly, and I don't want to sing lot one company, but I've said repeatedly that, well, I liked what Amway has often said, small IBOs, independent business owners. And that's what they are. People are independently building their own businesses. So, if we're caught up in independent contractor, it's just over and opting in and opting out expect a miracle out. But a lot of people will then I think eventually I'm lecturing here bit, but eventually lead to the well, everybody should decide who they are no longer the duck, but you get to decide who you are anyway. That's what we'll continue to work on.

Now to shift gears for one moment not so much an independent contractor status, but really the whole purpose is this conference. And it really is the crowning moment here because people are going to want to hear your reactions to what we heard from Sam. Your perspectives moving forward, what you're doing, lay of the land, a lot of subjects to cover. I would think mostly sort of products are part of it, but mostly on the earnings claims areas. And the disclosures and what you think about Sam's view and would you have heard the panelists about what's can be disclosed and what's atypical and so forth. So I'm going to turn it over to our great independent Lee Ron, and you make that underscore, I'm going to

tell you leadership of the direct selling self-regulatory council are friends, Peter Marinello and Howard Smith. So, delighted to have you here. And I know you'll want it to be a participatory thing, but you're independent. You'll let them know what.

Peter Marinello: Know what that's exactly right. Al thank you so much. We really appreciate it. Hey, good morning to everybody out there. Can't tell you how nice it is to kind of be back and seeing everybody over these last couple of days. It just really is so terrific seeing everybody. And I can't really tell you how much Howard and I really appreciate this opportunity to update everybody on things that are transpiring over at the direct selling regulatory counsel. Here we are last session of this terrific conference. Can we just take one moment and give a nice round of applause to these folks over at DSA, Webb, Adolfo, Frank Nancy, Brian Bennet and Joe Mariano, although he's not with us, he's with us in spirit.

Adolfo: So, I wanted to add there thing. Thanks for that. He is, I didn't say that again this morning, Joe, really regrets. He's not here. He really has been texting us to see how things are going and for Joe to be out sick with and he's much better right now is. I think this is the first event I think of this type. I've known him in 15, 16 years that he's missed. So he really, really regrets it. I do want to say something about our colleagues out front here Eleanor Campbell and Laura Collins and Tom Nutton and others that are beyond just the executive staff that's here at this table. Executives with us are here that they do so, so much to make all of this flow. So thank you.

Peter Marinello: No, absolutely. That's a great team that that you all have at your disposal here over at DSA. So, what we'd like to do is kind of keep this very conversational. My apologies to John Jackman. We don't have this dynamic PowerPoint presentation, John, or anything like that. But we did want to touch on a couple of different issues. Is Jonathan Delfin, Jonathan, you're still here. Unfortunately we will not be talking about the history of self-regulation and Raiders [inaudible 01:53:00] and how this whole system was created. But we but we did want to talk about a lot of what we've heard over these last couple of days. Different panels touching on a lot of different, very substantive issues that I know will be impactful for all of you over here. So, Howard as we look back in almost 40 years now administrating the programs. There are a couple of things that we wanted to let me start out by this. I know I thank the folks at DSA. I want to thank you all the self-regulation it really doesn't work unless we get the voluntary Dan Whitney, I'm sorry, the buy-in for your support of what we're trying to do. And I'm going to speak on behalf of Howard for a second.

One of the things that we were immediately taken with when we started the program is how engaged this group has been with our mission and what we're trying to accomplish, and the very, very real commitment that we've seen from you all. So, I want to thank you for that and whether it's our case work and our monitoring, whether it's the helping us with feedback that some of the industry guidance that we've worked on, and whether it's working with Jemima and DSA compliance council, and all of you were working with Jemima. What we see from the stakeholders and from the other industry thought leaders, it's actually been very impressive. I've worked with other industries administering self-regulation programs. And honestly we haven't seen that type of commitment, so kudos to you guys, and we appreciate it. I'm going to give you one example top of mind and has to do with financial freedom claims. Financial freedom it's a term that that's been used by direct sellers for years. But as we all know, historically, it hasn't been viewed very favorably by the regulators or the critics out there. And DSSRC has expressed our concern with the financial freedom claims, one major reason being that financial freedom can mean many different things to many different people. And don't forget it's an advertiser's burden to support any reasonable interpretation of the claims being made. And when viewing financial

freedom in a literal context, what does it mean? Earning enough income to be afforded financially free lifestyle? I think that's one reasonable interpretation of that claim.

Again, we've heard this several times, the majority of direct selling sales force members earned modest or supplemental income. And from our perspective, particularly in a general context, we think it would be inaccurate for Salesforce members and companies to communicate that message that the typical direct selling business opportunity participant will achieve financial freedom as a result of their participation in the business opportunity. I think we all know how regulators feel about this term and fairly or unfairly. They perceive these financial freedom claims as contributing to the erosion of consumer and regulatory confidence in the channel. Now I don't raise this point necessarily to express our concerns with financial freedom. Although now I have everyone's attention here we still hold concern with financial freedom claims. But really what I really want to kind of refer to that phrase to illustrate it as an example of how industry hurt us out on this concern and came to this collective consensus to refrain from making that claim and to train their sales forces had a position the opportunity in a way that doesn't reference financial freedom. Now we had a lot of good constructive dialogue, didn't we Jemima? A lot of really good dialogue about this term. And the company, thought leaders came to this conclusion that it was in the best interests of the direct selling industry to avoid poking the bear with this type of claim and stopped collectively disseminating financial freedom claims. Now it was not an easy consensus to come to. It was not. We had some very spirited conversations about this. Jemima, it's fair to say. But again, it really was an impactful, I'll also say this Howard in our monitoring, as we still see the occasional financial freedom claim, but we've seen a real significant diminishment in the use of this claim. And it's really a Testament to the work that you guys are doing. And it serves as a great example of how self-regulation can really help increase consumer and regulatory confidence in this channel.

Now, Howard sure. Our case work and our monitoring is always going to be the foundation. John Jackman presented some numbers to you all yesterday. We've recently opened Jonathan, it's now our 370th inquiry and its involved well over 2000 product or income claims. And while we've seen less egregious product and income claims through our monitoring, they're still out there. We still are seeing them. And these phrases unlimited income, replacement income, free trips, free cars, millionaire clubs, folks these are all vestiges of the past. We're in a new regulatory environment and it's funny, I'm going to actually refer to an old commercial line. Looking at the FTCs, very kind of aggressive scrutiny now, there's that old line in, was it car commercial line? This isn't your father's Buick, remember that one? Well, this isn't your mother, your father's FTC right now. Read the tea leaves, please. The claims and the promises that everyone's making out there they're being carefully scrutinized and being carefully monitored. Particularly the health and safety claims by the way, I know we talk a lot about earnings claims but it's those health and safety claims as well. Particularly something [inaudible 02:00:10-02:02:04] things like financial freedom. That's something that can really, we think sink people.

Speaker: And by the way, can I just add one thing, so we've talked to Lois and I'm not here to quote, Lois, but we do have ongoing dialogue and she has recognized the impact of your commitment to what we're trying to do. So, it has been acknowledged by the commission waiting for them to act on some of the referrals that we send their way, hopefully.

Speaker: [Inaudible 02:02:36] Any questions.

Female Speaker: Thanks. And thanks for the opportunity to chime in. what I would like to log with this audience and with Peter. And when it comes to compliance is, think global act local. I would

challenge the fact that you may think that the rules are more lenient elsewhere in the world. They're not. People and government expect exactly the same thing. If you can't substantiate, don't say it. If it's not typical, don't make it seem like it's the average. Where I would say there is a difference is that there used to be a difference in how the rules were enforced because local authorities might not have the resources that the FTC has to go after companies, but when it comes to the rules in place, they're very similar. Don't mislead. Don't try to go around what the facts are. Be transparent, disclose that you are commercial content if it is. Something that I want to log with you is that enforcement used to be expensive for countries. It's no longer the case. The tools that you have to do social media monitoring for companies, governments are starting to have it, and they can identify cases by the hundreds, if not the thousands by running the same automatic monitoring systems. On what Peter said about social media platform, I entirely agree it is problematic that they did not take their role of taking down content seriously. This is going to change dramatically. The EU just adopted the DSA DMA act. That is makes platform liable for the content that is on the platform. And they can be fined up to 4% of global turnover if they do not take down the content.

So, I would anticipate in the coming months that the terms and condition of meta products and other companies, YouTube and global would also change so that the companies would sort of protect themselves against liability they might have in Europe, because as geography on social media is fluid and content floats and things get picked up. And in that sense, I think what you are doing here, what we're trying to do in Europe and how content floats CBD claims start to be a problem in Europe, even though CBD is not even legalized most of European countries. Earning claims I see would have less problems but [02:05:02] all the issues are very, very similar and the rules are very, very, [inaudible 02:05:12] and enforcement is coming.

Speaker: Can I ask you a question back? Yeah. And by the way, that was an excellent point. I'm glad you kind of qualified that with a disclosure. This isn't necessarily meant to include Europe and it wasn't really Europe that we were kind of thinking about when we were saying that some foreign countries, there are more permissive rules and regulations. I don't think it's really Europe that we're concerned about honestly.

Female Speaker: But I was saying that in Latin America, they do have rules about your transparency and not misleading consumers they just didn't have the resources to enforce.

Speaker: Do you have any luck with the social media platforms and [crosstalk 02:05:48]

Female Speaker: Some but I think what is, I mean, us and many, many sectors in Europe were extremely frustrated with the level of engagement apart from a few company, I would say Google was maybe more cooperative and helpful. But what just happened? So the adoption of the GSA DMA is going to make a big change because they are now considered responsible. They didn't feel that they were responsible of the content on their platform. They were happy to have, light reporting mechanisms that would go through algorithm but now they are responsible for the content that's on the platform. So, that's going to change the rule of the game.

Peter Marinello: No, no, we thank you for that. We appreciate it. And this talk of about the non-responsiveness of the social media platforms. This is one of the reasons why a lot of times you'll hear DSSRC ask for copies of correspondence that has been made to inactive distributors, that has been made to social media platforms with these take down requests. Because should someone come knocking on your door, we want to make sure that you can demonstrate that you used your best efforts

to get these claims taken down. And so that I know a lot of times, companies are probably rolling in their eyes, like, okay, we have to give DS SRC copies of our correspondence and inactive distributors. This is the reason why we feel it's important. It's safeguarding you from a FTC or a state AG knocking on your door and say, my God, you haven't done anything to try to take this claim down, show them, show them and had that proof that you've taken, used your best efforts to take action at least. And that the social media platform hasn't been responsive.

Female Speaker: And in echo to that, do that also in other jurisdictions, European enforcement agency will look to what they call due diligence. So, have you taken all the necessary measures to prevent what is currently happening and that will or not play in your favor in case you have a case. So, keep that information and not just in the US.

Speaker: Thanks. Great comments and questions there. I know you're all waiting with bated breath to hear my colleague Howard here, but before Howard, I passed the torch to you. I'm going to ask this tragic indulge me for one moment, cause I just want to talk about one very important thing that happened over the last year with respect to the relationship between DSA and DSSRC. Hopefully you're all aware that that Jared Bloom, who had been the DSA, code of ethics administrator for a number of years retired earlier this year and now DSSRC has assumed the role of code administrator of the DSA code of ethics. And before I start kind of giving you an idea of what this all means, I just wanted to tip my hat and extend a some gratitude to Jared for all of his hard work and all his contributions to the formation of DS SRC and helping us get acclimated with a lot of the nuances of the space and really helping us through these first formative of the program. And I can assure you that Jared will never be too far away. He'll continue to be a resource for us and continue to serve on our appellate board. Talking about our appellate board, Mike Collins, can you stand up for one second? Mike also is a member of the DSSRC appellate board, another great contributor to what we're trying to accomplish. And we appreciate Mike's feedback all the time. We have quarterly calls with Mike and Jared and Don Hoffman and Mike, we appreciate all your help. So, thank you very much.

So, what this all means though in this new role is that DSSRC is essentially going to have two roles. We're going to continue to administer the self-regulatory program. Open cases, continue with our monitoring, continue with working with everybody in terms of industry guidance and things like that. But now we'll also be reconciling code of ethics complaints that were brought against DSA members. And we'll administer those complaints pursuant to the procedures that are articulated in the code of ethics. I've always thought of the DSA's code of ethics as this really important component of its regulatory portfolio. I mean, Adolfo here, you have this very authoritative code that's been around for over 50 years. And this great vehicle and repository for complaints about the behavior of DSA members. I also think that over the years that DSA has taken the very credible step to have that code administrator position administered by independent third parties, whether it's an individual like Jared or whether it's an entity like DSSRC and it's important, because I think that alleviates some of the concerns from the outsiders and even the optics that code complaints are being administered without the necessary impartiality.

I think the code administrator role, Howard is a natural evolution of the work that we're doing while our current purviews are obviously the truth and accuracy of product and income claims and reviewing the evidence provided to support those claims. By virtue of sitting in DSA webinars and speaking to the industry thought leaders, I think we've become fairly well versed in some of these other issues. Issues like compensation plans and proselytizing, inventory loading and even illegal business models, which I know Larry was still trying to figure out exactly what that means as you mentioned yesterday. And in assuming this new responsibility, one of the first things that Howard and I would like to do is kind of look

at the code with a fresh set of eyes here. And possibly make some recommendations to DSAs ethics and self-regulation committee about making the code more comprehensive, maybe more prescriptive in terms of what constitutes a code violation.

Now I don't have that fantastic PowerPoint, John, but I do have one slide. Do we happen to have it here? I just want to show you example of what we're talking about. Do we have that one slide section eight of the code by any chance? If not, I'll kind of read it to you. So, it's about earnings representations. This is section eight, in the code of ethics. And it says this right earning claims are always top of mind to us over at DSS. Earning claims must be truthful presented in a manner that is not false or deceptive, pretty intuitive. Also prospective sales force members must be provided with sufficient information to understand that earnings can vary based upon a number of factors, that the earnings stated may not be representative of what the typical sales force member can expect to earn. You've heard that from us a lot and the amount of earnings stated do not include any expenses that may have been incurred in realizing that income use your imagination. Now imagine you're seeing the code in front of you now. So as you know that the DSSRC does a lot of comprehensive monitoring. And we've been looking at a lot of social media posts that are disseminated by companies and their sales force members. Not only has this monitoring helped us recognize the immense challenge that you guys have trying to oversee all of these different claims being made in the four corners of the globe. But I'm also guessing looking around that everybody in the room has heard from DSSRC at one time or another regarding maybe one or two isolated social media posts, maybe a post in Africa, maybe a post from the Philippines that was making an atypical claim without the right disclosure or maybe a financial freedom claim.

Well, a literal interpretation of section eight, which I hope to have on the screen, but I don't. But trust me on this, would appear to mean that any company who has one problematic social media post can be cited for a code violation. When one of its Salesforce members makes one small post. That means third parties, the regulators, the industry critics out there can say, you see DSA members are continually violating their own code and it's a problem. And while all of this may seem a little bit too exacting, again I do think that some sections of the code provide an open door for some of these industry critics. The point being here is that we should all take a look, oh, there it is. We should all take a look at some of not just this section, but other sections of the code. See what kind of conduct could be actually considered a material violation of the code and what Howard and I will do socializing it with you as always we'll think about harmonizing making recommendations to harmonize the code with some other documents could be the DSSRC procedures, could be our earning claims document, could be the compliant handbook, but let's take a fresh look at this.

Now we're making this transition. It's an opportunity for us to kind of revisit some of these code provisions. My one last thing, I just want to mention this before we go over to Howard is one of the first things we did is code administrator was reinstitute this moratorium on DSA member companies being held as being in violation of the code of ethics when they're selling or marketing CBD products. And let me explain for a second back in 2019, Jared bloom had provided and this was while the FDA was kind of contemplating a regulatory pathway for the sale and marketing of CBD products. Jared bloom did the right thing. He provided this 90 day window period during which companies who were selling or marketing CBD products wouldn't be cited for code violations. And that was done with the anticipation that the FDA would provide some regulatory clarity fairly soon. And what happened was we're still waiting for that regulatory clarity. Although it was anticipated, we would see some kind of some regulatory guidelines. I think several things happen changes in leadership. I think COVID 19, certainly they have some resource issues over at the FDA as well. And I think the onset of COVID really shifted their priorities. Dan Whitney, this is kind of like the trombone oil that you talked about a little bit. All of

a sudden a change in priorities and it makes you kind of do a shift right away. So, here we are three years later still waiting for that regulatory guidance. Bottom line is we had sent out something as code administrator last month hopefully we all saw it reinstating this moratorium on DSA members being cited for code violations for the sale and marketing of CBD products until the FDA does come out with some very clear guidelines for the sale and marketing of those products. So, right now DSA members will not be held to be in violation of the code. And I will give it this caveat though. That doesn't mean in any way that any company who's making a product efficacy claim regarding the product performance of their product, of their CBD product to treat serious health related conditions without the necessary support, won't be their feet won't be held to the fire cause they will. But again, just by virtue of the sale and the marketing of the product, it will not be deemed a code violation. One last thing, how many times have I said one last thing before we go to Howard?

Howard Smith: You can see how much fun it is working with this guy, right?

Peter Marinello: No, I did just want to emphasize that our self-regulatory mission and this is so important. It's a collaborative one. Again, I'm going to reference Dan Whitney. Again, some people they reference, you Elon Musk or Sam Walton. I go with Dan Whitney, myself…

Howard Smith: Just reference Brian Bennett. I know you're going to turn over to Howard. How many times has been Howard, Howard?

Speaker: I know before you leave this slide. Before you leave this slide, do you think the FTC would be fine with this definition?

Speaker: Yeah, I do. But the problem is I think the FTC can use this against you. And I don't think that's within the spirit of the quote. I don't know. And I'm not going to pretend to know when this particular section of the code was enacted if DSA members were contemplating the proliferation of social media, because it's been a game changer and this can be certainly flipped against you.

Speaker: Well, let me say something here. I'm going to make it clear because I said it to Sam Levine on the way out. And it's been said during the compliance thing, millions of people are involved in direct selling. We are not guaranteeing that every single distributor and every single place in the world is going to be conversant. It's not going to go off the reservation. The question is what we spent a lot of time on what you do with the modern service, what momentum factor and others do, what our compliance console does, all this is does, is what you're doing about it. Are you policing it? Are you doing it? Is the FTC protecting every consumer in America? No. Are they making it an effort to do it? Yes. So, I think to be fair and I am going to push back on this all the way around. This is not a money back guarantee or guarantee. This is a pledge with teeth that we're going to do everything possible to address things that you or others or we ourselves find when there's a marketplace. And if we don't correct it repeats it, then it's a fair point. But the idea that that one distributor someplace is not going to do this is ludicrous. And on the way out, he said, I get it. But the question is I want to see the commitment, which of course is you, Peter in large part, what we've done in the last four or five years and what we've been talking about for the last few days, not going to be speak to the converted, but we need to get away from this a hundred percent guarantee, a hundred percent guarantee that we're going to do everything to abide by the code that you can have.

Peter Marinello: I agree with that. And let's say that in the code then, let's make that clear. Let's not be ambiguous about what a violation is and I'd love this spirit of discussion, how much I appreciate this back and forth. And it's great. And I want to have more conversations about this and here's one promise I will make. I'm not going to talk anymore. It's over to Howard.

Howard Smith: So, I will truncate my remarks with the limited time I have left there. No, but look there's a lot going on. Peter mentioned the code administrator work, obviously still the foundation of what we do is the case work. It's the monitoring, but like all of you, we are also very much attuned to what's going on with earnings claims. Adolfo, you started there. That's kind of the question of the day. And the FTC is juggling so many balls in the air right now with proposed rulemaking, notice of penalty, offense, updating the.com disclosures, updating the endorsements, testimonial guides. That's where everyone's focus is. And you can see even in other areas that are outside of direct selling that that's where they're looking. And you heard Sam say, well, we're not just look at the direct selling, we're looking at all sorts of channels. And you heard the last panel talking about this policy statement on the gig economy. When you dig into what they said about the gig economy, you could equally apply it right here. It's that gig companies must not be deceptive in their claims to perspective gig workers about potential earnings and they must be truthful and transparent about cost. So, these are the same themes they're making to you all. It's about earnings and it's about cost. And understand that the gig economy is often their view, they put you all under kind of the same umbrella when they did their proposed rulemaking. They said we're aware that there are deceptive earning claims in a number of industries and they list them and it's coaching and mentoring gig work, work at home, MLM.

So, we know that's kind of a focus of really where they're looking. And so it's also a focus of consumer groups. So, Tina who this group is very well aware of, they came out with a complaint to the FTC earlier this year about the gaming platform roadblocks. And it was about many things, including failure to make material disclosures but it was also about deceptive earning claims to the folks that actually make the games on roadblocks. And it was claims like, earn $10,000 a month, making games on roadblocks or earn enough to buy a Tesla. These are the same types of claims that we deal with obviously in this space. So, with earning claims being kind of front and center and Peter mentioned, this is a collaborative program. One of the most significant things we did in the last year was update the earnings claims guidance document. And you may recall that was came out in 2020, and then what we had maybe a year's worth of dialogue, right around maybe what this time, last year we started putting together some revisions and updates. And it was really based on feedback from you all, hey, maybe we could use some additional mock examples on this. Could you clarify this point? And so that's really one of the significant pieces of work I think that we really came out with this past year.

Just at a high level. I mean, a lot of you were involved in these conversations, so you'll kind of understand what the changes were. But just again, understand that those changes were based on our conversations with you all directly with the companies, GCs, compliance, round table, also with the regulators out there, that's how we kind of came to a consensus on what was needed in the way of updates. And just so you know, at a high level few big ticket changes. One was to make clear that this is just how we look at earnings claims. It's not how the FTC or any other regulator would look at it. It certainly you heard from Sam Levine said that yesterday, it's not going to be a safe harbor. It's not going to make anyone bulletproof was determined I heard yesterday. We included language that testimonials can be earnings claims that may sound head scratching, simple to many of you. It's not too many companies out there. We hear it all the time. I mean, we'll have a phone call. I think I had one in the last month. That's not an earnings claim. She just said she made $7,000 last month. That's true. Cost that's a thorny issue, Adolfo, you were hinting yesterday at maybe what the commission wants to get all the way

down to this granular level of gasoline and things like that. But I think a very constructive dialogue on that with you all. And what we put in the guidance is essentially that the obvious stuff, if you purchase a product and you're going to resell it at another price that needs to be taken into account. Other mandatory or de facto and mandatory cost for significant things that may be a mandatory conference, for example should be included.

And then other non-incidental costs, we would really just look at it sort of a case by case basis. You mentioned some of the high risk terms. We included a section on high risk, some very high risk terms. So, maybe terms that are maybe more borderline and things such as like, what's the time flexibility, I guess. It really is going to depend on if you're saying time flexibility to mean you can earn career level income, whatever you want. That's one thing. But if you're saying, hey, earn supplemental income on a flexible schedule in that context is going to be something entirely different. We added some content to say that hashtags can be claims, again, I would've thought that was known. But it's needed to be said. And also repurposing of content. You may have content that you are putting out there for a limited audience, let's say your top sellers and the net impression to that audience is one thing. But if that content gets now repurposed to a general audience, that's going to be a potential problem. We've heard that's a concern. We've heard that directly from the regulators. And then we included a whole host of new mock examples and in the interest of time, not going to go through what they're all about, but we heard some feedback from you all about either include new mock on this topic, or people were drawing a wrong, an incorrect inference from what we were trying to get at with a mock. But I hope you appreciate because we've heard this probably from year one, people always say, don't tell us what we can't say, tell us what we can say. And so, particularly with things like disclosures, we included examples where we gave you a good version with like a green check mark and a bad version with the red X. And we hope that that's helpful. And to the extent that additional mocks are helpful. For future iterations of this, please come to us, let us know again. As Peter said, this entire document stems from our collaboration with all of you and getting your feedback.

So, moving on from our guidance and just kind of to earning claims more generally, and I guess what's happening with the regulators. We heard Sam Levine. I mentioned the whole gig economy thing, the Tina thing, a few other developments over at the FTC and I touched on it earlier, the updates to the guides on endorsements and testimonials. And again, kind of begs John, your question, which is why are we giving people guidance on how to make disclosures if disclosures don't work. But the really, really the big issue there that's really jumped out and not just to this channel, but I'll tell you, I was at the national advertising division conference was a huge question over there, is what's up with this new definition of clear and conspicuous that they're proposing? And that really stood out for the advertisers at that conference. The new proposed rule is that a disclosure must be proved difficult to miss, easily noticeable, easily understandable by ordinary consumers that a visual claim must be disclosed with a visual disclosure and same for audio. You heard John Villa Franco adamantly say yesterday, that's not the law. And he, and I'm not saying it is this, but giving you a window into the regulator's thinking. And I think the word that really jumped out at everyone was that it's unavoidable. And we had the associate director of ad practices at the NID conference. And we asked her on that we kind of pressed her a little bit and said, hey, well, what does that mean? And are you redefining what a clear and conspicuous disclosure is? And she of course said, no, we're not redefining anything. It's just a further guidance for you all to consider. But well Brad asked her, said, so what is an unavoidable disclosure? And what she said was quote, it means that consumers must be able to see it and they can't skip it. And she cited to an example of clicking and somehow ending up in a video where maybe the disclosure is somewhere else. So again, I share that just to give you a window into what we're hearing from the regulators. Can I pivot and talk about some of our outreach?

Adolfo: Yes, you can. Can you see how anxious I am to interrupt Howard? But I know this crazy mob will turn on me, Howard, if I interrupt you.

Speaker: So, actually I'm going to interrupt Howard here for a minute. I know I was the led Howard speak audience, but yeah, it's…

Speaker: What is going on? The gong show here. It's like walking on a stage for Harry styles concert, my God…

Howard Smith: Like this is not really a question, but a comment, but I find it interesting that they're updating the.com disclosures, endorsing testimonials and we cite in our earnings claims NPRM comments, rely on this. Now they're kind of being cute and they're going on the back end and they're changing that. And I think Daniel Hoffman, when I was talking to him a few weeks ago, the FTC has told, I think it was Daniel. Told Daniel we're changing it because we hate people saying, well, we're just relying on that. So, they're changing it because they don't want people to rely on it anymore. So, that's the dynamic going on there too, which is interesting.

Speaker: Yeah, no, I know it's very, there's a lot going on over there all at once. It's very accurate.

Speaker: It's not just the FTC Howard, what's going on with the states. Tell them a little bit about what we're seeing with the states and everything else.

Howard Smith: In terms of our outreach. So, I did want to touch on this because I think it's an important part of what we do is to also let it be known to the regulators, what we're doing and why we're doing it and how we approach it. And so we've engaged in some outreach, the FTCs, not the only show in town. There are state AGS out there and we've engaged in some pretty significant outreach to the state AGs this year. Peter was out in Sun Valley at a bipartisan attorney General's conference. And just last month I was out in Colorado Springs to address the Republican Attorney General's association. And on that, I just want to say huge shout out to DSA for setting that up. It was a fantastic audience. John Webb was out there a number of top direct selling executives were out there and they got me this very private audience with what, 15 to 18 state AGs in this room. And a number of other states were represented by their top staffers. I mean very like intimate setting to the point where oftentimes they have the AV guy in the back giving you the time countdown. It was the state AG for South Carolinas giving me like the 10 minute, 5 minute warnings. But it was a great opportunity to get in front of them and kind of say, hey, how do we even get to a self-regulatory program for this particular channel that we actually heard some of the concerns out there and made the decision to proactively kind of get out in front on some of this?

The stress that DSA has always had a self-regulation program in place with their own code of ethics, but they, in response to some of what they heard, they turned to us. So, completely independent third party in the interest of transparency, we're an organization that's been fostering consumer trust for a hundred years. Telling them kind of what our goals are in the pro in creating the program, which was, to have something that applied across the industry members and non-members. To get out there, find these claims, get them taken down quickly and then kind of a bit about how we measure our own success. Really the benchmarks we look at what constitutes an effective and meaningful self-regulatory program and why we think we check the box on that. We apply an objective standard of review there's transparency. We post all of our work on our website, those types of issues. We gave them kind of a summary of the three and a half years to date of all the claims, all the cases, the number of COVID

claims we got taken down. The numbers of products and earning claims we actually left them with a nice packet on the data of what the program's accomplished in the three and a half years. Hopefully that's helpful. But I think the part that we really tried to stress that was different was, tying it back into the guidance, was the ongoing industry education.

And that's where we can look at them and say, look, your law enforcement, you have limited resources, you can only choose to deploy them against, maybe really serious instances of fraud, bad actors, but we're self-regulation, we can be nimble. And when we heard, as we did, there was this real appetite for guidance, help us. What are the rules of the road, especially these from the smaller companies, [02:33:40] companies, and that there was an appetite for guidance that we could get out there and educate and hey, state regulators, it's nice for us to show you a fact sheet of all the bad claims you got taken down, but here's what we're doing to make the marketplace better. So, those claims don't get made in the first place. That was a message I think we really tried to underscore with them. We talked about how we meet with companies one on one, we do telephone calls, zoom calls. People can email us with questions that we put out our written guidance. We attend events like this, where we're with the companies, they're in-house lawyers, their outside lawyers, their compliance teams. We have our own summit because it was [inaudible 02:34:16] I made sure to thank attorney general [inaudible 02:34:19] from Utah for being our speaker. But I think that was just a real key point to say, look, this is how our work can compliment yours and hopefully make the marketplace better.

Lastly, because we are self-regulators, we're the carrot, we don't have a stick. And we stressed that we had real buy in from industry and that's also shown from the compliance we get. 95% compliance case inquiries but if we do get a certain company where the self-regulatory process only goes so far, we are going to have to make a referral. So all, all we can ask is that they prioritize our referrals. We know they have a lot on their plates and they have to choose when their sort of prosecutorial discretion, but also that there's a two way street to that, that if their offices become aware of a company or a marketing practice that's problematic, but maybe isn't best suited for their offices to pursue, our doors open. They can send it to us and if we can help resolve it in the self-regulatory space, all the better. And the follow up on that is we're putting together kind of a packet for the AG offices of how they can send matters to us. And so we'll continue that outreach going forward. Yeah.

Peter Marinello: I just wanted to kind of touch on one, you had mentioned the guidance that we provided in response to the real appetite for guidance that we've seen out there. So on the horizon, you'll probably be hearing from us over the next month or so, Jacintha Parker had touched on this earlier today. We're going to start taking a look at maybe providing some guidance with income disclosure statements, the IDs statements, the utility of those statements, the information, the material information that should be included in those statements, we'll approach it very much like we did the earning claims guidance document. We'll start socializing it. Jemima maybe we'll start the conversation with your group. And then we'll be speaking to some of the individual stakeholders and get your thoughts. And we want to consider all of that feedback as we hopefully put together some guidelines regarding the utility of income disclosure statements.

Speaker: Terrific. And for any questions from anyone in the group first?

Adolfo: [Inaudible 02:36:32] And obviously we showed those stats yesterday. You guys are doing a fantastic job of taking down stuff, identifying it, regulating, doing what you guys are set up to do. With those numbers, have you a) shared those with the FTC, showing them that, you're seeing a different -- there's problematic claims, but when you look at the whole universe of what you're seeing, there's not

this proliferation. And 2) DSA has had conversations and I'm not necessarily advocating anything, but we have data, some companies obviously maybe don't want to put a name on it because it's our data and you don't necessarily want to share that with the FTC. But having said that if it was aggregate data, for example, we are anonymous but it was aggregate data of all the companies showing how much we do monitor. Again, we monitor, we see that there's a lot of compliant claims and then we see a small amount of non-compliant claims. So, first question was, have you shared your data with the FTC and what was the response? And two, do you think an industry response of some kind showing that, would it have any effect or would they still just be set in their views? And if, obviously, you have more conversations with Sam and others.

Peter Marinello: Yeah. John, a couple of thoughts with that, about that. Yeah, we do share that data. We try to be very transparent with the FTC about what we're seeing and what we're doing. There are two ways that we share that data. We put together an annual activity report that we send directly to division of marketing practices in Lois to see some of the work that we've done over the past 12 months or six months and what have you. And we talked about the diminishment of problematic product and earning claims in our comments that we submitted to the FTC regarding their proposed rulemaking. I would kind of love to hear from your end, from Herbalife to see if that arrow's going down in terms of what you're seeing, in the field from your sales force member. Because I mentioned earlier, we are seeing less problematic claims and don't get me wrong. They're still out there, but that we have seen this significant diminishment in those type of claims. We'd love to hear and maybe aggregate our collective data together because I think it's going to be a much more powerful…

Adolfo: It's going to be aggregate data. I think there was a reference to this made, Brian's been leadership on this as well. But the panel that we had that was chaired by John Dela Franco that was on the rule. We're going to work on that, step that up in terms of getting data. This is a window of opportunity. There is a rule coming out…

Peter Marinello: That's powerful information too.

Adolfo: To Jonathan's answer, we're going to do that. But to his point, if you can, again, independently, when you have your discussions have that beyond just saying that the datas or the comments of the Buicks and so forth, the yachts are old. But speaking about what you see as the trends. Since you've been around, I think is, is important to show the worth of the DSSRC in self-regulation in addition to our commitments. One of the things that was, Peter, you're such a big personality in every way, but I loved hearing Howard's comments, because I'm not going to be as articulate as you were, but conveying this as well about self-regulation since it's even been questioned a little bit subtly at times, even y the FTC that advocated for it at times. I think they come around. We work to educate what needs to be done. Then we go out and identify problems. There are going to be problems, as you say, there're always going to be problems. And we work to take those down. That was your words and if you don't take them down, then we really have a real problem. And you do have a stick its called referrals and the stick is even us as the association you're not going to be a DSA member. So, if that could be a capsule of what it is and it is totally independent, that is, I think why we going back to the first presentation, I think it was Jonathan as well that did this, is when we submitted our comments. We really don't believe there's a necessity for a rule. Probably going to do a rule, but take into account what's really going on in the industry.

Our time is short. So, I do want to ask for other questions, but I do want to ask , Gordon, one request because this is not a regulator, but you do have a relationship with Tina and with Bonnie Patton, and

again, it's your call on this, but it's extremely frustrating speaking about dinosaurs and things from the past. It is extremely frustrating to us to have post and things from the 1990s and representations way in the past that have either been taken down or ancient history being used as calling out at our companies publicly. Frankly, I'll tell you my opinion. I think it's ironically deceptive, unfair and misleading to do that. Now if you want to say there's a history here, write a history book, but if you can convey that if there's something current and I know you collaborate, I would appreciate that.

Peter Marinello: Don't collaborate, but we do speak, I don't think. And maybe listen, I'm always open to any kind of collaboration maybe in the future, there would be an opportunity to collaborate with Tina. I don't know. I do speak to Bonnie occasionally.

Howard Smith: I spoke to Bonnie on Tuesday.

Peter Marinello: Saw her on Monday at the NID conference. Again, maybe we're on opposite ends of the spectrum, but I always do say this. We had the same end goal in mind and that's getting rid of any type of misleading product or income claims. Now there are different ways to skin a catch. She comes at it much differently than we do. We look at it much more collaboratively. But I think that dialogue though is important though, and not just the dialogue, but also making clear that we have some questions about the way issues are presented.

Adolfo: The way that she quite specific than that Gordon is. I'm talking about signaling out things that are ancient history, people who haven't been around for 20 or 30 years and it is portrayed as a current problem. And that's just unfair and I like that conveyed.

Peter Marinello: It was conveyed to her trust me, bud. Yes?

Speaker: My question is, does the DSSRC have a position on the cryptocurrency companies? Because I continue literally every day to see some legal or regulatory action taken globally. And I didn't know what our position was on that.

Peter Marinello: We've had a couple of crypto matters actually. And I'll just say this, we don't have a position on a company or an industry. We have a position on claims though. I'll say that. And a claim is a claim is a claim. I don't care where it comes from or where it starts. But if it's a problematic claim, if it's not supported by the prerequisite evidence, then we have a problem with it. Crypto non crypto doesn't matter, but we've dipped our toe in that a little bit. Thank you.

Speaker: There you go. Sure.

Ed Burbank: Ed Burbank [inaudible 02:44:07] in our new case, I had the pleasure of taking Bonnie's deposition, which full day deposition was interesting. It was and very informative. Two quick comments with regard to Adolfo your statement about how she's still posting through Tina items that have been taken down. You may remember a couple years ago they changed that to the grain out. That's right after a conference in Austin where I asked that question to her, isn't that a misrepresentation you still have these up. So, she still graining them down, but we she's doing is when she reports them to the FTC. She doesn't tell them that they're down. That's number one. I've got that on the record. Secondly, with regard to DSSRC and her testimony, she was actually quite complimentary about the DSSRC. And I know at a later anti-MLM conference, not so complimentary.

Peter Marinello: Yeah. And in one of her papers as well.

Ed Burbank: Yeah. So, but we do have her sworn under her oath where she said that y'all are doing the best that you can do. So, it's positive testimony, at least on the record. She was critical of the FTC though, but she thought that they had not done enough to go forward with your…

Peter Marinello: Ed, we won't be exactly using that quote from her and our promotional materials.

Adolfo: Thank you. I think we are up against the clock.

Peter Marinello: Wait, one more thing, Adolfo, please. I just wanted to really thank everybody for hanging in there. Hearing Howard and I out on some of the things that are transpiring over at DSSRC, you can see we're very passionate about the work that we do. And I hope that you can sense the real palpable responsibility that we feel acting on behalf of all of you. And I can tell you that you all make Howard and I much, much better at the job that we do. And hopefully we're making you guys a little bit better at the job that you do. So with that, thank you so much.

Adolfo: No one more passionate than you. Thank you for you both. Thank you.

Howard Smith: And I'm going to get the last word by taking Peter's microphone.

Adolfo: The last word, is that it? What'd you say?

Howard Smith: I said I'm going to get the last word by saying thank you and taking Peter's microphone.

Adolfo: Thank you. Thank you. And I guess you get the last word for the panel, I guess last word for the conference. I want to thank everyone very much for attending. I hope it was as productive, enjoyable and rewarding this experience as it's certainly been for all of us at DSA and I mean that most sincerely. I really need to thank Brian Bennett who are really has put this together. All of these panels were put together by Brian and the leadership over many, many months. And it's been his work with a lot of help, of course, in setting this up with particularly Melissa Bruntnan and Nancy Burke and John and Webb and the rest of our staff. But Brian, thank you very much for a great conference. So, terrific. Now beyond the thanking, all of you, I hope many of you will attend our sales and marketing conference in Salt Lake City. And the reason I say this, so many of these issues have to do with our sales force on non-compliance, buy-in, I love the panel this morning and I just think that would be enriching. And talk about the relevancy of understanding their concerns as well as yours. And now it's lunchtime and conclusion, for those of you who are attending the government relations committee meeting it's to my right at the end here. Lunch will be there and the lunch is here as it was in yesterday. So thank you again very much and I hope you stay and enjoy lunch. This is our networking opportunity. I know Peter will be here as well. And Howard, thank you so much, very much.