

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**SECURITIES AND EXCHANGE  
COMMISSION, PLAINTIFF**

**v.**

**ERIC J. “EJ” DALIUS; RYAN MORGAN  
EVANS; PROFESSIONAL REALTY  
ENTERPRISES, INC.; SAIVIAN LLC;  
SAVINGS NETWORK APP LLC; SAVING  
NETWORK APP LIMITED; SAIVIAN  
INTERNATIONAL LIMITED; SAIVIAN INT  
LIMITED; AND REALTY SHARE NETWORK  
LLC, DEFENDANTS**

**Case No. 2:18-cv-08497-CJC-E  
The Honorable Cormac J. Carney  
United States District Judge**

**EXPERT REPORT OF ANNE T. COUGHLAN, Ph.D.  
March 7, 2022**

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## I. Introduction

### A. Qualifications

1. I am the Polk Brothers Chair in Retailing and Professor of Marketing, Emerita, of the Kellogg School of Management at Northwestern University, where I joined the Marketing faculty in 1985. My main research interests are in the areas of distribution channels, sales force management and compensation, pricing, and the management of these in particular business contexts, including direct selling (DS).
2. I am one of the co-authors of the book, *A Field Guide to Strategy: Building Routes to Market*, and was the lead author of *Marketing Channels* (a Prentice-Hall textbook) through its seventh edition.
3. I am a member of the Academic Advisory Committee of the Direct Selling Educational Foundation (DSEF) and am also an Academic Fellow of the DSEF. I am a Research Fellow of the University of Muenster, Germany. I have served as an Associate Editor and editorial board member of the journal *Marketing Science*, and on the editorial boards of *Journal of Marketing* and *Journal of Retailing*. I have served on the Senior Advisory Board of the *Journal of Personal Selling & Sales Management*, and am Editor in Chief of the *SSRN Marketing Research Network* and of its *Quantitative Marketing* e-Journal and the *Marketing Science* e-Journal.
4. I received my Ph.D. in Economics at Stanford University. Prior to my appointment at Kellogg, I was a professor at the business school of the University of Rochester. In addition, I was a Visiting Professor of Marketing at INSEAD in Fontainebleau, France in 1997-98. My full *curriculum vitae* appears in **Appendix A**.
5. I have served as an expert witness in many cases involving marketing and distribution. The cases in which I have given testimony in the last four years are listed in **Appendix B**.
6. My compensation for this engagement is at my regular consulting rate of \$800 an hour and is not contingent on the outcome of the case or my opinions expressed.

### B. Assignment

7. I have been asked by attorneys for defendants Eric J. Dalius, Saivian LLC, and Professional Realty Enterprises, Inc. (“Defendants”) to evaluate Saivian LLC’s and Saivian International Ltd.’s (collectively, the “Saivian Companies”) business strategy and operations and to opine whether they reflected the characteristics associated with investment contracts, operated as a Ponzi scheme, or qualified as a pyramid scheme based on my expertise, education and training.
8. In performing my analysis, I have reviewed documents, deposition testimony, and data produced by the parties in discovery. I have also reviewed publicly available information of relevance to my opinions. A complete list of all materials that I have considered in my analysis and in forming the opinions summarized in this report appears in **Appendix C**. I reserve the right to incorporate into my opinion any new information or data that may become available after the date of this report.

### C. Summary of Opinions

9. My analysis to date leads me to the following opinions concerning the Saivian Companies’ business strategy and operations and their business potential had they not voluntarily ceased doing business on July 31, 2017 for Saivian LLC and August 31, 2017 for Saivian International Ltd.:

**1. The Saivian Companies' Use of Direct Selling Is a Common and Legitimate Distribution Channel for Product Sales**

- a. Direct selling is an established retail distribution channel, comprised of the firm, independent contractor intermediaries (often called distributors), and consumers. In 2020, direct selling companies are reported to have made \$40.1 billion in sales, involving 7.7 million distributors, and to more than 41.6 million consumers in the U.S. alone. Direct selling includes many firms that use multi-level compensation plans for distributors, as the Saivian Companies did.
- b. A multi-level compensation plan is appropriate as a distribution channel design choice when the channel design designates both retailing and sales management functions to the distributor force. Accordingly, the Saivian Companies' use of a multi-level compensation plan to compensate their distributors (known as "Affiliates"), as many other direct selling firms do, is a common, appropriate, and reasonable business strategy.

**2. The Saivian Companies' Cashback Memberships and Affiliate Program Awarded Cashback and Commissions Based on Each Participant's Own Efforts**

- a. The Saivian Companies' Cashback Membership products and Affiliate programs awarded cashback to Cashback Members based on each Member's own efforts and commissions to Affiliates based on each Affiliate's own efforts and those of the downline sales team they had built. Participants had no interest in the profitability of the Saivian Companies and were awarded cashback and commissions regardless of the financial performance or profitability of the Saivian Companies.
- b. A Member of one of the Cashback Membership products could only earn cashback based on their own efforts by submitting receipts in accordance with the fully disclosed rules and conditions of the Membership. A Member was entitled to a fixed amount of cashback based on the value of the receipts they submitted, regardless of the profitability of the Saivian Companies. Whether a given Member submitted receipts and earned cashback had no effect on the cashback earned by any other Member.
- c. As is typical in many direct selling companies with multi-level compensation structures, an Affiliate in the Saivian Companies' Affiliate program could earn commissions on the volume of actual retail sales of the Saivian Companies' Membership products made by the Affiliate and other individuals who joined their sales team, commonly known in industry parlance as a "downline." Affiliates only earned commissions based on sales of product produced by their own efforts and those of the downline sales team they had built. Commissions earned by Affiliates in one downline sales team had no effect on the commissions earned by Affiliates in a different downline sales team. Affiliates were entitled to a specific amount of commissions based on sales volume, regardless of the profitability of the Saivian Companies.

**3. The Saivian Companies' "Cashback Membership" Program Did Not Operate as a Ponzi Scheme**

- a. The Saivian Companies' Cashback Membership program (including the Retail Shopping Membership [RSM], Global Travel Membership [GTM], Global Retail Shopping Membership [GRSM], and Global Savings Plan [GSP] membership products) did not operate as a Ponzi scheme because the eventual collapse of the Saivian Companies and

their Cashback Membership products was not inevitable – either theoretically or in reality – due to multiple actual and potential revenue streams evident in the business strategy of the Saivian Companies and real aspects of a membership model such as breakage, discussed below.

- b. Specifically, the Saivian Companies were: (i) receiving actual revenue from merchants that paid to advertise to Members; (ii) receiving actual revenue from Google AdSense advertisements; (iii) receiving actual revenue from the sale of tickets to attend events and meetings; (iv) working to monetize the data regarding Members and contained in Member-submitted point-of-sale (“POS”) receipts; (v) developing a mobile app to generate additional advertising revenue; and (vi) planning to develop a website to generate additional revenues from advertisers. Because of these multiple actual and potential revenue sources that could be used to subsidize cashback payments, the Saivian Companies were not inevitably fated to collapse in my opinion, nor was there any reason for Mr. Dalius to think otherwise. That the Saivian Companies did not fully execute all elements of their overall business strategy in the roughly 17 months during which they operated does not prove the inevitable failure of the strategy.
- c. The cash flow required to make cashback payments to Members was reduced because the Saivian Companies allowed Members, entirely at their discretion, to redeem their cashback for passes of equivalent value instead of cash. Passes were alphanumeric codes that could be used to pay for or renew memberships and allowed Members to monetize their cashback more quickly than being paid in cash. This was because a Member could redeem cashback for Passes sooner than cash pursuant to the Saivian Companies’ rules that were fully disclosed to Members. Members could then use the Passes themselves or sell them to another person. The value of Passes and the demand for them was demonstrated by the active market for Passes.
- d. Furthermore, the cash flow needed to pay cashback to Members was reduced by breakage. Breakage here includes less than complete usage of the benefits of the Cashback Memberships, such as submitting receipts of lower than the maximum allowed value, failing to submit receipts in a certain time period (for whatever reason), or failing to redeem earned Cashback or Passes Awards in a timely manner. Breakage also results when Cashback Members do not remain “Active” (make their 28-day Membership payments) and therefore leave potential cashback earnings “on the table.” As with other membership or subscription products such as a gym membership, breakage is common and accepted consumer behavior that is recognized both in real-world practice and in academic research on consumer behavior and behavioral economics. Breakage does not demonstrate that such products lack value. In the case of the Saivian Companies, the amount of Membership fees paid by Members who did not take advantage of their Cashback Membership by submitting any receipts (and therefore earned no cashback) exceeded the amounts the Saivian Companies paid in cashback payments in cash to *all* Members. Thus, in fact, the Saivian Companies’ cash available due to breakage fully funded the cashback payments to Members.

#### **4. The Saivian Companies Did Not Operate as a Pyramid Scheme**

- a. The Saivian Companies did not operate as a pyramid scheme. The Saivian Companies fail the *Koscot* test for a pyramid scheme because their offerings do not exhibit the *Koscot* requirement that an enrollee must pay a consideration to earn the two rights granted under the *Koscot* Rule. First, there was never a requirement to be an Active

Member (paying \$125 per 28-day period) in order to become an Affiliate and earn commissions. To the extent that individuals were ever required to pay anything to be an Affiliate, it was a one-time administrative fee, not a consideration in the *Koscot* sense.

- b. Even though an individual was never required to purchase a Membership to be an Affiliate, Affiliates wanted to and did purchase Cashback Memberships for their own use, to understand and better sell the products, and to be able to demonstrate the value that they received from the Cashback Memberships. This is an entirely rational and reasonable behavior, which does not prove that the Saivian Companies were operating as a pyramid scheme.
- c. Second, the Saivian Companies further fail the *Koscot* test because commissions were only ever earned and paid based on actual sales of the Saivian Companies' real, valuable Membership products. By definition, enrolling a Member meant that the Affiliate sold, and the Member purchased, a unit of product (a 28-day Membership). Affiliate commissions were based solely on product sales, not on recruitment alone, nor does the multi-level structure of the Affiliate Program prove that it was a pyramid scheme.
- d. The Saivian Companies also fail the pyramid scheme test because there was no requirement for every Member to be an Affiliate. An individual could choose at any time to participate only in the Cashback Membership program, which had no multi-level compensation elements.

**5. In Light of My Analysis and My Reading of Dr. Vander Nat's Expert Report, I Find That the Report and Analysis are Unreliable**

- a. Dr. Vander Nat's failure to treat the Saivian Companies' Memberships as products, or even mention or account for the economic value of the Membership's Instant Savings Benefit, fundamentally and fatally flaws his analysis.
- b. Dr. Vander Nat's report shows no understanding of the concept of "breakage" nor of its validity, both in academic literature and in real-world contexts.
- c. Dr. Vander Nat erroneously states that recruitment is "necessary" for Saivian Affiliates and relies on this claim to argue that the Saivian Companies' strategy was doomed to fail.
- d. Dr. Vander Nat erroneously claims that the Saivian Companies have always required an Affiliate to be an Active Cashback Member. The Saivian Companies have in fact never had this requirement.
- e. Dr. Vander Nat makes mention of "costs" of building and maintaining status as an Affiliate, but gives no evidence of any such costs. In fact, an Affiliate of one of the Saivian Companies was not required to bear any costs; and because the product sold by the Saivian Companies is a Membership, there are no inventory holding costs or shipping costs.
- f. Dr. Vander Nat's purported "model" is inapplicable to Saivian's business, for all the above reasons. Therefore, his analytics are uninformative in making a pyramid scheme assessment regarding the Saivian Companies.
- g. Dr. Vander Nat's claim of the inevitability of "losses" for most Affiliates lacks merit.

His claim relies on his inaccurate mathematical analysis, which does not apply to the Saivian Companies' business. He provides no evidence of any Saivian Companies' participant having actually lost money.

- h. As a result of these foundational errors and incorrect assumptions, I find Dr. Vander Nat's report, his entire analysis of the Saivian Companies' business, and his conclusion that the Saivian Companies' Affiliate program was a pyramid scheme to be invalid and unsupportable.

## II. Background Facts

### 1. The Cashback Memberships, Including the Instant Savings Benefit

10. The Saivian Companies offered several different Cashback Membership products over time, including the Retail Shopping Membership ("RSM"), Global Travel Membership ("GTM"), Global Retail Shopping Membership ("GRSM"), and Global Savings Plan ("GSP") membership. Each membership cost \$125 every 28 days.

11. The RSM, and later the GRSM which functioned similarly but was available to international Members, allowed Members to submit retail shopping receipts and earn Cashback Awards pursuant to the Saivian Companies' fully disclosed rules. A Member's Cashback Wallet would be credited with 20 percent of the dollar value of the receipts they had entered in the back office (less any taxes or tips). When a Member's wallet amount reached at least \$125.00, the Member could request a 20 percent Cashback Award by submitting a cashback redemption request. Cashback redemptions could be requested every 30 days, for either \$125.00 or \$250.00 each time, provided the Member had entered a sufficient dollar value of receipts.<sup>1</sup> The Member could choose to redeem their award in cash or in "Passes," which were alphanumeric codes that could be used to pay for or renew one of the \$125 Memberships. A 30-day verification period followed a Member's request for a cashback redemption and submission of copies of the Member's receipts for that redemption.<sup>2</sup> Assuming the cashback redemption was verified at the conclusion of the 30-day verification period, a Member could wait another 30 days to receive a cash payment, or could voluntarily choose to redeem their cashback immediately for one or two Passes depending on whether the cashback redemption was for \$125.00 or \$250.00. Thus, a Member could choose to redeem their cashback for Passes 30 days sooner than they would receive a cash payment.

12. Another Cashback Membership offered by the Saivian Companies was the GTM. The GTM operated similarly to the RSM and GRSM, with the exception that a GTM Member could submit receipts from hotels and plane tickets instead of retail shopping.<sup>3</sup> The hotel or plane ticket receipts could have a higher individual dollar value than the RSM and GRSM and redemptions were limited by a balance of automatically accruing "bonus credits" against which a GTM Member could make a cashback redemption request.<sup>4</sup> The "bonus credits" mechanism meant that GTM Members could make cashback redemptions in essentially the same amounts and on the same schedule as RSM and GRSM Members, assuming they submitted sufficient, verifiable receipts.

13. Around January 5, 2017, the Saivian Companies stopped selling the RSM, GRSM, and GTM and began selling the GSP Membership product, which combined features of the RSM, GRSM, and GTM into a single Membership. The process for making cashback redemptions for a GSP Member worked

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<sup>1</sup> See, e.g., EPROD-DEF-SEC-000193991 (explaining rules for making a cashback redemption).

<sup>2</sup> See, e.g., Exhibit 642 (TD0000877) ("Redemptions are verified 30 days after receipt submission and paid 30 days after verification.").

<sup>3</sup> See, e.g., Exhibit 269 (EJD0212242).

<sup>4</sup> *Id.*



similarly to the RSM and GRSM, with the addition that receipts for hotels and plane tickets could be submitted.<sup>5</sup> A GSP Member could likewise choose to redeem their cashback for Passes 30 days sooner than redeeming their cashback for cash.<sup>6</sup>

14. The Cashback Memberships were thus a product of value that offered 20 percent cashback on a Member's purchases in exchange for providing their consumer panel POS data, subject to the clearly stated rules for earning cashback. Member testimony shows Members found the Cashback Membership to be a product of value,<sup>7</sup> and that Members submitted receipts and received Cashback Awards.<sup>8</sup>

15. In addition, beginning on or about February 27, 2016, every Member also had access to the Instant Savings Benefit ("ISB") at no additional cost, pursuant to which the Member could take advantage of discounts from over 300,000 merchants across numerous categories including dining, shopping, recreation, and travel, thereby increasing the potential value of the Cashback Membership.<sup>9</sup> Member testimony further shows that Members saw value in and liked the ISB.<sup>10</sup> Indeed, according to a report from Access Development, the company that provided the ISB to the Saivian Companies, members of the Saivian Companies made over 29,500 discount redemptions and saved over \$2.18 million from August 2016 through July 2017.<sup>11</sup> Moreover, those figures do not include an additional approximately five-month period when the ISB was available to Members from February 27, 2016 through July 2016.<sup>12</sup>

## 2. The Merchant Advertising Platform Membership

16. The Merchant Advertising Platform ("MAP") Membership was announced in June 2016.<sup>13</sup> A merchant signing up to be a MAP Member paid \$125 per 28-day period for the right to publicize itself to the Saivian Companies' RSM and GRSM Members (and later GSP Members once that membership was made available), to encourage them to list the MAP Merchant as one of their preferred stores from which the Member could submit receipts to earn Cashback Awards, and to thereby increase the MAP Member's

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<sup>5</sup> See, e.g., EPROD-DEF-SEC-000048908 (February 23, 2017 email from Ryan Evans attaching a manual explaining how the GSP works).

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., Deposition Transcript of Kevin Marino ("Marino Tr.") at 41:12-42:5, 76:20-77:5; Deposition Transcript of Christine Lefever ("Lefever Tr.") at 119:5-7, 155:25-156:12; Deposition Transcript of Corey Chadwick ("Chadwick Tr.") at 28:2-29:5, 29:14-30:2, 31:20-25, 53:22-54:3, 119:14-120:5, 154:10-15, 173:17-174:4; Deposition Transcript of Steve Gewecke ("Gewecke Tr.") at 49:7-20, 54:18-55:12, 57:3-58:9, 86:9-87:16; Deposition Transcript of John Cini ("Cini Tr.") at 31:2-7, 71:4-72:3, 76:6-77:3, 77:18-78:14; Deposition Transcript of Donald LaPlume ("LaPlume Tr.") at 51:14-52:4, 202:7-21; Deposition Transcript of Justin Hoffman ("Hoffman Tr.") at 82:23-83:15, 92:5-22; Deposition Transcript of Jodie Herbert ("Herbert Tr.") at 64:4-20; Deposition Transcript of William Toth ("Toth Tr.") at 290:11-16; Deposition Transcript of Scott McDaniel ("McDaniel Tr.") at 46:19-47:3, 133:12-22; see also Deposition Transcript of Jordan Goldman ("Goldman Tr.") at 93:18-22.

<sup>8</sup> See, e.g., Chadwick Tr. at 29:14-30:2, 32:5-17, 119:14-120:5, 154:10-15, 173:17-174:4; Lefever Tr. at 27:16-19, 80:17-25, 81:8-19, Gewecke Tr. at 38:18-39:3, 131:17-132:8; Cini Tr. at 78:22-79:13, 100:20-101:23; LaPlume Tr. at 132:14-20, 141:18-24, 143:16-23, 150:24-151:4; Deposition Transcript of Mike Dohyung Kim at 14:20-15:4, 56:8-24; Deposition Transcript of Zachariah Heilman ("Heilman Tr.") at 188:5-190:8, 192:6-193:22; Toth Tr. at 57:8-9, 290:17-22, 291:2-23, 292:16-23, 296:4-14, 299:6-19, 300:12-25, 301:8-16; McDaniel Tr. at 69:15-21, 94:9-14, 115:8-10; Deposition Transcript of Ryan Evans ("Evans Tr.") at 67:19-68:17, 73:12-17.

<sup>9</sup> EJD0210320 (February 26, 2016 email from Goldman to Ryan Monson at Access Development confirming that the link for the ISB will be active for all members on February 27, 2016).

<sup>10</sup> See, e.g., Marino Tr. at 74:5-12, 75:7-77:5, 76:20-77:5; Gewecke Tr. at 49:7-20; Cini Tr. at 31:18-32:4, 71:4-72:3; Heilman Tr. at 209:13-19, 211:10-16; Toth Tr. at 111:16-112:7, 294:8-13; see also Goldman Tr. at 94:15-25.

<sup>11</sup> Exhibit 101 (EJD0247758) (August 7, 2017 email from Ryan Monson at Access Development attaching a report on ISB usage by members).

<sup>12</sup> EJD0210320 (February 26, 2016 email from Goldman to Ryan Monson at Access Development confirming that the link for the ISB will be active for all members on February 27, 2016).

<sup>13</sup> BD0005358.

sales without having to cut their prices by 20 percent. In effect, the Saivian Companies' RSM, GRSM, and GSP Membership awards allowed the Member to earn a 20 percent Cashback Award on purchases at the MAP Member's store, paid by the Saivian Companies instead of by the MAP Member.

17. The Saivian Companies' MAP program offered Merchants advertising access to the Saivian Companies' Membership base. As the Membership base grew in size and geographic reach, its value as an advertising target population would also increase, allowing the Saivian Companies to charge these Merchants for advertising access. Further, the value to Merchants could be even higher because of the possibility that Cashback Members would list a retailer as one of their preferred stores whose receipts they would file in a given 28-day period.<sup>14</sup> It is likely that listing a retailer in this set is associated with an increase in a consumer's purchases from that retailer, thus increasing the return to advertising to this base. And finally, a Merchant in the MAP program could make its current consumers aware of the Cashback Membership, and a MAP Merchant that enrolled some of these consumers would be eligible for Affiliate commission earnings as well.<sup>15</sup>

18. The MAP program grew quickly and had enrolled 1,378 MAP Members by the time the Saivian Companies closed.<sup>16</sup> There is no reason to think that this growth would not have continued. Indeed, the Saivian Companies were also working on a mobile application that was planned to further enhance the value of a MAP Membership to Merchants by showing a listing of MAP Members as well as providing additional advertising opportunities and the ability for MAP Members to issue customized coupons to Members.<sup>17</sup> The MAP program was an economically logical business for the Saivian Companies to have debuted, for multiple reasons. It would offer economic benefits to Merchants through access to an advertising base of interested shoppers, the value of which would increase as and if the number of Cashback Members grew. It would also offer the MAP Members possible Affiliate commission earnings based on its success in enrolling its own consumers in the Cashback Membership program. And it would generate revenues for the Saivian Companies as well as increasing the Saivian Companies' database of consumer panel POS data, which in turn would increase the value of selling those data to other companies.

### III. Opinions

#### A. The Saivian Companies' Use of Direct Selling Is a Common and Legitimate Distribution Channel for Product Sales

19. A distribution channel is a set of entities – firms and individuals – that together perform the functions necessary to deliver products to consumers along with valued non-product benefits, called channel benefits. It is through the performance of channel functions that products and channel benefits are created and delivered to consumers.<sup>18</sup> Direct selling, an established retail distribution channel, uses a structure comprised of the firm, independent contractor intermediaries (often called distributors), and consumers. Distributors are independent contractors<sup>19</sup> who can choose when, whether, and how much to

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<sup>14</sup> See, e.g., EPROD-DEF-SEC-000193991 (“Welcome to your Saivian Retail Shopping Membership (RSM), which pays you 20% Cashback on your retail purchases of up to \$300 per week! You can register 10 locations, and you can add an additional 10 Merchant Advertising Platform (MAP) locations.”).

<sup>15</sup> See, e.g., Exhibit 52 (EJD0225340).

<sup>16</sup> I understand that this information is derived from the Saivian Companies' participant database using the SQL query listed in **Appendix E**.

<sup>17</sup> See, e.g., Gewecke Tr. at 346:15-348:19; Exhibit 364 (EJD0244169) (May 20, 2017 email from Jeff Whelan referring to a “Promotional Coupon” feature in the mobile app).

<sup>18</sup> Anne T. Coughlan et al., *Marketing Channels*, 7th Ed., Pearson Prentice Hall, Upper Saddle River, NJ, pp. 2-5 (2006); and Anne T. Coughlan and Sandy D. Jap, *A Field Guide to Channel Strategy*, chapter 1 (2016).

<sup>19</sup> Sara L. Cochran et al., *Direct Selling: A Global and Social Business Model*, Business Expert Press, chapter 3 [“Direct Selling Distributor Compensation Plans,” by Anne T. Coughlan], p. 31 (2021).

work on their direct selling business, and have different motivations and skills they bring to the direct selling distributorship.<sup>20</sup> This is the type of distribution channel the Saivian Companies used to sell their Membership products to consumers.

20. Among member firms of the Direct Selling Association (“DSA”), U.S. direct sales were reported to be \$40.1 billion in 2020.<sup>21</sup> The DSA categorized 7.7 million individuals as direct sellers actively working their direct selling business. Another 41.6 million individuals registered with the firm, act as personal consumers, and do not work the direct selling business (including 9 million who have registered as full-fledged distributors and 32.6 million who have registered with the company as Preferred Customers without business-building rights; unregistered retail consumers are not included in these numbers). It is therefore common for registered participants not to build a downline or make commissions and bonuses.<sup>22</sup> DSA member firms sold a wide variety of products and services: Wellness products (37.4 percent of firms), Services (22.6 percent), Home and Family Care / Durables (17.9%), Personal Care products (12.9%), Clothing and Accessories (6.1 percent), and Leisure and Educational products (3.1 percent).<sup>23</sup>

21. Just like the Saivian Companies, many direct selling companies compensate distributors (what the Saivian Companies called Affiliates) using a multi-level compensation structure. For example, a 2015 survey of 102 DSA member firms, including 78% of the 50 largest member firms, found that 95.1% of respondents had a multi-level compensation structure.<sup>24</sup> Examples of direct selling companies that are reported to have had more than \$100 million in revenue for 2020 are listed in **Appendix D**.<sup>25</sup>

22. A multi-level compensation plan is appropriate as a distribution channel design choice when the channel design designates both retailing and sales management functions to the distributor force. To motivate sales management and recruiting functions, the multi-level compensation structure may include commissions on sales by a distributor’s downline. These compensation practices are standard in non-direct selling sales situations as well. For example, it is common to compensate sales managers in a non-direct selling firm sales force based on the performance of the field salespeople whom they manage, whether through commissions and/or bonuses based on their sales.<sup>26</sup> Therefore, the multi-level direct selling compensation structure is economically sensible and is designed to motivate performance of the very channel functions that the direct selling firm using a multi-level compensation plan allocates to its distributors.

23. Accordingly, the Saivian Companies’ use of a multi-level compensation plan to compensate their Affiliates as many other direct selling firms do, is a common, appropriate, and reasonable business strategy.

#### **B. The Saivian Companies’ Cashback Memberships and Affiliate Program Awarded Cashback and Commissions Based on Each Participant’s Own Efforts**

24. The Saivian Companies’ Cashback Membership products and Affiliate programs awarded cashback to Cashback Members based on each Member’s own efforts and commissions to Affiliates

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<sup>20</sup> Anne T. Coughlan, Manfred Krafft, and Julian Allendorf, *Join, Stay, Leave: A Study of Direct-Selling Distributors* (September 20, 2016), <https://ssrn.com/abstract=2841403>.

<sup>21</sup> Direct Selling Association, *Research Overview*, <https://www.dsa.org/statistics-insights> (last visited Mar. 7, 2022).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Direct Selling Association, *2016 Growth and Outlook Report 52* (June 2016).

<sup>25</sup> Direct Selling News, *DSN Global 100 Lists*, <https://www.directsellingnews.com/global-100-lists/> (last visited Mar. 7, 2022).

<sup>26</sup> Cochran, *supra* note 19, at chapter 3 [“Direct Selling Distributor Compensation Plans,” by Anne T. Coughlan], Table 3.1, p. 33.

based on each Affiliate's own efforts and those of the downline sales team they had built. Participants had no interest in the profitability of the Saivian Companies and were awarded cashback and commissions regardless of the financial performance or profitability of the Saivian Companies.

25. An individual who signed up for one of the Saivian Companies' Cashback Memberships purchased a product that offered the opportunity to earn Cashback Awards based solely on the Member's own efforts—that is, making retail purchases, submitting receipts, and requesting redemptions.<sup>27</sup> Cashback Members had no reasonable expectation of any profit as the result of the efforts of others, because Members were entirely in control of whether they received Cashback Awards, and only profited from their own efforts. Each Member was paid Cashback Awards only on the basis of the receipts they submitted.<sup>28</sup>

26. A Member was entitled to the same amount of Awards, regardless of the Saivian Companies' behaviors and outcomes. Specifically, Members were entitled to receive the same 20% cashback based on the amount of the receipts they properly submitted – without regard to the financial performance or profitability of the Saivian Companies.<sup>29</sup> Here, Members were entitled to the same amount – again based solely on the receipts they personally submitted – regardless of the behaviors of any other Members.<sup>30</sup>

27. Likewise, an Affiliate in the Saivian Companies' Affiliate program could earn commissions on the volume of actual retail sales of the Saivian Companies' Membership products made by the Affiliate and other individuals who joined their downline sales team.<sup>31</sup> Affiliates only earned commissions based on sales of product by their own efforts and those of the downline sales team they had built.<sup>32</sup> The commissions earned by Affiliates in one downline sales team had no effect on the commissions earned by Affiliates in a different downline sales team.<sup>33</sup> Moreover, Affiliates were entitled to a specific amount of commissions based on sales volume, regardless of the financial performance or profitability of the Saivian Companies.<sup>34</sup>

### C. The Saivian Companies' "Cashback Membership" Program Did Not Operate as a Ponzi Scheme

28. It is alleged in this case that the Saivian Companies' Cashback Membership program operated as a Ponzi scheme. In this section, I identify the definition of a Ponzi scheme and some of the key characteristics found in Ponzi schemes. My examination leads me to conclude that the nature and offering of the Saivian Companies' Cashback Membership program did not operate as a Ponzi scheme.

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<sup>27</sup> See, e.g., Exhibit 627 (EPROD-DEF-SEC-000193991 (SEC-SAIVIAN-E-0000535)) (generally setting forth the requirements to make a cashback redemption at the time); Chadwick Tr. at 33:5-10, 36:8-17; Gewecke Tr. at 285:6-22, 285:23-286:13; Cini Tr. at 67:24-68:6, 68:12-16; Heilman Tr. at 215:3-9; Hoffman Tr. at 146:19-147:3; Toth Tr. at 308:17-22, 308:24-309:8, 309:22-310:4.

<sup>28</sup> See *supra* note 23; Hoffman Tr. at 147:7-10.

<sup>29</sup> See, e.g., Chadwick Tr. at 33:23-34:5; LaPlume Tr. at 88:15-20; Heilman Tr. at 215:21-216:14; Hoffman Tr. at 147:18-25; Toth Tr. at 309:15-20.

<sup>30</sup> See, e.g., Chadwick Tr. at 33:11-22; Gewecke Tr. at 285:23-286:13, 286:23-287:2; Cini Tr. at 68:7-11; LaPlume Tr. at 88:11-14; Heilman Tr. at 215:10-20; Hoffman Tr. at 147:12-16; Toth Tr. at 309:9-13.

<sup>31</sup> Examples of documents reflecting the compensation plan's ranks and requirements include EPROD-DEF-SEC-000216795, Exhibit 638 (EJD0201510), and Exhibit 642 (TD0000877). See also Chadwick Tr. at 34:6-21, 36:19-37:4, 287:8-288:2; Cini Tr. at 66:22-67:3; LaPlume Tr. at 89:9-12; Heilman Tr. at 216:18-217:7; Hoffman Tr. at 148:15-20; Deposition Transcript of Charles Black ("Black Tr.") at 293:10-17.

<sup>32</sup> See, e.g., Gewecke Tr. at 288:3-8; Toth Tr. at 310:11-15; McDaniel Tr. at 137:15-21.

<sup>33</sup> See, e.g., Gewecke Tr. at 288:21-289:9; Cini Tr. at 66:2-21, 67:4-9; LaPlume Tr. at 89:13-19; Heilman Tr. at 219:12-22; Hoffman Tr. at 149:3-12; Black Tr. at 292:17-293:3.

<sup>34</sup> See, e.g., Chadwick Tr. at 34:22-35:4; LaPlume Tr. at 89:20-25; Heilman Tr. at 219:23-220:8; Hoffman Tr. at 148:21-149:2; Toth Tr. at 310:17-20; McDaniel Tr. at 137:122-25; Black Tr. at 293:6-9.

## 1. Characteristics of a Ponzi Scheme

29. In a Ponzi scheme investors are paid not from the profits of the business in which they invest, but from the investments of investors who join later than they do. The perpetrator of a Ponzi scheme must know all along that the scheme will inevitably collapse as a result of the inability to attract new investors, and that investors at the end of the line will lose their money. Another characteristic of Ponzi schemes is that they lack any product of real value or potentially profitable business.

30. However, a company is not a Ponzi scheme merely because it has negative cash flow for several years. Indeed, many entrepreneurial start-ups fail to make a profit for a number of years before eventually becoming profitable.

## 2. The Saivian Companies Had Multiple Actual Revenue Sources Besides Cashback Membership Sales

31. The Saivian Companies generated actual revenue in addition to revenue from the sale of Cashback Memberships. First, sales of the MAP Membership product, described above, created a separate revenue stream from Cashback Memberships.<sup>35</sup> Second, revenue accrued from payments for hosting Google AdSense advertisements on the Saivian Companies' website.<sup>36</sup> Third, other revenue accrued from the sale of tickets or passes to attend events and meetings.<sup>37</sup> Each of these additional revenue sources generated actual revenues for the Saivian Companies to subsidize cashback payments to Cashback Members.

## 3. The Saivian Companies Had Multiple Potential Revenue Sources

32. The Saivian Companies also had multiple potential revenue sources.

33. First, the consumer panel POS data the Saivian Companies were collecting from Members had the potential to be a valuable asset to potential purchasers<sup>38</sup> and thus offered the possibility of a potential revenue stream to the Saivian Companies. The Saivian Companies had a multi-phase business plan to monetize these data to generate additional revenue.<sup>39</sup> This plan was premised on first collecting, validating, and organizing a sufficiently large amount of POS data that could be attractive to potential purchasers.<sup>40</sup> The Saivian Companies were making efforts to monetize the POS data until the businesses closed.<sup>41</sup>

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<sup>35</sup> See, e.g., Marino Tr. at 165:4-11; Evans Tr. at 123:6-124:2 (referring to sales of MAP Memberships as one of several factors that played a role in helping to fund cashback payments).

<sup>36</sup> See, e.g., EJD0215009 (showing Google AdSense advertisements were live on the website); EJD0282533 (showing Google AdSense being added back to the website); Ryan Evans Tr. at 123:6-16 (“I believe that there were, you know, Google ads.”).

<sup>37</sup> See, e.g., EJD0222506 (referring to event passes that “can be purchased through . . . Genie”); Exhibit 523 (EJD0306329) (Mr. Dalius requesting a credit card option “for event registration ASAP”).

<sup>38</sup> See, e.g., Expert Report of Alfred O. Boutros ¶¶62-63; Marino Tr. at 142:6-20; 147:13-19, Lefever Tr. at 119:18-25, 120:21-121:10, 123:16-124:7; Gewecke Tr. at 98:21-99:8, Herbert Tr. at 455:25-456:5; Deposition Transcript of Jacques Nack Ngue (“Nack Tr.”) at 146:5-147:2; Goldman Tr. at 305:24-306:5.

<sup>39</sup> See, e.g., Exhibit 230 (EJD0199726) (“The goal of the advertising revenue is to help subsidize the Cashback model to our active members.”); Exhibit 46 (SEC-LIT-EPROD-000001505) (December 10, 2015 email from Saivian LLC’s Marketing Director, Steve Gewecke, to a Member named Mike Zanicchi explaining the multi-phase plan: “The back end POS data model is a 3 phase roll out. Phase I is building up the membership base (suppliers of POS data to Saivian), Phase II is the collection, compiling, and packaging of data, Phase III is acquisition of retail businesses to purchase the available data and advertise to our membership.”).

<sup>40</sup> See, e.g., Exhibit 46 (SEC-LIT-EPROD-000001505).

<sup>41</sup> For instance, Saivian International Ltd. engaged a data scientist, Jacques Nack Ngue, and his company, JNN

34. Second, the Saivian Companies were developing a mobile app that the companies had plans to use to generate additional revenue by showing advertisements to Members, including geo-targeted advertisements.<sup>42</sup> Additionally, the Saivian Companies also planned for the mobile app to enhance the value of MAP Memberships by creating additional ways for MAP Members to promote their business to the Saivian Companies' Cashback Members, including by offering coupons to Cashback Members.<sup>43</sup>

35. Third, the Saivian Companies also planned to develop the website [www.saivian.com](http://www.saivian.com) "exclusively to attract retail marketing partners" and to show how the POS data could benefit them through advertising opportunities.<sup>44</sup>

#### **4. Many Members Redeemed Their Cashback Awards for Passes, Reducing the Cash Flow Needed to Pay Cashback**

36. The cash flow the Saivian Companies required to pay cashback was reduced because many Members voluntarily chose to redeem their Cashback Awards for Passes instead of for cash. The Saivian Companies gave Members the option of redeeming Cashback Awards for Passes that could be used to purchase or renew a Membership. Passes simply substituted for a \$125.00 cash payment to the Saivian Companies for a 28-day Cashback Membership, so the Member choosing Passes did not lose money versus choosing cash in 60 days.

37. Passes had several advantages to Members over receiving cash. As was fully disclosed to Members, Passes were available 30 days earlier than cash and could be sold or used immediately with no fees.<sup>45</sup> Because Passes were frequently in high demand and there was an active market for selling and buying Passes, they could be monetized by a Member selling their Passes to others.<sup>46</sup> Thus, many Members chose to redeem their cashback for Passes, which allowed them to monetize their cashback faster.<sup>47</sup> Indeed, Passes were in such high demand that some individuals even purchased additional

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Group, Inc., to analyze the consumer panel POS data being collected from Members and advise on monetization strategies for the data. *See, e.g.*, Nack Tr. at 38:6-39:18, 41:14-44:24, 56:6-22, 146:5-147:2, 170:8-171:5; EPROD-DEF-SEC-000052736 (Consulting Agreement entered into with JNN Group, Inc., dated March 30, 2017); EPROD-DEF-SEC-000052700 (JNN Group's Data Assessment Report, dated July 10, 2017); EJD0247833 (August 11, 2017 email from Jacques Nack to Mr. Dalius, attaching a Data Analytics Consulting Agreement, a detailed Statement of Work, and a detailed proposed project schedule for the next phase of Nack's data monetization project); Goldman Tr. at 313:18-314:8. The Saivian Companies were also working with an outside software development company, ISBX, in an attempt to develop optical character recognition (OCR) technology to more easily capture information from receipt images. *See, e.g.*, Evans Tr. at 103:2-104:7; 245:25-246:12, Deposition Transcript of Ted Hekman ("Hekman Tr.") at 69:16-70:2, 86:5-12; Exhibit 526 (EPROD-DEF-SEC-000053377). Additionally, the Saivian Companies also created a central online repository to store the receipt images Members submitted so that they could be more easily analyzed for monetization purposes. *See, e.g.*, Hekman Tr. at 80:21-82:22.

<sup>42</sup> *See, e.g.*, Marino Tr. at 249:19-250:10; Goldman Tr. at 258:5-10; Hekman Tr. at 145:18-146:15; Exhibit 47 (EPROD-DEF-SEC-000017621) (discussing plans for a mobile app that could provide "targeted ads based on the members location"); Exhibit 364 (EJD0244169) (referring to "Adding the capability of Push Notifications GTP (Geo Targeted Push) . . . this is the real revenue producer").

<sup>43</sup> *See, e.g.*, Gewecke Tr. at 346:15-348:19; Exhibit 364 (EJD0244169) (referring to a "Promotional Coupon" feature in the mobile app).

<sup>44</sup> *See, e.g.*, Exhibit 47 (EPROD-DEF-SEC-000017621) ("Working on developing the .com site exclusively to attract retail marketing partners and how our pos data can benefit their organization.").

<sup>45</sup> *See, e.g.*, Gewecke Tr. at 244:24-246:6; Toth Tr. at 73:23-74:11, 327:18-329:4; Evans Tr. at 206:22-207:10.

<sup>46</sup> *See, e.g.*, Chadwick Tr. at 107:24-108:3, 132:15-25, 140:8-25; Herbert Tr. at 71:5-16, 130:21-23; Toth Tr. at 303:23-304:9; Black Tr. at 130:8-11; Evans Tr. at 206:22-207:10.

<sup>47</sup> *See, e.g.*, Heilman Tr. at 195:15-196:19, 202:19-203:15; Herbert Tr. at 271:9-12; Toth Tr. at 292:5-15, 296:22-297:11, 299:20-300:7, 302:5-11, 306:17-25, 312:18-313:11; McDaniel Tr. at 142:21-24; Evans Tr. at 128:22-129:11, 206:22-207:10, 213:3-21.

Passes.<sup>48</sup>

38. The decision to redeem cashback for Passes instead of cash was a voluntary choice by each individual Member and no one was ever required by the Saivian Companies to redeem their cashback for Passes.<sup>49</sup>

#### **5. The Saivian Companies' Cash Flow Needs to Pay Cashback Were Reduced by the Fully Disclosed Timing Schedule of Fees and Cashback Payments**

39. The scheduled timing of Membership fees and Cashback payments – all of which were fully disclosed to Members<sup>50</sup> – meant the Saivian Companies did not need additional cash flow to make cashback payments beyond a Cashback Member's own payment of membership fees until at least the seventh month of Membership. This assumes that the Member is taking full advantage of the Cashback Membership by submitting the maximum receipt amounts and redeeming for cash the maximum amount of Cashback Awards available pursuant to the Saivian Companies' rules. This time period would be even longer if a Member submitted less than the maximum amount of receipts or did not make a cashback redemption.

#### **6. The Saivian Companies' Cash Flow Needs to Pay Cashback Were Reduced by Breakage**

40. The cash flow needs of the Saivian Companies to pay cashback to Members was significantly reduced by breakage in Members' usage of the Cashback Memberships. As used herein, breakage refers to behavior by Members that did not take full advantage of a Cashback Membership, such as choosing not to submit receipts in a certain time period or ever (for whatever reason), choosing to submit receipts of lower than the maximum allowed value, or not requesting a cashback redemption in a timely manner when it was available to the Member. Breakage also includes instances of Cashback Members who cancelled their Membership or allowed their Membership to lapse, thereby leaving potential cashback earnings "on the table."

41. Breakage is common and accepted consumer behavior, especially in the context of membership or subscription products such as a gym membership. Indeed, breakage is recognized both in real-world practice and in academic research on consumer behavior and behavioral economics. Many valuable products, like the Memberships the Saivian Companies sold, exhibit such breakage in the level of usage of the product.

42. Cashback Members individually chose which items they purchased, how much they spent, and at which stores they shopped, and therefore experienced varying *ex post* outcomes based on their own decisions and behaviors. Despite these outcome variations, observing that some Members took less advantage of the Cashback Membership offering than others does not change the fact that all had access to the same offer.

43. In these membership situations, including the Saivian Companies', this consumer behavior pattern is well-recognized by social psychologists and even has a name in the social psychology literature: the "intention – behavior gap," and is not indicative of consumers that are not rational economic actors or that were duped into signing up for a membership that may pay out *ex post* less than one expected *ex ante*.

44. The reality of breakage drove and supported the Saivian Companies' strategy to plan for breakage

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<sup>48</sup> See, e.g., Chadwick Tr. at 66:15-19, 140:8-25; Toth Tr. at 312:18-313:11.

<sup>49</sup> See, e.g., Heilman Tr. at 202:19-203:15; Toth Tr. at 292:5-15, 296:22-297:11, 302:5-11; McDaniel Tr. at 142:21-24; Evans Tr. at 128:22-129:11, 208:1-12, 209:8-15.

<sup>50</sup> See, e.g., Exhibit 642 (TD0000877) ("Redemptions are verified 30 days after receipt submission and paid 30 days after verification.").

in their model and is not a sign of fraudulent intent or of the operation of a Ponzi scheme.<sup>51</sup> Because one could expect such consumer behavior from analogues such as gym memberships or insurance policyholders, and because some of these Members would nevertheless be happy to maintain Memberships to have access to the ISB, it was economically reasonable for the Saivian Companies to plan for only a portion of Cashback Members to break even on their Memberships and therefore to anticipate that the Cashback Membership products themselves could generate positive financial outcomes for the Saivian Companies.<sup>52</sup>

45. The existence of breakage with respect to the Saivian Companies' Memberships is not merely theoretical. Member testimony shows that the existence of breakage was prevalent in Members' usage of the Cashback Memberships.<sup>53</sup> In fact, the Saivian Companies' data shows that membership fees paid by Members who entered and submitted no receipts, and therefore never earned any Cashback Awards or made a cashback redemption, exceeds the Cashback Awards paid in cash to all Members who actually entered and submitted receipts and made cashback redemptions. Membership fees paid directly to the Saivian Companies by such Members constituted cash available to the Saivian Companies due to breakage because those Members paid membership fees but made the personal decision not to use the product (for whatever reason) and did not earn any Cashback Awards payable by the Saivian Companies. Such Members are comparable to gym members who pay gym membership fees but never go to the gym.

46. The following table<sup>54</sup> shows the amount of membership fees paid by those Members that entered and submitted no receipts to the Saivian Companies by various payment methods, including by check, electronic check through "Genie Gateway" (a payment processor), "ePin" (another payment method), and credit card:

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<sup>51</sup> See, e.g., Gewecke Tr. at 92:7-95:12 (stating that there was breakage in usage of the Cashback Memberships and that he would explain this to Members); 289:10-290:21 (stating that he would tell Members "we utilized a model like a rebate system with a breakage that would help cover the cash back program"), 291:2-18 ("[T]he breakage was pretty high").

<sup>52</sup> See, e.g., Gewecke Tr. at 92:7-95:12.

<sup>53</sup> See, e.g., Gewecke Tr. at 92:7-95:12; 289:10-291:18; Cini Tr. at 98:13-100:18; LaPlume Tr. at 129:19-130:18; Hoffman Tr. at 175:22-176:12.

<sup>54</sup> I understand that the information summarized in this table is based on the Saivian Companies' participant database, using the SQL query listed in **Appendix F**.



Year	Month	Check	Genie Gateway	ePin	Credit Cards	Total Payments
2015	10	\$2,250.00	\$0.00	\$0.00	\$0.00	\$2,250.00
2015	11	\$29,375.00	\$0.00	\$0.00	\$0.00	\$29,375.00
2015	12	\$111,125.00	\$0.00	\$0.00	\$0.00	\$111,125.00
2016	1	\$133,125.00	\$0.00	\$0.00	\$0.00	\$133,125.00
2016	2	\$200,750.00	\$0.00	\$0.00	\$0.00	\$200,750.00
2016	3	\$248,125.00	\$0.00	\$0.00	\$0.00	\$248,125.00
2016	4	\$5,250.00	\$3,500.00	\$0.00	\$0.00	\$8,750.00
2016	5	\$0.00	\$17,137.00	\$0.00	\$0.00	\$17,137.00
2016	6	\$0.00	\$8,698.00	\$0.00	\$0.00	\$8,698.00
2016	7	\$0.00	\$254.00	\$0.00	\$19,760.00	\$20,014.00
2016	8	\$0.00	\$0.00	\$0.00	\$43,680.00	\$43,680.00
2016	9	\$0.00	\$0.00	\$0.00	\$61,594.68	\$61,594.68
2016	10	\$0.00	\$0.00	\$0.00	\$93,105.00	\$93,105.00
2016	11	\$0.00	\$0.00	\$0.00	\$195,825.00	\$195,825.00
2016	12	\$0.00	\$0.00	\$0.00	\$205,140.00	\$205,140.00
2017	1	\$0.00	\$0.00	\$0.00	\$102,850.00	\$102,850.00
2017	2	\$0.00	\$0.00	\$9,230.87	\$54,340.00	\$63,570.87
2017	3	\$0.00	\$0.00	\$10,595.00	\$40,040.00	\$50,635.00
2017	4	\$0.00	\$0.00	\$0.00	\$1,950.00	\$1,950.00
2017	5	\$0.00	\$0.00	\$250.00	\$1,000.00	\$1,250.00
	<b>Total:</b>	\$730,000.00	\$29,589.00	\$20,075.87	\$819,284.68	\$1,598,949.55

47. As shown above, Membership fees paid directly to the Saivian Companies by such Members total nearly \$1.6 million.<sup>55</sup> The plaintiff in this action has produced a Declaration of Jordan Goldman, dated November 24, 2020 (“Goldman Decl.”), containing a SQL query to run against the database of the Saivian Companies’ data that purports to return the “Total Cashback Amounts Redeemed by Saivian Customers for Cash.”<sup>56</sup> I understand that the query returns an amount of nearly \$1.4 million.<sup>57</sup> I further understand that Defendants believe that this is inaccurate and the real amount is lower. Regardless, even the higher amount of Cashback Awards redeemed for cash returned by the query in the Goldman Declaration of nearly \$1.4 million is less than the nearly \$1.6 million in membership fees paid by Members who entered no receipts and therefore received no Cashback Awards from their Membership. Moreover, this delta between the two amounts is just a portion of the cash available to the Saivian Companies from breakage on account of Members’ personal decisions about how much to utilize the Cashback Memberships.

48. In addition to Members who paid Membership fees to the Saivian Companies yet made the personal decision to enter and submit no receipts whatsoever, breakage also resulted due to Members who paid membership fees to the Saivian Companies and did enter and submit receipts but received less back in Cashback Awards paid in actual cash than they paid in Membership fees.

49. Based on company data, the amount of membership fees paid to the Saivian Companies by

<sup>55</sup> I understand that there is some uncertainty as to whether all of the membership fees paid to the Saivian Companies using two payment methods, Genie Gateway and ePin, were received by the Saivian Companies due to problems with the payment processors. Even if the Genie Gateway and ePin amounts were excluded entirely, the membership fees paid to the Saivian Companies by check and credit card total \$1,549,284.68.

<sup>56</sup> Exhibit 499 (Second Declaration of Jordan Goldman, dated November 24, 2020) ¶62.

<sup>57</sup> I understand that this information is derived from the Saivian Companies’ participant database using the SQL query listed in **Appendix G**.

Members that did enter at least one receipt (and therefore are not included in the table above), yet received less in Cashback Awards paid in cash than those Members paid in membership fees, is greater than the amount of Cashback Awards paid in cash to such Members by approximately \$4 million.<sup>58</sup>

50. Adding these breakage amounts (breakage from Members that submitted no receipts and breakage from Members that submitted receipts but received less in Cashback Awards paid in cash than they paid in membership fees) results in a breakage amount of approximately \$5.6 million.<sup>59</sup>

51. Accordingly, breakage in Members' level of utilization of the Cashback Memberships resulted in cash to the Saivian Companies that exceeded the amount of Cashback Awards paid to all Members in cash. Therefore, the cash from breakage alone was more than sufficient to cover the Cashback Awards paid by the Saivian Companies in cash. Thus, in fact, the cash available to the Saivian Companies on account of breakage was more than sufficient to fully fund the cashback payments to Members.

## **7. It Was Not Inevitable That the Saivian Companies Would Collapse**

52. Given all of the factors above, including the Saivian Companies' offer of a real, valuable product, their multiple actual and potential revenue sources besides sales of the Memberships, the reduction in cash flow needed to pay cashback due to the offering of passes, the scheduled timing of cashback redemptions, and breakage, the Saivian Companies were not inevitably fated to collapse, and Mr. Dalius had no reason to think otherwise.

53. Further, as noted above, experiencing negative cash flow for a period of time after the launch of a new business strategy does not mean that the strategy itself is doomed to failure or a Ponzi scheme.

54. The Saivian Companies' overall strategy combined a reasonable expectation of Member activity levels with a plan to monetize the value of the consumer base and their consumer panel POS data to generate additional revenues. The Saivian Companies and Mr. Dalius took an entrepreneurial risk in establishing the business; the lack of time to fully execute all elements of the strategy in the approximately 17 months during which they operated does not prove inevitable failure of the strategy.

55. For the foregoing reasons, I conclude that the nature and offering of the Saivian Companies' Cashback Membership program did not operate as a Ponzi scheme.

## **D. The Saivian Companies Did Not Operate as a Pyramid Scheme**

56. The *Koscot* Rule defines a pyramid scheme as an "entrepreneurial chain" that is "characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users."<sup>60</sup> This pyramid scheme definition requires that an enrollee pay a consideration to earn the two rights granted under the *Koscot* Rule. This predicate is not met with respect to the Saivian Companies because they offered valuable Cashback Membership products, there was never any requirement to purchase a Cashback Membership to become an Affiliate and sell the Membership products to others, and Affiliates were paid commissions only on actual product sales and not merely for recruitment. Accordingly, the Saivian Companies did not operate as a Pyramid

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<sup>58</sup> I understand that this information is derived from the Saivian Companies' participant database using the SQL query listed in **Appendix H**. If membership fees paid to the Saivian Companies using the Genie Gateway and ePin payment methods are excluded for the reason discussed above, there is still an additional \$3,641,084.75 in membership fees paid by such Members.

<sup>59</sup> If membership fees paid to the Saivian Companies using the Genie Gateway and ePin payment methods are excluded entirely for the reason discussed above, the breakage amount would be \$5,190,369.43.

<sup>60</sup> *In the Matter of Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1975 WL 173318, at \*49-50 (F.T.C. 1975).

scheme under *Koscot*.

### 1. The Cashback Memberships Were Real, Valuable Products

57. The Cashback Memberships were real, valuable products that Members liked and used. The value inhered in both the ability to earn cash back on one's retail shopping receipts and the ability to take advantage of the ISB, provided at no extra cost to every Member. As noted above, Member testimony shows that Members found the Cashback Membership to be a product of value, and that they actually submitted their receipts and received cashback. Member testimony further shows that Members saw value in and liked the ISB.

58. Together, the ability to earn Cashback Awards and the ability to use the ISB show that the Saivian Companies' Cashback Memberships were products of real value that Members desired.

### 2. Affiliates Were Not Required to Purchase Any Products

59. I understand that there was never any requirement to purchase one of the Saivian Companies' Membership products to become an Affiliate at any time during their operation. Thus, an individual always had the option to become an Affiliate without purchasing any of the Membership products. I also understand that there are no individuals who requested and were denied the ability to become an Affiliate without purchasing one of the Membership products.<sup>61</sup> The option to become a free Affiliate was explicitly disclosed in Section 1.2 of Saivian LLC's Policies and Procedures in June 2016 (before Saivian International Ltd. was formed).<sup>62</sup> A one-time administrative fee of \$125 was noted in an August 2016 email,<sup>63</sup> for individuals who wanted to be an Affiliate but did not want to purchase a Membership, to cover access to the Saivian Companies' back-office website. It is my understanding that this one-time \$125 administrative fee may never have been charged, but in any event would not have been a "consideration" under *Koscot* because it was a one-time administrative fee and was not a recurring fee that could have been used to pay upline commissions. Subsequently, on or about January 5, 2017, the ability to become an Affiliate without the one-time administrative fee was enabled on the Saivian Companies website.<sup>64</sup>

60. Moreover, though Affiliates were not required to purchase the Cashback Memberships, Affiliates wanted to purchase, and did indeed, purchase and use the Cashback Memberships.<sup>65</sup> Of course, economically, it is entirely rational and reasonable that Affiliates would desire to sell a product that they themselves used and believed in. Naturally, one would expect Affiliates to want to also be Members, and to be able to demonstrate the value that they received from the Cashback Memberships. Witness testimony shows that individuals did indeed pay for a Cashback Membership so that they could understand how it worked and better sell the product.<sup>66</sup> The fact that Affiliates saw value in the Saivian

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<sup>61</sup> See, e.g., Marino Tr. at 120:16-22; Gewecke Tr. at 357:22-359:5.

<sup>62</sup> Exhibit 520 (EJD0222702) (showing Section 1.2, which reads "No Purchase or Payment Required[.] No person is required to purchase any of Saivian's products or services or to pay any fee to become an Independent Representative.").

<sup>63</sup> See Exhibit 64 (EJD0228264), August 27, 2016, in which Mr. Dalius responds to a question about whether an individual must purchase a Cashback Membership in order to become an Affiliate: "if no membership is purchased there is a \$125 admin cost for affiliate back office set up." This was a one-time cost, not a recurring fee.

<sup>64</sup> EPROD-DEF-SEC-000085800 (May 19, 2017 screenshot showing what the free affiliate sign-up option looked like on the join page after GSP launch); EPROD-DEF-SEC-000200251 ("How long was 'Free Affiliate' program active? The signup page shows this being active from 1/4/17 to the end of the signups we did (7/31/17)").

<sup>65</sup> See, e.g., *supra* notes 7, 8 (wherein Christine Lefever, Corey Chadwick, John Cini, Donald LaPlume, Mike Kim, Zach Heilman, William Toth, Scott McDaniel, and Ryan Evans were all Affiliates who also purchased and used the Cashback Membership).

<sup>66</sup> See, e.g., Gewecke Tr. 140:24-141:15; Evans Tr. at 67:19-68:7.

Companies' products and purchased Cashback Memberships for their own use is not evidence that Affiliate status required the purchase of a Membership.

### **3. No Affiliate Commissions Were Paid Merely for Recruitment**

61. Affiliates were never paid commissions based on recruiting new Members. Commissions were only paid to Affiliates based on actual sales of Cashback Memberships,<sup>67</sup> and no commissions were paid for Members who stopped buying 28-day Cashback Memberships. Therefore, all commissions awarded to Affiliates were a function of product sales of Memberships.

62. Before an individual was eligible to receive Affiliate commissions, they had to have personally made three actual retail Membership sales and maintain those three personally-sponsored active Members to remain eligible for commissions.<sup>68</sup> In other words, an Affiliate had to sell to individuals who were actually purchasing the Cashback Membership in order to ever receive any commissions. Indeed, Affiliates consistently testified that they only received commissions for actual sales of the Cashback Memberships, and that they would cease to receive these commissions if they failed to maintain three active Members.<sup>69</sup>

63. Accordingly, I conclude that the Saivian Companies did not operate as a pyramid scheme because the Saivian Companies' Affiliate Program fails the *Koscot* test for a pyramid scheme.

#### **E. In Light of the Above Analysis, Dr. Vander Nat's Report and Analysis are Unreliable**

64. Based on my analysis in this Report and on my reading of Dr. Vander Nat's report, I find that his analysis and conclusions are invalid and unsupportable.

#### **1. Dr. Vander Nat's Lack of Understanding That the Saivian Companies' Cashback Memberships Were Products of Value Invalidates His Pyramid Scheme Analysis**

65. Dr. Vander Nat does not treat the Saivian Companies' Memberships as a product, nor does he acknowledge or account for the ancillary benefits of Membership such as the ISB. He appears to assume that Memberships have no value, an incorrect perception and a fundamental and fatal flaw in the foundation for his entire pyramid scheme analysis.<sup>70</sup>

66. Dr. Vander Nat essentially claims that the purchase of a 28-day Cashback Membership is merely a "recruitment" event, not a retail product purchase. This is incorrect for at least two reasons.

67. First, the Cashback Membership is in fact a retail product purchase, as my analysis elsewhere in this Report demonstrates. Second, as a simple logical and definitional point, any Membership renewal purchase after the first one cannot be called a "recruitment" event because recruitment only applies to the initial purchase – not subsequent Membership renewals. Thus, Dr. Vander Nat's claim that "*all rewards*" are "recruitment rewards" is illogical because Affiliates earned commissions on membership sales for renewals as well as product sales to new Members.

68. Beyond this, Dr. Vander Nat's misapprehension about the fact that the Cashback Memberships were products contributes to and is commingled with his lack of understanding about the way in which

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<sup>67</sup> See, e.g., EPROD-DEF-SEC-000216795, Exhibit 638 (EJD0201510), and Exhibit 642 (TD0000877).

<sup>68</sup> *Id.*

<sup>69</sup> See, e.g., Marino Tr. at 42:15-22, 44:7-15; Lefever Tr. at 133:2-12, 135:6-10, 135:22-136:2; Chadwick Tr. at 24:19-25:24; Cini Tr. at 34:5-14; LaPlume Tr. at 44:3-7, 89:9-12; Heilman Tr. at 147:5-12, 224:13-25; Toth Tr. at 302:22-303:8; McDaniel Tr. at 110:8-111:9.

<sup>70</sup> Expert Report of Peter Vander Nat, Ph.D., Feb. 9, 2022 ("Vander Nat Report"), ¶¶15-16 (footnote text omitted in quotes from Dr. Vander Nat's report unless otherwise indicated).

the Affiliate compensation plan works, as the following quote demonstrates:

- “since retailing, *per se*, provided no profit to an Affiliate, there was a built-in disincentive for an Affiliate to spend time and resources to enroll retail customers (people not required for greater daily rewards and of no help in building a downline).”<sup>71</sup>

69. Dr. Vander Nat’s statement above indicates that he believes that the purchase of a 28-day Cashback Membership by an Affiliate’s downline is not a retail sale, because he appears not to recognize that “enrollment” of a downline Member is in fact accomplished through a retail purchase of a 28-day Cashback Membership by that downline Member. Whether any given downline Member does or does not recruit other Members does not change the fact that any Member remains a Member precisely because they continue to purchase the 28-day Membership, a retail product, at the rate of one Membership per 28-day period. Indeed, in terms of Affiliate commissions, a Member who has no interest in selling the product to others counts towards the sales volume requirements just the same as a Member who does. Thus, Dr. Vander Nat’s purported distinction between recruiting a “retail only customer” versus an Affiliate is a meaningless criterion for a pyramid scheme analysis.

70. In addition, the claim that a downline’s purchase of a 28-day Cashback Membership does not contribute to an Affiliate’s “profit” (presumably meaning “commissions”) is also incorrect, since the sale of Memberships to three active Cashback Members is exactly what Affiliate must do to earn daily commissions. In fact, the *only* way to generate that \$5.00 daily commission is through the retail purchases by downlines of 28-day Cashback Memberships.

71. Dr. Vander Nat’s allusion to “people not required for greater daily rewards” is unclear, though it is contradicted by his own Table 1,<sup>72</sup> which shows (for instance) that progressing from 3 to 12 downline Memberships does increase an Affiliate’s daily Commissions.

72. Dr. Vander Nat also does not explain how it would be possible to enroll a “retail customer” (that is, a Cashback Member) that does not “help in building a downline,” since enrolling a Cashback Member who buys 28-day Memberships does help build an Affiliate’s network. Not all downlines have to be successful Affiliate recruiters; an Affiliate could, for example, sell 12 Memberships and had the right to place them into two downline Teams of 6 Members each, thereby qualifying for a VIP Founder commission each day in which all 12 individuals are Active Members, having paid for or renewed their Membership.<sup>73</sup>

## **2. Dr. Vander Nat’s Report Fails to Account for Breakage as a Normal and Expected Consumer Behavior, Rendering His Analysis Irrelevant to the Assessment of the Saivian Companies’ Affiliate Program**

73. Dr. Vander Nat’s report shows no understanding of the concept of “breakage” nor of its validity, either in academic literature or in real-world contexts. The omission of breakage from his pyramid scheme analysis renders it irrelevant to the assessment of the Saivian Companies’ Affiliate Program.

74. Dr. Vander Nat’s analysis of the Saivian Companies’ Affiliate compensation plan builds scenarios that he calls:

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<sup>71</sup> Vander Nat Report ¶23.

<sup>72</sup> Vander Nat Report ¶25.

<sup>73</sup> EPROD-DEF-SEC-000167978 (“Saivian Training” screenshots focusing on placement rules for an Affiliate’s downline marketing teams). *See also* Exhibit 638 (EJD0201510) (showing all Affiliate Compensation Plan Ranks, the requirements to qualify for each, and that individuals who purchase a Membership can be placed on any team, including multiple people “down one team in a straight line”).

- “optimal (or best-case) participant scenarios; i.e., scenarios in which the participants meet all the rules of the program, seek progressively higher rankings, and obtain the highest rewards available,” and states that he relies “on the economic principle that people, as economic agents, are rational profit maximizers.”<sup>74</sup>

75. These scenarios ignore the many rational reasons for breakage in Membership product markets and the commonality and reality in consumer behavior of the “intention – behavior gap.” Along with the other crucial (and incorrect) assumption that an Affiliate must be an Active Member to qualify for Affiliate commission earnings, these errors set the stage for Dr. Vander Nat’s predictable but incorrect conclusion of “economic losses” for “most” participants.

76. I therefore find that Dr. Vander Nat’s conclusion that “the empirical percentage of Affiliates for whom the rewards under the compensation plan do not cover their membership payments in this manner is close to 97.4%” does not apply to an analysis of the Saivian Companies and provides no basis for a pyramid scheme assessment in this case.

### **3. Dr. Vander Nat’s Erroneous Position That Recruitment is a Necessary Element for All Saivian Companies’ Participants Undermines His Argument That the Saivian Companies Would Have Been Doomed to Failure**

77. Dr. Vander Nat assumes an “optimal (or best-case) participant scenario” based on maximum Affiliate commission earnings for each and every participant. His analysis rests on two incorrect assumptions: first, that Affiliates must be Active Cashback Members to earn commissions, and second, that all Affiliates desire to recruit other Affiliates to maximize their commission earnings.

78. However, Dr. Vander Nat provides no evidence that all enrollees in fact seek to build the biggest downline possible, in the fastest time possible. In fact, in Table VI of his report, Dr. Vander Nat identifies a purported 2,386,800 customer IDs, which he claims represents 72.7% of all customer IDs, that never reached the rank of Founder and therefore never earned any Affiliate commissions. Table VII purports to show that of these 2,386,800 customer IDs, 336,509 sponsored one or more other participants, equating to 2,050,291 customer IDs that both never reached the rank of Founder and never sponsored any other participants. There is no evidence that the “vast majority” of these roughly 2 million Members sought to but failed to become qualified Affiliates rather than simply wishing to be a Member only and enjoying the benefits of the Memberships, despite Dr. Vander Nat’s wholly unsupported speculation to the contrary.<sup>75</sup>

79. These unrealistic assumptions lead to an overstatement of the ability and willingness of any given Member to work at, and achieve, a downline of a given size. Therefore, I agree with Dr. Vander Nat’s characterization of his geometric progression depicted in Table 2 as “absurd on its face”<sup>76</sup> as a model of the development of an Affiliate’s downline network – but for different reasons than he states.

80. While Dr. Vander Nat asserts that “the rules of Saivian’s program ensure that the vast majority of Affiliates would not qualify for a position that earns them sufficient rewards to recoup their investment,”<sup>77</sup> his analysis<sup>78</sup> overstates an Affiliate’s required costs and underestimates an Affiliate’s possible benefits in doing so. First, his analysis incorrectly assumes that the Affiliate is required to maintain an Active Cashback Membership in order to qualify for Affiliate commissions, as shown in Dr. Vander Nat’s Figure 4, with the “result” that only by the (quick) time at which the Affiliate achieves VIP

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<sup>74</sup> Vander Nat Report ¶31.

<sup>75</sup> Vander Nat Report ¶54.

<sup>76</sup> Vander Nat Report ¶32.

<sup>77</sup> Vander Nat Report ¶33.

<sup>78</sup> Vander Nat Report at 15-19.

Founder status does s/he earn sufficient Affiliate commissions to “break even” on the accumulated Cashback Membership fees. Instead using the correct assumption of *no* required Cashback Membership fees, Figure 4 would show no “net loss” over any time horizon. Second, even if an Active Cashback Membership had been required to earn Affiliate commissions (in contradiction to the actual rules of Affiliate compensation), Dr. Vander Nat’s analysis would still overestimate “net losses” because it ignores the financial benefits possible from the Cashback Membership.

81. In summary, my analysis indicates that Dr. Vander Nat has not demonstrated that recruitment was a necessary part of participating in the Saivian Companies’ programs.

#### **4. Dr. Vander Nat’s Erroneous Claim That the Saivian Companies Required All Affiliates to be Members Renders His Pyramid Scheme Analysis Unreliable**

82. Dr. Vander Nat erroneously claims that the Saivian Companies always required an Affiliate to be a Member,<sup>79</sup> thus improperly inferring that all Saivian Affiliates were required to purchase a Cashback Membership. As my discussion in this Report shows, the Saivian Companies did not require Cashback Membership, or payment of any other *Koscot* consideration,<sup>80</sup> as a condition for being an Affiliate or earning Affiliate commissions. Based on his erroneous claim, Dr. Vander Nat’s assertion that the Saivian Companies’ Affiliate program was a pyramid scheme has no factual basis.

83. Further failing to support Dr. Vander Nat’s contention that Cashback Membership was a requirement for qualification for Affiliate commissions, he states that only a small number of Affiliates were not Cashback Members<sup>81</sup> and uses this to conclude that, “the ‘Affiliate Only’ participants played a *de minimus* role in Saivian’s operation.”<sup>82</sup>

84. In fact, observing that few Affiliates chose not to be also Cashback Members does not support the claim that Membership was required, nor does the role – large or small – of such Affiliates in “Saivian’s operation” make Dr. Vander Nat’s incorrect assumption correct.

85. As a result, I find that Dr. Vander Nat’s claim that a Cashback Membership was a requirement for qualification for Affiliate compensation is not only incorrect in itself, but also invalidates his entire pyramid scheme analysis and his resulting conclusions.

#### **5. Dr. Vander Nat’s Reference to “Costs” of a Saivian Companies Affiliate Has No Foundation and Does Not Support His Pyramid Scheme Analysis**

86. Dr. Vander Nat makes mention of “costs” of building and maintaining status as an Affiliate, but gives no evidence of any such costs.

87. In fact, an Affiliate was not required to bear any costs; and because the product the Saivian Companies sold was a Membership, there were no inventory holding costs or shipping costs, nor would such costs be possible with a Membership product. Any reliance on a “costs” argument for Dr. Vander Nat’s pyramid scheme conclusion is therefore inappropriate.

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<sup>79</sup> Vander Nat Report ¶21.

<sup>80</sup> *See supra* ¶59. Dr. Vander Nat incorrectly states that Saivian required an “Affiliate Only” participant to pay an annual cost of \$130 (Vander Nat Report at 9 n.26). The document he cites (EJD0289863) was a proposed revision to the compensation plan that was never implemented. *See* 30(b)(6) Deposition Transcript of Saivian LLC at 278:5-13.

<sup>81</sup> Vander Nat Report at 9 n.26

<sup>82</sup> Vander Nat Report at 9-10 n.26.

**6. Dr. Vander Nat’s Claims of “Inevitable Losses” for Most Affiliates is Based on Mathematical Analysis That Is Inapplicable to the Saivian Companies’ Affiliate Program or Overall Offerings, and Therefore is Not Useful in Assessing Whether Any Saivian Companies Affiliate or Member Lost Money**

88. Dr. Vander Nat’s claims about the inevitability of “losses” for most Affiliates are similarly without merit. He bases these claims on an inaccurate mathematical analysis that does not apply to the Saivian Companies’ business. He provides no evidence of any participant having actually lost money.

89. “Losses” are not demonstrated, first because Membership payments were not required to be an Affiliate or earn commission, and second because the Cashback Membership was a retail product of value whose *ex ante* value included positive benefits, in addition to the costs to maintain a Cashback Membership. It is therefore inappropriate to include the Cashback Membership fees to calculate gains or losses from being an Affiliate.

90. Further, the Affiliate program is not a “perpetual recruitment chain” as Dr. Vander Nat contends,<sup>83</sup> because recruiting downline Members was not the only way to participate (one also could participate only as a Cashback Member, without an intention to recruit a downline). Second, as being a Member was not required to earn commissions, it is not appropriate to include Cashback Membership fees as “costs” of being an Affiliate. And third, as a result of the prior two statements and my analysis in this Report of the benefits of Cashback Membership, one cannot conclude that “the vast majority of participants” are “doomed” to “financial failure.” Dr. Vander Nat has not therefore supported his claim that the Saivian Companies operated a perpetual recruitment chain.

**7. Dr. Vander Nat’s “Model” is Based on the Above Inaccurate Claims and Assumptions and Does Not Support His Pyramid Scheme Assertions**

91. Dr. Vander Nat’s purported “model” is inapplicable to the Saivian Companies’ business, for all the above reasons. Therefore, his analysis does not support his characterization of the Saivian Companies’ Affiliate program as a pyramid scheme.

#### **IV. Conclusions**

92. My analysis to date as summarized in this Report leads me to conclude that:

- a. The Saivian Companies’ use of a multi-level compensation plan to compensate their Affiliates is a common, appropriate, and reasonable business strategy;
- b. The Saivian Companies’ Cashback Membership products and Affiliate programs awarded cashback to Cashback Members based on each Member’s own efforts and commissions to Affiliates based on each Affiliate’s own efforts and those of the downline sales team they had built. Participants had no interest in the profitability of the Saivian Companies and were awarded cashback and commissions regardless of the financial performance or profitability of the Saivian Companies;
- c. The Saivian Companies did not operate as a Ponzi scheme;
- d. The Saivian Companies did not operate as a pyramid scheme, in either design or practice; and
- e. The analysis in Dr. Vander Nat’s Report is flawed and unreliable and therefore does not

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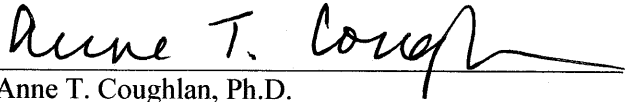
<sup>83</sup> Vander Nat Report ¶24.



support his pyramid scheme conclusion.

93. Additional information may come to my attention after the date of this Report that could affect the opinions stated herein. Therefore, I reserve the right to supplement and/or amend my Report and opinions as appropriate in light of such additional information.

Dated: March 7, 2022

A handwritten signature in black ink that reads "Anne T. Coughlan". The signature is written in a cursive style and is positioned above a horizontal line.

Anne T. Coughlan, Ph.D.

**APPENDIX A: CURRICULUM VITAE FOR ANNE T. COUGHLAN**

**NAME AND RANK**

Anne T. Coughlan  
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**EDUCATION**

Stanford University, Ph.D. (Economics), April 1982.  
Stanford University, B.A. (Economics, with Honors and Distinction, Phi Beta Kappa), 1977.

**PRIOR EXPERIENCE**

**Academic Positions**

Sept. 2020-	Polk Bros. Chair in Retailing and Professor of Marketing Emerita, Kellogg School of Management, Northwestern University
Sept. 2014-Sept. 2020	Polk Bros. Chair in Retailing and Professor of Marketing, Kellogg School of Management, Northwestern University
Sept. 2009-Aug. 2014	J.L. & Helen Kellogg Professor of Marketing, Kellogg School of Management, Northwestern University
February 2007-	Professor of Marketing, Kellogg School of Management, Northwestern University
Dec. 1990 – Feb. 2007	Tenured Associate Professor of Marketing, Kellogg (Graduate) School of Management, Northwestern University
Aug. 1997-July 1998	Visiting Professor of Marketing, INSEAD, Fontainebleau, France
July 1988 - Dec. 1990	Associate Professor of Marketing, Kellogg Graduate School of Management, Northwestern University
July 1985 - June 1988	Assistant Professor of Marketing, Kellogg Graduate School of Management, Northwestern University
July 1981 - June 1985	Assistant Professor, Graduate School of Management, University of Rochester

## RESEARCH ACTIVITIES

### PUBLICATIONS AND COMPLETED WORK IN THE LAST 10 YEARS

“Direct Selling Distributor Compensation Plans,” Chapter 3 in Direct Selling: A Global and Social Business Model, Business Expert Press, 2021.

*Strategic Channel Management: Designing Routes to Market*, with Sandy Jap (book), December 2016, ISBN 9-781539-987741.

“Minimum Advertised Pricing: Patterns of Violation in Competitive Retail Markets,” with Ayelet Israeli and Eric T. Anderson, *Marketing Science*, vol. 35 (4, July-August 2016), 539-564.

“How Firm Strategies Impact Size of Partner-Based Retail Networks: Evidence from Franchising,” with Manish Kacker, Rajiv P. Dant, and Jamie Emerson, Journal of Small Business Management, vol. 54 (2016), 506-531.

“Sales Force Compensation: Research Insights and Research Potential,” with Kissan Joseph, Chapter 26 in Handbook on Business-to-Business Marketing, Gary L. Lilien and Rajdeep Grewal, Editors, Edward Elgar Publishing, 2012, 473-495.

Marketing Channels, Seventh Edition, with Erin Anderson, Louis W. Stern and Adel I. El-Ansary, Prentice-Hall, 2006.

### WORKING PAPERS IN THE LAST 10 YEARS

“An Analysis of 'Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes' Under Standard Protections Offered by Legitimate Direct Selling Firms,” available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3718842](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3718842).

“Direct Selling Under Scrutiny: Assessing Analytic Direct Selling Models,” with Patrick Brockett, Linda Ferrell, O.C. Ferrell, Linda Golden, Charles A. Ingene, Lou E. Pelton, and Robert A. Peterson, December 2020, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3743816](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3743816).

“Consumer Harm from Voluntary Business Arrangements: What Conditions Are Necessary?” November 2019, available at SSRN: <https://ssrn.com/abstract=3488105> or <http://dx.doi.org/10.2139/ssrn.3488105>.

“Wardrobing: Is It Really All That Bad?” with Ahmed Timoumi, February 2019.

“Simply the Best: Drivers of High Performance of Direct-Selling Distributors,” with Manfred Krafft and Julian Allendorf, February 2019.

“Sales Force Retention and Turnover: Insights from Direct-Selling Distributors,” with Manfred Krafft and Julian Allendorf, July 2017.

## WORKING PAPERS IN THE LAST 10 YEARS, continued

“Join, Stay, Leave: A Study of Direct-Selling Distributors,” with Manfred Krafft and Julian Allendorf, September 20, 2016, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2841403](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841403) . This research won the Best Doctoral Paper Award at the 2017 Global Sales Science Institute conference.

## CASES WRITTEN

Sondologics, 2016. This case presents the challenges facing multi-channel product sellers that wish to both control downstream prices and to manage and mitigate gray marketing of their branded products. Sondologics thus combines important management problems in the *pricing* and the *distribution channel management* areas. The company’s management must decide what to do about gray marketing of its audio-visual products in online channels, along with a lack of control over retail pricing. I was able to develop this case through my interaction with Channel IQ, a tech startup that offers channel management services to firms selling in online channels, founded by one of my MBA students at Kellogg.

Airline Ticket Sales: From Distribution to Retailing with New Distribution Capability (NDC), 2016. This is a multimedia interactive case on the airline industry’s challenge in modernizing the channel’s antiquated data interchange technologies so that airlines will be able to accurately and fully represent their multi-attribute offers to travelers through all their channels. The case is innovative in its full multimedia presentation, which allows the student to see industry participants speak to the issues in the case; to see relevant documents; and to consider how they would make decisions as the case timing unfolds. The substantive content of the case is rich in its combination of issues in big-data management and presentment to the market; in distribution channel structure and upheaval in a time of significant innovation; and in channel power and conflict issues surrounding the introduction of new technologies and their implications for changing profit positions amongst channel members. I was able to write this case through my multi-year investigation of airline industry channel challenges, facilitated by the industry’s invitations for me to appear and present at three consecutive World Passenger Symposium conferences run by IATA (the International Air Transport Association).

d.light Design, 2014. This case examines the go-to-market strategy for an entrepreneurial start-up selling solar lamps in rural India. It considers tradeoffs facing the small firm, seeking to sell to consumers at the bottom of the pyramid, and lacking the “deep pockets” of other international firms marketing in the Indian market.

CEMEX: Targeting the Low-End Housing Market in Mexico, 2008. This case adapts a Harvard Business School case on CEMEX, the Mexican cement manufacturer, as it considers how best to build an appropriate route to market to serve the poorest market segment of homebuilders.

Guarantee Mutual, 2005. This case concerns an insurance company facing the problem of how to effectively manage its channel relationships and allocate channel functions among itself (the insurance carrier), its sales force, and its independent brokers. The company is refocusing its product line toward non-medical employee benefit plans.

Mary Kay Corporation, 2004. This case deals with the company’s decision about how to incorporate the Internet into its business, which historically has relied solely on Mary Kay “Beauty Consultants” to direct-sell to end consumers.

### CASES WRITTEN, continued

Michaels Craft Stores, 2004. This case profiles the channel management challenges facing the largest and fastest-growing retail craft chain in the world as it seeks to build greater efficiency with its craft suppliers. Combines focus on channel efficiency/design and channel conflict management.

Invisalign, 2004. This is a case about a new technology for straightening teeth (a substitute for metal braces) and the distribution channel issues facing the firm. Focus: identifying and closing gaps in channel design.

Verklar Austria, 1995, revised 2004. This case deals with both channel design and channel coordination issues in a multinational European firm that makes roof windows.

West Bend Company, 1992. This case describes the foreign market (Japan) entry decision of an American manufacturer of light consumer appliances.

Lands' End Direct Marketers, 1992. This case concerns a U.S. mail-order firm's decisions about how to enter the European market and with what level of investment and control.

CIGNA Corporation (revised, 1992). This is a Harvard case for which I supervised Jonathan Hibbard in the revision for use in my International Distribution Channels course. Revision is now incorporated in the Harvard case book.

### OTHER WRITTEN WORK

“The Elephant in the Room: The Benefits of Creative Destruction in Airline Distribution,” October 2013. This is a paper prepared for a (non-compensated) plenary presentation at the October 2013 IATA World Passenger Symposium in Dublin, Ireland. It forms the basis for discussion in my MBA Distribution Channel Strategies course at Kellogg on airline distribution; this discussion has been based on a Harvard case on American Airlines but is much expanded with the material available in this “Elephant” paper.

“FAQs on MLM Companies,” July 2012. This white paper was supported by Herbalife Ltd.

“Assessing an MLM Business: Herbalife as a Legitimate MLM,” July 2012. This analysis was supported by Herbalife Ltd.

### ACADEMIC HONORS, AWARDS, & GRANTS

Academic Advisory Council, Direct Selling Educational Foundation, May 2020 -.

Research grant from Direct Selling Educational Foundation, 2018-2021, to support research using proprietary industry survey (DSA’s National Sales Force Study, a survey of over 20,000 direct selling distributors, and international SELDIA data), amount: \$41,450.

Grants to host and run the AMA Pre-Conference on *Best Practices in Teaching and Research in Channel Strategy and Sales Management*, February 2018 of \$3,000 in total: grants of \$1,000 each from three academic Special Interest Groups of the AMA (Interorganizational SIG; Market Strategy SIG; and Relationship Marketing SIG).

ACADEMIC HONORS, AWARDS, & GRANTS, continued

Best Doctoral Student Paper Award for “Direct-Selling Distributors: Why Do They Stay or Leave?” with Prof. Manfred Krafft and Julian Allendorf, Ph.D. student, both of University of Muenster. Awarded by the Global Sales Science Institute at its 2017 Annual Conference.

Conference grants (joint with Sandy Jap of Emory University) to host the *Conference on Best Practices in Teaching and Research in Channel Strategy and Sales Management*, May 2017: grant of \$15,000 from Emory; grant of \$2,000 from Direct Selling Educational Foundation; grant of \$2,000 from the Sales Management Association; grant of \$200 from Routledge Publishers.

DSEF (Direct Selling Educational Foundation) Research Fellow, 2016-.

University of Muenster (Germany), Institute of Marketing Research Fellow, 2016-.

Research grant from Direct Selling Educational Foundation, 2015-2018, to support research using proprietary industry survey (DSA’s National Sales Force Study, a survey of over 20,000 direct selling distributors), amount: \$35,600.

AMA Doctoral Consortium Fellow, London Business School, 2015.

February 2015, invited Visiting Scholar at Rotman School of Management, University of Toronto. Taught a Ph.D. seminar, gave a research seminar, met with Ph.D. students and faculty on research issues.

Fall 2014 -, Polk Bros. Chair in Retailing, Kellogg School of Management, Northwestern University.

2010, American Marketing Association’s Selling and Sales Management Special Interest Group’s Excellence in Research Award, for “Determinants of Pay Levels and Structures in Sales Organizations,” with Dominique Rouziès, Erin Anderson, and Dawn Iacobucci, Journal of Marketing, vol. 73 (November 2009), 92-104.

Fall 2009 - 2014, J.L. & Helen Kellogg Professor of Marketing, Kellogg School of Management, Northwestern University.

2008-2009, Kraft Research professorship, Kellogg School of Management, Northwestern University.

2008 AMA Davidson Honorable Mention Award for Best Article in 2006 in Journal of Retailing: "Private Label Positioning: Quality vs. Feature Differentiation from the National Brand," with S. Chan Choi, Journal of Retailing, vol. 82, no. 2, 2006, pp. 79-93.

2003-2004, McManus Research Chair, Kellogg School of Management, Northwestern University.

2003, Executive Masters’ Program Teacher of the Year Award (best electives course), Kellogg School of Management, Northwestern University.

2001, Sidney J. Levy Teaching Award, Kellogg School of Management, Northwestern University.

ACADEMIC HONORS, AWARDS, & GRANTS, continued

- 1999-2000, McManus Research Chair, Kellogg Graduate School of Management, Northwestern University.
- 1996, Executive Masters' Program Teacher of the Year Award (best elective course), Kellogg School of Management, Northwestern University.
- 1993-94, Kraft Research professorship, Kellogg Graduate School of Management, Northwestern University.
- 1990-91, Beatrice Research professorship, Kellogg Graduate School of Management, Northwestern University.
- 1989-90, McManus Research professorship, Kellogg Graduate School of Management, Northwestern University.
- 1988, Reviewer of the Year, Marketing Science.
- 1987-88, research grant from Brunswick Corporation to study salesforce compensation and competitive pricing strategies.
- 1987-88, Paget Research Fund grant, Kellogg Graduate School of Management, Northwestern University.
- 1986-87, Beatrice Research professorship, Kellogg Graduate School of Management, Northwestern University.
- 1985, Reviewer of the Year, Marketing Science.
- 1983, Marketing Science Institute grant to study incentive effects of salesforce compensation (with Subrata Sen).
- 1983, Marketing Science Institute grant to survey the literature on the marketing of new technological innovations (with Shlomo Kalish).
- 1977, Phi Beta Kappa, Stanford University; graduation with Honors and Distinction in Economics, Stanford University.
- 1975, Summer Research Fellowship, Department of Economics, Stanford University.

## SERVICE ACTIVITIES

### Ph.D. THESIS COMMITTEE CHAIRMANSHIP AND MEMBERSHIP

Julian Allendorf, member of Ph.D. thesis committee, Marketing, University of Muenster, Germany. Expected thesis completion: December 2018. Thesis topic: “Sales Force Recruitment, Retention, Excellence, and Turnover: Insights from the Direct Selling Channel.”

Ayelet Israeli, co-chair of the thesis committee, graduated June 2016. Thesis topic is “Vertical Pricing Policies and Governance.” Ayelet’s thesis paper won the Marketing Science Best Thesis Paper award in 2016.

Ahmed Timoumi, outside thesis committee member, Marketing Department of Koç University, Istanbul, Turkey, graduated July 2016. Thesis topic is “Decision-Making Delegation under Information Asymmetry in a Channel.”

Huseyin S. Karaca, member of the thesis committee, graduated June 2012. Topic of thesis is: “Essays on Marketing Communication Decisions.” Now an Assistant Professor of Marketing at Bogazici University, Istanbul, Turkey.

Alexei Alexandrov, member of committee, graduated 2007 in Kellogg’s Management & Strategy Department, thesis entitled “Essays in Applied Industrial Organization.” Now Assistant Professor of Economics, Simon School of Management, University of Rochester.

Jeffrey D. Shulman, chair of committee, graduated 2006, thesis entitled “Essays on Modeling Product Returns and Durable Goods Secondary Markets.” Now Assistant Professor of Marketing, Foster School of Business, University of Washington.

Fabio Caldieraro, chair of committee, graduated 2003, thesis entitled “Essays on Sales Force Management in Marketing Channels.” Now Assistant Professor of Marketing, Foster School of Business, University of Washington.

Ursula Alvarado Sullivan, chair of committee, graduated 1999, thesis entitled “Horizontal Distribution Alliances: Their Formation and Success.” Now Assistant Professor of Marketing, Northern Illinois University.

Manish Kacker, chair of thesis committee, graduated 1997, thesis entitled “Growing a Franchise System: Structure and Strategy.” Now Associate Professor AIC Professor in Strategic Business Studies at DeGroote School of Business, McMaster University, Ontario, Canada.

Shumeet Banerji, chair of thesis committee, graduated 1990, thesis entitled “A Theory of Gray Markets: The Case of the Personal Computer Industry.” Shumeet is now the retired CEO of Booz and Co.



### MARKETING DEPARTMENT SERVICE

Participation in annual faculty recruiting efforts; member of recruiting committee, 2017, 2018.

Annual presenter (multiple times per year) for the Marketing Department at “Day at Kellogg.”

Contributor to the Marketing Department’s Strategic Vision documents during our seven-year reviews.

### KELLOGG SCHOOL-LEVEL COMMITTEES AND BOARDS

Kellogg Personnel Committee, 2012-2015.

Personnel Committee *ad hoc* committee member for various faculty under review.

Kellogg Curriculum Committee member, 2006 – 2007.

Kellogg *Insight* Editorial Board member, 2007-2013.

Chair of Kellogg Case Competition Committee, 2008-09.

Presenter, panelist, and moderator at various sessions of Kellogg student-run conferences such as the annual Kellogg Marketing Conference.

### SERVICE TO NORTHWESTERN UNIVERSITY

Deering Library Renovation Faculty Advisory Committee Member, 2017.

Faculty and Staff Campaign Committee, *We Will: The Campaign for Northwestern*, committee member for Northwestern University Libraries, 2015 – present.

Northwestern University Library Board of Governors, October 2013 - present.

Northwestern University Library Committee: member 2002-current, Chair 2003-2016.

Member of committee to evaluate Northwestern University’s External Communications Department, 2002.

SERVICE TO THE FIELD: EDITORIAL REFEREEING AND OTHER ACTIVITIES

Editorial Board, Journal of Marketing, 2018-.

*Social Sciences Research Network (SSRN), 2007-:* Co-Editor of the *Quantitative Marketing Network* since 2007, (focusing on working papers written by, and of interest to, quantitative researchers in the Marketing field) and Editor of the *Marketing Science eJournal* since 2010 (focusing on working papers written by, and of interest to, researchers at the juncture of quantitative Marketing topics and topics in Operations Management).

Journal of Personal Selling & Sales Management, Senior Advisory Board, 2015-.

Quantitative Marketing & Economics (QME) Conference Committee member, 2015.

Associate Editor, Marketing Science, 2007-2016.

Editorial Board, Review of Marketing Science (ROMS), an Internet-based journal.

Editorial Board, Marketing Science, June 2000-2016.

Co-Editor, Journal of Economics and Management Strategy, Fall 1998-2005.

Editorial Board, Journal of Marketing, July 1996-2002.

Guest Editor, Special Issue on Management Science Approaches to Distribution Channel Management, Journal of Retailing, Summer 1995 issue.

Editorial Board, Journal of Retailing, 1992-2001.

Editorial Board, Journal of Marketing Research, June 1991-August 1993.

Associate Book Review Editor, Journal of Marketing Research, February 1991-November 1994.

Area Editor, Marketing Science, November 1989-November 1994.

Editorial Board, Marketing Letters, September 1988-August 1993.

Editorial Board, Marketing Science, November 1984-November 1989.

Reviewer of the Year awards (1985 and 1988, *Marketing Science*).

Referee for Japan and the World Economy, Journal of Accounting and Economics, Journal of Business, Journal of Law Economics and Organization, Management and Decision Economics, Management Science, and Sloan Management Review.

SERVICE TO THE FIELD: OTHER

Co-Chair, *Conference on Best Practices in Teaching and Research in Channel Strategy and Sales Management*, American Marketing Association Winter 2018 Educators' Pre-Conference, February 2018. This conference brings together professors involved in teaching and research in the channels and sales force fields. My co-author on *A Field Guide to Channel Strategy* (Sandy Jap, Emory) and I have developed a full suite of teaching materials, including the book, course syllabi, teaching notes, original cases, case teaching materials, and the information that enables a professor to match these together to offer an MBA, exec MBA, or undergraduate course. The conference "teaches the teachers" as well as bringing together practitioners with academics to encourage teaching and research collaboration in this applied field. The success of the original *Conference at Emory* in May 2017 (see below) led to this follow-on conference, which was financially supported with grants from multiple Special Interest Groups (SIGs) of the American Marketing Association.

Co-Chair, *Conference on Best Practices in Teaching and Research in Channel Strategy and Sales Management*, Emory University, May 2017. This conference brings together the top professors involved in teaching and research in the channels and sales force fields. My co-author on *A Field Guide to Channel Strategy* (Sandy Jap, Emory) and I have developed a full suite of teaching materials, including the book, course syllabi, teaching notes, original cases, case teaching materials, and the information that enables a professor to match these together to offer an MBA, exec MBA, or undergraduate course. The conference "teaches the teachers" as well as bringing together practitioners with academics to encourage teaching and research collaboration in this applied field.

Co-Chair of 2014 American Marketing Association Sheth Foundation Doctoral Consortium, held at Kellogg School of Management, Northwestern University, June 26-29, 2014.

Outside evaluator of Marketing Department at NYU-Stern School of Business, Spring 2014 (one of three outside evaluators in a process similar to Northwestern's 7-year departmental evaluations that involve a team of outside senior faculty who review the department's activities, process, and progress).

Outside letter writer for various faculty under review at their respective schools, at various levels of review, from renewal as Assistant Professor to consideration for appointment as a Chaired Professor.

Chair, Erin Anderson Award for an Emerging Woman Scholar committee, American Marketing Association, 2009 – 2013.

Organizer of research track at Erin Anderson Memorial Conference at the Wharton School, 2008, on analytic research in distribution. The output of my session was an article in *Marketing Letters*, Vol. 21, entitled "Marketing Modeling Reality and the Realities of Marketing Modeling," on which I was the primary author.

SERVICE TO THE FIELD: OTHER, continued

Conference Track Chair, Distribution Channels Track, American Marketing Association Conference, August 1994.

Member, International Scientific Committee of C.R.E.E.R. (Centre for Research and Education in European Retailing), February 1992-1996.

President, College on Marketing, The Institute of Management Sciences, January 1, 1992-December 31, 1993. [Past President, January 1, 1994-December 31, 1995.]

Co-Chair, The Chicago Marketing Modelers' Group, September 1989-September 1992.

Track Chair, Marketing Track, TIMS XXIX International Meeting, Osaka, Japan, July 1989.

Faculty Representative, Doctoral Consortium, Berkeley, California, August 1988.

Secretary-Treasurer, College on Marketing, The Institute of Management Sciences, January 1, 1988-December 31, 1989.

Member of Editorial selection committee, Marketing Science, October 1987-January 1988.

Academic Advisory Council, Marketing Science Institute, May 1986-July 1987.

Faculty Representative, Doctoral Consortium, Duke University, Durham, North Carolina, August 1985.

Reviewer of the Year awards (1985 and 1988, *Marketing Science*).

INTERACTION WITH BUSINESS: OUTSIDE ACTIVITIES IN THE LAST 10 YEARS

Academic Advisory Council, Direct Selling Educational Foundation, May 2020 – present.

Direct Selling Association and Direct Selling Educational Foundation: Research Fellow, 2016-present.

Direct Selling Educational Foundation Research Forum, February 2020: development of substantive research agenda for the direct selling channel.

Distributor Compensation Module development for “Strategic Optimization for Direct Selling Executives” Program, Direct Selling Association and Rollins College, January 2020.

Research presentation to The Hudson Institute, “Assessing Participant Harm from Voluntary Business Arrangements,” November 2019.

Plenary research speaker, Direct Selling Association Annual Meeting, November 2017, Washington D.C, on “How to Manage (and not be managed by) Strategic Relationships,” with Sandy D. Jap.

INTERACTION WITH BUSINESS: OUTSIDE ACTIVITIES IN THE LAST 10 YEARS, cont.

Plenary research speaker, Direct Selling Association Annual Meeting, June 2017, Orlando, FL, on “High Flyers: Forecasting Excellence in Salesperson Performance.”

Research presentation to Board of Directors, Direct Selling Association and Direct Selling Educational Foundation, on “Retention and Turnover of Direct-Selling Distributors,” March 2017.

Direct Selling Association, member of Outside Reviewers Group, 2017-.

Direct Selling Association, Judge for DSA 2017 Industry Awards Program. Judges review applications by direct selling firms for excellence awards, culminating in awards to the direct selling firms who are the best in technology innovation, product innovation, future vision, sales force development excellence, marketing/sales campaigns, and partnership.

Plenary research speaker, Direct Selling Association Annual Meeting, June 2016, Phoenix, AZ, on “Join, Stay, Leave: A Study of Direct-Selling Distributors.”

Judge for Passenger Innovation Awards at 2015 IATA World Passenger Symposium, Hamburg, Germany, 2015 (uncompensated).

Judge for inaugural Passenger Innovation Awards at 2014 IATA World Passenger Symposium, San Diego, California, October 2014 (uncompensated).

Plenary and panel speaker on airline distribution, IATA World Passenger Symposium, Dublin, Ireland, October 2013, based on my paper “The Elephant in the Room: The Benefits of Creative Destruction in Airline Distribution” (uncompensated).

Advisory Board member, Incentive Compensation Advisory Board of the Sales Management Association, January 2010-2012 (uncompensated).

Board of Advisors, Channel Velocity / OnRamp, Inc., 2005- 2014.

Consulting to, expert witness work for, and executive education for, various companies, including Acco, Airlines Reporting Corporation (ARC), Allstate, Amazon, Amway, Barnes & Noble, BASF, BP, Brinks Gilson & Lione, Bryan Cave LLP, Diageo, Duracell, Franklin Electric, Herbalife, IATA, J.M. Huber, James Hardie, John Deere, Kohler, Kraft, Land o’ Lakes Purina Feed, Mead Johnson, Microsoft, Mitsubishi Caterpillar North America, Morrison and Foerster, Motorola, Navigant, Neal Gerber Eisenberg, Omron, PrePaid Legal, Radwell International, R.R. Donnelly, Roche Pharmaceuticals, SNR Denton, Seminarium Latin America, Shure, Smile Direct Club, Stream Energy, and Tribune Company.

### TEACHING ACTIVITIES AT KELLOGG

Ph.D. seminar on Operations / Marketing Quantitative Models.

Co-Chair, *Conference on Best Practices in Teaching and Research in Channel Strategy and Sales Management*, Emory University, May 2017. This conference brought together the top professors involved in teaching and research in the channels and sales force fields. My co-author on *A Field Guide to Channel Strategy* (Sandy Jap, Emory) and I have developed a full suite of teaching materials, including the book, course syllabi, teaching notes, original cases, case teaching materials, and the coordinating information that enables a professor to match these together to offer an MBA, exec MBA, or undergraduate course. The conference “teaches the teachers” as well as bringing together practitioners and academics to encourage teaching and research collaboration in this applied field.

MBA course on Distribution Channel Strategies.

Executive MBA course on Distribution Channel Strategies.

Ph.D. seminar on Quantitative Models in Marketing and Operations Management.

Distribution Channel Management: Bridging the Sales and Marketing Divide, half-week executive course (Academic Coordinator).

Consumer Marketing Strategies, week-long executive course.

Pricing Strategies, half-week executive course.

### RECENT PAPER PRESENTATIONS AND CONFERENCES

“Assessing Participant Harm from Voluntary Business Arrangements,” Research presentation at The Hudson Institute, November 2019.

“Omni, Multi, Channel, and Consumer: When Is an ‘Omni-Channel Strategy’ a Good Idea?” Presentation at Marketing Science Institute (MSI) Board Meeting, Boston, April 2019.

“Entrepreneurial Sales: Direct Selling Distributors as Entrepreneurs, Social Media Agents, and High Flyers,” Special Session Chair, Marketing Science Conference, June 2018.

“High Flyers: An Analysis of Top-Performing Direct-Selling Distributors,” Invited research presentation, Santa Clara University, March 2018.

“High Flyers: An Analysis of Top-Performing Direct-Selling Distributors,” Marketing Department Quant Workshop presentation, Kellogg School, February 2018.

“High Flyers: An MOA Analysis of Top-Performing Direct-Selling Distributors,” AMA Winter Educators’ Conference, February 2018.

RECENT PAPER PRESENTATIONS AND CONFERENCES, continued

“High Flyers: An MOA Analysis of Top-Performing Direct-Selling Distributors,” Invited research presentation, University of Muenster, February 2018.

Plenary research speaker, Direct Selling Association Annual Meeting, November 2017, Washington D.C, on “How to Manage (and not be managed by) Strategic Relationships,” with Sandy D. Jap.

Plenary research speaker, Direct Selling Association Annual Meeting, June 2017, Orlando, FL, on “High Flyers: Forecasting Excellence in Salesperson Performance” (Direct Selling Educational Foundation supported research).

“Retention and Turnover of Direct-Selling Distributors,” presentation at the Thought Leadership on the Sales Profession Conference, HEC – Paris, May.

Research presentation to Board of Directors, Direct Selling Association and Direct Selling Educational Foundation, on “Retention and Turnover of Direct-Selling Distributors,” March 2017 (Direct Selling Educational Foundation supported research).

Plenary research speaker, Direct Selling Association Annual Meeting, June 2016, Phoenix, AZ, on “Join, Stay, Leave: A Study of Direct-Selling Distributors” (Direct Selling Educational Foundation supported research).

“Multi-Level Marketing Business Opportunities: Defining and Assessing Economic Viability, Benefit, and Harm,” invited seminar, Mays Business School, Texas A&M University, March 2015.

“Multi-Level Marketing Business Opportunities: Defining and Assessing Economic Viability, Benefit, and Harm,” invited seminar, Rotman School of Management, University of Toronto, February 2015.

“Optimal Delegation of Retail Sales Force Management and Compensation to the Manufacturer,” Marketing Science Conference, Istanbul, Turkey, July 2014 (with Ahmed Timoumi)

“Attenuation of News Value: An Empirical Study with Best Companies Lists,” Marketing Science Conference, Istanbul, Turkey, July 2014 (with Chayoun Kim).

“Current Trends and Practices in Strategic Account Management,” Key Account Management Workshop and Conference, HEC-Paris and EDF, July 2013 (with Dominique Rouzies).

“Analytical Modeling in Sales Force Research,” 2013 AMA Faculty Consortium: New Horizons in Selling and Sales Force Management, Neeley TCU School of Business, June 2013 (with Niladri Syam).

RECENT PAPER PRESENTATIONS AND CONFERENCES, continued

“Wardrobing: Is It Really All That Bad?” invited seminar presentation, Wharton School, University of Pennsylvania, January 2013.

“Wardrobing: Is It Really All That Bad?” invited seminar presentation, Bauer School, University of Houston, October 2012.

“Reducing MAP Violations,” invited presentation, Channel IQ Summit, Chicago, October 2012 (with Ayelet Israeli and Eric Anderson).

“Asymmetric Spillovers in MAPP Violations,” Marketing Science Conference, Boston, June 2012 (with Ayelet Israeli and Eric Anderson).

“Wardrobing: Is It Really All That Bad?” Marketing Science Conference, Boston, June 2012 (with Ahmed Timoumi).

“Wardrobing: Is It Really All That Bad?” MSOM Conference, Columbia University, June 2012 (with Ahmed Timoumi).

**March 2022**



**APPENDIX B: TESTIMONY IN THE PREVIOUS FOUR YEARS BY ANNE T. COUGHLAN**

2018: *Certain Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware, Motion Control systems, Networking Equipment, Safety Devices, and Power Supplies*, Docket No. 337-TA-1074, filed by Rockwell Automation, Inc. v. Radwell International, Inc. (among others), U.S. International Trade Commission

- Testimony given at deposition.

2018: *Certain Programmable Logic Controller (PLCs), Components Thereof, and Products Containing Same*, Docket No. 337-TA-1105, filed by Radwell International, Inc. v. Rockwell Automation, Inc., U.S. International Trade Commission

- Testimony given at deposition.

2018: *Size It, LLC and Mickey Segal v. ASICS America Corporation*, Case No. BC 597769, Superior Court of the State of California, County of Los Angeles

- Testimony given at deposition and trial.

2019: *Rockwell Automation, Inc. v. Radwell International, Inc.*, Civil Action No. 1:15-cv-05246-RBK-JS, U.S. District Court, District of New Jersey

- Testimony given at deposition.

2020: *State of Washington v. LLR, Inc. / LuLaRoe*, CASE #: 19-2-02325-2 SEA, King County Superior Court

- Testimony given at deposition.

**APPENDIX C: MATERIALS CONSIDERED**

**1. Bates Stamped Documents**

BD0005358  
EJD0199726  
EJD0200064  
EJD0200084  
EJD0200515  
EJD0201004  
EJD0201048  
EJD0201241  
EJD0201508  
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EPROD-DEF-SEC-000167978  
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EPROD-DEF-SEC-000193461  
EPROD-DEF-SEC-000193991  
EPROD-DEF-SEC-000194195  
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EPROD-DEF-SEC-000331308  
EPROD-DEF-SEC-000331309  
EPROD-DEF-SEC-000331311

EPROD-DEF-SEC-000331312  
EPROD-SEC-DEF-000000536  
EPROD-SEC-DEF-000036690  
SEC-LIT-EPROD-000001505  
SEC-LIT-EPROD-000023453  
TD0000877

## **2. Declarations**

Declaration of Jordan Goldman, dated September 27, 2018

Declaration of Jordan Goldman, dated November 4, 2020

## **3. Pleadings**

Amended Complaint (Dkt. No. 78)

Defendants' Answer and Affirmative Defenses to Plaintiff's First Amended Complaint (Dkt. No. 87)

## **4. Transcripts**

Deposition Transcript for Kevin Marino

Deposition Transcript for Christine Lefever

Deposition Transcript for Corey Chadwick

Deposition Transcripts for Steve Gewecke

Deposition Transcript for John Cini

Deposition Transcript for Donald LaPlume

Deposition Transcript for Mike Dohyung Kim

Deposition Transcript for Zachariah Heilman

Deposition Transcripts for Justin Hoffman

Deposition Transcripts for Jodie Herbert

Deposition Transcript for William Toth

Deposition Transcript for Ted Hekman

Deposition Transcript for Charles Black

Deposition Transcript for Jacques Nack Ngue

Deposition Transcript for Scott McDaniel

Deposition Transcript for Jordan Goldman

Deposition Transcript for Ryan Evans

Deposition Transcript for Saivian LLC 30(b)(6)

## 5. Written Discovery

SEC's Responses to Defendant Eric Dalius' First Set of Interrogatories

SEC's Amended Responses to Defendant Eric Dalius' First Set of Interrogatories

Expert Report of Peter Vander Nat, Ph.D., dated February 9, 2022

Expert Report of Alfred O. Boutros, dated March 7, 2022

## 6. Other Materials

Ana Swanson, *What your new gym doesn't want you to know*, WASHINGTON POST, Jan. 5, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/01/05/what-your-new-gym-doesnt-want-you-to-know/>.

Anne T. Coughlan et al., Marketing Channels, 7<sup>th</sup> Ed., Pearson Prentice Hall, Upper Saddle River, NJ.

Anne T. Coughlan and Sandy D. Jap, A Field Guide to Channel Strategy (2016).

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**APPENDIX D: EXAMPLES OF DIRECT SELLING COMPANIES**

<b>Company Name</b>	<b>Revenue for 2020</b>
Amway	\$8.5B
Natura	\$7.16B
Herbalife	\$5.5B
Vorwerk	\$4.48B
COWAY	\$2.8B
Nu Skin	\$2.5B
Young Living	\$2.2B
PM International	\$1.71B
Tupperware	\$1.70B
Oriflame	\$1.38B
USANA	\$1.35B
Ambit Energy	\$1.12B
Telecom Plus	\$1.09B
POLA	\$969M
Medifast/OPTAVIA	\$935M
Scentsy	\$893M
Belcorp	\$880M
Arbonne	\$847M
MONAT Global	\$804M
Color Street	\$597M
Yanbal	\$536M
MIKI	\$515M
Plexus Worldwide	\$509M
Faberlic	\$409M
New Image International	\$403M
Nature's Sunshine Products, Inc.	\$385M
Prüvit	\$363M
Hy Cite Enterprises	\$341M
Pure Romance	\$312M
Vestige Marketing	\$312M
Menard	\$302M
Noevir	\$253M
Naturally Plus	\$234M
LifeVantage	\$230M
Immunotec	\$220M
Giffarine	\$208M
BearCere'Ju	\$196M
Best World Lifestyle (BWL)	\$195M
Princess House	\$195M
Usborne Books and More	\$192M
KK ASSURAN	\$187M
ASEA Global	\$178M
Xyngular	\$171M
Mannatech	\$153M
Charle	\$146M
DIANA	\$134M



Youngevity	\$121M
NARIS	\$111M
inCruises	\$107M

**APPENDIX E: SQL QUERY**

```
SELECT COUNT(DISTINCT a.CustomerID) n_customers
FROM Transactions a
LEFT JOIN (
  SELECT DISTINCT CustomerID, Sponsor FROM customers
  WHERE EnterpriseId = 375
) b
ON a.CustomerID = b.CustomerID
WHERE EnterpriseID = 375
AND TransactionCategory = 900
AND a.CustomerID > 2000000 AND b.Sponsor > 3000000 AND
  a.CustomerID NOT IN (4134150, 4145163, 4158251, 4207111,
4218760, 4239373, 4247513, 4301682, 4316403, 4343294, 4401130,
4419532, 4451724, 4461817, 4559337, 4585483, 4811229, 4814201,
4817021, 4828968, 4923413, 4933777, 4939913, 4960081, 4970554,
4991987, 5326047, 5434461, 5519685, 5586212, 5712188, 5757385,
5836595, 5928558, 6201979, 6391849, 6581363, 6631796, 6784272,
6850586, 6970445, 7000000, 7453082, 7453127, 7457104, 7458184,
7493611, 7524119, 7528266, 7528283, 7587628, 7609816, 7750320,
7750343, 7803343, 7803345, 7803346, 7803347, 7808923, 7842334,
7842337, 7842472, 7854851, 7854944, 7924611, 7924667, 7978669,
7992211, 7992267, 7992278, 11108585, 11305534, 11609308,
11637234, 11637254, 11731764, 11733651, 11733976, 11734075,
11752588, 11906434, 11979082, 11986378, 12182938, 12231807,
12279928, 12310233, 12355694, 12372201, 12402955, 12516014,
12629811, 12693407, 12813942, 12814632, 12814635, 12816447,
13044890, 13052770, 13057121, 13093148, 13093358, 13095542,
13153751, 13154135, 13168405, 13169387, 13169402, 13169406,
13169555, 13173361, 13201302, 13220847, 13220899, 13301951,
13304231, 13304248, 13317186, 13371321, 13409997, 13464184,
13464706, 13523389)
;
```

**APPENDIX F: SQL QUERY**

```

WITH test_accounts AS (
    SELECT DISTINCT CustomerID
    FROM dbo.Customers CUST
    WHERE CUST.EnterpriseID = 375 AND
    (CUST.CustomerID <= 2000000 OR CUST.Sponsor <= 3000000 OR
    CUST.CustomerID IN (4134150, 4145163, 4158251, 4207111,
    4218760, 4239373, 4247513, 4301682, 4316403, 4343294, 4401130,
    4419532, 4451724, 4461817, 4559337, 4585483, 4811229, 4814201,
    4817021, 4828968, 4923413, 4933777, 4939913, 4960081, 4970554,
    4991987, 5326047, 5434461, 5519685, 5586212, 5712188, 5757385,
    5836595, 5928558, 6201979, 6391849, 6581363, 6631796, 6784272,
    6850586, 6970445, 7000000, 7453082, 7453127, 7457104, 7458184,
    7493611, 7524119, 7528266, 7528283, 7587628, 7609816, 7750320,
    7750343, 7803343, 7803345, 7803346, 7803347, 7808923, 7842334,
    7842337, 7842472, 7854851, 7854944, 7924611, 7924667, 7978669,
    7992211, 7992267, 7992278, 11108585, 11305534, 11609308,
    11637234, 11637254, 11731764, 11733651, 11733976, 11734075,
    11752588, 11906434, 11979082, 11986378, 12182938, 12231807,
    12279928, 12310233, 12355694, 12372201, 12402955, 12516014,
    12629811, 12693407, 12813942, 12814632, 12814635, 12816447,
    13044890, 13052770, 13057121, 13093148, 13093358, 13095542,
    13153751, 13154135, 13168405, 13169387, 13169402, 13169406,
    13169555, 13173361, 13201302, 13220847, 13220899, 13301951,
    13304231, 13304248, 13317186, 13371321, 13409997, 13464184,
    13464706, 13523389))
),

customers_no_302 AS (
    SELECT DISTINCT CustomerID
    FROM Transactions
    WHERE EnterpriseID = 375
    AND CustomerID not in (SELECT * FROM test_accounts)
    GROUP BY CustomerID
    HAVING sum(case when TransactionCategory = 302 and TransactionDate > '10-
15-2015' then 1 else 0 end) = 0
),

gm28 AS (
    SELECT yr, mo, sum(amount) as amount_28
    FROM (
        SELECT amount, year(checkdate) yr, month(checkdate) mo
        FROM dbo.Checks CH
        INNER JOIN customers_no_302 FLTR
        ON CH.CustomerID = FLTR.CustomerID
        WHERE CH.Enterpriseid = 375 AND
        (CH.BatchNumber > 0 AND CH.BatchNumber < 210) AND
        CH.LoadType IN (1, 2, 3, 7) AND
        CH.CustomerID not in (SELECT * FROM test_accounts)
    ) x
    GROUP BY yr, mo
),

gm30 AS (
    SELECT yr, mo,

```

```
sum(case when Status in ('E-mailed', 'Issued', 'Paid') then Amount
else 0 end) -
sum(case when Status in ('Canceled', 'Returned') then Amount
else 0 end) as amount_30
FROM (
SELECT year(Created) yr, month(Created) mo, Status, Amount
FROM GenieTrans2 GEN
INNER JOIN customers_no_302 FLTR
ON GEN.CustomerID = FLTR.CustomerID
WHERE GEN.[Genie Number] IN (
SELECT Phone2 FROM customers
WHERE EnterpriseID = 375
) AND GEN.CustomerID NOT IN (SELECT * FROM test_accounts)
) x
GROUP BY yr, mo
),

gm32 AS (
SELECT yr, mo, sum(TransactionAmount) as amount_32
FROM (
SELECT year(TransactionDate) yr, month(TransactionDate) mo,
TransactionAmount
FROM Transactions TR
INNER JOIN customers_no_302 FLTR
ON TR.CustomerID = FLTR.CustomerID
WHERE EnterpriseID = 375
AND TransactionCategory IN (154, 155, 156, 157, 158, 161)
AND TR.CustomerID NOT IN (SELECT * FROM test_accounts)
) x
GROUP BY yr, mo
),

gm34 AS (
SELECT yr, mo, sum(TransactionAmount) as amount_34
FROM (
SELECT year(TransactionDate) yr, month(TransactionDate) mo,
TransactionAmount
FROM Transactions TR
INNER JOIN customers_no_302 FLTR
ON TR.CustomerID = FLTR.CustomerID
WHERE EnterpriseID = 375
AND TransactionCategory IN (126, 127, 128, 130, 131, 132, 134, 135,
136, 138, 140, 142, 144, 146, 148, 150, 153, 163, 196, 197, 198)
AND Paid = 1
AND TR.CustomerID NOT IN (SELECT * FROM test_accounts)
) x
GROUP BY yr, mo
)

SELECT coalesce(a.yr, b.yr, c.yr, d.yr) as yr,
coalesce(a.mo, b.mo, c.mo, d.mo) as mo,
amount_28, amount_30, amount_32, amount_34
FROM gm28 a
FULL JOIN gm30 b
ON a.yr = b.yr AND a.mo = b.mo
FULL JOIN gm32 c
ON coalesce(a.yr, b.yr) = c.yr AND coalesce(a.mo, b.mo) = c.mo
```

```
FULL JOIN gm34 d
ON coalesce(a.yr, b.yr, c.yr) = d.yr AND coalesce(a.mo, b.mo, c.mo) = d.mo
ORDER BY coalesce(a.yr, b.yr, c.yr, d.yr), coalesce(a.mo, b.mo, c.mo, d.mo)
;
```

**APPENDIX G: SQL QUERY**

```
SELECT SUM(TransactionAmount) total_dollar_amt
FROM Transactions a
LEFT JOIN (
  SELECT DISTINCT CustomerID, Sponsor FROM customers
  WHERE EnterpriseId = 375
) b
ON a.CustomerID = b.CustomerID
WHERE a.TransactionCategory = 308
AND a.Paid = 1
AND a.SelectedForPayment = 0
AND a.CustomerID > 2000000 AND b.Sponsor > 3000000 AND
  a.CustomerID NOT IN (4134150, 4145163, 4158251, 4207111,
4218760, 4239373, 4247513, 4301682, 4316403, 4343294, 4401130,
4419532, 4451724, 4461817, 4559337, 4585483, 4811229, 4814201,
4817021, 4828968, 4923413, 4933777, 4939913, 4960081, 4970554,
4991987, 5326047, 5434461, 5519685, 5586212, 5712188, 5757385,
5836595, 5928558, 6201979, 6391849, 6581363, 6631796, 6784272,
6850586, 6970445, 7000000, 7453082, 7453127, 7457104, 7458184,
7493611, 7524119, 7528266, 7528283, 7587628, 7609816, 7750320,
7750343, 7803343, 7803345, 7803346, 7803347, 7808923, 7842334,
7842337, 7842472, 7854851, 7854944, 7924611, 7924667, 7978669,
7992211, 7992267, 7992278, 11108585, 11305534, 11609308,
11637234, 11637254, 11731764, 11733651, 11733976, 11734075,
11752588, 11906434, 11979082, 11986378, 12182938, 12231807,
12279928, 12310233, 12355694, 12372201, 12402955, 12516014,
12629811, 12693407, 12813942, 12814632, 12814635, 12816447,
13044890, 13052770, 13057121, 13093148, 13093358, 13095542,
13153751, 13154135, 13168405, 13169387, 13169402, 13169406,
13169555, 13173361, 13201302, 13220847, 13220899, 13301951,
13304231, 13304248, 13317186, 13371321, 13409997, 13464184,
13464706, 13523389)
;
```

**APPENDIX H: SQL QUERY**

```
WITH test_accounts AS (  
    SELECT DISTINCT CustomerID  
    FROM dbo.Customers CUST  
    WHERE CUST.EnterpriseID = 375 AND  
    (CUST.CustomerID <= 2000000 OR CUST.Sponsor <= 3000000 OR  
    CUST.CustomerID IN (4134150, 4145163, 4158251, 4207111,  
    4218760, 4239373, 4247513, 4301682, 4316403, 4343294, 4401130,  
    4419532, 4451724, 4461817, 4559337, 4585483, 4811229, 4814201,  
    4817021, 4828968, 4923413, 4933777, 4939913, 4960081, 4970554,  
    4991987, 5326047, 5434461, 5519685, 5586212, 5712188, 5757385,  
    5836595, 5928558, 6201979, 6391849, 6581363, 6631796, 6784272,  
    6850586, 6970445, 7000000, 7453082, 7453127, 7457104, 7458184,  
    7493611, 7524119, 7528266, 7528283, 7587628, 7609816, 7750320,  
    7750343, 7803343, 7803345, 7803346, 7803347, 7808923, 7842334,  
    7842337, 7842472, 7854851, 7854944, 7924611, 7924667, 7978669,  
    7992211, 7992267, 7992278, 11108585, 11305534, 11609308,  
    11637234, 11637254, 11731764, 11733651, 11733976, 11734075,  
    11752588, 11906434, 11979082, 11986378, 12182938, 12231807,  
    12279928, 12310233, 12355694, 12372201, 12402955, 12516014,  
    12629811, 12693407, 12813942, 12814632, 12814635, 12816447,  
    13044890, 13052770, 13057121, 13093148, 13093358, 13095542,  
    13153751, 13154135, 13168405, 13169387, 13169402, 13169406,  
    13169555, 13173361, 13201302, 13220847, 13220899, 13301951,  
    13304231, 13304248, 13317186, 13371321, 13409997, 13464184,  
    13464706, 13523389))  
,  
  
customers_yes_302 AS (  
    SELECT CustomerID,  
           sum(case when TransactionCategory = 302 and TransactionDate > '10-  
15-2015' then 1 else 0 end) n_302  
    FROM Transactions  
    WHERE EnterpriseID = 375  
           AND CustomerID not in (SELECT * FROM test_accounts)  
    GROUP BY CustomerID  
    HAVING sum(case when TransactionCategory = 302 and TransactionDate > '10-  
15-2015' then 1 else 0 end) > 0  
,  
  
gm62 AS (  
    SELECT CustomerID,  
           sum(case when TransactionCategory = 308 then TransactionAmount else  
0 end) as amt_cashback_redeemed_308,  
           sum(case when TransactionCategory = 501 then TransactionAmount else  
0 end) as amt_cashback_redeemed_501,  
           sum(case when TransactionCategory = 608 then TransactionAmount else  
0 end) as amt_cashback_redeemed_608  
    FROM (  
        SELECT TR.CustomerID, TransactionCategory, TransactionAmount  
        FROM Transactions TR  
        INNER JOIN customers_yes_302 FLTR  
        ON TR.CustomerID = FLTR.CustomerID  
        WHERE EnterpriseID = 375  
               AND TransactionCategory IN (308, 501, 608)  
               AND Paid = 1
```

```
        AND SelectedForPayment = 0
        AND PaidDate IS NOT NULL
        AND TR.CustomerID NOT IN (SELECT * FROM test_accounts)
    ) x
GROUP BY CustomerID
),

gm28 AS (
    SELECT CustomerID, sum(amount) as amount_28
    FROM (
        SELECT CH.CustomerID, amount
        FROM dbo.Checks CH
        INNER JOIN customers_yes_302 FLTR
        ON CH.CustomerID = FLTR.CustomerID
        WHERE CH.Enterpriseid = 375 AND
        (CH.BatchNumber > 0 AND CH.BatchNumber < 210) AND
        CH.LoadType IN (1, 2, 3, 7) AND
        CH.CustomerID not in (SELECT * FROM test_accounts)
    ) x
GROUP BY CustomerID
),

gm30 AS (
    SELECT CustomerID,
        sum(case when Status in ('E-mailed', 'Issued', 'Paid') then Amount
        else 0 end) -
        sum(case when Status in ('Canceled', 'Returned') then Amount
        else 0 end) as amount_30
    FROM (
        SELECT GEN.CustomerID, Status, Amount
        FROM GenieTrans2 GEN
        INNER JOIN customers_yes_302 FLTR
        ON GEN.CustomerID = FLTR.CustomerID
        WHERE GEN.[Genie Number] IN (
            SELECT Phone2 FROM customers
            WHERE EnterpriseID = 375
        ) AND GEN.CustomerID NOT IN (SELECT * FROM test_accounts)
    ) x
GROUP BY CustomerID
),

gm32 AS (
    SELECT CustomerID, sum(TransactionAmount) as amount_32
    FROM (
        SELECT TR.CustomerID, TransactionAmount
        FROM Transactions TR
        INNER JOIN customers_yes_302 FLTR
        ON TR.CustomerID = FLTR.CustomerID
        WHERE EnterpriseID = 375
        AND TransactionCategory IN (154, 155, 156, 157, 158, 161)
        AND TR.CustomerID NOT IN (SELECT * FROM test_accounts)
    ) x
GROUP BY CustomerID
),

gm34 AS (
    SELECT CustomerID, sum(TransactionAmount) as amount_34
```



```
FROM (
  SELECT TR.CustomerID, TransactionAmount
  FROM Transactions TR
  INNER JOIN customers_yes_302 FLTR
  ON TR.CustomerID = FLTR.CustomerID
  WHERE EnterpriseID = 375
  AND TransactionCategory IN (126, 127, 128, 130, 131, 132, 134, 135,
136, 138, 140, 142, 144, 146, 148, 150, 153, 163, 196, 197, 198)
  AND Paid = 1
  AND TR.CustomerID NOT IN (SELECT * FROM test_accounts)
) x
GROUP BY CustomerID
),

summary AS (
  SELECT coalesce(z.CustomerID, a.CustomerID, b.CustomerID, c.CustomerID,
d.CustomerID) as CustomerID,
  e.n_302,
  z.amt_cashback_redeemed_308,
  z.amt_cashback_redeemed_501,
  z.amt_cashback_redeemed_608,
  amount_28 as amt_paid_by_check,
  amount_30 as amt_genie_gateway,
  amount_32 as amt_epin,
  amount_34 as amt_credit_cards,
  coalesce(amount_28, 0) + coalesce(amount_30, 0) +
coalesce(amount_32, 0) + coalesce(amount_34, 0) as amt_all_categories,
  coalesce(z.amt_cashback_redeemed_308 +
z.amt_cashback_redeemed_501 + z.amt_cashback_redeemed_608, 0) -
  (coalesce(amount_28, 0) + coalesce(amount_30, 0) +
coalesce(amount_32, 0) + coalesce(amount_34, 0)) as redemption_less_paid_in
  FROM gm62 z
  FULL JOIN gm28 a
  ON z.CustomerID = a.CustomerID
  FULL JOIN gm30 b
  ON coalesce(z.CustomerID, a.CustomerID) = b.CustomerID
  FULL JOIN gm32 c
  ON coalesce(z.CustomerID, a.CustomerID, b.CustomerID) = c.CustomerID
  FULL JOIN gm34 d
  ON coalesce(z.CustomerID, a.CustomerID, b.CustomerID, c.CustomerID) =
d.CustomerID
  LEFT JOIN customers_yes_302 e
  ON coalesce(z.CustomerID, a.CustomerID, b.CustomerID, c.CustomerID,
d.CustomerID) = e.CustomerID
)

SELECT * FROM summary
WHERE redemption_less_paid_in < 0
ORDER BY CustomerID
;
```