

September 11, 2017

The Honorable Paul Ryan
Office of the Speaker
United States House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Office of the Democratic Leader
United States House of Representatives
H-204, The Capitol
Washington, D.C. 20515

RE: The Moolenaar amendment to the Financial Services and General Government Appropriations bill

Dear Speaker Ryan and Leader Pelosi,

The undersigned former Republican and Democratic senior officials of the Federal Trade Commission write to you to express our bipartisan support for the role the FTC plays in protecting consumers from fraudulent pyramid schemes, and our strong opposition to pending legislation that we are concerned would dramatically curtail the Commission's authority to bring appropriate enforcement actions against these schemes.

Specifically, we are concerned about an amendment offered by Rep. John Moolenaar (R-MI) and included in the FY18 Financial Services and General Government Appropriations bill¹ as reported by the Appropriations Committee.² Our concerns are shared by a broad coalition of consumer and Latino advocacy organizations,³ and even prominent members of the direct selling industry itself.⁴

¹ House of Representatives, Committee on Appropriations. "Appropriations Committee Approves Fiscal Year 2018 Financial Services Bill," press release. July 13, 2017. Online:

<https://appropriations.house.gov/news/documentsingle.aspx?DocumentID=395001>.

² The proposal is based on H.R. 3409, introduced by Rep. Marsha Blackburn (R-TN). Online:

<https://www.congress.gov/bill/115th-congress/house-bill/3409>.

³ National Consumers League. "Consumer groups call on House to oppose pyramid scheme promotion amendment," press release. July 18, 2017. Online: http://www.nclnet.org/moolenaar_amendment

⁴ See, e.g., Rosen, Eric. Letter from Herbalife to the Honorable Marsha Blackburn and the Honorable Marc Veasey. July 28, 2017. Online: <https://www.scribd.com/document/356458302/Blackburn-Veasey-072817>; Vandersloot, Frank. "Anti-pyramid measure is really a pro-pyramid bill," *The Hill*. September 6, 2017. Online: <http://thehill.com/blogs/congress-blog/politics/349537-anti-pyramid-measure-is-a-step-in-the-wrong-direction-for>

Over more than 40 years of enforcement history, the FTC has made pyramid scheme prosecution an important priority in its consumer protection mission. The reason why is clear: pyramid schemes are frauds in which members are deceptively lured into a supposedly lucrative business opportunity in which, by design, the vast majority of members are destined to lose money in order to enrich the schemers. For example, the Commission voted on a bipartisan and unanimous basis to bring major pyramid scheme cases against BurnLounge in 2007⁵ and against Vemma Nutrition Company in 2015.⁶ The FTC won both cases in district court, and both cases were upheld by courts of appeals. Ultimately, the agency returned millions of dollars to innocent victims.

The FTC has been careful to distinguish in its enforcement actions between naked pyramid schemes and multi-level marketing companies that have legitimate retail sales goals but also certain allegedly deceptive recruiting practices. In the latter situations, the FTC has targeted only the allegedly deceptive aspects. Since the *Amway* decision in 1979 and, more recently, in the *Herbalife* matter in 2016, the Commission has secured relief against practices of concern while permitting the direct selling business, with significant additional distributor protections, to continue.⁷

Over the course of this enforcement history, the FTC and the courts have developed case law that draws this distinction clearly, by requiring that direct selling businesses derive their revenue predominantly from the verifiable sale of products and services to retail customers. By relying on this core test, along with regular additional guidance regarding unsubstantiated income claims, the Commission has made clear for the direct selling industry what business practices will attract FTC investigation and enforcement.⁸

⁵ Federal Trade Commission. "FTC Asks Court to Shut Down Illegal Pyramid Operation," press release, June 12, 2007. Online: <https://www.ftc.gov/news-events/press-releases/2007/06/ftc-asks-court-shut-down-illegal-pyramid-operation>

⁶ Federal Trade Commission. "FTC Acts to Halt Vemma as Alleged Pyramid Scheme," press release, August 26, 2015. Online: <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-acts-halt-vemmas-alleged-pyramid-scheme>

⁷ Federal Trade Commission. "Herbalife Will Restructure Its Multi-level Marketing Operations and Pay \$200 Million For Consumer Redress to Settle FTC Charges," press release, July 15, 2016. Online: <https://www.ftc.gov/news-events/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations>.

⁸ See, e.g., Stipulated Order for Permanent Injunction & Monetary Judgment, *FTC v. Vemma Nutrition Co.*, No. CV-15-01478 (D. Ariz. Dec. 21, 2016) (ECF No. 273); Stipulated Order for Permanent Injunction & Monetary Judgment, *FTC v. Herbalife Int'l of Am., Inc.*, No. 2:16-cv-05217 (C.D. Cal. July 25, 2016) (ECF No. 17); Final Judgment & Order for Permanent Injunction & Other Equitable Relief, *FTC v. BurnLounge, Inc.*, No. 2:07-cv-03654 (C.D. Cal. July 25, 2011) (ECF No. 437).

Because we believe the current case law and enforcement policy are sound and working effectively, we do not believe legislation is warranted. Moreover, we are concerned that the proposed legislation would create unnecessary uncertainty and result in impairing the ability of the FTC to protect consumers against deceptive schemes. For example, the safe harbor created by the bill to immunize pyramid promotional schemes could shelter schemes structured around the very type of deceptive pitch that the FTC and the courts have condemned – convincing individuals to pay for inventory for resale with the expectation, fueled by the promoter, of substantial profits, and then to find that much of that inventory is unmarketable.

The provisions in the bill describing required disclosures and repurchase promises – incorporating intricately defined terms such as “bona fide inventory repurchase agreement,” “commercially reasonable terms,” “inventory loading,” and “ultimate users” – all have limits and exceptions. At a minimum, these statutory intricacies, separately and in combination, would unnecessarily create new opportunities for legal challenge to enforcement; even worse, the provisions could put practices now recognized as harmful and deceptive beyond the reach of the law.

Despite claims to the contrary by some in the direct selling industry,⁹ this legislation would not provide helpful clarification as to legitimate direct selling business practices, or strengthen consumer protections against fraudulent pyramid schemes. Instead, it would undermine the FTC’s ability to effectively police these deceptive practices, and we fear they would spread, harming millions of consumers, and putting direct sellers who are committed to honest business practices at a competitive disadvantage.

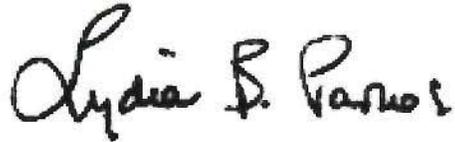
Given these concerns, we urge you to support the removal of the Moolenaar amendment from the FY18 Financial Services and General Government Appropriations bill.

⁹ See, e.g. Mariano, Joseph. “Direct selling is no pyramid scheme,” *The Hill*. July 24, 2017. Online: <http://thehill.com/blogs/pundits-blog/economy-budget/343508-protecting-legitimate-businesses-in-todays-economy>

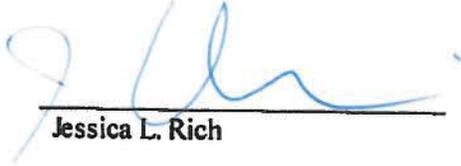
Sincerely,



William C. MacLeod



Lydia Parnes



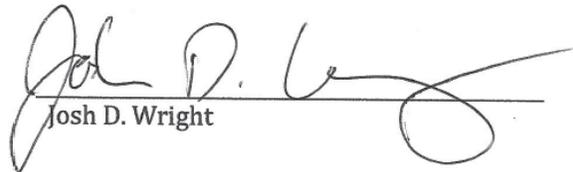
Jessica L. Rich



David Vladeck



Jon Leibowitz



Josh D. Wright

cc: The Honorable Rodney P. Frelinghuysen, Chairman, Committee on Appropriations
The Honorable Nita M. Lowey, Ranking Member, Committee on Appropriations
The Honorable Greg Walden, Chairman, Energy and Commerce Committee
The Honorable Frank Pallone, Ranking Member, Energy and Commerce Committee
The Honorable Tom Graves, Chairman, Subcommittee on Financial Services and
General Government
The Honorable Mike Quigley, Ranking Member, Subcommittee on Financial Services
and General Government
The Honorable Marsha Blackburn
The Honorable John Moolenaar
The Honorable Marc Veasey