IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LISA RANIERI and MEGAN CORNELIUS, individually and on behalf of a class of similarly situated persons,	)	
Plaintiffs,	)	CIVIL ACTION NO. 3:17-CV-0691-S
vs.	)	
ADVOCARE INTERNATIONAL, L.P.,	)	
Defendant.	)	

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Lisa Ranieri and Megan Cornelius ("**Plaintiffs**"), individually, and on behalf of all others similarly situated, plead as follows against Defendant AdvoCare International, L.P. ("**AdvoCare**").

I. PRELIMINARY STATEMENT

1. AdvoCare was one of the largest multi-level marketing companies ("**MLMs**") in the world, reportedly generating $719 million in net revenues in 2015. Until July 2019, it also operated a pyramid scheme. AdvoCare derived its many millions in revenues from bilking hundreds of thousands of individuals, known as "**Distributors**," who participated in AdvoCare's business opportunity.

2. On May 17, 2019—26 months after Plaintiffs filed their original complaint in this matter—AdvoCare announced that, as of July 17, 2019, it was abandoning its "multi-level marketing" business model and relying solely on direct-to-consumer and single-level marketing compensation. AdvoCare no longer rewards Distributors for bringing in new Distributors or based on the amount of product downline Distributors purchased. As discussed herein, those are the

features of MLMs that can turn them into pyramid schemes. AdvoCare further stated that it was making these fundamental changes to its business model based on confidential talks it had with the Federal Trade Commission ("**FTC**"), through which "it became clear that this change [was] the only viable option."

3. Although this change will protect thousands of persons who would have become Distributors from losing money in AdvoCare's pyramid scheme in the future, Plaintiffs seek to compensate thousands of persons defrauded by AdvoCare's pyramid scheme in the past.

4. Although AdvoCare masqueraded as a valid and legal product-based business where Distributors could make money buying products from AdvoCare at wholesale prices and selling them to third parties at retail prices, AdvoCare really operated a pyramid scheme. In a classic pyramid scheme, participants pay money for the right to receive compensation based on recruiting new participants into the scheme. Participants are told that the more recruits they have under them, and the closer to the top of the pyramid they are, the more money they might make. Participants will lose their money unless they recruit enough new participants, who will also lose their money unless they recruit enough new participants, and so on.

5. Because there is little or no money flowing into the scheme from non-participants, the majority of participants are doomed to lose most or all of their money. This is precisely why the Fifth Circuit (and many other courts) have consistently explained that "[p]yramid schemes are 'inherently fraudulent'" because they are nothing more than "robbing Peter to pay Paul" payment structures.[1]

6. Some MLMs (as AdvoCare did) operate pyramid schemes with a twist—rather than simply selling participants a right to share in the money paid in by other participants, the MLM

[1] *Torres v. S.G.E. Mgmt., LLC*, 838 F.3d 629, 639-40 (5th Cir. 2016).

sells participants the right to share in the money paid in by other participants ***and*** a product, but with no real prospect of reselling the product for a profit. The sale of the product to the Distributor is just a mask to obfuscate the true nature of the scheme.

7. For example, if the promoter of the classic pyramid scheme "sold" participants $100 toothpicks and the right to compensation from bringing in new participants to purchase $100 toothpicks (who would also bring in more toothpick-buying participants), the scheme is no less a pyramid scheme because the participants purchased toothpicks. The sale of toothpicks merely provides a mask of legitimacy to the pyramid scheme, allowing the promoter to claim he is a multi-level marketer of toothpicks instead of a pyramid scheme promoter. Here, rather than selling overpriced toothpicks to disguise its scheme, AdvoCare sold overpriced nutritional supplements.

8. Participants in the pyramid scheme operated by AdvoCare were the Distributors—a network people AdvoCare paid based on its compensation program. AdvoCare required Distributors to purchase start-up packages and pay annual dues, and the AdvoCare system made it a virtual necessity that the Distributors regularly purchase AdvoCare products. In return, the Distributors got the right to receive compensation based on retail sales and their recruitment of new Distributors (who paid fees, paid dues, and purchased product). Just like a classic pyramid scheme, the more recruits a Distributor brought into the AdvoCare program (and the more money those recruits paid AdvoCare), the more money that Distributor could make.

9. Unlike participants in a classic pyramid scheme, the AdvoCare Distributors received products—nutritional supplements—in return for the money they paid into the scheme, which the Distributors could theoretically consume or sell. But that fact made AdvoCare's business model no less a pyramid scheme. Although AdvoCare touted itself as a wholesaler of nutritional supplements, the Distributors could sell little product at retail, at least for any amount

above the wholesale price they paid AdvoCare (just as the $100 toothpicks are unlikely to be sold for a profit). The Distributors could use some of the product they bought, or they sold it for deep discounts, or they gave it away for free as part of their recruiting efforts. But selling the product to non-Distributors for a profit was not a real income-generating possibility for Distributors.

10. AdvoCare's Distributor network did not have to be a pyramid scheme. Nothing is inherently wrong with multi-level marketing. But MLMs become pyramid schemes when there are minimal retail sales and the participants are merely feeding off each other.

11. AdvoCare operated the scheme in such a way that made profitable retail sales unlikely to impossible. Products just as good, if not better, than AdvoCare's were widely available and cheaper on Amazon, on eBay, and at GNC. The protein powder, amino acids, supposedly nutritional shakes, and other products AdvoCare sold have the same principal ingredients as cheaper alternatives widely available. In addition, AdvoCare prohibited junior Distributors from selling goods on e-commerce platforms and in almost all brick-and-mortar businesses, so there was no realistic way for Distributors to sell the overpriced products. Moreover, because the Distributors got stuck with AdvoCare product they could not sell for a profit, some Distributors ignored AdvoCare's prohibition on e-commerce sales and sold the products on the internet for the wholesale price or less, further frustrating other Distributors' efforts at selling for a profit.

12. Other than the theoretical possibility of selling AdvoCare products for a profit to retail customers, all of AdvoCare's business incentives depended on recruiting—just like a classic pyramid-scheme promoter's incentives. The primary financial incentives in AdvoCare's compensation plan were bonuses based on purchases made by junior Distributors. And without recruiting, there were no junior Distributors. Thus, AdvoCare's compensation system strongly encouraged recruiting, and it provided very little reward for retail sales.

13. Moreover, AdvoCare's compensation system strongly encouraged Distributors to buy more and more product, regardless of whether they needed it for retail sales or would otherwise buy it for personal use. Distributors had to achieve certain levels of purchases by themselves or in conjunction with junior Distributors to maintain their eligibility for each type of bonus from AdvoCare. This pressure to maintain their statuses incentivized the Distributors to purchase product they did not need. Indeed, AdvoCare specifically designed its system to incentivize Distributors to purchase product they did not need.

14. AdvoCare claimed to have 570,289 Distributors who placed an order and/or earned a check in 2016, but the vast majority of AdvoCare's Distributors lost money. According to AdvoCare's 2016 Income Disclosure Statement, AdvoCare paid 72.3.5% of its Distributors ***$0*** in 2015. It paid 94% of its Distributors $500 or less. These are gross income numbers that do not account for the money the Distributors paid AdvoCare in fees and product purchases. On information and belief, at least 95% of AdvoCare's Distributors paid AdvoCare more money than AdvoCare paid them.

15. AdvoCare turned a potentially legitimate MLM into a pyramid scheme with the help of others. AdvoCare set up the operation, advertised the products, ran the website, organized Distributor conferences, obtained, shipped, and priced the products, and, most importantly, took in the Distributor payments and redistributed the money throughout the pyramid (minus AdvoCare's cut). But AdvoCare did not, itself, perform the most crucial aspect of any pyramid scheme—recruiting new persons (and new money) into the scheme.

16. For this function, AdvoCare looked to the persons at the top of the pyramid who worked together to bring in a never-ending march of Distributors to be fleeced. These few at the top of AdvoCare's pyramid (the "**Scheme Beneficiaries**")—including Daniel McDaniel, Jenny

Donnelly, Crystal Thurber, Wes Bewley, Dawn Funk, Tyler DeBerry, and Tori Cuevas—got rich from defrauding the ~95% of Distributors who lost money. These few at the top of the pyramid served as the "faces of the franchise," presenting to rank-and-file Distributors and potential Distributors an illusion of success for the purpose of bringing in new Distributors and keeping existing Distributors in the scheme. Like AdvoCare, these Scheme Beneficiaries profited from fees paid by the Distributors in their downline, not retail sales. They led the charge in coaxing persons to become Distributors, encouraging existing Distributors to stay in the scheme and pay more into the scheme, and training Distributors in how to bring new Distributors into the scheme.

17. They performed these functions through appearances at Distributor conferences, through videos posted on the internet and other internet postings, and via one-on-one contacts. Their actions were coordinated with each other and with AdvoCare. They appeared at the same conferences. They supported one another in video postings. They repeated the same messages such that statements by one would reinforce statements by the others.

18. They were unlike the rank-and-file Distributors because they, unlike 99+% of Distributors, made lots of money. AdvoCare paid them millions of dollars (dollars from the pockets of Distributors). Their success in the scheme allowed them to do what the net-loser Distributors (~95% of Distributors) and the small profit Distributors (~5%) could not do—bring in hundreds of new recruits.

19. Because the Scheme Beneficiaries are so important to the scheme, AdvoCare allowed them advantages forbidden to rank-and-file Distributors. AdvoCare allowed the Scheme Beneficiaries to unfairly manipulate AdvoCare's Compensation Plan (as defined below) and sell AdvoCare product on e-commerce sites. The Scheme Beneficiaries even provided input into the drafting of the contract documents between AdvoCare and the Distributors.

20. In addition, the Scheme Beneficiaries knew, from their vantage point atop the pyramid, that perpetuating the scheme depended upon bringing in a constant stream of new recruits. AdvoCare provided its Distributors with access to information regarding the purchases and recruiting performance of their downline Distributors. Thus, the Scheme Beneficiaries could see the performance and failures of hundreds of Distributors. By necessity, the Scheme Beneficiaries knew that the majority of Distributors paid AdvoCare thousands of dollars to participate, realized it was not really a money-making venture, and dropped out, or just quit buying product. To perpetuate the scheme, new Distributors—and new money—had to come into the scheme. The Scheme Beneficiaries, with their large "downlines" of recruits, saw and understood this churn of Distributors in a way lower-level Distributors could not.

21. Perhaps most damning is the fact that AdvoCare and the Scheme Beneficiaries did not prey on those who sought a get-rich-quick or idle investment scheme. Rather, they marketed the scheme to good people willing to work hard to make better lives for themselves and their families. They preyed on people in tight financial circumstances looking for some extra income. They told their victims that, with enough hard work, they could help themselves financially by growing their own AdvoCare-based business. They told Distributors that their lack of success was due to their not working hard enough at growing their AdvoCare business (*i.e.,* recruiting more Distributors). AdvoCare and the Scheme Beneficiaries thus used their victims' good natures to encourage them to join and stay in the scheme.

22. With the cooperation of the Scheme Beneficiaries, AdvoCare made an MLM into a pyramid scheme. The purpose and effect of AdvoCare's conduct was defrauding hundreds of thousands of Distributors. On their own behalves and on behalf of classes of similarly injured

Distributors, Plaintiffs seek to hold AdvoCare financially liable for the operation and promotion of a pyramid scheme.

II. JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs bring claims under federal law, specifically 18 U.S.C. §§ 1961, 1962, and 1964 ("**RICO**").

24. Federal subject matter jurisdiction also arises under 28 U.S.C. § 1332(d) because (i) the amount in controversy exceeds $5,000,000, exclusive of interest and costs, (ii) members of the proposed Class are citizens of different states from AdvoCare, (iii) there are more than 100 members of the proposed Class, and (iv) fewer than one-third of the members of the proposed Class are residents of Texas.

25. The amount in controversy far exceeds $5,000,000. AdvoCare reportedly generated $719 million in revenues in 2015 and $494 million in 2014. Most of these revenues came from sales of product to AdvoCare's Distributors.

26. There are far more than 100 members of the proposed Class. AdvoCare claims that in 2015, it had more than 623,000 participants. It had 570,289 participants in 2016. More than 95% of those participants lost money.

27. Fewer than one-third of AdvoCare's Distributors are Texas residents. AdvoCare markets itself nationally, and its Distributors were located nationwide.

28. AdvoCare is subject to the personal jurisdiction of this Court. AdvoCare is a Delaware limited partnership with its principal place of business in Plano, Texas.

29. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1).

III. PARTIES

A. PLAINTIFFS

30. Plaintiff Lisa Ranieri is, and at all material times was, an individual who resides in the county of Alexandria, in the Commonwealth of Virginia.

31. Plaintiff Megan Cornelius is, and at all material times was, an individual who resides in the county of San Diego, in the State of California.

B. DEFENDANT

32. Defendant AdvoCare is a Delaware limited partnership with its principal place of business in Plano, Texas. AdvoCare was founded by Charles Ragus in 1993. Immediately before founding AdvoCare, Ragus was an officer of Omnitrition International, Inc. ("**Omnitrition**"), a MLM which the U.S. Court of Appeals for the Ninth Circuit determined, based on the summary judgment evidence in the record, bore the characteristics of a pyramid scheme. *See Webster v. Omnitrition Int'l, Inc.*, 79 F.3d 776 (9th Cir. 1996). Before Omnitrition, Ragus was one of the top distributors at Herbalife International, Inc. ("**Herbalife**"), a MLM company that recently agreed with the Federal Trade Commission to a $200 million settlement and injunctive relief to remedy and prevent Herbalife's operation of a pyramid scheme.

33. As discussed above, under pressure from the FTC, AdvoCare recently changed its operational model so that it was no longer a MLM (let alone operating a pyramid scheme). As of the writing of this Second Amended Complaint, the FTC has not issued a stipulated order, consent order, or other document regarding the details of a settlement with AdvoCare.

IV. PLAINTIFFS' CLAIMS ARE NOT ARBITRABLE

34. At all times that Plaintiffs were associated with AdvoCare, the AdvoCare "**Distributor Agreement**" set forth the terms and conditions of the contractual relationship between AdvoCare and its Distributors. The Distributor Agreement incorporated by reference

AdvoCare's "Policies, Procedures and the Compensation Plan" (the "**Policies**"). The Distributor Agreement and the Policies were uniform as to all Distributors. They were take-it-or-leave-it documents, and the Distributors (including Plaintiffs) had no opportunity to bargain regarding their terms.

35. The Distributor Agreement provided that the Distributor Agreement and the Policies together constituted the "**Contract**" between the parties, provided that AdvoCare could change the Policies (and thus the Contract) as it wished, and provided that the Policies controlled in the face of a conflict with the Distributor Agreement:

> **Policies Incorporated into Distributor Agreement**. This Agreement incorporates by reference the AdvoCare [Policies], in their current form and as amended periodically at the sole discretion of AdvoCare. Together the Distributor Agreement and the Policies, as they may be amended, constitute the contractual agreement ("Contract") between AdvoCare and each Distributor. … By executing this Agreement, Distributor agrees to abide by all terms of the Contract, including the current version of the Policies and all modifications and amendments thereto. It is the responsibility of each Distributor to read, understand, adhere to, and ensure that he or she is aware of and operating under the most current version of the Policies. The most current version of the Policies is available online through the Distributor Microsite and is effective upon posting by AdvoCare. AdvoCare reserves the right to amend the Policies in its sole discretion. The continuation of a Distributor's AdvoCare business following the posting of amended Policies, including but not limited to Distributor's acceptance of compensation under the Compensation Plan, shall constitute acceptance of all amendments to the Policies.
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> . . .
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> The Contract may not be altered or amended except as provided in the Policies as amended from time to time or by other written notice by AdvoCare. . . . Should any discrepancy exist between the terms of the AdvoCare Distributor Agreement and the Policies, the terms of the Policies will prevail.[2]

[2] Distributor Agreement at 1 [Appx. P. 0001]. AdvoCare may have used an earlier version of the Distributor Agreement at some point during the period four years preceding the filing of this Complaint, but, on information and belief, the earlier version is identical in every relevant respect to the version included in the Appendix accompanying this Complaint.

36. AdvoCare used at least four versions of the Policies within four years of the filing of this Complaint and while the Plaintiffs were active AdvoCare Distributors. These versions were dated October 6, 2011 (Appx. P. 0011-36); January 25, 2013 (Appx. P. 0037-64); May 21, 2015 (Appx. P. 0065-97); and March 11, 2016 (Appx. P. 0098-130). Each version confirmed AdvoCare's ability to amend the Contract as it wished. The October 6, 2011, and January 25, 2013, versions of the Policies provided, "The Contract may not be altered or amended except as provided in the [Policies] as amended from time to time or by other written notice by AdvoCare."[3]

37. The May 21, 2015, and March 11, 2016, versions of the Policies had a similar provision allowing AdvoCare to change its contract with the Distributors as AdvoCare wished:

> The [Policies], in their current form and as amended periodically at the sole discretion of [AdvoCare], are incorporated into the AdvoCare Distributor Agreement. It is the responsibility of each AdvoCare Independent Distributor ("Distributor") to read, understand, adhere to, and ensure that he or she is aware of and operating under the most current version of these Policies. The most current version of the Policies is available online through your Distributor Microsite . . . and is effective upon posting by AdvoCare. AdvoCare reserves the right to amend the Policies in its sole discretion. By executing the AdvoCare Distributor Agreement, each Distributor agrees to abide by all amendments or modifications AdvoCare makes. The continuation of a Distributor's AdvoCare business following the posting of amended Policies, including but not limited to a Distributor's acceptance of compensation under the Compensation Plan, shall constitute acceptance of all amendments to the Policies.
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> . . .
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> Any violation of the Policies may result in disciplinary action including probation, suspension and/or termination at the sole discretion of AdvoCare.[4]

38. The Distributor Agreement in place at all times during the class period contained a provision (the "**Arbitration Provision**") that purported to require that all disputes between AdvoCare and any Distributor be arbitrated:

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[3] *See* Policies, Procedures and the Compensation Plan (10/6/11) ("**Policies (10/6/11)**") at 15 [Appx. P. 0025]; Policies, Procedures and the Compensation Plan (1/25/13) ("**Policies (1/25/13)**") at 17 [Appx. P. 0053].

[4] Policies, Procedures and Compensation Plan (3/11/16) ("**Policies (3/11/16)**") at 5 [Appx. P. 0102].

> EXCEPT AS MAY BE PROVIDED OTHERWISE BY THESE POLICIES, ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THE CONTRACT, WHETHER SUCH CLAIM ARISES IN TORT, CONTRACT, EQUITY, OR OTHERWISE, SHALL BE RESOLVED BY BINDING AND CONFIDENTIAL ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS THEN EXISTING COMMERCIAL ARBITRATION RULES BEFORE A SINGLE ARBITRATOR.[5]

39. The May 21, 2015, and March 11, 2016, versions of the Policies included a provision identical to the Arbitration Provision found in the Distributor Agreement.[6] Prior to the May 21, 2015, version of the Policies, only the Distributor Agreement addressed dispute resolution.

40. On May 18, 2016, after Plaintiffs' distributorships were suspended or terminated, AdvoCare changed the Arbitration Provision in the Policies to provide that amendments to the Arbitration Provision (unlike amendments to other parts of the Policy), would apply only prospectively, not retrospectively, would be effective fourteen days after posting, and would not apply to any claim for which a Distributor has provided AdvoCare written notice.[7] This limitation on AdvoCare's ability to amend the arbitration provision was not in any prior version of the Policies. The Contracts as defined by the Distributor Agreement and the October 6, 2011, January 25, 2013, May 21, 2015, and March 11, 2016, versions of the Policies all allowed AdvoCare to change the Contract, including the Arbitration Provision, at will, without notice, prospectively, and retrospectively.

41. Because AdvoCare had the ability to modify its Contract, including the Arbitration Provision, as it wished until May 18, 2016, the Arbitration Provision set forth in the Distributor

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[5] Distributor Agreement at 7 [Appx. P. 0007].
[6] *See* Policies, Procedures and Compensation Plan (5/21/15) ("**Policies (5/21/15)**") at 21-23 [Appx. P. 0085-87]; Policies (3/11/16) at 21-23 [Appx. P. 0118-120].
[7] *See* Policies, Procedures and Compensation Plan (5/18/16) ("**Policies (5/18/16)**") at 20 [Appx. P. 0153].

Agreement and in the May 21, 2015, and March 11, 2016, versions of the Policies is illusory and unenforceable.

42. On July 5, 2017, the Court in this matter entered an agreed order requiring the original parties to this case (Plaintiffs, AdvoCare, and the now-dismissed Individual Defendants) to arbitrate the issue of arbitrability. Plaintiffs, AdvoCare and the Individual Defendants agreed that Plaintiff Cornelius would not be a party to the arbitration and that whatever decision the arbitration reached as to the arbitrability of Plaintiff Ranieri's claims would apply to Plaintiff Cornelius, also.

43. Plaintiff Ranieri, AdvoCare, and the Individual Defendants proceeded to arbitration before the American Arbitration Association. Those parties had a full and fair opportunity to present their positions on arbitrability to the arbitrator, including the submission of lengthy briefs and exhibits and an in-person hearing. On December 27, 2017, the arbitrator agreed with Plaintiff Ranieri that the Arbitration Provision was illusory and unenforceable.

44. Plaintiffs contend that the arbitrator's ruling on arbitrability must apply to all members of the Class (as defined herein).

V. FACTUAL ALLEGATIONS

A. ADVOCARE OPERATED A PYRAMID SCHEME

45. The allegations herein regarding AdvoCare's creation and perpetuation of a pyramid scheme regard AdvoCare's conduct prior to May 18, 2016—the date AdvoCare amended its Policies in an attempt to prevent its Arbitration Provision from being illusory. Since then,

AdvoCare has made additional changes to its Policies and the structure of its compensation system to avoid a judicial or regulatory finding that it operates a pyramid scheme.

46. AdvoCare recently abandoned its MLM structure in response to "confidential talks" with the FTC. As of July 17, 2019, AdvoCare abandoned "multi-level marketing" altogether and will rely solely on direct to consumer and single-level marketing. In other words, AdvoCare dumped its pyramid scheme in favor of only selling products at retail prices to third parties.

47. AdvoCare has always claimed Distributors could sell AdvoCare's products for a profit at retail prices. Indeed, AdvoCare touted its products as being "world class" and consistently maintained that "[r]etail sales [not recruiting] are the foundation of a successful Distributorship."[8] In reality, however, AdvoCare did not care about retail sales. Supposed retail sales and the supposed quality of AdvoCare's products were just lures to draw Distributors into the pyramid scheme.

48. The essential characteristic of a pyramid scheme is the compensation of participants primarily derived from participants' payments into the scheme and based on participants' recruitment of new participants into the scheme. Little outside money comes into the scheme. The participants just feed off each other's money and are highly incentivized to bring new participants into the scheme. This is the exact structure AdvoCare created, oversaw, and maintained behind the facade of a valid and legal product-based operation.

49. AdvoCare's Contract contained a "**Compensation Plan**."[9] The Contract required Distributors to pay AdvoCare initial and annual fees to access the Compensation Plan, and through

[8] Policies (3/11/16) at 25 [Appx. P. 0122].

[9] The March 11, 2016, version of the Policies, Procedures and Compensation Plan sets forth the Compensation Plan at pages 25-33 [Appx. P. 0122-130]. The rules and structure of the Compensation Plan are identical in every significant way in the four versions of the Policies at issue in this Complaint. Unless otherwise noted, for ease of reference, the Complaint herein cites to the March 11, 2016, version.

its bonuses, the Compensation Plan encouraged and, as a practical matter, required Distributors to pay AdvoCare more money through the purchase of products to receive compensation. This is how AdvoCare enticed its pyramid scheme participants to pay money into the scheme. *See infra* Section V.A.1.

50. In addition, for reasons discussed herein, Distributors were unable to make any significant retail sales, and extremely few retail sales are made directly by AdvoCare. Thus, the only meaningful source of compensation for AdvoCare and the Distributors was other Distributors' money. *See infra* Section V.A.2.

51. To avoid scrutiny from the FTC and similar state regulators, and to avoid liability in court, AdvoCare adopted a few rules it hoped would obscure the fact that its Distributors are simply feeding off each other. But these rules were just smokescreens that could not change the fact that AdvoCare, together with the Scheme Beneficiaries, operated a pyramid scheme. *See infra* Section V.A.3.

52. The fact is that the Distributors lost money from participating in AdvoCare's pyramid scheme, while the Scheme Beneficiaries and AdvoCare grew rich. *See infra* Section V.A.4.

1. AdvoCare's Complicated Compensation Plan Required Distributors to Pay Fees and Incentivized Distributors to Purchase Unneeded Product and to Recruit New Distributors

a. AdvoCare required Distributors to pay fees to participate in AdvoCare's Compensation Plan

53. To become an AdvoCare Distributor, a person purchased a "**Distributor Kit**" and signed a Distributor Agreement.[10] During the time relevant to the Complaint, the Distributor Kit

[10] Policies (3/11/16) at 6 [Appx. P. 0103].

cost either $59 or $79. A person could not become a Distributor without purchasing a Distributor Kit.

54. Distributors received the following rights and privileges:

(1) To purchase products directly from AdvoCare at a discounted price;

(2) To participate in the AdvoCare Compensation Plan (receive commissions and bonuses, if eligible);

(3) To sponsor other individuals as Distributors, and build a downline organization;

(4) To receive AdvoCare communications and literature;

(5) To participate in AdvoCare-sponsored training, motivational and recognition events upon meeting qualifying criteria and payment of appropriate charges, if applicable;

(6) To participate in AdvoCare-sponsored incentive trips and programs, if eligible;

(7) To earn a profit on Retail Sales, if eligible;

(8) To earn a profit from Wholesale Commissions, if eligible; and

(9) To have an opportunity to advance to the Advisor level and be eligible to earn Overrides and Leadership Bonuses upon fulfilling requirements set forth in Section II: Compensation Plan.[11]

55. AdvoCare's Policies also required the payment of a $50 annual "**Renewal Fee**."[12] If a Distributor failed to renew, AdvoCare could terminate the Distributor, precluding him from participating in the AdvoCare Compensation Plan.[13] Termination resulted in the Distributor's loss of his status earned prior to termination, and if the Distributor reenrolled, he did so at the bottom of the pyramid.[14]

[11] *Id*. at 6 [Appx. P. 0103].
[12] *Id*. at 7 [Appx. P. 0104].
[13] *Id*.
[14] *Id*. at 21 [Appx. P. 0118].

b. Basic terminology relevant to understanding AdvoCare's Compensation Plan

56. The payments made for the Distributor Kit and the Renewal Fee, however, represented only a small portion of the payments Distributors made to AdvoCare. The primary tool AdvoCare used to bilk Distributors was the sale of its products to Distributors. The structure of AdvoCare's Compensation Plan encouraged Distributors to purchase more product than they could profitably sell at retail so that the Distributors would remain eligible for various forms of AdvoCare compensation. Understanding how AdvoCare manipulated and incentivized its Distributors requires understanding how AdvoCare's complicated Compensation Plan worked.

57. A basic concept in AdvoCare (and any MLM) is the "**Downline**": the branching stream of junior Distributors whose entry into AdvoCare ultimately links back to a particular Distributor.

58. One of the key distinctions in the Compensation Plan was between run-of-the-mill Distributors and "**Advisors**." Most of the income-generating opportunities supposedly offered by AdvoCare were available only to Distributors at the Advisor level. Distributors graduated to Advisor level in the AdvoCare system upon generating a certain level of product purchases (personally or through junior Distributors). Distributors lost their Advisor status if they failed to maintain these levels. All Advisors were Distributors, but not all Distributors were Advisors.

59. The Compensation Plan offered three primary types of bonuses, each of which encouraged purchasing more product than a Distributor wanted for personal consumption or could sell profitably, and each of which encouraged recruiting: "**Wholesale Commissions,**" "**Overrides**," and "**Leadership Bonuses**." Each of these is discussed herein. The amount of Wholesale Commissions, Overrides, and Leadership Bonuses available to a Distributor depended upon their ranking within the AdvoCare compensation structure, and a Distributor's ranking was

tied to the amount of product sales attributable to a Distributor over particular time periods. In general, the more a Distributor purchased, and the more a Distributor's Downline purchased, the more money AdvoCare paid the Distributor.

60. The complicated formulas AdvoCare used to calculate a Distributor's compensation were based on four approaches to measuring the amount of product purchases attributable to a Distributor:[15]

- **P/GV** was Personal Volume and Group Volume combined. P/GV was essentially the retail value of the products purchased by a Distributor and the Distributor's Downline, excluding purchases by junior Advisors and their Downlines.
- **Personal Volume** was the total suggested retail value of the product purchases made by a Distributor, any retail sales made through the Distributor's AdvoCare webpage (known as a "**Microsite**"), and the purchases of each Downline Distributor with a total retail price less than $500 (*i.e.,* purchases by Distributors not trying to become Advisors), excluding purchases by junior Advisors and their Downlines.
- **Group Volume** was the total suggested retail value of the product purchases made by Downline Distributors with a retail price of more than $500 (*i.e.,* purchases by Distributors trying to become Advisors), excluding purchases by junior Advisors and their Downlines.
- **Business Volume** was the sum of the purchases made by junior Advisors and their Downlines, measured by values assigned to the purchases by AdvoCare. The Business Volume value was approximately half a product's suggested retail price.

Each of these was generally measured over two-week pay periods.

61. Finally, one of the harmful effects of pyramid schemes disguised as MLMs is that they encourage participants to purchase more product than they can sell at retail, or to purchase product they otherwise would not, to advance within the MLM ranks to qualify for bigger bonuses. This is known as "**Inventory Loading**."

[15] *See id*. at 26 [Appx. P. 0123].

c. AdvoCare encouraged Distributors to recruit and to Inventory Load through its "Wholesale Commissions"

62. Upon first entering the AdvoCare system, Distributors were eligible to purchase AdvoCare products at a 20% discount, but the discount could grow to 40%, depending on the Distributor's P/GV.

63. When a Distributor and her Downline purchased the following amounts of product over any one-to-three pay periods (two to six weeks), measured by P/GV, the following discounts applied:[16]

P/GV Volume	Discount
$0-$499	20%
$500-$1,499	25%
$1,500-$2,999	30%
$3,000 or more	40%

64. The ability to purchase product at a greater discount was of little consequence, in and of itself, because Distributors were unable to sell much product at retail for a profit, even with a 40% discount. However, the greater discount led to Wholesale Commissions.

65. Wholesale Commissions were based on the idea that AdvoCare would ultimately sell its products to Distributors at a 40% discount off the suggested retail price, but the Wholesale Commission bonus spread that 40% discount across Distributors. So, if Distributor A was entitled to a 35% discount, and her junior Distributor B purchased products with his 20% discount, AdvoCare paid Distributor A 15% of the suggested retail value for the products Distributor B purchased. Some Distributor above Distributor A who was eligible to purchase products at a 40% discount would then get a 5% Wholesale Commission on Distributor B's purchase so that AdvoCare has effectively given a 40% discount on Distributor B's purchase.[17]

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[16] *Id*. at 27 [Appx. P. 0124].
[17] *See generally id*. at 27-28 [Appx. P. 0124-125].

66. The prospect of Wholesale Commissions obviously encouraged recruiting: the more recruits a Distributor had, the more potential there was for a Wholesale Commission.

67. The prospect of Wholesale Commissions also encouraged Distributors to purchase product they did not otherwise need or want to increase their P/GV so that they could be eligible for greater discounts and thus greater Wholesale Commissions.

68. It was theoretically possible that a Distributor could qualify for higher discounts solely through his Downline's purchases. But the way AdvoCare calculated P/GV ensured that most Distributors had to purchase product themselves to qualify for higher discounts. As explained above, P/GV included:

- PV:
  - A Distributor's own purchases;
  - The retail sales made at a Distributor's Microsite;
  - The purchases made by Downline Distributors for less than $500 in retail value (excluding purchases by Downline Advisors and their Downlines' purchases); and

- GV: the purchases made by Distributors for $500 or more in retail value and who were seeking to qualify for Advisor status (excluding purchases by Downline Advisors and their Downlines' purchases).

69. There were very few retail purchases made at Distributors' Microsites. These were AdvoCare webpages that allowed retail customers to order directly from AdvoCare and attributed the purchase to a particular Distributor (much like a customer informing the cashier at a department store which clerk helped him find the sweater he is purchasing). The customer did not receive a discount for purchasing through a particular Distributor's Microsite, so the customer had little incentive to order through the Microsite. As for the Distributors, they wanted to make retail sales directly to retail customers so they could offload product that they had already purchased from AdvoCare. In addition, for reasons described herein, few profitable retail sales were made at all,

via the Microsites or otherwise. Thus, retail sales through a Distributor's Microsite was not a reliable source of P/GV.

70. Distributors looked to purchases by junior Distributors for less than $500 to increase their PV (and thus their P/GV). However, these purchases excluded those made by Advisors (the people who were most committed to the business and were likely buying the most product) and Distributors in junior Advisors' Downlines. (AdvoCare compensated Distributors based on the purchases made by junior Advisors and their Downlines via Overrides and Leadership Bonuses, discussed herein.) Moreover, AdvoCare products ranged in retail price from $5.95 to $79.95, with most products priced in the $30-$50 range. Thus, it required many individual purchases by many Distributors purchasing less than $500 to give a Distributor sufficient P/GV to qualify for the higher discount levels. It was unlikely that a Distributor could meaningfully fulfill his P/GV requirements to advance to higher discount levels by relying on purchases by junior Distributors, not in a junior Advisor's Downline, purchasing less than $500.

71. Distributors looked to purchases of $500 or more by junior Distributors who were not already Advisors, and who were not in a junior Advisor's Downline, to increase their GV (and thus their P/GV). These were purchases by "up-and-comers." This was a limited source of P/GV because it depended on catching Distributors in this transitional phase between Distributor and Advisor.

72. The only reliable source of P/GV for the majority of Distributors was their own purchases. Purchases for normal consumption would be insufficient to meet the thresholds required to qualify for bigger discounts. Reaching just the 30% discount level required P/GV of $1,500 (measured by the retail price) of AdvoCare products, which was far more than any person

could be expected to consume over six weeks. For example, $1,500 worth of AdvoCare products could include:

3 boxes of AdvoBars (36 bars)	$96
3 boxes of Slam amino acid supplement (36 bottles)	$107.85
2 canisters of Muscle Gain protein powder (50 servings)	$159.90
2 boxes of BioCharge amino acid vitamin (60 servings)	$85.90
2 canisters of Arginine Extreme supplement (60 servings)	$79.90
2 canisters of Post-Workout Recovery drink mix (50 servings)	$159.90
2 canisters of AdvoGreens Powder (40 servings)	$65.90
1 box of Herbal Cleanse System (10 day supply)	$36.95
4 boxes of AdvoCare Core supplement (56 day supply)	$203.80
4 boxes of SleepWorks supplement (48 servings)	$143.80
6 boxes of Spark supplement (84 servings)	$137.70
2 pouches of V100 Tropical Chews (120 chews)	$69.90
4 boxes of AdvoCare Slim appetite suppressant (56 servings)	$119.80
1 bottle of Fibo-Trim fiber supplement (180 capsules)	$37.95
Total	**$1505.25**

73. Thus, even though AdvoCare prohibited the practice, its Wholesale Commissions financially incentivized (and made a practical necessity) Inventory Loading—Distributors making purchases **not** for the purpose of fulfilling retail demand, and **not** to satisfy their normal desire for nutritional supplements, but rather so that they could increase their P/GV, qualify for greater discounts, and qualify for Wholesale Commissions.

d. AdvoCare encouraged Distributors to recruit and Inventory Load through its Advisor incentives and qualifications

74. While all Distributors could earn money from retail sales and Wholesale Commissions from their recruited Distributors' purchases, becoming an Advisor allowed a Distributor to access AdvoCare's most significant bonuses: Overrides and Leadership Bonuses. AdvoCare's Policies stated bluntly that Overrides and Leadership Bonuses were available only to Advisors.

75. The importance of achieving Advisor status was apparent from internet postings:

- One website explained that becoming an Advisor "is really the most important step you can make if you are serious about earning an income in AdvoCare."[18]

- One Scheme Beneficiary explained that Advisors are individuals "who want life on their terms;" [19] who can earn "anywhere from $1,000 a month to $2,000, $3,000, $5,000 a month really just depending on what their goals are for their family."[20]

- Another Scheme Beneficiary stated that becoming an Advisor is "the first step to financial freedom."[21] "Advisor is a starting point."[22]

- Yet another Scheme Beneficiary explained that "[w]e don't really consider people serious about AdvoCare from a business perspective until they get to the Advisor level."[23]

- An AdvoCare presentation demonstrated that about 98% of AdvoCare earnings was from bonuses based on recruiting, not simply selling AdvoCare products to retail customers—"[i]t is clearly very important if you want to make a lot of money in AdvoCare to have a bunch of Advisors who are working the business." [24] "There's a saying in AdvoCare: he with the most Distributors wins."[25]

- As Scheme Beneficiary Thurber stated, Advisor "puts you on the bench to be able to get on the playing field."[26]

76. The requirements for reaching Advisor ensured, as a practical matter, that Distributors trying to become Advisors must purchase AdvoCare products, and the requirements highly incentivized Distributors to recruit new Distributors (who would purchase products).

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[18] http://thechampionsvision.blogspot.com/2012/04/our-business-model-is-duplication.html.
The links to videos footnoted in this Amended Complaint were active as of the date of Plaintiffs' original Complaint. Since then, some of the videos at the links have been removed. However, Plaintiffs' counsel downloaded copies of all the videos prior to filing the original Complaint.
[19] https://www.youtube.com/watch?v=rWSWUfT0PEM&t=36s, posted Aug. 23, 2012 (around 3:00 mark).
[20] *Id*. (around 3:00 mark).
[21] https://www.youtube.com/watch?v=8aoFePVEKsA, posted May 11, 2011 (4:30 mark).
[22] https://www.youtube.com/watch?v=WaOAg1plCXc, posted Feb. 23, 2012 (around 2:30 mark).
[23] https://www.youtube.com/watch?v=HQMum2vx2Bc, posted Oct. 13, 2014 (around the 13:20 mark).
[24] *Id*. (around the 16:50 mark).
[25] *Id*. (around the 11:00 mark).
[26] https://www.youtube.com/watch?v=s1mc9zhWDi8, posted on Sept. 3, 2015 (around the 36:00 mark).

77. To become an Advisor, a Distributor must achieve $3,000 in P/GV over one to three consecutive pay periods.[27] The same difficulties in achieving P/GV discussed above in relation to earning greater product discounts applied to achieving P/GV for the sake of making Advisor (*see supra* ¶¶ 68-73), but with the Advisor requirement there was an additional hurdle: for every pay period in which the Distributor was seeking to qualify as an Advisor, $500 of the P/GV had to be PV. Thus, even if a Distributor had an up-and-comer below him who purchased $3,000 in product to achieve Advisor status in one pay period, that Distributor would still need $500 in PV—meaning the Distributor would likely need to purchase a substantial amount of product himself.

78. Despite all of AdvoCare's representations about the quality of its products and the ability to sell them for a profit to retail customers, AdvoCare has expressly admitted in its Policies that the Advisor qualification requirements incentivized Distributors to purchase product solely to qualify for Advisor. In the January 25, 2013, version of the Policies, AdvoCare provided the following examples of how a Distributor could achieve Advisor status (emphases added):[28]

> **Example 1:** You personally made $400 worth of purchases. Your down-line Distributor ("Joe") made $450. Because Joe purchases less than $500 retail value, his Personal Volume rolls into yours, giving you $850. Since you need at least $500 in Personal Volume to be in qualification for Advisor, you've fulfilled the criteria for this pay period.
>
> **Example 2:** At some point during the pay period, Joe figures out he's so close to qualification that he makes a $75 order at 11:30 p.m. the night of the pay period close. Now Joe is in an Advisor qualifying period ($500 or more in Personal Volume), and his Personal Volume rolls up into your Group Volume, not your Personal Volume. Your P/GV is $925, but you're not in Advisor qualification. Why? Because your Personal Volume is less than $500! You'll have to start your qualification all over in the next pay period.
>
> **Example 3:** <u>In the previous example, you "lost" $925 toward Advisor qualification because you didn't have at least $500 in Personal Volume.</u> ***<u>One way to insure this</u>***

[27] Policies (3/11/16) at 28 [Appx. P. 0125].
[28] Policies (1/25/13) at 23[Appx. P. 0059].

> ***doesn't happen is to purchase at least $500 yourself, as in this example, if you are striving to reach Advisor status.***
>
> **Example 4:** Here's another way to drive home the point. In this example, you have $499 in Personal Volume. But now Joe gets on a hot streak and purchases $2,500 worth of product. His Personal Volume rolls up to your Group Volume, not your Personal Volume. You "lose" the value of his $2,500 toward your own qualification because you're a dollar shy of the required $500 in Personal Volume. ***Just one more dollar and you would have qualified in one period by utilizing Joe's burst of energy!***
>
> You may choose any method you like to achieve Advisor status. ***These examples point out the practical reasons why you always want to track your volume if you think you're close to qualifying [for] Advisor status – and if necessary, cover the $500 Personal Volume with your own purchases.***

79. Thus, AdvoCare's own statements explained how the Advisor qualifications, together with the complicated requirements for calculating P/GV, encouraged Advisors to purchase product they did not need, solely so that they could qualify as an Advisor. The bold and italicized portions of the quotes above were express encouragement of Inventory Loading.

80. The text quoted above comes from the January 25, 2013, version of the Policies, and the same statements are found in the October 6, 2011, version.[29] However, the May 21, 2015, version attempted to sanitize the examples and removed the portions underlined above, apparently to make it less explicit that the AdvoCare Compensation Plan encouraged purchases for the sake of rank advancement.[30] The March 11, 2016, version of the Policies omitted the examples altogether.[31] Despite removing the examples, the requirements for advancing to Advisor remained the same, and at all times the Advisor requirements encouraged Distributors to Inventory Load.

[29] Policies (10/6/11) at 21 [Appx. P. 0031].
[30] Policies (5/21/15) at 28-29 [Appx. P. 0092-93].
[31] Policies (3/11/16) at 28 [Appx. P. 0125].

81. The requirements for advancing to Advisor also encouraged recruiting. The more populous a Distributor's Downline, the more likely that the Distributor's P/GV requirements would be met, at least in part, by purchases by junior Distributors.

82. The Advisor requirements were recurring. Once a Distributor reached Advisor, he had to requalify every year. The requirements for requalification were similar to the requirements for initial qualification.[32]

e. AdvoCare encouraged recruiting and Inventory Loading through its Override bonuses

83. Once a Distributor became an Advisor, she was eligible to earn compensation through Overrides.[33] As discussed above, Wholesale Commissions allowed Distributors to earn income based on their junior Distributors' purchases, but only as to junior Distributors who were entitled to a lower discount. All Advisors were entitled to a 40% discount, so Distributors could not earn Wholesale Commissions on junior Advisors' purchases. Overrides were a way for Distributors with Advisor status to earn money based on purchases made by junior Advisors and their Downlines.

84. An Override bonus was based on two metrics: the Override percentage to which the Advisor was entitled, and her Downline's Business Volume.

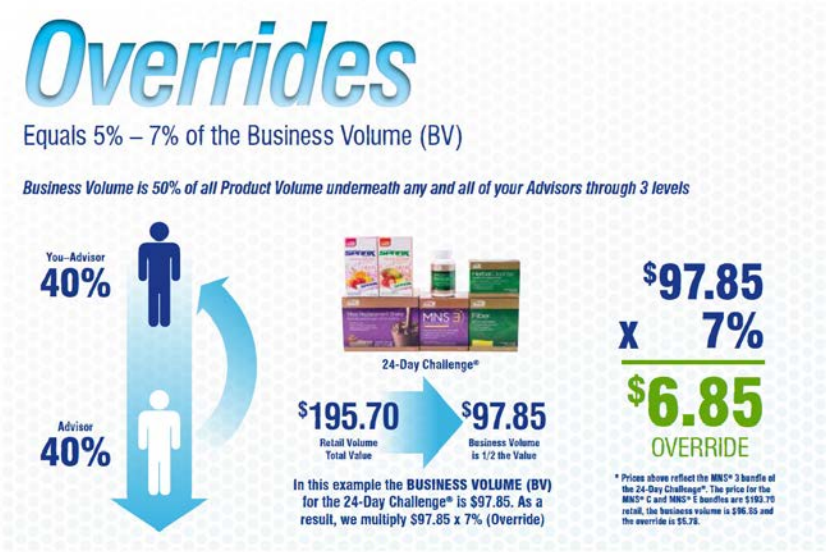
85. The Override percentage was based on the Advisor's total P/GV per two-week pay period:

Total P/GV per Pay Period	**Override Percentage**
$1,000 and up	7%
$750-999	6%
$500-749	5%
$0-499	0%

[32] *Id*. at 6 [Appx. P. 0103].
[33] *Id*. at 29 [Appx. P. 0126].

86. The Override percentage P/GV requirements encouraged recruiting and Inventory Loading for the same reason that the P/GV requirements for Wholesale Commissions and Advisor status encouraged recruiting and Inventory Loading. *See supra* ¶¶ 56-61, 65-57. The Override percentage requirements are in one respect more onerous because they required that certain levels of P/GV be reached every two weeks.

87. An Advisor's Business Volume was based on the purchases of junior Advisors and their Downlines. For Overrides, Business Volume was calculated for up to three generations of junior Advisors. AdvoCare assigned a value to these purchases that was roughly half the retail price of the products purchased.[34] AdvoCare provided the following example:[35]



88. The way AdvoCare calculated Business Volume encouraged recruiting. The more populous a Distributor's Downline, the more opportunity there was for a junior Distributor to become an Advisor and accumulate Business Volume. Because the bonus only extended through three

[34] https://advocarecorporate.s3.amazonaws.com/microsite/downloads/pdf/PresentationGuideCompensation201504.pdf (slide 12).
[35] https://advocarecorporate.s3.amazonaws.com/microsite/downloads/pdf/PresentationGuideCompensation201504.pdf (slide 13).

generations of Advisors, Advisors were encouraged to consistently keep recruiting Advisors directly under them, each time creating a new generation.

f. AdvoCare encouraged recruiting and Inventory Loading through its Leadership Bonuses

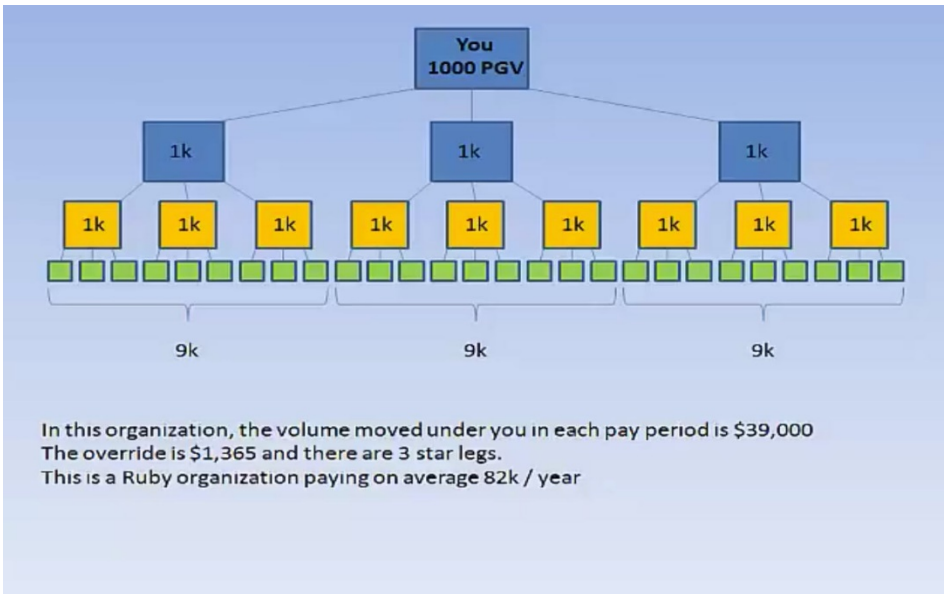
89. Through Leadership Bonuses, like Overrides, AdvoCare rewarded Distributors based on the product purchased by junior Advisors and their Downlines. Unlike Overrides, Leadership bonuses were paid over a Distributor's whole Downline (not just through three levels).

90. There were eleven levels of Leadership Bonuses,[36] and AdvoCare's requirements for achieving each of these levels encouraged recruiting and/or Inventory Loading. The first requirement was that a Distributor must be an Advisor. As discussed above (*see supra* ¶¶ 76-82), the requirements for making Advisor status encouraged recruiting and Inventory Loading.

91. The second requirement was that a Distributor accrued P/GV of $1,000 or more in the pay period for which a Leadership Bonus was sought. As discussed above (*see supra* ¶¶ 63-72), accumulating P/GV encouraged both recruiting and Inventory Loading.

92. The third requirement regarded the amount of Override the Distributor was entitled to, and the fourth requirement regarded the number of "legs" contributing at least $100 of Override to the Distributor's Override bonus. A "**Leg**" is an immediately junior Distributor and his Downline. A Distributor can have multiple Legs in his Downline, depending on how many Distributors he has directly recruited. The following slide used to train Distributors showed a top Distributor ("You") with three Legs in a Downline:[37]

[36] *See* Policies (3/11/16) at 29-32 [Appx. P. 0126-129] (describing Leadership Bonus structure).
[37] https://www.youtube.com/watch?v=HQMum2vx2Bc, posted Oct. 13, 2014 (around 27:30 mark).



93. A Leadership Bonus was a percentage of the Business Volume of all Downline Advisors. So, for example, the "Ruby 6 Star Leadership Bonus" entitled a qualifying Advisor to 11 percent of the Business Volume of all Downline Advisors, with one caveat: if a Downline Advisor was also entitled to a Leadership Bonus, then that Advisor's Leadership Bonus would reduce the senior Advisor's Leadership Bonus by the amount of the junior Advisor's Leadership Bonus. (So, if Advisor A was entitled to an 11 percent Leadership Bonus, but Downline Advisor B was entitled to a 7 percent Leadership Bonus, then Advisor A earned 11 percent on all Advisor Business Volume "upline" of Advisor B but only 4 percent Downline from Advisor B.)

94. The Override and Leg requirements, and the bonus percentages, for the different Leadership Bonuses were as follows:

Name	Override Requirement	Number of Legs Contributing at Least $100 to Override	Bonus
Silver	$100	None	3%
Gold	$500	None	5%
Gold 3 Star	$500	3	7%
Ruby	$1,000	3	9%
Ruby 6 Star	$1,000	6	11%
Emerald	$2,000	6	13%
Emerald 9 Star	$2,000	9	15%
Diamond	$4,000	12	19%
Platinum	$8,000	18	19.25%
Double-Diamond	$12,000	24	19.50%
Triple-Diamond	$24,000	36	19.75%

95. The Override requirements for the Leadership Bonuses encouraged Inventory Loading because Override was driven in part by a Distributor's P/GV, which was driven in part by the Distributor's personal purchases. *See supra* ¶¶ 49-60. The possibility of Leadership Bonuses provided a strong incentive for Distributors to buy product to increase their P/GV so that they could have the highest Override percentage, which led to higher Leadership Bonuses.

96. The Override requirements for the Leadership Bonuses also strongly encouraged recruiting, and not just recruiting of Distributors, but also the recruiting of and encouraging of Distributors who themselves became recruiters.

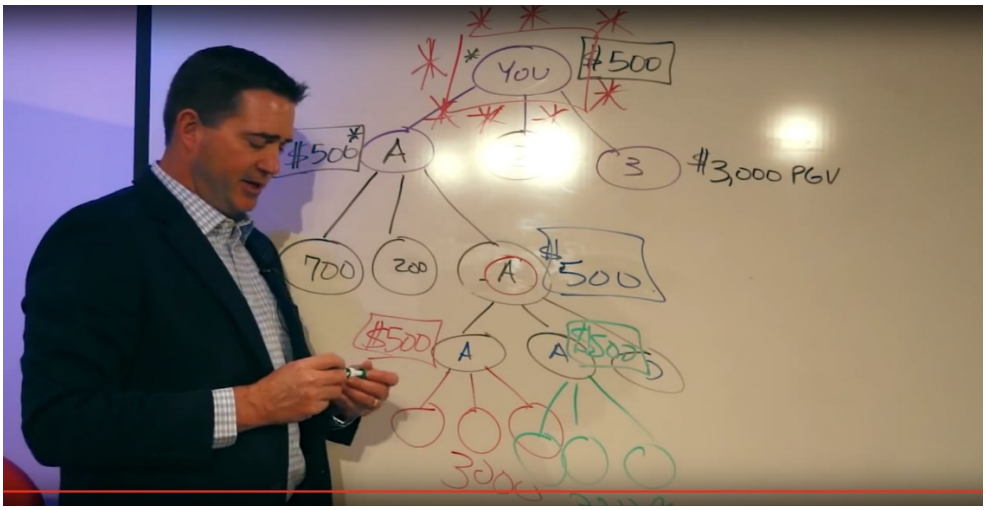
97. The same is true of the Leg requirements, but even more so. To achieve the higher Leadership Bonus levels, a Distributor must have had many Distributors at the Advisor level working beneath her and developing their Downlines that contributed at least $100 to the Distributor's Override bonus. This encouraged the Distributor to not only recruit, but also to encourage junior Distributors to achieve Advisor status and to recruit.

g. AdvoCare encouraged recruiting and Inventory Loading through promotional bonuses

98. From time to time, AdvoCare ran promotional bonuses to further incentivize Distributors to recruit more Distributors. During the Class Period, AdvoCare offered Distributors

the ability to earn a $500 "**Rookie Bonus**" by (1) reaching Advisor level, (2) recruiting three new Distributors during the Distributor's first six pay periods, and (3) accumulating $3,000 in P/GV over these first six pay periods, excluding the Distributor's personal purchases.

99. While AdvoCare developed the promotional bonuses, the Scheme Beneficiaries advertised, disseminated, and taught the bonuses to Distributors through their vast downlines. They used them as recruiting tools. Scheme Beneficiary McDaniel explained with the help of the chart below that the point of Rookie Bonuses was to increase a Distributor's downline quickly by providing financial incentives directly and explicitly for recruiting. The Rookie Bonus encouraged Distributors to become Advisors and recruit quickly, and also encouraged Downline Distributors to become Advisors and recruit quickly (and so on):



100. Scheme Beneficiary Thurber called the Rookie Bonus "ingenious" because "AdvoCare is about multiplication," which the Rookie Bonus incentivized.[38] Because only Advisors were eligible for the Rookie Bonus, the Rookie Bonus also encouraged Inventory Loading, for the same reasons the qualifications for Advisor encouraged Inventory Loading.

101. In the Spring of 2014, AdvoCare offered a "line of two" promotion, specifically to "add advisors." This promotion allowed two Distributors to achieve the Advisor rank if one Distributor bought $1,500 of product in one order and recruited another Distributor to do the same during the same pay period.

h. AdvoCare's and the Scheme Beneficiaries' statements confirmed that AdvoCare operated a pyramid scheme based on recruiting

102. As discussed above, AdvoCare's Compensation Plan overwhelmingly rewarded recruiting and encouraged Distributors to Inventory Load. AdvoCare's own training materials explained that the key to succeeding in AdvoCare was recruiting:

[38] https://www.youtube.com/watch?v=H9uZm5ePZnI, posted Dec. 23, 2014 (around the 50:00 mark).

103. Charlie Ragus, AdvoCare's founder, stated in an article about the AdvoCare business that "[w]ithout question, recruiting new, quality distributors into your AdvoCare organization is the single most important aspect of distributorship building."[39]

104. Scheme Beneficiary McDaniel has instructed AdvoCare Distributors on the nature of the business: "We get paid for width and depth as we recruit and help Advisors build their businesses."[40]

i. AdvoCare's Income Disclosure Statement confirmed the importance of recruiting

105. The fact that recruiting was the focus of AdvoCare's scheme is further evidenced by the company's 2014 Income Disclosure Statement:

[39] Charlie Ragus, "Developing Your Natural Market," at p. 2 (http://advoarmy.com/schedule/02261716pm_Developing%20your%20Warm%20Market%20%20Charlie%20Ragus.pdf).

[40] https://www.youtube.com/watch?v=ok458Q5dHks&t=2237s, posted Aug. 24, 2014 (30:20 mark).

Income

Disclosure Statement

Distributors by Pay Level			Monthly Income by Pay Level†			Yearly Income by Pay Level
Pay Level*	% of Active Distributors**	Average Months to Reach	Top 10%	Average	Bottom 10%	Annualized Average††
Distributor	34.52%	-	$280	$69	$6	$831
Advisor	58.04%	-	$747	$183	$16	$2,190
Silver	4.70%	14	$2,225	$1,068	$430	$12,817
Gold	1.34%	25	$8,110	$3,204	$1,615	$38,444
Gold 3 Star	0.31%	26	$5,086	$3,509	$2,341	$42,104
Ruby	0.58%	34	$13,154	$7,154	$4,466	$85,848
Ruby 6 Star	0.06%	39	$11,449	$8,787	$6,340	$105,447
Emerald	0.21%	49	$27,819	$16,567	$11,197	$198,801
Emerald 9 Star	0.09%	60	$41,057	$24,745	$15,269	$296,935
Diamond	0.12%	71	$91,411	$53,079	$30,620	$636,953
Platinum & Above	0.03%	134	$319,598	$98,796	$68,206	$1,185,555

* Pay Level is sorted by Discount Level and/or Leadership Pin Level. Distributor compensation is outlined further in the AdvoCare Policies, Procedures, and Compensation Plan.
** Active Distributor is anyone that earned a check in 2014 (154,819 total Distributors). The overall number of Distributors on December 31, 2014 was 517,666.
† AdvoCare pays Distributors who earn a check semi-monthly. Distributors may receive up to 24 checks per year. The numbers represent the average monthly earnings as well as the average top and bottom 10% earnings of that Pay Level in 2014.
†† The Annualized Average earnings are calculated based on the assumption that the Distributor gets paid at this Pay Level. The average annual income for all Active Distributors in 2014 was $1,610.

Total Payments from AdvoCare in 2014	$1 - $1,000	$1,001 - $5,000	$5,001 - $10,000	$10,001 - $25,000	$25,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	> $250,000	Total
No. of Distributors	131,141	18,327	2,545	1,597	588	303	205	113	154,819

NOTE: This includes earnings from pay periods ending between 1/1/14 and 12/31/14

AdvoCare Distributors can earn compensation pursuant to the AdvoCare Compensation Plan in the form of wholesale commissions, overrides, and leadership bonuses. The amounts above do not include the income realized by Distributors from the retail sale of products or incentive bonuses, so the actual compensation earned may be higher.

The earnings shown above are not necessarily representative of the income, if any, that an AdvoCare Distributor can or will earn through his or her participation in the AdvoCare Compensation Plan. These figures should not be considered as guarantees or projections of your actual earnings or profits. Success with AdvoCare results only from successful sales efforts, which require hard work, diligence, and leadership. Your success will depend upon how effectively you exercise these qualities.

106. The average monthly gross income (not counting money paid to AdvoCare and any earnings from theoretical retail sales) of "active" Distributors (Distributors who had received some compensation from AdvoCare in 2014) yet to reach the rank of Advisor was only $69. Even Advisors received only $183 on average.

107. But once a Distributor reached the Silver level, his income jumped significantly because a Distributor cannot obtain the Silver level without earning Override bonuses (*see supra* ¶¶ 81-86), and there were no Override bonuses without recruiting. The escalation in the average monthly incomes tracked the requirements for advancement relating to recruiting—the increase in Leg requirements and Override bonus requirements for receiving Leadership Bonuses. *See supra* ¶¶ 87-95.

108. These advancements in income were completely unrelated to increases in a Distributor's retail sales. As discussed above, the P/GV requirements are the same for all Leadership Bonus levels from the bottom level—Silver—on up: a P/GV accumulation of $1,000 per pay period. Thus, how much product a Distributor bought (and thus how much product a Distributor theoretically sold) had no bearing on advancement up the Leadership Bonus ranks. These pay increases were all tied to recruiting.

109. A web presentation illustrates the break-down in high-ranking Distributors' AdvoCare income:[41]

The greatest income is generated by having many Advisors

Average Diamond Performance 7/6/11-4/3/12

Average Total Check	Average Wholesale Earnings	Average Override Earnings	Average Leadership Earnings
$21,686.28	$370.47 (2%)	$6,733.99 (31%)	$14,581.82 (67%)

110. This slide shows that 98% of an average Diamond-level Distributor's earnings came from Overrides and Leadership Bonuses. And as discussed above, Overrides and Leadership Bonuses were driven primarily by recruiting. Thus, AdvoCare incentivized recruiting far more than it rewarded retail sales.

[41] https://www.youtube.com/watch?v=HQMum2vx2Bc, posted Oct. 13, 2014 (around 11:40 mark).

2. Distributors Made Few Retail Sales

111. As discussed above, AdvoCare's Compensation Plan required and incentivized Distributors to pay AdvoCare more and more money. AdvoCare required Distributors to purchase Distributor Kits and pay Annual Fees. Then every form of compensation paid by AdvoCare to Distributors—Wholesale Commissions, Advisor qualifications, Overrides, Leadership Bonuses, and even promotional bonuses—encouraged Distributors to purchase enough product so that they would retain their statuses. Indeed, to achieve these bonuses, as a practical matter Distributors had to purchase more product.

112. Moreover, as discussed above, every form of compensation paid by AdvoCare incentivized recruiting—bringing more Distributors into the scheme. In fact, Wholesale Commissions, Overrides, and Leadership Bonuses were payable only if a Distributor had recruited new Distributors.

113. Thus, just like a classic pyramid scheme, the AdvoCare scheme required participants to put money into the scheme and rewarded participants who brought in new participants.

114. And as discussed in this section, just like a classic pyramid scheme, AdvoCare paid Distributors with other Distributors' money. This is undeniably true because AdvoCare itself made few retail sales. During the Class Period, the overwhelming majority of the money flowing into AdvoCare came from the Distributors, so the overwhelming majority of the money AdvoCare used to pay Distributors came from the Distributors.

115. It is theoretically possible that Distributors could sell the product they purchased at retail for a profit, just as it is theoretically possible that the hypothetical participant in the toothpick scheme described in the introduction could sell individual toothpicks at retail for more than $100

each. But, for the reasons discussed herein, only in rare circumstances were AdvoCare Distributors able to profitably sell the products they purchased from AdvoCare.

116. And, in fact, AdvoCare had little interest in retail sales. The compensation it paid its Distributors was tied to the Distributors' purchases, not the Distributors' retail sales. AdvoCare had little interest in retail sales because its true customers were the Distributors—the people willing to pay the price AdvoCare charged for its overpriced, non-special products so that they could access AdvoCare's Compensation Plan.

a. Virtually all the money AdvoCare paid Distributors came from other Distributors

117. In late 2016, AdvoCare began selling its product to non-Distributors at a 20% discount off retail prices (after these retail customers pay a $19.95 annual fee). But before that program began, the only sales AdvoCare made directly to non-Distributors came when customers ordered product through Distributors' Microsites.

118. As discussed above, sales through Distributors' Microsites were minimal. *See supra* ¶¶ 67-69. AdvoCare had no significant sources of revenue other than payments from Distributors. Thus, virtually all its cash came from Distributors, and virtually all the money it paid to Distributors came from the Distributors.

b. Very few Distributors could profitably sell AdvoCare products to retail customers under the restrictions AdvoCare placed on Distributors

119. Plaintiffs were not able to profitably sell the AdvoCare products they purchased. Their experiences were consistent with the experiences of many other Distributors. An ESPN article also indicated that profitable retail sales were rare:

> Like many distributors, [Lori] Crossan found it hard to sell the products. She says she moved only three 24-Day Challenges over the course of a year, two of which went to her sister, so she tried to recruit other advisors.

> …
>
> Several distributors told ESPN that they did sell some products. But most said they—and their superiors—put far more effort into recruiting. "It's absolutely 100 percent the business opportunity. No one falls in love with the product," says [Shereef] Kamel, who estimates that less than 5 percent of his downline turned a profit.[42]

120. Distributors were unable to consistently sell AdvoCare products for a profit for many reasons. First, the products were overpriced. Interchangeable products were available online or in brick-and-mortar stores for amounts far less than AdvoCare's suggested retail price, and even lower than its wholesale prices. For example (based on pricing at the time Plaintiffs filed their original Complaint):

- AdvoCare's Muscle Gain protein powder had a retail price of $79.95 a canister, which supposedly provides 25 servings, with 25 grams of protein in each serving ($3.20 per serving). Low-level Distributors could buy the canister at a 20% discount for $63.96 ($2.56 per serving). Higher-level Distributors with a 40% discount paid $47.97 ($1.92 per serving).

  Mutant PRO 100 protein powder retailed at $29.99 a canister on Amazon. It purported to provide 25 grams of protein per serving, and its canister contained 71 servings ($0.42 per serving).

  Muscle Pharm Combat Powder retailed at $33.13 per canister on Amazon. It purported to provide 25 grams of protein per serving, and its canister contained 52 servings ($0.63 per serving).

  Jym Pro Protein retailed at $57.99 per canister at GNC. It purported to provide 24 grams of protein per serving, and its canister contained 51 servings ($1.14 per serving).

- AdvoCare's AdvoBar DB9 had a retail price of $32.95 for a box of 12 ($2.75 each). Low-level Distributors could buy the box at $23.36 with their 20% discount ($1.95 per bar). Higher-level Distributors could buy the box at $19.77 with their 40% discount ($1.65 per bar). AdvoCare claimed these bars provided 7 grams of fat, 23 grams of carbohydrate, and 12 grams of protein.

[42] Mina Kims, "Drew Brees Has a Dream He'd Like to Sell You" (March 15, 2016) (http://www.espn.com/espn/feature/story/_/id/14972197/questions-surround-advocare-nutrition-empire-endorsed-saints-qb-drew-brees) (the "**ESPN Article**").

thinkThin High Protein Bars retailed at $14.60 on Amazon for a box of 10 ($1.46 per bar). The nutritional information provided stated that the bars provided 9 grams of fat, 24 grams of carbohydrate, and 20 grams of protein.

Simply Protein Bars retailed at $24.99 on Amazon for a box of 15 ($1.67 per bar). The nutritional information provided stated that these bars provided 5 grams of fat, 16 grams of carbohydrate, and 15 grams of protein.

GNC Total Lean Bars retailed for $6.99 for a box of 5 ($1.40 per bar). The nutritional information provided stated that these bars provided 6 grams of fat, 24 grams of carbohydrate, and 15 grams of protein.

- AdvoCare's BioCharge amino acid vitamin supplement had a retail price of $42.95 for a box of 30 servings ($1.43 per serving). Low-level Distributors could buy the box at $34.26 with their 20% discount ($1.14 per serving). Higher-level Distributors could buy the box at $25.77 with their 40% discount ($0.86 per serving). AdvoCare claimed each serving contained 3 grams of BCAAs.

  Infinite Labs BCAA supplement retailed at GNC for $26.99 a canister. Each canister contained 40 servings ($0.67 per serving). The nutritional information provided stated that each serving provides 3 grams of BCAAs.

  Muscle Pharm's BCAA supplement retailed on Amazon for $16.58 per canister. Each canister contained 30 servings ($0.55 per serving). The nutritional information provided stated that each serving provided 6 grams of BCAAs.

121. Second, (based on pricing at the time Plaintiffs filed their original Complaint) AdvoCare's products themselves were available online for the wholesale price or less.

Product	**Retail**	**Distributor**	**Advisor**		**eBay (Sold Price)**	**Craigslist**
MNS® 3 14 day supply	$45.95	$36.76	$27.57		$26.00	$20.00
MNS® C (control)†	$43.95	$35.16	$26.37		$20.50	$20.00
MNS® E (energy)†	$43.95	$35.16	$26.37		$30.99	$20.00
Carb-Ease® Plus	$37.95	$30.36	$22.77		$29.99	$19.00
ThermoPlus®	$31.95	$25.56	$19.17		$18.50	$16.00
AdvoCare Slim®	$29.95	$23.96	$17.97		$16.00	
Meal Replacement Shake	$44.95	$35.96	$26.97		$1.00	$10.00
Fibo-Trim™	$37.95	$30.36	$22.77		$14.50	$19.00
Spark®(pouches)	$22.95	$18.36	$13.77		$8.50	$10.00
Spark (can)	$51.95	$41.56	$31.17		$39.00	$13.00
AdvoCare Rehydrate®(14)	$19.95	$15.96	$11.97		$2.99	$11.00
V16™	$38.95	$31.16	$23.37		$22.00	

Product	Retail	Distributor	Advisor		eBay (Sold Price)	Craigslist
AdvoBar® Meal	$31.95	$25.56	$19.17		$18.00	
Coffeccino®	$38.95	$31.16	$23.37		$20.00	
AdvoGreens™ Snack Shake	$39.95	$31.96	$23.97		$21.99	
AdvoGreens™ Greens Powder	$32.95	$26.36	$19.77		$7.00	
AdvoCare® Fiber	$16.95	$13.56	$10.17		$8.50	
OmegaPlex®	$21.95	$17.56	$13.17		$10.50	$11.00
SleepWorks®	$35.95	$28.76	$21.57		$20.00	
AdvoCare Oasis™	$27.95	$22.36	$16.77		$10.50	
Arginine Extreme™	$39.95	$31.96	$23.97		$18.50	
BioCharge®	$42.95	$34.36	$25.77		$12.50	
O2 GOLD®	$38.95	$31.16	$23.37		$16.99	$19.50
Muscle Strength™	$41.95	$33.56	$25.17		$19.50	
Post-Workout Recovery	$79.95	$63.96	$47.97		$39.00	
AdvoCare Workout Series CU24™ Level 2	$39.95	$31.96	$23.97		$9.99	

122. That these products were sold at or below the Advisor price made it difficult for Distributors to sell the products for a profit. AdvoCare has brought legal actions to try to stop some Distributors and others from selling product on eBay and other platforms, but the fact remains that AdvoCare products were available at or below even the 40% discount price. Moreover, many of these sales were likely made by current or former Distributors desperately trying to offload excess product at whatever price they could get, which further supports the propositions that Distributors Inventory Loaded and that the AdvoCare products were overpriced.

123. Third, AdvoCare contractually prohibited Distributors from selling the products in the only fora where Distributors could reasonably expect to sell enough product to make a meaningful profit: the internet. The March 11, 2016, version of the Policies provided as follows:

> In order to maintain AdvoCare's premium brand images [*sic.*] and business goodwill, as well as to preserve the unique aspects of the sales channels in which AdvoCare's products are sold, including person-to-person interaction that is essential to AdvoCare's business model, Distributors are prohibited from selling or advertising the sale of Products on e-commerce sites or auction sites, websites

> trading in products or services using the internet. Some examples of these prohibited websites include, but are not limited to: eBay, Amazon or Craigslist.[43]

124. In addition, AdvoCare forbade its Distributors from selling AdvoCare products at almost all brick-and-mortar establishments.[44] AdvoCare sought to limit the Distributors to one-on-one situations in private locations (such as the Distributor's or a friend's home), but achieving significant, profitable retail sales by this method was extremely difficult.

125. The Policies further provided that "Distributors are prohibited from selling Products on social media sites or their personal website."[45] These prohibitions barred Distributors from accessing the most obvious and effective means of selling AdvoCare products.

126. Plaintiffs do not contend that Distributors made no profitable retail sales at all. But Plaintiffs do allege that relatively little of the funds used to compensate Distributors—including both money paid them by AdvoCare and proceeds from retail sales—came from retail sales, and the vast majority came from Distributors' payments to AdvoCare. Thus, the Distributors were primarily feeding off each other.

c. AdvoCare had little interest in retail sales

127. AdvoCare's disinterest in retail sales was evident in several ways. First, as discussed at length above, AdvoCare rewarded its Distributors based on how much they and their Downlines bought. AdvoCare's payment structure was not tied to retail sales.

128. Second, AdvoCare did not track retail sales. If AdvoCare cared about retail sales, it would have some way to track them, such as by requiring all retail sales to be made through the Distributors' Microsites. AdvoCare's bonuses and compensation structure could then be tied to

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[43] Policies (3/11/16) at 14 [Appx. P. 0111].
[44] *See id*. at 19 [Appx. P. 0116].
[45] *Id*. at 14 [Appx. P. 0111].

the Distributors' verifiable retail sales. Instead, AdvoCare sold its product to the Distributors and had no ability to verify that Distributors actually made retail sales.

129. Third, its prohibition on Distributor sales through e-commerce platforms confirmed that AdvoCare had little interest in retail sales. Dozens of producers of nutritional supplements sold their products on e-commerce platforms. If AdvoCare really wanted its Distributors to sell to retail customers, it would allow them to sell through e-commerce sites. But in fact, AdvoCare has brought numerous lawsuits to prevent Distributors from selling on e-commerce platforms and from selling product to others who will sell the products on e-commerce platforms.

130. AdvoCare had limited interest in whether its Distributors sold its products to retail purchasers because AdvoCare's true customers were its Distributors. AdvoCare was able to sell its overpriced products to its Distributors because AdvoCare was selling them something more than products: it sold them the dream of making money by participating in AdvoCare's Compensation Plan. AdvoCare restricted the ways in which its Distributors could sell its products so that the Distributors must meet face-to-face with potential customers where they, too, could sell the "business opportunity," as well as the product.

3. AdvoCare Operated a Pyramid Scheme Despite its Smokescreen Policies

131. As discussed above, just like a classic pyramid scheme promoter, AdvoCare required and incentivized its Distributors to pay it money for the opportunity to receive compensation from the AdvoCare scheme and incentivized its Distributors to recruit new people into the scheme. And as in a classic pyramid scheme, the majority of Distributors' compensation came from contributions to the scheme made by other Distributors and not from legitimate operations (*i.e.,* retail sales).

132. Recognizing that it operated a pyramid scheme, AdvoCare adopted several policies in an effort to avoid the pyramid scheme label without changing its business practices: (1) the "Retail Sales Compliance" forms ("**RSC Forms**") requirement; (2) the 70% certification requirement; and (3) two refund policies. Each of these were mere smoke-screens designed to obscure the fact that AdvoCare operated a pyramid scheme.

a. The requirement that Distributors submit RSC Forms was a sham

133. AdvoCare required Distributors to submit RSC Forms before they could receive an Override or Leadership Bonus during any pay period. On these RSC Forms, Distributors were to list five retail sales made to five different customers, including contact information for the customers, made within the pay period.[46]

134. But Distributors routinely falsified the information in the forms. They had to because making true retail sales was so difficult, and they were taught to do this by higher-level Distributors. On information and belief, AdvoCare knew much of the information in the forms was false, and AdvoCare rarely, and never systematically, audited the forms, at least during the Class Period.

b. The 70% certification requirement was a sham

135. AdvoCare required Distributors to be able to certify that at least 70% of products previously purchased were sold or consumed by the Distributor (the "**70% Requirement**"):

> In order to keep the integrity of the Compensation Plan intact, at any time a Distributor must be able to certify that he or she has sold or consumed at least 70 percent of all products previously purchased prior to placing a new order.[47]

136. The Federal Trade Commission, in a well-known decision referred to as the *Amway* decision, determined that an MLM might avoid the pyramid scheme label if its distributors actually

[46] *Id*. at 27 [Appx. P. 0124].
[47] *Id*. at 13-14 [Appx P. 0110-111].

sold to retail customers or consumed 70% of the products they purchased.[48] AdvoCare plainly had the *Amway* decision in mind when it adopted the 70% Requirement.

137. Because AdvoCare did not track retail sales, AdvoCare had no way to determine if a Distributor had complied with the 70% Requirement. Regardless of the 70% Requirement, Distributors routinely purchased more product than they needed for personal consumption or to meet retail sales demand.

c. The refund policies did not prevent the conclusion that AdvoCare operated a pyramid scheme

138. AdvoCare offered two refund policies, but neither of these prevented the conclusion that AdvoCare operated a pyramid scheme. First, AdvoCare allowed Distributors to return up to $500 in retail value of products within a calendar year. The products had to be unopened, undamaged, and submitted for a refund within 30 days of purchase (the "**30-Day Refunds**").[49] Second, AdvoCare allowed Distributors to return all unopened product purchased within one year of purchase, but Distributors had to resign from AdvoCare at the time they made the returns (the "**Resignation Refunds**").[50]

139. AdvoCare's refund policies were woefully inadequate to prevent the conclusion that AdvoCare operated a pyramid scheme. As discussed above, the essential reasons why AdvoCare operated as a pyramid scheme are that it (a) required and incentivized Distributors to pay money to participate in the Compensation Plan, (b) rewarded recruiting far more than retail sales, and (c) primarily compensated Distributors with other Distributors' money. Only a complete and entire refund policy would impact the first reason why AdvoCare operated a pyramid scheme,

[48] *In the Matter of Amway Corp., Inc.*, 93 F.T.C. 618 (1979).
[49] Policies (3/11/16) at 16 [Appx. P. 0113].
[50] *Id*. at 25 [Appx. P. 0122].

and no refund policy could impact the second and third reasons why AdvoCare operated a pyramid scheme.

140. AdvoCare's policies did not affect the conclusion that AdvoCare required and incentivized Distributors to pay money to participate in the Compensation Plan.

141. First, both refund policies were limited in time, so Distributors who purchased product outside the 30-day and one-year windows could not receive refunds.

142. Second, they were limited to a return of unopened product.

143. Third, they provided no protection for Distributors who sold the product for less than the wholesale price, who gave away product in an effort to recruit new Distributors, or who consumed product they never would have purchased absent the incentives in the Compensation Plan.

144. Fourth, the 30-Day Refunds did not apply to either Distributor Kits or Annual Fees, and the Resignation Refunds did not apply to Annual Fees.

145. Fifth, Distributors had to resign before they were eligible for Resignation Refunds. Far from protecting Distributors, the requirement that Distributors resign punished Distributors who had purchased more product than they needed. Eligibility for Resignation Refunds required Distributors to give up their places in the AdvoCare compensation structure, which AdvoCare had encouraged the Distributors to achieve through hard work, recruiting, and product purchases.

146. Sixth, both refund policies, and certainly the Resignation Refund policy, put the Distributor at risk that AdvoCare would invoke the 70% Requirement to reduce any Wholesale Bonus, Override, Leadership Bonus, or other bonus otherwise owed. The return of product necessarily meant that the Distributor did not consume or sell at least that much product.

AdvoCare threatened its Distributors that if it learned that a Distributor did not actually sell or consume 70% of the products the Distributor purchased,

> AdvoCare may deduct the amount of the Override, Leadership Bonus or other bonus or incentive previously paid from compensation due to you in subsequent pay periods, or AdvoCare may deny payment of any Override, Leadership Bonus or other bonus or incentive in addition to any disciplinary action that may be taken, including suspension or termination.[51]

Moreover, a Distributor might fear that a Resignation Refund could result in threatened or actual litigation by AdvoCare to recover previously paid bonuses.

4. The Vast Majority of Distributors Lost Money

147. Very few Distributors made any money at all from their participation in AdvoCare, and the vast majority lost money. AdvoCare's website provided a 2015 Income Disclosure Statement that set forth some information regarding the number of Distributors and the amounts AdvoCare paid them.[52]

[51] *Id*. at 29 [Appx. P. 0126].
[52] http://www.advocare.com/opportunity/

2015 ANNUAL INCOME RANGES

RANGE	% OF ACTIVE DISTRIBUTORS	% OF ALL DISTRIBUTORS
$0	-	71.52%
$0.01 - $50.00	31.86%	9.07%
$50.01 - $250.00	31.88%	9.08%
$250.01 - $500.00	12.16%	3.46%
$500.01 - $1,000.00	9.91%	2.82%
$1,000.01 - $2,500.00	7.93%	2.26%
$2,500.01 - $5,000.00	2.96%	0.84%
$5,000.01 - $7,500.00	1.01%	0.29%
$7,500.01 - $10,000.00	0.54%	0.15%
$10,000.01 - $15,000.00	0.52%	0.15%
$15,000.01 - $20,000.00	0.28%	0.08%
$20,000.01 - $30,000.00	0.29%	0.08%
$30,000.01 - $50,000.00	0.25%	0.07%
$50,000.01 - $75,000.00	0.13%	0.04%
$75,000.01 - $100,000.00	0.06%	0.02%
$100,000.01 - $150,000.00	0.08%	0.02%
$150,000.01 - $200,000.00	0.04%	0.01%
$200,000.01 +	0.10%	0.03%

148. However, AdvoCare did not adjust these ranges based on the amount of money the Distributors paid AdvoCare for product, Annual Fees, or Distributor Kits. Without this information, it was impossible to tell what percentage of Distributors received more money from AdvoCare than they paid to AdvoCare. But even the limited information AdvoCare provided demonstrates that becoming an AdvoCare Distributor was a losing proposition for all but the very few.

149. AdvoCare reported on the same webpage where it posted the 2015 Income Disclosure Statement that it had 623,003 Distributors (anyone who placed a product order or received a check) and 177,443 "Active Distributors" (anyone who received a check) in 2015. Of all Distributors, it paid 71.52% of them nothing at all. All of those Distributors lost money because to be considered a Distributor in the 2015 Income Disclosure Statement, a Distributor had to have

bought something or received a check, and because in every year a Distributor had to have purchased a Distributor Kit (in her first year) or pay Annual Fees (in subsequent years). But the percentage of "net losers" is undeniably over 80% because an additional 9.07% earned $50 or less, and every Distributor paid either the $50 Annual Fee or purchased the Distributor Kit. Moreover, because of the incentives discussed above to purchase product, it was very likely that the percentage of Distributors paying AdvoCare more than AdvoCare paid them exceeded 95%, once product purchases, Distributor Kits, and Annual Fees were taken into account. But even at the undisputed 80% failure rate, that equals at least ***498,402*** people who received less from AdvoCare than they paid AdvoCare in 2015.

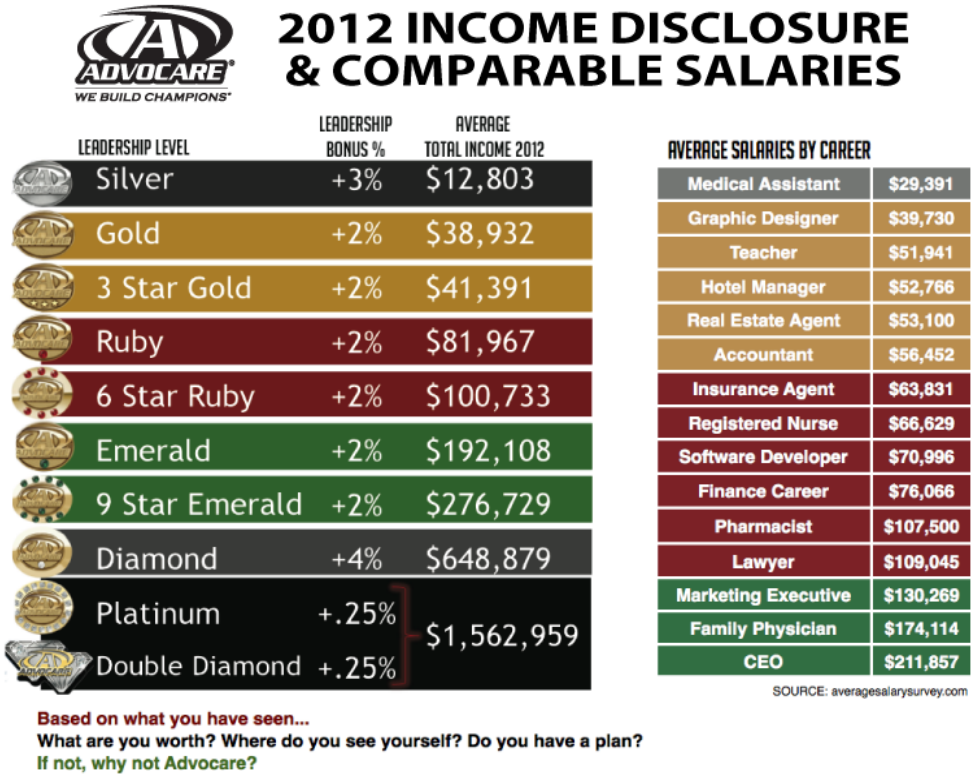
150. Moreover, AdvoCare and the Scheme Beneficiaries lured in new Distributors with the dream of a sizable income. *See infra* Section V(B)(1)(a). But according to AdvoCare's own numbers, AdvoCare paid only ***0.13%*** of all Distributors $50,000-or-more per year. Thus, of AdvoCare's 623,003 Distributors in 2015, only ***747 people*** made anything close to the financial success AdvoCare and the Scheme Beneficiaries promoted.

151. These statistics were consistent with the Plaintiffs' own experience. Plaintiffs received less from AdvoCare than they paid AdvoCare, and their experiences are consistent with the other Distributors with whom they have spoken and the vast majority of the multitude of Distributors who have contacted Plaintiffs' counsel since the filing of the original Complaint.

152. Because AdvoCare paid the people at the top of the pyramid exorbitant incomes and because little non-Distributor money came into the scheme to pay Distributors, the Distributors at the bottom of the pyramid lost money. These losses were borne out by AdvoCare's own financial disclosures and the experiences of the Plaintiffs and multiple other Distributors.

5. AdvoCare's Own Promotional Materials were Misleading

153. AdvoCare used the tactic of comparing supposed Distributor income to the incomes earned at more conventional jobs.[53] The following chart was produced by AdvoCare, and it used this chart (or similar versions prepared for other years) to lure in new recruits:



154. This is a misleading chart. As discussed above, only a tiny minority of AdvoCare Distributors earn even as much as AdvoCare claims Medical Assistants earn—the lowest level in the payscale AdvoCare presents. And the vast majority of Distributors lost money. Moreover, the chart is misleading because it equates promoting the AdvoCare pyramid scheme with normal jobs in which the employees, professionals or workers are not feeding off the money co-workers contribute to the system.

[53] http://advocare.betteryourselfnow.com/distributor-promo.html

155. AdvoCare promoted the scheme as a lawful program that, with sufficient hard work, virtually guaranteed financial success. AdvoCare was different from many pyramid scheme operators in that it did not promote the program as a "get rich quick" scheme. Instead, AdvoCare promoted AdvoCare as a reliable source of significant income, should the participant determine to work hard enough at the business.

156. Indeed, AdvoCare stated in the March 11, 2016, Policies that AdvoCare required hard work:

> Success in AdvoCare is dependent upon successful sales efforts, which require hard work, diligence and leadership.[54]
>
> …
>
> The Compensation Plan is a work plan, and your compensation will depend on how much effort you expend, and to some extent, what area of the country you live in.[55]

157. Other AdvoCare promotional materials were misleading. After the Income Disclosure Statement on its website (*see supra* ¶ 147), AdvoCare offered the following "disclaimer":

> AdvoCare pays no compensation for recruiting new Distributors. Instead, compensation is based upon product sales, which varies based upon a number of factors, including how effectively Distributors exercise key traits like diligence, leadership, time and effort in selling products. There is no guarantee of success or short cut to success. Distributors establish their own working hours, conduct the day-to-day business, determine and pay for their own costs of doing business, and choose when and how much they would like to engage in their AdvoCare business.

158. The first sentence of the "disclaimer" is false, as is the independent clause in the second sentence. Recruiting and product purchases made by Downline Distributors was the primary basis for AdvoCare's compensation, as discussed in detail above. The remainder of the disclaimer is misleading. Certainly a Distributor's success or failure depended to some degree on

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[54] Policies (3/11/16) at 23 [Appx. P. 0120].
[55] *Id*. at 25 [Appx. P. 0122].

"key traits like diligence, leadership, time and effort in selling products," but the implication from the disclaimer was that any diligent person willing to devote time and effort to AdvoCare would be financially successful. Unless only 0.35% of AdvoCare's Distributors had these "key traits," the implication from the disclaimer is belied by the numbers in AdvoCare's Income Disclosure Statement.

B. THE SCHEME BENEFICIARIES' ROLE IN THE PYRAMID SCHEME

159. AdvoCare created the operational model that resulted in the creation of a pyramid scheme. AdvoCare provided the incentives and structure described above that encouraged recruiting and Inventory Loading. AdvoCare (to the extent it saw fit) enforced the terms of the Policies, promoted and marketed the AdvoCare brand and products, created official AdvoCare marketing materials, received money from Distributors and paid out money to other Distributors (after keeping a cut for itself), and mailed out AdvoCare product.

160. The success of the scheme, however, depended upon the independent operations of the Scheme Beneficiaries atop the pyramid of Distributors. The lifeblood of the pyramid scheme was recruiting, and the Scheme Beneficiaries were what AdvoCare could not be—the engines of recruiting. They were rewarded handsomely for performing this role. Whereas ~95% of Distributors lost money, and ~5% made a little, the very few at the top made millions.

161. While AdvoCare advertised its brand, the Scheme Beneficiaries inflated Distributor ranks by serving as examples of supposed success that persons could attain if they became Distributors and remained Distributors.

162. In addition, the Scheme Beneficiaries sought to make, and encouraged their Downline Distributors to make, retail sales. AdvoCare, itself, made very few retail sales, and AdvoCare depended on the Scheme Beneficiaries and other Distributors to make retail sales.

Unfortunately, neither AdvoCare, the Scheme Beneficiaries, nor the Distributors made significant retail sales.

163. The Scheme Beneficiaries shared a common purpose of promoting the AdvoCare scheme (1) to keep a never-ending line of new recruits coming into the AdvoCare system and (2) to keep existing Distributors contributing to the scheme. They worked together to promote the AdvoCare scheme. They appeared at the same Distributor conferences, supported each other's messaging, and repeated each other's messages.

164. They were the leaders for the scheme in a way the rank-and-file Distributors could not be because AdvoCare gave them unique concessions to ensure their success. Moreover, they, unlike 99+% of Distributors, not only made money, but made lots of money. AdvoCare paid them millions of dollars (dollars from the pockets of Distributors). Their success in the scheme allowed them to do what the net-loser Distributors (~95+% of Distributors) and the small profit Distributors (~5%) could not do—bring in hundreds of new recruits.

165. In addition, they knew, from their vantage point atop the pyramid, that perpetuating the scheme depended upon bringing in a constant stream of new recruits because of the high drop-out rate of Distributors. The majority of Distributors joined the scheme, paid AdvoCare thousands of dollars to participate, realized it was not really a money-making venture, and dropped out, or just quit buying product. To perpetuate the scheme, new Distributors—and new money—had to come into the scheme. The Scheme Beneficiaries, with their large "downlines" of recruits, saw and understood this churn of Distributors in a way lower-level Distributors could not.

166. By AdvoCare's own design, Scheme Beneficiaries made the vast majority of their fortunes from the fees paid by the Distributors in their downline. Thus, their interest and

AdvoCare's interest aligned to promote recruiting over retail sales to the detriment of other Distributors.

1. The Scheme Beneficiaries Promoted the Scheme and Provided an Image of Success to Lure in New Distributors and Keep Existing Distributors Engaged in the Scheme

a. The Scheme Beneficiaries' own promotional materials

167. All of the Scheme Beneficiaries produced videos and made statements via the internet knowingly promoting the AdvoCare "opportunity" and touting themselves as examples of the financial rewards supposedly available to participants. Each of these statements furthered the pyramid scheme by encouraging persons to become Distributors and by encouraging Distributors to remain Distributors and pursue the AdvoCare business opportunity. The Scheme Beneficiaries colluded together to make these statements to present a near-uniform effort to promote the scheme.

i. Scheme Beneficiary McDaniel

168. McDaniel was one of the most successful scheme promoters. Scores of videos on YouTube and other public internet platforms featured him promoting, touting, and explaining the AdvoCare opportunity. He owned several websites on which he promoted AdvoCare and explained the AdvoCare marketing system in many videos.

169. McDaniel made the statement quoted below in a promotional video previously available on YouTube. As of the date of the original Complaint filed in this case, the video had received approximately 2,171 views:

> I was making you know making $35,000 a year working 80 to 90 hours a week living in this $400 a month rent house…. [McDaniel claims he ran home after first trying the AdvoCare products and told his wife,] "Honey, get ready because we're about to be rich." [McDaniel goes on to tout the tremendous financial success he was able to obtain through AdvoCare with hard work.][56]

[56] https://www.youtube.com/watch?v=0MagWBoG9Bc, posted Sept. 10, 2012 (around the 1:00 mark).

170. McDaniel made the statement quoted below in a promotional video entitled "D&D Updated Story" on his "Vimeo" channel. The video had, as of the date of the original Complaint, received approximately 3,381 views. The video was filmed in September 2015.

> By our fourth year in AdvoCare we earned our first million dollars in a year and we went on to earn a consistent seven figure income from there.[57]
>
> …
>
> We have a world class business model and a system that accompanies that that allows you the independent distributor if you so choose to go to work and if your dream is only to earn another $500 a month then you can certainly do that here at AdvoCare. But if your dream is to build a business you know by building a marketing organization that is moving products throughout America and eventually you know throughout the world then that business can move just as fast today or even faster today.[58]

171. McDaniel published a promotional video entitled "Intro to AdvoCare" on or about April 12, 2013. The video was on YouTube and had received about 10,045 views as of the date of the original Complaint. Therein, Scheme Beneficiary McDaniel explains that the way to make money in AdvoCare is by recruiting:

> This is a relationship business where if I recruit someone like Katie Weathers who I just showed you her story. Katie's got a sister named Torie and we're gonna say "hey Katie let's talk to Torie for you" and she's gonna sign Torie up and Torie's got friends and family, Torie's gonna recuit those people. So the point I'm trying to make to you is as you recruit people that's called width and as we help those other people recruit people through their friends and family and their warm market of social networking they're going to recruit their friends and family as well and there's a sales compensation plan that is built to reward you for all of that and it's powerful and you saw that with the stories. And today my wife and I earn really over $300,000 a month in AdvoCare, we have distributors, you know that, on our own team that earn over $100,000 a month, we have distributors on our own team that earn 90 something thousand a month, 80 something thousand a month, 60 and 70 thousand a month, 50 thousand a month, all the way down. We have multitudes of distributors that are on incomes on all types of those levels. In these last 16 years as we've been helping them and so you just gotta decide is there something here for me and if there is will I go for it.[59]

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[57] https://vimeo.com/138351120, posted Sept. 4, 2015 (around the 3:10 mark).
[58] *Id*. (around the 4:00 mark).
[59] https://www.youtube.com/watch?v=EM-gcNt8kX4, posted Apr. 12, 2013 (around the 25:50 mark).

172. McDaniel made a promotional video entitled "Maybe It's Our Fault" on or about June 2013.[60] The video is available on YouTube and had, as of the date of the original Complaint, received approximately 6,184 views at the link footnoted above. The video shows multiple images demonstrating McDaniel's success—diamond jewelry, watches, commendations, etc. In a voice-over, McDaniel says: "Maybe it's my fault. Maybe I led you to believe it was easy when it wasn't… Maybe I led you to believe that AdvoCare was a God-given gift and not something I work for every single day…" The last shot is of McDaniel speaking to a group of young Distributors: "Or maybe, you're just making excuses."

ii. Scheme Beneficiary Donnelly

173. Over a dozen videos featuring Scheme Beneficiary Donnelly could be found on YouTube and other public platforms on the internet in which she promoted AdvoCare.

174. On or about February 2012, Scheme Beneficiary Donnelly made a promotional web video entitled "Mixer Insights With—Jenny Donnelly." The video is available on YouTube and has, as of the date of this Complaint, received approximately 31,978 views at the link footnoted above. In the video, Donnelly says, *inter alia*:

> AdvoCare is like jumping in a new Lamborghini and with no speed limit on the freeway and you are just zipping as fast as you want to go because your foot's on the gas pedal. And you can go as slow or as fast as you want to go.[61]
>
> …
>
> AdvoCare as a powerful way to earn income.[62]

[60] https://www.youtube.com/watch?v=zioQHG7wBCM.
[61] https://www.youtube.com/watch?v=nnJNkXS4_7g, posted Feb. 20, 2012 (around the 11:20 mark).
[62] *Id*. (around 8:20 mark).

175. Scheme Beneficiary Donnelly made a promotional video entitled "Jenny and Bob Donnelly—AdvoCare Testimonial." It was posted to YouTube on March 7, 2009, and has had approximately 32,590 views. Therein, Donnelly says, *inter alia*:

> I wanted to be a stay-at-home mom. I wanted to not be scraping by every single month financially. I didn't want to be constantly balancing the check book, hoping the checks didn't bounce. I didn't want to have that lifestyle. To me, that was extremely stressful. And so, when we found AdvoCare, it became our way to live at the next level.[63]

176. Scheme Beneficiary Donnelly participated in an AdvoCare promotional video entitled "Bob and Jenny Donnelly." The video was uploaded to YouTube on August 16, 2013, and has been viewed approximately 1,527 times as of the date of the filing of this Complaint. Therein, Donnelly says, *inter alia*:

> The last three years each year we've made over a million dollars in income from AdvoCare. I never set out to be a millionaire. I set out to have great purpose, to bring a family together, to have more time with him, and just to live life without the limitations of money dictating our schedule.
>
> …
>
> And so what's so exciting about AdvoCare, what drives me today to still help other families, is to free up time, they can still get paid a lot of money but have time and the freedom financially to do that, and we have not found a better vehicle than AdvoCare to help people.[64]

177. Scheme Beneficiary Donnelly participated in the making of an AdvoCare promotional video entitled "Bob & Jenny Donnelly Washington 360p." The video was uploaded to YouTube on February 22, 2013, and has had approximately 1,319 views as of the date of the filing of this Complaint. Therein, Donnelly says, *inter alia*:

> At the end of our first year, we were earning $10,000 a month. And that's when it struck us that we don't have anything so unique and so special that other people

[63] https://www.youtube.com/watch?v=vCpYCLJ9nPs&t=30s, posted March 7, 2009 (0:10 second mark).
[64] https://www.youtube.com/watch?v=Z-ptnX5NZZ4, posted Aug. 16, 2013 (0:13 second mark; 2:00 minute mark).

> couldn't do this. We knew that anybody, our friends, family, or anybody that we met really could duplicate this success.
>
> …
>
> I couldn't envision $90,000 a month when I started. There's no way. I could, for some reason, I could see $10,000 a month, because I met a couple named Danny and Diane McDaniel making $80,000 a month, and I thought, well, if they can make eighty, I can make ten. I mean, I don't know, I just felt like, I can do something. And the greatest thing about AdvoCare is they taught us step, by step, by step… exactly, a formula, and formula of how this business would come and how a paycheck would follow because of that. And so we decided to follow a formula, and we did it consistently. You know, and that was a key, consistency, and discipline, but it pumped out a paycheck, I'm telling you. There is so much money that AdvoCare has been able to pay people.[65]

iii. Scheme Beneficiary Thurber

178. Scheme Beneficiary Thurber appeared in dozens of apparently self-made videos in which she promoted AdvoCare and explained the AdvoCare marketing system. Thurber owned a website with the address "www.workwithchampions.com" on which she posted videos of herself and others promoting AdvoCare. She also posted videos explaining the AdvoCare Compensation Plan prepared by Scheme Beneficiary McDaniel.

179. Scheme Beneficiary Thurber spoke to a crowd of AdvoCare Distributors and a video recording of her speech is posted in a video on YouTube entitled, "Crystal Thurber Testimony." The video was posted on July 5, 2009, by Scheme Beneficiary McDaniel, and as of the filing of this Complaint, it has had approximately 1,786 views. In the video, Thurber says, *inter alia*:

> [Before AdvoCare she and her husband] had over $300,000 in debt, a 75-hour workweek, an hour commute every day, and I cried every single morning before I went to work.
>
> We looked at this [AdvoCare] as a business. Went straight to the Advisor level, didn't think anything about it except for what it would bring us. And you guys I had two hours a week to work this business. Two hours. But I was willing to do

[65] https://www.youtube.com/watch?v=mZlGj78TAQs, posted Feb. 22, 2013 (1:25 minute mark).

> what it took in those two hours. I was willing to let Marci teach me, and she did. I made an extra $1,500 in the first month, I quickly found more time. … And long story short, if you fast forward now it's been seven years, we've earned a million dollars with the company, earn an average of $30,000 a month. We are on track for that to double in the next 90 days.
>
> …
>
> No more burdens, only choices now. Choices to help others win and that's what AdvoCare is all about.[66]

180. Scheme Beneficiary Thurber prepared a video entitled, "All in Training With Platinum Leader Crystal Thurber" and posted it to her YouTube channel on December 23, 2014. It has had approximately 583 views as of the date of the filing of this Complaint. Therein, Thurber states, *inter alia*:

> You have nothing that you can blame for not having the business you want. Champions! We have got to look in the mirror because see I can motivate you from the outside and I can inspire you, but I cannot make you have the desire to pick up the phone, to put shoes on your feet, to get out the door to talk to people.[67]

iv. Scheme Beneficiary Funk

181. Scheme Beneficiary Funk has made and appeared in dozens of videos promoting AdvoCare and providing instruction to Distributors in how to build their AdvoCare distributorships. She has her own YouTube channel where she has posted many such videos.[68]

182. Scheme Beneficiary Funk appeared in an AdvoCare promotional video entitled "Dawn and Brett Funk discuss life before and after AdvoCare. The video was posted to YouTube on December 15, 2012. As of the filing of this Complaint, it has had approximately 8,556 views. Therein, Funk states, *inter alia*:

> When I think about our life before AdvoCare, it was truly a life, a secret life, it was a life of struggle, of daily struggle. [But after becoming involved with AdvoCare,

[66] https://www.youtube.com/watch?v=S_Qq5DziUqc, posted July 5, 2009 (0:40 second mark).
[67] https://www.youtube.com/watch?v=H9uZm5ePZnI, posted Dec. 23, 2014 (around 15-minute mark).
[68] https://www.youtube.com/user/Funky5TV.

> she and her husband] are now averaging, about, you know, sixteen to twenty thousand dollars a month as a family. I can't tell you what that has done for us.[69]

183. On August 13, 2015, Scheme Beneficiary Bewley posted a video to YouTube of a presentation by Funk in which she discusses how to recruit new Distributors into AdvoCare. As of the filing of this Complaint, the video has had approximately 14,996 views. Therein, Funk says, *inter alia*:

> By…sharing AdvoCare and not letting anything or anyone get in the way, we have been able to travel the world.[70]

184. On December 13, 2013, Scheme Beneficiary Funk posted a video to YouTube entitled, "AdvoCare … so not a pyramid scheme!!" As of the filing of this Complaint, the video has had approximately 14,996 views. Therein, Funk says, *inter alia*:

> The beauty of AdvoCare, is that you, there's no lid to what you can earn and achieve.[71]

v. Scheme Beneficiary Bewley

185. Scheme Beneficiary Bewley had many AdvoCare promotional videos publicly available online. In these videos he promoted AdvoCare and provided instruction on how Distributors can recruit more Distributors to grow their distributorships.

186. Bewley prepared a video entitled, "Why AdvoCare? Quick Overview by Wes Bewley." The video was posted to YouTube on October 18, 2014, and as of the filing of this Complaint, has had approximately 1,279 views. Therein, Bewley says, *inter alia*:

> Diligent part time efforts have led to full-time income. And as a result today my wife and I average $40,000 monthly with AdvoCare at the time of this recording. It allows us to have a life of choice. A life of freedom. You know we don't have alarm clocks. We don't have to drive in traffic. We don't have bosses. We don't have to look at prices on a menu. We don't have to cut coupons when we go to the

[69] https://www.youtube.com/watch?v=F3K6pQTxkU8, posted Dec. 2012 (around the 0:15 mark).
[70] https://www.youtube.com/watch?v=5nx0uedpixY, posted Aug. 30, 2015 (around the 5:30 mark).
[71] https://www.youtube.com/watch?v=rUtjgCial5g, posted Dec. 13, 2013 (2:30 minute mark).

> grocery store. And we're able to design a life on our terms. And certainly AdvoCare can help you do the same thing.[72]

187. Bewley gave an AdvoCare testimonial on June 15, 2009, to an audience of potential recruits. The video is available on YouTube and has had approximately 2,724 views as of the filing of this Complaint:

> I treated AdvoCare like a business from day one. And you know what it started paying me like a business. First month made $1,200 bucks and next month—that's when I was a full-time student athlete—never earned less than $2,000 and month all year long … which was a dream come true at the time. And within a year I was making over $5,000 a month with it.
>
> …
>
> You can't get along with the greatest opportunity in the world and be realistic. That's an oxymoron. So, you know, I just started dreaming big and AdvoCare gave me the opportunity to dream big.[73]

vi. Scheme Beneficiary DeBerry

188. Scheme Beneficiary DeBerry was touted in some AdvoCare promotional materials as AdvoCare's youngest diamond-level Distributor. He appeared in many videos on the internet promoting AdvoCare.

189. DeBerry appeared in an AdvoCare promotional video entitled, "Success Story—Tyler DeBerry." This video was uploaded to YouTube on April 30, 2012, and as of the filing of this Complaint has had approximately 2,530 views. In the video, DeBerry says, *inter alia*:

> I didn't know the degree of success that could be expected, but I knew that success [in AdvoCare] could be expected because I was willing to work.
>
> …
>
> Currently, I'm 27 years old and average anywhere from $20,000 and $30,000 a month.

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[72] https://www.youtube.com/watch?v=dAz2DjVQ53o, posted Oct. 18, 2014 (around the 1:30 mark).

[73] https://www.youtube.com/watch?v=UWRZAT1dqfI&spfreload=5, posted July 5, 2009 (0:30 minute mark; 1:15 minute mark).

> …
>
> I have always felt that, when I saw AdvoCare as an opportunity, I realized very quickly that with some sacrifice now, to be able to design a life for my future family that really took my parents about thirty years of their lives to design. … For me, I had a desire to compress time, and based on intentional effort over four-and-a-half years, was able to compress what took my parents thirty years to build income-wise …[74]

190. DeBerry appeared in an AdvoCare promotional video entitled, "Intro to AdvoCare with Tyler DeBerry." The video was uploaded to YouTube on September 1, 2014, and as of the filing of this Complaint has been viewed approximately 1,305 times. In the video, DeBerry says, *inter alia*:

> [After touting the money he is earning with AdvoCare:] But this is about you. … And no doubt, you know, there are things that you desire that AdvoCare can potentially unlock for you.
>
> I was really looking to be able to live a 'yes' life. Be able to say yes to things that most people have to say no to. You know I look back at some of the reasons I said yes to AdvoCare. And really it comes down to extra finances, extra time, significance and escaping mediocrity.
>
> Advocare is paying people incredible incomes all according to what you desire.[75]

vii. Scheme Beneficiary Cuevas

191. Cuevas appeared in a video published to YouTube on December 7, 2012 and as of the filing of this Amended Complaint has approximately 1,342 views. In the video, Cuevas says:

> And so fast forward as a result of us pouring into others, getting them to achieve better energy, better health and giving them a financial solution, which was shown to us by my sister, we have been able to build an incredible team of champions that we are pouring into. Helping them accomplish their goals and in return our goals and our vehicle has taken off full-speed and now we have been involved with Advocare for 6 months and are earning about $8-9,000 a month which is incredible. It's lifesaving because we had no answers prior to AdvoCare and when we said yes to AdvoCare's opportunity everything in our whole world changed. We are on track to earn $10,000 by the beginning of the year. We have also earned 6 rookie bonuses which has brought in over $25,000 of income. This is

[74] https://www.youtube.com/watch?v=4FR-KQOi14g, posted Apr. 30, 2012 (1:20 minute mark; 2:45 minute mark).
[75] https://www.youtube.com/watch?v=BI45nAm130c, posted Sept. 1, 2014 (around the 4:20, 28:00, and 29:20 marks).

our first incentive trip that we have been on with Advocare and its absolutely been so impactful, we are blessed to be surrounded by such an incredible group of people, other champions.[76]

b. AdvoCare gave the Scheme Beneficiaries platforms to promote the scheme

192. Each of the Scheme Beneficiaries had an AdvoCare Microsite. These were webpages regarding the Scheme Beneficiaries, authored by the Scheme Beneficiaries, and describing the Scheme Beneficiaries' supposed AdvoCare experiences. The webpages were hosted by AdvoCare itself. Internet searches for the Scheme Beneficiaries frequently led to the Microsites, and a search box on AdvoCare's website allowed a user to find the Scheme Beneficiaries' Microsites. In this way, AdvoCare gave the Scheme Beneficiaries a platform to promote the scheme for the benefit of the Scheme Beneficiaries and AdvoCare.

193. The content on the Microsites, like that in the Scheme Beneficiaries' own videos described above, promoted the AdvoCare business opportunity and the financial benefits supposedly available to Distributors:

Scheme Beneficiary	**Excerpts From Microsite**
Daniel McDaniel[77]	"Advocare is a life-changing company in many ways. We help people look better, feel better, have extra energy, and lose weight. We also help people who choose to be a part of Advocare, earn extra income with a part time business that can very well lead to full time income. I was a high school football coach working 80 hours per week, while Diane was working 60 hours per week for a mortgage company, and day care was raising our kids. Although I loved coaching, I had to ask myself if I was really worth more than $35,000 per year of income. That answer was easy. Advocare became the vehicle that we chose to get out of debt obtain financial freedom. We eliminated our $35,000 of debt in one year, earned a six-figure income, and began to build a life on "our terms." Advocare has given us the freedom to take our 3 boys to school, pick them up from school, and attend all of their school and athletic events.

[76] https://www.youtube.com/watch?v=dpmnesB_mJQ, posted Dec. 7, 2012 (around the 3:23 mark).
[77] https://www.advocare.com/9701221/

	We don't have to answer to other people's demands for our lives, over our family's priorities." "We have been able to take vacations from Australia/New Zealand to Hawaii, to Alaska, to the mountains, to the Caribbean, and to the Bahamas. Today, we help people get started with their dreams, just like someone helped us in 1997. We introduce people to a powerful earning potential, with a business that pays 5 different ways. Where else in America can you earn income 5 different ways with one concentrated effort. This is what makes Advocare such an amazing part time business for anyone who has a need to become debt free, or has a desire to earn what their true value is in the market place today."
Jenny Donnelly[78]	"ROBERT (BOB) AND JENNY DONNELLY- THE DONNELLY TEAM "As AdvoCare distributors, my wife and I earn **over $100,000 every month**." "If you live in the Portland Oregon area, and are interested in trying AdvoCare products, or becoming an AdvoCare distributor yourself, we would love to help you. We have been involved with AdvoCare since 1999, are experienced with all of the products, and have helped thousands of people around the Portland Metro area find financial success through a relationship with AdvoCare. "OUR PROGRESSION AS ADVOCARE DISTRIBUTORS "I used to work 60 hours a week at an engineered wood products mill and Jenny was a registered dietitian. We initially got excited about AdvoCare because of the nutritional products. I lost 25 pounds and my pant size went from a 36 to a 32 in the first two months. Jenny was skeptical at first, but was sold after looking at AdvoCare's Scientific & Medical Advisory Board. …We started sharing our excitement with family and friends and earned $4,000 our first month. AdvoCare opened our eyes to our priorities and helped us have more choices. We realized that our lives weren't going to magically get better without us choosing a new path. "Within one year, we were averaging $10,000 a month.

[78] https://www.advocare.com/99091840/

	Currently, approximately $20 million of product moves through our business annually. "AdvoCare has afforded us to both be stay-at-home parents and has truly been a blessing in our lives. "We also embrace the opportunity to help other families get healthy and to have the lifestyle and freedom that we have today. It's an opportunity to work hard and play hard... life on your terms."
Crystal Thurber[79]	"In my first month using the Success System ADVOCARE has in place- I earned an extra 1500.00 with a VERY part Time effort. I was looking for a more productive day and loved the energy of the products, Mark lost 17 pounds of body fat in 6 weeks and has since put it back on in lean muscle! My first full year in AdvoCare- we earned $20,000. 2003-$45,000, 2004-$73,000, 2005-$100,000 and … just had our largest year in 2012- Nearly $1 Million in Income. I worked this mostly by myself Since Jan of 2002 and recently my husband who has owned his own business for 32 years just jumped on board! Using the FREE DebtBuster System we have paid off over $500,000 worth of debt and enjoy of life of debt freedom. TRUE FREEDOM only comes when you are Debt Free! We have been so blessed in our journey and now earn $85,000-$90,000 per month and are on pace for this to double in the next 12 months… thanks to the Wellness Revolution. … We love pouring our lives into others to help them achieve their goals. Our passion is to help others who are where we were, searching desperately for a solution to debt- either time debt or financial debt... and help them break free!" The Microsite then provides contact information for Defendant Thurber.
Dawn Funk[80]	"We both turned forty in the last year and have been doing a lot of reflecting on our lives from a health and financial perspective. With four children to keep up with as far as energy and expenses, we decided it was time to take advantage of our good friends' advice and look to Advocare to fulfill our many needs. … Advocare has truly changed our lives in the last nine months

[79] https://www.advocare.com/0110417/
[80] https://www.advocare.com/11088077/

	and is allowing me to leave public education and be a stay at home mom at the end of this school year! If you want to learn more about our incredible team of CHAMPIONS, please call us directly at 937-545-2908. We would love to paint a picture of what Advocare can do for you and your family!"
Wes Bewley[81]	"I was introduced to Advocare in the later part of 2000! I was 18 years old and found myself working 4 jobs. I grew up knowing how to work hard, but not neccessarily smart. Needless to say I was looking for a better way! I was introduced to Advocare and what I saw was amazing...a chance to create leverage and to own my own business. I got started on the metabolic nutrition system, catalyst, and spark the first day. I knew because the products worked so well, that I was going to be able to earn some serious income here as a result of sharing these products with other people! I became a distributor. "Advocare is great for someone who truly has a heart to help others!"
Tyler DeBerry[82]	"I am excited to help not only athletes, but anyone reach their fitness and health goals. I am equally as passionate about Advocare's opportunity though, and as a 31 year old post collegiate athlete, I was able to build a 6 figure income with part time consistent effort, in less than 4.5 years. Advocare offers world class products, a business opportunity that is second to none, and builds champions in all areas of life! Feel free to call me at 520-609-2500."

* * *

194. These promotional videos that the Scheme Beneficiaries participated in and/or prepared, like the statements on their AdvoCare-hosted microsites, all promoted the AdvoCare "business opportunity." The Scheme Beneficiaries plainly made or participated in these videos and made the microsite statements for the purpose of recruiting more Distributors and thereby perpetuating AdvoCare's pyramid scheme.

[81] https://www.advocare.com/00062193/
[82] https://www.advocare.com/04035255/

195. Moreover, these statements by the Scheme Beneficiaries implied, if not stated explicitly, that Distributors can achieve significant financial success if they work hard enough at growing their AdvoCare distributorships. But the truth was that only the tiniest minority of Distributors achieved the sort of financial success the Scheme Beneficiaries touted, no matter how hard they worked.

196. The Scheme Beneficiaries were well aware of this fact, but they sought to intentionally mislead people (a) so that people would agree to sign up as new Distributors in the Scheme Beneficiaries' Downlines and (b) so that current Distributors would continue to participate in the AdvoCare system, which required the purchasing of product and recruiting, all to the benefit of AdvoCare and the Scheme Beneficiaries. It was the continued hard work of the Distributors at recruiting that would affect the ability of AdvoCare and the Scheme Beneficiaries to continue to reap financial rewards.

c. AdvoCare's "Success Schools" and "Regional Rallies"

197. AdvoCare provided another platform for the Scheme Beneficiaries to promote the AdvoCare "business opportunity." Every year AdvoCare hosted a "Success School" and several "Regional Rallies" where thousands of AdvoCare Distributors were taught how to operate and promote their AdvoCare distributorships. The Scheme Beneficiaries and top AdvoCare executives were regular presenters there. DeBerry, Bewley, and Cuevas spoke at Success School the weekend of August 9-11, 2013. Donnelly and McDaniel spoke in 2012. Scheme Beneficiaries have appeared on multiple other occasions, and every time they encouraged Distributors to recruit new Distributors, to stay in the scheme, and to pursue the AdvoCare "business opportunity."

2. The Scheme Beneficiaries Knew their AdvoCare Incomes Depended upon New Distributor Money Coming into the Scheme

198. As discussed in section V.A.1.a. above, only the top 0.03% of all Distributors had the kind of success claimed by the Scheme Beneficiaries, and success in AdvoCare depended on having a massive downline of Distributors.

199. With such massive downlines, the Scheme Beneficiaries saw what other Distributors could not—the churn of new recruits necessary to support the Scheme Beneficiaries' massive monthly checks. Every month, AdvoCare provided its Distributors in their "backoffice" accounts visibility into the purchases of their Downline Distributors. AdvoCare did this because how many Distributors are in a Distributor's Downline and how much those Downline Distributors purchased impacts how a Distributors' primary bonuses were calculated. With their extensive downlines, the Scheme Beneficiaries could see through this backoffice information the flow of new Distributors coming into their Downlines, purchasing product for a few months, then stopping their purchases. Because the Scheme Beneficiaries could see the Distributor drop-out rate, they knew that the endless recruiting of new Distributors is what funded their big checks.

200. The Scheme Beneficiaries' view into their Downlines' activities also demonstrated that the AdvoCare compensation model was simply a complicated formula for dividing the money paid AdvoCare by the Distributors in the Downlines. The Scheme Beneficiaries could see the amounts paid by the Downline Distributors and see that AdvoCare paid a cut of those amounts to the Scheme Beneficiaries.

201. In addition, by seeing the churn of Distributors in their Downlines—new recruits coming in, purchasing for a while, then stopping—the Scheme Beneficiaries saw, in a way lower-level Distributors could not, the staggering failure rate of Distributors. Although the Scheme Beneficiaries repeatedly told Distributors to stay in the scheme (i.e., keep buying more product),

to keep trying (i.e., keep recruiting), to keep pursuing retail sales that rarely happened, and that if the Distributors failed, it was their own fault, the Scheme Beneficiaries knew, because they could see it in the backoffice information AdvoCare provided, that all but the smallest minority of Distributors lost money. And they knew from their own experiences and the experiences of the hundreds of Distributors with whom they interacted that Distributors rarely made profitable retail sales.

202. Nonetheless, the Scheme Beneficiaries kept recruiting and touting themselves as examples of wealth so that they—like AdvoCare—could continue to reap the rewards of the pyramid scheme. A quote in the ESPN Article, explains the mindset of Scheme Beneficiaries well:

> "It nauseates me to think of the people who spent $3,000 and didn't make a dime, because they believed me -- and the goal, and the dream," she says. "You catch people in a bad spot who maybe have hope that this could be a way for them to pay for their credit card and their kids, and you exploit them. That's the bottom line."

3. AdvoCare Allowed the Scheme Beneficiaries Advantages over the Other Distributors

203. The Scheme Beneficiaries were crucial to AdvoCare. They provided the examples of wealth that AdvoCare and the Scheme Beneficiaries used to entice Distributors to participate in the scheme. *See supra* Section V.B.1.a. And as the managers of the most massive downlines, they spearheaded the recruiting that provided the fuel for the pyramid scheme engine to run.

204. Likely because of AdvoCare's financial dependence on the Scheme Beneficiaries' maintenance of their Downlines, they held a unique role in the scheme. Unlike rank-and-file Distributors, the Scheme Beneficiaries participated in "leadership meetings" and conference calls with AdvoCare executives to determine how best to run the scheme. They collectively commented on and influenced amendments to the Policies.

205. Additionally, AdvoCare allowed the Scheme Beneficiaries to manipulate the Compensation Plan. For example, McDaniel instructed Distributors immediately below him in his Downline on how to manipulate the compensation plan by qualifying for higher ranks through Inventory Loading, yet AdvoCare did not stop this activity. Additionally, Rendy Anderson, a former AdvoCare Distributor, testified in open court that Scheme Beneficiary Cuevas manipulated AdvoCare's Compensation Plan by transferring money to downline Distributors so Cuevas could artificially qualify for diamond-level status.[83] Ms. Anderson notified AdvoCare of this fact, but as of the date of Ms. Anderson's testimony, AdvoCare had done nothing to remedy the problem.[84]

206. Scheme Beneficiaries DeBerry and Bewley also practiced Inventory Loading to manipulate AdvoCare's Compensation Plan. For example, in early March 2015, DeBerry ordered products on other Distributors' accounts and instructed certain members in his Downline to purchase products (over and above what could ever be sold to retail customers) just to elevate himself to "Ruby 6-Star" rank. DeBerry has also claimed that other Diamond-rank Distributors ordered products on other Distributors' accounts to reach their rank. DeBerry has claimed that Bewley was complicit in this activity.

207. AdvoCare's Policies strictly prohibited inventory loading and manipulation of the Compensation plan:

> AdvoCare strictly prohibits conduct and actions which are, or may be perceived as, manipulation of the Compensation Plan primarily for the purpose of qualifying for commissions, bonuses, incentives or advancement in the Compensation Plan. This prohibited conduct may include, but is not limited to: (1) purchasing products under a Distributor's account in your downline; (2) encouraging other Distributors to purchase products under a Distributor account in your downline; or (3) placing

[83] *See* Hearing Tr. at 134:10-137:1, *AdvoCare Int'l L.P. v. Anderson*, Cause No. 2017-22709, (Harris Cty Apr. 18, 2017).
[84] *See id.* at 124:2-3.

> or encouraging the placement of orders under customer accounts in a fraudulent, manipulative or deceptive manner.[85]

Nonetheless, Scheme Beneficiaries were allowed to manipulate the Compensation Plan because of their importance to AdvoCare in running the pyramid scheme.

208. Further, as discussed above, AdvoCare prohibited Distributors from reselling its products via e-commerce website. *See supra* Section V.A.2.b. Indeed, AdvoCare brought many legal action against low-level Distributors to prevent the resale of its products. However, Scheme Beneficiaries sold their extra product on e-commerce websites, while AdvoCare consistently looked the other way to their rule-breaking activities.

4. The Scheme Beneficiaries Engaged in Common, Coordinated Efforts to Promote the Scheme

209. The Scheme Beneficiaries' worked together to promote the scheme in many ways. First, they related similar stories and claims on the Microsites and their promotional videos to uniformly promote the AdvoCare "business opportunity" and themselves as models of success:

- Of course, they all talked about their own financial success with AdvoCare (McDaniel, Donnelly, Thurber, Funk, Bewley, DeBerry, Cuevas).
- They frequently claimed they were working a significant amount of hours at old jobs before beginning AdvoCare (McDaniel, Donnelly, Bewley, Thurber, Funk).
- They touted the increased amount of free time they had with the AdvoCare opportunity (DeDerry, Funk, Donnelly, Thurber, Bewley).
- They claimed one benefit of the AdvoCare program was that it allowed them to improve the lives of other people (Donnelly, Thurber, Funk, Cuevas).

210. Second, the Scheme Beneficiaries participated in each other's promotions or used the promotional material produced by each other. For example, Scheme Beneficiary McDaniel's

[85] *See*, *e.g.*, Policies (3/11/16) at 14.

YouTube page contained videos of Scheme Beneficiaries Thurber and Bewley promoting AdvoCare.[86] Scheme Beneficiary McDaniel's "ChampionMakers" website included a link to a "training call" he did with Scheme Beneficiary Donnelly.[87] Scheme Beneficiary Thurber's "AdvoCareFreedom" YouTube channel links to Scheme Beneficiary Funk's YouTube channels[88] and posts a McDaniel video. Scheme Beneficiary Bewley posted a Funk video.

211. Third, the Scheme Beneficiaries appeared at the same venues, including AdvoCare's Success Schools, to encourage Distributors to stay in the scheme and to recruit new Distributors into the scheme.

5. The Scheme Beneficiaries Operated Independently from AdvoCare

212. As discussed above, the Scheme Beneficiaries performed a different role from AdvoCare with respect to perpetuating the pyramid scheme. In addition, Scheme Beneficiaries—like all Distributors—operated independently from AdvoCare. They were "independent contractors, not employees of AdvoCare" who were not allowed to "do anything that would lead someone to believe that he or she is an employee or an agent of AdvoCare."[89] To manage their independent organizations and massive downlines, some Scheme Beneficiaries operated through their own registered business entity.[90] For example, Scheme Beneficiary McDaniel maintained Champion Makers, L.L.C. and Scheme Beneficiary Cuevas established Cuevas Champions, Inc. AdvoCare did not participate in the ownership or management of these business entities.

213. Scheme Beneficiaries and their companies had massive online presences. They routinely setup and maintained their own websites for their "teams" that contained training

[86] https://www.youtube.com/user/advocarenuggets/videos.
[87] http://www.championmakerstraining.com/downloads/mcdaniel-team-calls/.
[88] https://www.youtube.com/user/advocarefreedom
[89] Distributor Agreement at 3[Appx. P. 0120]; Policies (10/6/11) at 2 [Appx. 012]; Policies (1/25/13) at 10 [Appx. P. 0074]; Policies (5/21/15) at 10 [Appx. P. 0107].
[90] The business entities established on behalf of the Scheme Beneficiaries are included in the term "Scheme Beneficiaries" as used herein.

materials created by the Scheme Beneficiaries, from documents to how-to videos. For example, Scheme Beneficiary McDaniel used championmakers.com, workwithchampions.com, and championmakerstraining.com, and Scheme Beneficiary Cuevas has used betterlivingstartsnow.com. Scheme Beneficiaries maintained their own large Facebook, Twitter, and YouTube presences.

214. Moreover, likely because of their massive Downlines and financial benefit to AdvoCare, the Scheme Beneficiaries—with AdvoCare's consent—often did not abide by or restrict themselves to the rules in AdvoCare's Policies.

C. ADVOCARE AND THE SCHEME BENEFICIARIES HID THE FACT THAT ADVOCARE OPERATED A PYRAMID SCHEME

215. AdvoCare and the Scheme Beneficiaries knew that AdvoCare operated a pyramid scheme. Nonetheless, they knew that they had to hide this fact from regulatory authorities, potential recruits, and currently enrolled Distributors. They did this by claiming AdvoCare provided quality products Distributors could sell for a profit (even though they knew that was practically impossible) and making false claims and omissions regarding the fact that AdvoCare operated a pyramid scheme.

1. AdvoCare's Products and the Possibility of Retail Sales were Used to Falsely Legitimize AdvoCare's Scheme

216. Although retail sales rarely happened, AdvoCare and the Scheme Beneficiaries falsely used AdvoCare's products and touted the possibility of retail sales to provide a seemingly legitimate façade to the scheme. First, AdvoCare and the Scheme Beneficiaries touted the quality of AdvoCare's products by proclaiming them to be "the finest products on the planet"[91] and "the world's finest nutritional products."[92] Second, AdvoCare and the Scheme Beneficiaries made

[91] https://www.youtube.com/watch?v=nnJNkXS4_7g, posted Feb. 20, 2012 (around the 2:25 mark).
[92] https://advocareshiningstars.wordpress.com/page/4/?app-download=android (around the 2:40 mark).

bold claims about the popularity of the products. For example, Danny McDaniel represented multiple times that "everyone in the world is going to be on these products one day."[93] Third, they falsely represented that retail sales provided a viable path for success in AdvoCare. Indeed, AdvoCare's Compensation Plan explains that "[r]etail sales [not recruiting] are the foundation of a successful Distributorship."[94] Scheme Beneficiary Dawn Funk represented that "AdvoCare is a product driven company and we clearly have products that we sell."[95] Scheme Beneficiary McDaniel told potential recruits "[w]e sold our way to advisor retailing the products in ten days."[96]

2. AdvoCare and the Scheme Beneficiaries Falsely Claimed that AdvoCare did not Operate a Pyramid Scheme

217. To deflect questions about the legitimacy of the scheme, AdvoCare and the Scheme Beneficiaries misrepresented that AdvoCare was legitimate and not a pyramid scheme.

218. AdvoCare itself proclaimed that it is not a pyramid scheme. According to the ESPN Article, "When asked point-blank if the company is a pyramid scheme, Levy [AdvoCare's General Counsel] responds: 'Absolutely not. AdvoCare is a business based on terrific real nutritional products that are sold through a direct-sales channel.'" At one of AdvoCare's annual "Success Schools," AdvoCare presented a panel of diamond-level Distributors who entertained the issue of what to do when someone asks if AdvoCare is a pyramid scheme.[97] The panelists claimed that AdvoCare was not a pyramid scheme because, *inter alia,* pyramid schemes are

[93] https://www.youtube.com/watch?v=0MagWBoG9Bc, posted Sept. 10, 2012 (around the 1:00 mark).
[94] Policies (3/11/16) at 25 [Appx. P. 0122].
[95] https://www.youtube.com/watch?v=rUtjgCial5g, posted Dec. 13, 2013 (1:37 minute mark).
[96] https://www.youtube.com/watch?v=0MagWBoG9Bc, posted Sept. 10, 2012 (around the 1:56 mark).
[97] http://www.championmakerstraining.com/training-videos/diamond-panel-with-diane-mcdaniel/ (beginning at 12:00 mark).

illegal, pyramid schemes do not involve the exchange of real products, Drew Brees would not associate himself with a pyramid scheme, and in AdvoCare you can earn as much as you want.

219. The Scheme Beneficiaries often addressed the pyramid-scheme issue head on in internet videos. Scheme Beneficiary McDaniel publicly claimed in marketing materials that AdvoCare did not operate a pyramid scheme: "When you don't have a pyramid scheme, and when you gear your sales compensation plan to pay people for their work effort, and for what they genuinely do to build other people's lives, that's when you know it doesn't matter, you know, whether you're at the top of some food chain."[98] In another promotional video, he claimed: "We don't have a pyramid scheme. We don't have some little deal for you. This is the most exciting, legitimate, financial opportunity you have probably laid your eyes on in your entire adult life."[99]

220. Scheme Beneficiary Bewley has also defended AdvoCare against the pyramid scheme charge in a promotional video. Therein, Bewley and another person dressed and acted like uneducated hillbillies to ridicule the idea that AdvoCare could be considered a pyramid scheme. Bewley defended AdvoCare on the basis that Distributors can earn as much as they want, depending on how many lives they want to change.[100]

221. Scheme Beneficiary Funk has posted an internet video directly addressing the subject. From the beaches of Bora Bora, she explained that AdvoCare has ignored pyramid scheme allegations for years and "to think if we would have let those skeptics and critics steal our dreams with that question in the beginning I wouldn't be standing here right now in Bora Bora."[101]

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[98] https://www.youtube.com/watch?v=7WKs9GaF3so, posted Feb. 20, 2012 (around 1:14 minute mark).
[99] https://www.youtube.com/watch?v=EM-gcNt8kX4, posted Apr. 12, 2013 (around 1:00 minute mark).
[100] https://www.youtube.com/watch?v=eghDHm7HVfo, posted June 11, 2104 (beginning at the 1:12 mark; Bewley is the taller character).
[101] https://www.youtube.com/watch?v=rUtjgCial5g, posted Dec. 13, 2013 (0:55 minute mark).

She reassured her listeners that AdvoCare did not operate a pyramid scheme, that those are illegal, and that "there's no such thing as a pyramid scheme in the United States."[102]

222. AdvoCare's and the Scheme Beneficiaries' claims that AdvoCare was not a pyramid scheme are false, for all the reasons set forth in Section V.B.2, *supra*. AdvoCare and the Scheme Beneficiaries argued that the AdvoCare's Distributor Network was less a pyramid scheme than a job in a normal corporate organization. In those companies, they argued, the CEO or a comparable figure sits at the top of the pyramid making the most money, with other executives beneath the CEO making less, and other levels within the company having progressively more people at each level, with each person in each level making less money than each person in the level above.[103] These organizations, they claimed, are more pyramidal in shape than the pyramid of Distributors AdvoCare operates.

223. This facile explanation ignores what a pyramid scheme is. A pyramid scheme is an enterprise in which participants are rewarded based on bringing in new participants to the enterprise, and are rewarded with other participants' money, not with the proceeds of the legitimate operations of the enterprise. AdvoCare fits this description perfectly. Normal companies do not.

D. PLAINTIFFS WERE VICTIMS OF ADVOCARE'S PYRAMID SCHEME

224. Lisa Ranieri is a retired Air Force Sargent who served as a guard at the Arlington National Cemetery. She joined AdvoCare as a Distributor in 2007 and lost thousands of dollars trying to be a successful Distributor. She became a Distributor because she believed AdvoCare offered a legitimate business opportunity and that she could make money by purchasing

[102] *Id*. (1:33 minute mark).
[103] *See* https://www.youtube.com/watch?v=7WKs9GaF3so, posted Feb. 20, 2012 (McDaniel; around 2:00 minute mark); https://www.youtube.com/watch?v=rUtjgCial5g, posted Dec. 13, 2013 (Funk; around 2:00 minute mark); https://www.youtube.com/watch?v=eghDHm7HVfo, posted June 11, 2014 (Bewley; around the 3:10 mark)

AdvoCare product at wholesale, selling it at retail, and by recruiting. She believed this based on: (i) statements from her upline, primarily Joanna Wheeler and Sonja Lowe; (ii) presentations made at the Success Schools she attended; (iii) AdvoCare's Policies; (iv) AdvoCare's Compensation Plan; (v) AdvoCare's marketing materials at the time; (vi) AdvoCare's website; and (vii) various other websites and materials on the internet regarding AdvoCare.

225. Plaintiff Ranieri paid AdvoCare $20,000-$25,000 in fees and product purchases between 2007 and September 2015. Plaintiff Ranieri's last payment to AdvoCare was in September 2015. Over the course of her association with AdvoCare, Plaintiff Ranieri received approximately $5,000 in payments from AdvoCare.

226. Plaintiff Ranieri was unable to make many retail sales, and she lost money in the AdvoCare scheme even considering retail sales.

227. AdvoCare terminated Plaintiff Ranieri for failure to pay Annual Fees in or about January 2016.

228. Megan Cornelius joined AdvoCare as a Distributor in February 2014 and lost thousands of dollars trying to be a successful Distributor. She became a Distributor because she believed AdvoCare offered a legitimate business opportunity and that she could make money by purchasing AdvoCare product at wholesale, selling it at retail, and by recruiting. She believed this based on: (i) statements from her upline, primarily Bryce Richards and Nick and Heidi Landon; (ii) AdvoCare's Policies; (iii) AdvoCare's Compensation Plan; (iv) AdvoCare's marketing materials at the time; (v) AdvoCare's website; and (vi) various other websites and materials on the internet regarding AdvoCare.

229. AdvoCare locked Plaintiff Cornelius out of her AdvoCare MicroSite in February 2016, thereby preventing Plaintiff Cornelius from accessing the AdvoCare documents posted

there, including whatever version of the Policies was then current. AdvoCare never provided Plaintiff Cornelius with access to her AdvoCare MicroSite after February 2016.

230. AdvoCare suspended Plaintiff Cornelius on April 29, 2016 and informed her on that day that she was not allowed to work on her AdvoCare business during her suspension, and informed her that she was not entitled to compensation or incentives during her period of suspension.

231. On August 2, 2016, AdvoCare formally terminated Plaintiff Cornelius. On August 3, 2016, sent Plaintiff Cornelius a check in the amount of $329.66 as payment for Wholesale Commissions earned through February 16, 2016. AdvoCare did not pay Plaintiff Cornelius for any Wholesale Commissions or other bonuses or incentives earned after February 16, 2016.

232. Plaintiff Cornelius paid AdvoCare approximately $12,000 in fees and product purchases between February 2014 and February 2016 and received approximately $3,000 from AdvoCare over this same period. Plaintiff Cornelius also paid AdvoCare more than she received from AdvoCare between March 9, 2015, and February 2016.

VI. CLASS ACTION ALLEGATIONS

233. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23.

234. Plaintiffs seek relief on behalf of themselves and the following class (the "**Four-year Class**"):

> Distributors who paid Annual Fees, purchased a Distributor Kit, and/or purchased products from AdvoCare between March 9, 2013, and May 17, 2016, who lost money from their participation in the AdvoCare scheme, and whose distributorships were suspended without reinstatement or terminated by May 17, 2016.

235. Plaintiffs seek relief on behalf of themselves and the following class (the "**Two-year Class**"):

> Distributors who paid Annual Fees, purchased a Distributor Kit, and/or purchased products from AdvoCare between March 9, 2015, and May 17, 2016, who lost money from their participation in the AdvoCare scheme, and whose distributorships were suspended without reinstatement or terminated by May 17, 2016.

236. The Scheme Beneficiaries are excluded from the Classes.

237. The members of the Classes (the "**Class Members**") number in the tens of thousands, making joinder of all Class Members in a single action impracticable.

238. There are common questions of law and fact common to the Classes, including, but not limited to, the following:

- Whether the Arbitration Provision is enforceable against the Class Members;
- Whether AdvoCare operated an illegal pyramid scheme;
- Whether AdvoCare promoted the illegal pyramid scheme;
- Whether AdvoCare made materially false representations that AdvoCare was legal;
- Whether AdvoCare engaged in acts of mail fraud and wire fraud in violation of RICO; and
- Whether and to what extent AdvoCare's conduct has injured the Class Members.

239. These and other questions of law and/or fact are common to the Class Members and predominate over any question affecting only individual Class Members.

240. The Plaintiffs' claims are typical of the claims of the Four-year Class Members in that Plaintiffs were Distributors (a) who paid Annual Fees, purchased a Distributor Kit, and/or purchased products from AdvoCare between March 9, 2013, and May 17, 2016, (b) who lost money from their participation in the AdvoCare scheme, and (c) whose distributorships were suspended without reinstatement or terminated by May 17, 2016. Plaintiffs claims are typical of

the claims of the Two-year Class Members in that Plaintiffs were Distributors (a) who paid Annual Fees, purchased a Distributor Kit, and/or purchased products from AdvoCare between March 9, 2015, and May 17, 2016, (b) who lost money from her participation in the AdvoCare scheme, and (c) whose distributorship was suspended without reinstatement or terminated by May 17, 2016.

241. Plaintiffs will fairly and adequately represent the interests of the Classes in that Plaintiffs' claims are typical of the Class Members and Plaintiffs' interests are fully aligned with those of the Classes. Plaintiffs have retained counsel who are experienced and skilled in class action litigation.

242. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein, because such treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender.

243. Plaintiffs know of no difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VII. CAUSES OF ACTION

Count One:
Judgment Declaring the Arbitration Provision Unenforceable

244. Plaintiffs re-allege paragraphs 34-44 and 224-243 as though fully set forth herein.

245. AdvoCare's Contract contained an Arbitration Provision. The Contract also granted AdvoCare the power to unilaterally modify the terms of the Contract, including the Arbitration Provision, at any time and without prior notice, thereby rendering the Arbitration Provision illusory, lacking consideration, and therefore unenforceable.

246. On December 27, 2017, an arbitrator from the American Arbitration Association, after a full and fair hearing, and after AdvoCare had every opportunity to present its positions as to arbitrability, ruled that the dispute between Plaintiff Ranieri and AdvoCare was not arbitrable because the Arbitration Provision was illusory. AdvoCare agreed that that ruling would apply equally to Plaintiff Cornelius.

247. Accordingly, the Court should declare that the Arbitration Provision is illusory, lacks consideration, and unenforceable, and that the Plaintiffs' claims and the Class claims are properly before this Court.

Count Two:
Racketeering Activity in Violation of 18 U.S.C. §§ 1962(c) and 1964(c)

248. Plaintiffs re-allege paragraphs 1-243 as though fully set forth herein.

A. AdvoCare Was and Is a RICO "Person" Associated with a RICO "Enterprise."

249. AdvoCare is a "person" for purposes of RICO, 18 U.S.C. § 1962, because AdvoCare is, and was at all relevant time was, an entity capable of holding legal or beneficial interest in property.

250. The Scheme Beneficiaries and AdvoCare collectively formed an "**Enterprise**" under 18 U.S.C. § 1962, in that they were a group of individuals and an entity with a common purpose: the operation and perpetuation of a pyramid scheme. For all the reasons set forth at length above, the Enterprise operated the network of Distributors as a pyramid scheme.

251. One of the professed goals of the Enterprise was the sale of product at retail, yet each of the members of the Enterprise knew Distributors could make few profitable retail sales and knew the vast majority of Distributors would lose money from their participation the AdvoCare business opportunity, no matter how hard Distributors sought to sell at retail or to build their own businesses. Each of the members of the Enterprise knew they were paid entirely, or

almost entirely, with other Distributors' money, and that the Distributors paying into the scheme would not be able to offset those costs through retail sales. Accordingly, the true purpose of the Enterprise was to run a pyramid scheme—to constantly recruit new Distributors who paid money to AdvoCare, retain those Distributors for as long as possible, and have them recruit more money-paying Distributors.

252. The purpose of the Enterprise was collective and not merely parallel because the Enterprise members benefited from the perpetuation of the pyramid scheme generally. They sought to promote the AdvoCare scheme generally, and not only themselves and their individual businesses specifically.

253. The members of the Enterprise had relationships between them, which is evident from their concerted conduct described at length above. The concerted conduct included the Scheme Beneficiaries appearing at joint events (including, but not limited to, those sponsored and created by AdvoCare), the use of similar or identical messaging, and the use of AdvoCare's microsites. The Scheme Beneficiaries also share relationships by virtue of their positions at the top of the network of Distributors.

254. The association-in-fact has a longevity sufficient to permit the Enterprise to pursue its purpose—the perpetuation of an unlawful pyramid scheme. AdvoCare was formed in 1993. Most of the Scheme Beneficiaries were associated with AdvoCare for many years. For example, the following Scheme Beneficiaries joined AdvoCare on the following dates and were still part of the AdvoCare enterprise as of the filing of the original Complaint:

Crystal Thurber:	1995
Daniel McDaniel:	1997
Jenny Donnelly:	1999
Dawn Funk:	2010

255. The Enterprise is separate and distinct from AdvoCare for many reasons, including that the Scheme Beneficiaries performed an importantly different role from AdvoCare in perpetuating the pyramid scheme. AdvoCare organized the scheme, advertised the products, ran the website, organized Distributor conferences, obtained and shipped the products, and, most importantly, took in the Distributor payments and redistributed the money throughout the pyramid (minus AdvoCare's cut). But the Scheme Beneficiaries were primarily responsible for the critical function of bringing new recruits into the scheme. They led the charge in coaxing persons to become Distributors, encouraging existing Distributors to stay in the scheme and pay more into the scheme, and training Distributors in how to bring new Distributors into the scheme. The Scheme Beneficiaries added a critical air of legitimacy to the AdvoCare program by posing as false success stories and promoting the idea that anybody could become rich as an AdvoCare Distributor. Both the Scheme Beneficiaries and AdvoCare encouraged Distributors to sell at retail.

256. The Scheme Beneficiaries (and thus the Enterprise) were separate and distinct from AdvoCare for multiple additional reasons. AdvoCare's own Contract specifies that the Scheme Beneficiaries are independent contractors and not employees. The Scheme Beneficiaries were independent people or corporate entities, not otherwise affiliated with AdvoCare. AdvoCare's contract gave the Scheme Beneficiaries significant leeway in how they operated their distributorships and in how they recruited new Distributors.

257. There was an identifiable hierarchy and framework within the Enterprise. It was directed by AdvoCare, which promulgated the Policies and the Distributor Agreement.

B. AdvoCare Willfully and Knowingly Conducted, or Participated in the Conduct of, the Affairs of the Enterprise Through a Pattern of Mail or Wire Fraud

258. AdvoCare has used false and fraudulent pretenses to obtain money and property from the Plaintiffs and the Classes.

259. First, a pyramid scheme, by its very nature, is a *per se* scheme and artifice to defraud under the mail and wire fraud statutes. AdvoCare conducted, or participated in the conduct of, the affairs of the Enterprise by making it practically impossible for the network of Distributors that the Scheme Beneficiaries recruited to be anything other than a pyramid scheme. AdvoCare set the rules of the Compensation Plan, which rules encouraged recruiting over retail sales and required (as a practical matter) Distributors to purchase product they did not need or want. AdvoCare also set the prices of its products and restricted the manner in which Distributors could sell products at retail, which made it practically impossible for Distributors to sell the products for a profit.

260. Second, AdvoCare has promoted the pyramid scheme through numerous false representations, all to obtain profit. AdvoCare's false representations include misleading statements regarding the financial opportunity presented by AdvoCare and false statements that AdvoCare's marketing scheme is legal and that its network of Distributors, as operated by AdvoCare pursuant to its compensation plan, is not a pyramid scheme. The misleading and false statements AdvoCare has made in furtherance of the pyramid scheme are more specifically described in paragraphs 74-79, 102-105, 153, 159-193, 215-223, *supra*.

261. Third, AdvoCare has promoted AdvoCare's pyramid scheme by omitting material facts for the purpose of and with the intention of defrauding and obtaining money from the victims. For example, AdvoCare:

- represented that AdvoCare operated a legitimate multi-level marketing organization without disclosing that AdvoCare really operated an illegal pyramid scheme;

- represented that success in AdvoCare was based on retail sales to non-Distributors when, in fact, few sales are made to non-Distributors;

- claimed that Distributors could make significant amounts of money by selling AdvoCare products at retail, when in fact very few Distributors are able to profitably sell products at retail; and

- implied that Distributors could achieve the top ranks of AdvoCare with sufficient effort and hard work, when in fact it is virtually impossible to achieve the top ranks of AdvoCare.

262. AdvoCare acted with specific intent to conduct, or participate in the conduct, of the Enterprise to perpetrate and operate a pyramid scheme. AdvoCare was well aware that its Compensation Plan, promoted by the Enterprise, would result in the recruitment of more Distributors who would pay money into the AdvoCare scheme, which money would be used to pay AdvoCare and other persons in the pyramid. AdvoCare specifically desired that Distributors would pay money in the AdvoCare scheme, which money would be used to pay AdvoCare, the Scheme Beneficiaries, and other Distributors.

C. AdvoCare Engaged in a Pattern of Racketeering Activity.

263. AdvoCare's numerous acts of mail fraud and wire fraud amount to a pattern of racketeering activity because they are continuous and related.

264. Continuity of Activity: AdvoCare's perpetuation of a pyramid scheme through Scheme Beneficiaries began on or about 1993 after the creation of AdvoCare. AdvoCare continued to perpetuate a pyramid scheme through at least the date of the original Complaint filed in this matter. AdvoCare has engaged in multiple acts to promote and/or operate the pyramid scheme, and AdvoCare actively worked to perpetuate the pyramid scheme.

265. Relatedness of Activity: The predicate acts of mail and wire fraud are related because they had the same or similar purpose: to cause the Enterprise to recruit new Distributors

to pay to join the pyramid scheme, to convince those Distributors to recruit new Distributors, and to perpetuate the pyramid scheme. These predicate acts had the same result: convincing Distributors to join AdvoCare's pyramid scheme by paying money, having those Distributors recruit new Distributors to do the same, and perpetuating the pyramid scheme. The predicate acts had the same victims: Distributors who participated in AdvoCare's pyramid scheme and received less money from AdvoCare than they paid AdvoCare. Finally, the predicate acts had similar methods of commission: the operation of the pyramid scheme, using the wires and mail, pursuant to AdvoCare's Contract and compensation plan, as well as fraudulent representations concerning numerous aspects of AdvoCare's operations. In sum, the predicate acts of wire and mail fraud committed by AdvoCare constituted an intricately related set of predicate acts sufficient to meet the relatedness standard.

D. Effect on Interstate Commerce

266. The pyramid scheme affected interstate commerce by reason of, at least, each of AdvoCare's numerous acts or omissions constituting use of the mail or interstate wire communication facilities in furtherance of the scheme to defraud. Additionally, the enterprise affected interstate commerce because the Distributors engaged in business in several states and made use of the mail and interstate communications facilities in the process of doing so by causing marketing and promotional materials for AdvoCare, as well as images, videos, and information to be communicated through regular mail and via the internet.

E. Mail and Wire Fraud

267. AdvoCare committed racketeering acts by operating and promoting an illegal pyramid scheme through the use of the mail or private or commercial carriers, such as UPS, and by transmitting and causing others to transmit, by means of wire in interstate commerce, writing,

signs, signals, pictures, and sounds, all in furtherance of and for purposes of executing a scheme or artifice to defraud, namely an illegal pyramid scheme.

268. AdvoCare distributed many hundreds of thousands of pieces of promotional literature, statements, checks, and other mailings to many people by commercial carriers or USPS since its inception. AdvoCare used the internet to disseminate, publish, and spread the pyramid scheme throughout the United States for the purpose of executing its scheme or artifice to defraud in violation of RICO.

269. AdvoCare maintained its own website as well as an internet portal where Distributors gain access to exclusive AdvoCare information and the ability to purchase AdvoCare products by inputting credit card information. In addition, the Scheme Beneficiaries, as members of the Enterprise, used outlets like YouTube, Facebook, Twitter, and other websites to disseminate information about AdvoCare's business opportunity. Each such transmission is a separate act of wire fraud.

F. Injury

270. As a direct and proximate result of AdvoCare's acts of mail and wire fraud, Plaintiffs and the Four-year Class Members were injured in their business or property. Plaintiffs and the Four-year Class Members spent more money than they have obtained in commissions and/or bonuses as a result of their involvement with AdvoCare. The precise amount lost by the Four-year Class has not yet been determined but is estimated at over $100 million. The precise amounts that each and every participant in the pyramid scheme has (i) paid AdvoCare based on its participation in the Distributor "business opportunity" and (ii) received in commissions or bonuses or other payments from AdvoCare as a result has been tracked, maintained, and accounted for by AdvoCare. Thus, the precise loss of every Class Member is capable of being

easily ascertained in this litigation, and the total business injury capable of being computed for the Four-year Class.

271. The Plaintiffs and the Four-year Class Members are the foreseeable victims of the pyramid scheme and AdvoCare's acts of mail and wire fraud. The Plaintiffs and the Four-year Class Members are all Downline recruits who were unable to recoup their payments into the scheme. The Plaintiffs and the Four-year Class Members are necessary to the pyramid scheme and are the direct victims of the pyramid scheme.

Count Three:
Violation of the Texas Deceptive Trade Practices Act
Tex. Bus. & Com. Code §§ 17.50(a)(1); 17.46(b)(21); 17.461

272. Plaintiffs reallege paragraphs 1-243 as if fully set forth herein.

273. Plaintiffs and the Two-year Class Members were "consumers" within the meaning of Tex. Bus. & Com. Code § 17.45(4) in that they acquired goods or services from AdvoCare and the goods and services they acquired form the basis for their Texas Deceptive Trade Practices Act claims.

274. Promoting a pyramid scheme constitutes a deceptive trade practice. Tex. Bus. & Com. Code § 17.46.

275. AdvoCare promoted a pyramid scheme within the meaning of Tex. Bus. & Com. Code § 17.461. Under this statute, a "pyramid promotional scheme" means a plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of other persons to participate in the plan or operation rather than from the sale of a product by a person introduced into the plan or operation.

276. Plaintiffs gave "consideration" within the meaning of the statute in that she (a) paid cash to AdvoCare in the form of fees, and (b) purchased product from AdvoCare. Tex. Bus. &

Com. Code § 17.461(a)(2). The exclusions from the definition of "consideration" do not apply because AdvoCare did not provide the products at cost and because AdvoCare's repurchase agreements do not comply with § 17.461(b).

277. AdvoCare's repurchase agreements do not comply with § 17.461(b) for the reasons set forth above, including that AdvoCare's Resignation Refund requires the Distributor to resign his or her distributorship to obtain the refund, which is a punishment to the Distributor and a condition to obtaining a refund not allowed under the statute.

278. Knowingly or not, Plaintiffs and the members of the Two-year Class gave consideration for the opportunity to receive "compensation" from AdvoCare. The exclusion from the definition of the "compensation" in § 17.461(a)(1) does not apply because, as discussed above, there was no realistic possibility of Plaintiffs and the members of the Two-year Class selling the AdvoCare product for a profit.

279. For the reasons discussed at length above, any "compensation" Plaintiffs and the members of the Two-year Class could have received from AdvoCare would have been derived primarily from their introduction of other persons into the AdvoCare scheme, rather than from the sale of product.

280. AdvoCare, in conjunction with the Scheme Beneficiaries, promoted the pyramid scheme by inducing or attempting to induce Distributors to join the scheme. AdvoCare also promoted the pyramid scheme by assisting the Scheme Beneficiaries and other Distributors in inducing or attempting to induce persons to become Distributors. Tex. Bus. & Com. Code § 17.461(a)(5).

281. AdvoCare's promotion of the pyramid scheme was a producing cause of damages to Plaintiffs and the members of the Two-year Class in that they purchased product and paid fees to AdvoCare and would not have done so had AdvoCare not promoted its pyramid scheme.

282. Plaintiffs and the members of the Two-year Class relied on AdvoCare's promotion of its pyramid scheme because (a) they signed or agreed to the AdvoCare Contract, which is a document created by AdvoCare to perpetuate the pyramid scheme; (b) they signed up to be a Distributor junior to other Distributors, and the existence of the network of Distributors is a promotion of a pyramid scheme; (c) all Distributors became Distributors because of some act of "promotion" of the scheme, else they would not know of the existence of AdvoCare; (d) they believed AdvoCare offered a legitimate business opportunity and not an illegal pyramid scheme; (e) the reliance of Distributors on promotion of the scheme by AdvoCare and other Distributors caused the scheme to grow; and (f) Plaintiffs' and the Two-Year Class Members' losses were the necessary, direct, foreseeable, and expected result of AdvoCare's promotion of its pyramid scheme.

283. Plaintiffs have provided the notice required under Tex. Bus. & Com. Code § 17.505 contemporaneously with the filing of this Second Amended Complaint.

VIII. PRAYER FOR RELIEF

Plaintiffs and Class request the following relief:

a. Certification of the Classes;

b. A declaration that the Arbitration Provision in the Plaintiffs' and the Class Members' Contracts is unenforceable;

c. A judgment against AdvoCare on all Counts;

d. As to Count Two, an award of damages in the amount of Plaintiffs' and each Four-year Class Member's financial loss as a result of AdvoCare's conduct and for injury to Plaintiffs' and the Four-year Class's business and property, all as

a result of AdvoCare's violation of 18 U.S.C. § 1962(c) and that such amounts be tripled in accordance with 18 U.S.C. § 1964(c);

e. As to Count Three, an award of damages in the amount of Plaintiffs' and each Two-year Class Members' economic damages as a result of AdvoCare's conduct, with damages to be trebled, plus court costs and reasonable and necessary attorneys' fees;

f. For all other relief, at law or equity, to which Plaintiffs and the Class Members are entitled, including such other damages and relief as the Court may deem just and proper.

IX. JURY DEMAND

Plaintiffs, on their own behalf and on behalf of the Class Members, demand a trial by jury on all issues triable by a jury.

Dated July 31, 2019

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