**VII. THE PROOF IS INSUFFICIENT THAT HOSSEINIPOUR KNOWINGLY AND VOLUNTARILY CONSPIRED IN A SCHEME TO DEFRAUD.**

**A. There was no proof that Hosseinipour knew she was participating in a pyramid scheme.**

Hosseinipour incorporates Barnes’s arguments in reply to this issue by reference. She had no involvement with I2G’s corporate operations nor access to relevant information on whether the Emperor program was a pyramid scheme.

Moreover, the law did not provide sufficient guidance for an MLM distributor to determine if the Emperor program was a pyramid scheme. Congress has never criminalized the line between MLMs and pyramid schemes, and the FTC has not filled that void. Instead, it uses an *ad hoc* approach.

Hosseinipour did not devise the Emperor program or I2G. Hosseinipour stood in the same shoes as other purchasers of Emperor packages. The Government conceded that Hosseinipour joined with “good intentions.” (R.690,#9411.) This Court already recognized that Hosseinipour was a “low-level participant.” (R.769,#11628.) The Government has never offered a time when Hosseinipour learned that the Emperor program was a pyramid scheme. Instead, the Government focuses on irrelevant evidence that does not concern whether the Emperor program was a pyramid scheme.

It is fundamental that “[u]nwitting participation in a fraudulent scheme is not criminal under § 1341.” *United States v. Dobson*, 419 F.3d 231, 237-38 (3d Cir. 2005). “[I]t is reasonable to infer that individuals do not knowingly join pyramid schemes.” *Torres*, 838 F.3d at 643.

The court found that Hosseinipour was duped: “I do believe that in a way you were duped.” (R.675, #7890.) “I don’t think you knew that Songstagram was a scam, that Songstagram didn't work.” (*Id.* at #7888.) Rather, the court stated, “I do believe you knew you were getting a bunch of money and that there was something rotten about it.” (R.675, #7889.) But that is not a crime, nor was it the crime charged. *U.S. v. Piepgrass*, 425 F.2d 194, 199-200 (9th Cir. 1970) (“‘[I]nvolvement in an unsavory, high-pressure, fly-by-night scheme’ is not sufficient to establish ‘knowing participation in a scheme to defraud.’”); *U.S v. Kates*, 508 F.2d 308, 312 (3d Cir. 1975)(“‘knowledge of shadowy dealings’ is insufficient to infer that a defendant was part of the conspiracy.”); *U.S. v. Parker*, 839 F.2d 1473, 1478 (11th Cir. 1988)(reversing conviction where proof showed that defendants “directed their efforts toward the common goal of making money for themselves and their employer” and the “evidence clearly shows that the law was violated” but did not show “common agreement to violate the law”).

 The Government cites a single email that gave advance notice of a change to how leadership bonuses would be calculated in support of its claim that Hosseinipour had access to inside information. (GovBr.41.) However, that only shows she knew about one event a few days before other Emperors; it does not show knowledge that the Emperor program was doomed to fail because it depended on endless recruitment. The Government’s reference to Hosseinipour as “high-level” and “insider” is name-calling. Anzalone used the term insider to describe the fact that, on occasion, he would receive a “heads-up” when a change was going to be made. (R.504,#4480.) This was common in the MLM industry. (*Id.*) He did not suggest that Hosseinipour received information that others did not or that she was involved in decision-making. (*Id.*) The term “insider” is not probative of knowledge of a pyramid scheme.

 All of the evidence shows that Hosseinipour believed in the long-term potential of the Emperor program. (R.583-1; *see* R.504,#4422, 62; App’x’095.) Hosseinipour’s focus was on products and driving customers to the casino. (R.702,#10997; 10/27/2023CD, Barnes Ex.5&6; R.505,#4682-93, 4793; US Ex.144,20:32-21:27,11:34-11:51, 10:43-11:09; US Ex.151,24:42-26:18; US Ex.155, 20:35-22:30.)

The Government asked Anzalone, based on his knowledge at the time of trial, whether an Emperor could have recouped their purchase payment through the casino profits. But that is an attempt to prove fraud by hindsight. *Dailey v. Medlock*, 551 F. App’x 841, 847 (6th Cir. 2014)(fraud cannot be proven by hindsight); *DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990). Knowledge gained afterward cannot support the conviction. *See Windsor v. United States*, 384 F.2d 535, 537 (9th Cir. 1967). Instead, the testimony taken in the light most favorable to the Government shows that Hosseinipour was only aware of the casino profits she was receiving in the early months of I2G. This was the same knowledge that every other Emperor had. Nothing about it put any Emperor on notice that the program was a pyramid scheme.

 The Government claims that Anzalone testified that ninety percent of sales came from recruiting. The argument is misleading. Anzalone testified that ninety percent of their sales came from the sales of packages. The Government assumed that those packages were recruiting-based and asked the question that way. (R.504,#4413.) When defense counsel asked if Emperor packages were product packages, Anzalone agreed. (R.505,#4733.) Anzalone also referred to the non-Emperor packages as product packages. (R.505,#4732.) Anzalone also gave abundant testimony on his focus and personal use of the i2G products and emphasized the importance of getting customers to play at the casino and use the i2G products. (505 4585, 87,90,91

4600,4701) Anzalone’s wife was the main product trainer for the company for the entirety of i2G’s existence, and Hosseinipour participated. (ex Maike 205 Doc 505 4583-91,4600)

 (cite) Thus, Anzalone’s testimony is not probative of knowledge that the Emperor program was a pyramid scheme.

 The Government relies on further evidence irrelevant to this issue. It cites a statement that casino transactions had been increasing and that Emperors could earn money from them. The Government notes that Hosseinipour held an accurate check on stage. None of this evidence shows knowledge that the Emperor program was doomed to fail because of its dependency on endless recruitment.

Hosseinipour did not make false statements or know of any false statements. In any event, purported false statements by Hosseinipour do not support knowledge of a pyramid scheme. *U.S. v. Pearlstein*, 576 F.2d 531, 544 (3d Cir. 1978); *U.S. v. Chandler*, 388 F.3d 796, 809-10 (11th Cir. 2004)(“If the defendants have no knowledge of the overall conspiracy, their independent, even fraudulent, misrepresentations do not supply that link.”). False statements are made in all types of businesses.

Finally, the Government notes that Hosseinipour received critiques and made money from the sale of Emperor packages. But making money from a company and defending it against critiques do not support that the individual knew it was a pyramid scheme. *Ranieri v. Advocare Int’l, L.P.*, 336 F. Supp. 3d 701, 719 (N.D. Tex. 2018). Moreover, Hosseinipour forwarded those complaints to Koerner, an attorney and I2G’s compliance officer, who was handling them. Hosseinipour had no reason to disbelieve Maike or not trust I2G’s counsel. Hosseinipour asked and was assured that the Emperor program was legitimate. (R.511,#4863-64; R.504,#4344-45,4422; *see also* R.504,#4381, 4384-85, 4495; *U.S. v. Bailey*, 859 F.2d 1265, 1275 (7th Cir. 1988)(reversing for insufficient evidence where “Bailey did ask, and he was assured by two people with much greater expertise and experience than he that the deal was legitimate.”)). Speculation and comments regarding a transaction are insufficient to support a conviction. *Id.*

The testimony from Anzalone showed that Hosseinipour “wouldn’t lie,” would not “intentionally mislead anybody,” and was “trustworthy,” “honest,” and “loyal.”   (R.511,#4829.) The evidence was insufficient to show that Hosseinipour knew the Emperor program was a pyramid scheme.

**B. The evidence is insufficient to show that Hosseinipour knew of any misrepresentation.**

The Government claims that Hosseinipour misspoke in April 2014 that casino profits had increased each month. But that was consistent with what Maike told distributors. It also was true at that time. Maike updated distributors regarding the company, including casino performance. (R.671,#7581 (nineteen update calls from Maike.) Casino profits steadily increased when she made that statement. (GovBr.9.)

The government takes issue with snippets where distributors talk about the fact that the emperors received profits from the casino. The statement that “[w]e get paid when other people play” was a truthful description of the I2G business plan. Emperors earned BV if their customers gambled in the online casino and earned a share of any profits from the casino. Similarly, Jason Syn’s statement in the Hosseinipour video that Emperors could earn in the future—if the casino was profitable was true. His overall message was that the plan was to drive casino customers to the casino, which was also true. (exh152:41:51-44:45) Her focus was on having distributors drive customers to the casino. (Internal cite.)

The Government references “customer spots,” but it is unclear how it believes this is relevant. I2G had customer spots. (R.497,#4032, 46.) US Exhibit 101d indicates that 14,503 people had customer spots. As Jerry Reynolds explained, compensation in all binary compensation systems is based on the development of a distribution team by the distributor. (R.498,#4214.) Anzalone testified that a common MLM practice is for a distributor to place a successful salesperson higher up in the distributor’s downline. (R.504,#4352-53, 63; R.497,#4074.) This would enable the distributor and everyone below the successful salesperson in the downline to benefit from the salesperson’s success. Anzalone testified that he purchased customer spots in his downline to make room for a potential future successful salesperson. None of this is probative of Hosseinipour's knowledge about a misrepresentation to a purchaser of an Emperor package.

Hosseinipour repeated Maike and Rocky Wright's statements that celebrities supported Songstagram. However, the court did not “believe that [she] knew that Rocky Wright hadn’t enlisted stars like Lady Gaga and Justin Timberlake to support this revolutionary new product.” (R.675,#7890.)

Her statement in September 2014 about sales being up was also true. Hosseinipour reflected what Maike said: “Everything is growing with the company, and we’re moving in the right direction.” (10/27/23CD, Maike Ex.211.) Maike said that sales had increased because of fantasy sports. (Maike Exhibit 211, 10:24-45.) Anzalone testified, “We finally had a trajectory of moving back up.” (R.505, #4590.) Glenn Logan also testified that volume was going up after introducing fantasy sports. (R.701,#10918.) Hosseinipour did not know any statements were false.