

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NEORA LLC, et al.,

Defendants.

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Civil Action No. 3:20-cv-01979-M

MEMORANDUM OPINION AND ORDER

Before the Court is Neora LLC’s Motion for Fees and Expenses Under the Equal Access to Justice Act. ECF No. 355. For the reasons stated below, the Motion is **DENIED**.

I. BACKGROUND¹

In 2019, Plaintiff Federal Trade Commission (“FTC”) filed a Complaint against Neora, LLC (“Neora”) and Jeffrey Olson, seeking a permanent injunction based on five alleged violations of the FTC Act in connection with Neora’s health supplement multi-level marketing business.² Compl. (ECF No. 1). ¶¶ 1, 4. In October 2022, the Court held a multiday non-jury trial, during which the Court received evidence and heard sworn testimony. On September 28, 2023, the Court entered its Findings of Fact and Conclusions of Law, denying the FTC’s requests for relief, and entered Final Judgment on behalf of Neora and Olson. ECF Nos. 347 (“Mem.

¹ The Court assumes the parties’ familiarity0 T-1 -2.8 (s)250(r)3d[51 T-1lia 5.4 (f)-5.4 (a)-2.8 W8TD(u)-77.1 (e (e)9.3 (C)3. 88t)-2 (x1)

Op.), 348. Neora now seeks its attorneys' and experts' fees and expenses pursuant to the Equal Access to Justice Act.

II. LEGAL STANDARD

The Equal Access to Justice Act ("EAJA") provides that federal courts shall award fees to the prevailing private party "unless the court finds that the position of the United States is substantially justified or that special circumstances make an award unjust."²⁸ 42 U.S.C. §412(d)(1)(A). To avoid the imposition of fees, the government bears the burden of demonstrating that its position was "justified to a degree that could satisfy a reasonable person."

Nkengfac v. Garland, 64 F.4th 251, 253 (5th Cir. 2023) (quoting **Pierce v. Underwood**, 487 U.S. 552, 565 (1988)). The Court evaluates the government's position under the totality of circumstances: "provided the government's position as a whole was reasonable, a prevailing

how and control Neora's rendering of any potential fee award is not

⁴ The parties further

dispute the reasonableness of Neora's requested fee.

Considering the totality of the circumstances, the Court concludes that the FTC's position

is substantially justified, and does not reach the parties' remaining argument. In support of it

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173318 (1975), no authority binding on this Court has defined an “illegal pyramid scheme” or provided clear guidance to separate a legal pyramid scheme from a legitimate multi-level marketing program.” **See Torres v. S.G.E. Mgmt. LLC**, 838 F.3d 629, 639 (5th Cir. 2016) (en banc). Although the relevant weight is placed on other persuasive authority—such as the FTC guidance document and other circuit case law and evidence informing the **Koscot** inquiry—left to the discretion of the district court.” **See id.** at 653-54 (Jones, J., dissenting).

In this case, the FTC ruled that a pyramid scheme claim around the second element of the **Koscot** test, which asks whether participants in the alleged pyramid scheme receive the right to receive in return for recruiting other participants in the program rewards which are unrelated to a sale of the product or service.” 1975 WL 173318 at *60 (emphasis added). Because the test at the right that participants receive through the scheme, the FTC argued that court applying **Koscot** should focus on the particular defendant’s compensation plan, before or even in lieu of considering operational data.” ECF No. 331 at 1142 & n.9 (citing case). As a result, the FTC’s evidence and argument in support of its pyramid scheme claim, including the opinion and appointment of its expert Dr. Stacie Boley emphasized the term of Neora’s Compensation Plan and the right of Brand Partner to receive the reward. **See, e.g.** [redacted], Mem. Op. at 31 n.117 (noting that in making her appointment about the purchasing motivation of Brand Partner, Dr. Boley relied on her interpretation of the reward rule and incentive award in the Compensation Plan); ECF No. 364 at 1244 (summarizing evidence). Relevant to the FTC’s content of other evidence—such as Neora’s revenue, a letter to Preferred Customer, and

potentially for certain collateral purposes are not compensated in the **Koscott** and are
related to Neora's Compensation Plan. ⁵

Here, admittedly the Court may find reason to look beyond the plain terms of the
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So too for the FTC's request for an injunction based on its income, product and mean
and instrumental life claim. To be entitled to an injunction under §13(b) of the FTC Act the
FTC needed to establish that Neora was violating, or . . . about to violate, any provision of law
enforced by the FTC. 15 U.S.C. §13(b). The record demonstrates that the FTC had a
reasonable basis in both law and fact to seek an injunction based on Neora's violation of the
FTC Act. Regarding the income and product claim, the FTC presented evidence of a
statement attributable to Neora that it acknowledged violated § and/or 12 of the FTC Act,
which, under different circumstances, may have been sufficient to justify an injunction to prevent
Defendant from making similar statements in the future. Specifically, the FTC presented

