EXHIBIT A

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

FEDERAL TRADE COMMISSION, Plaintiff, v. NEORA, LLC, SIGNUM BIOSCIENCES, SIGNUM NUTRALOGIX, and JEFFREY OLSON, Defendants.	§ § § § § § § § § § § §	Civil Action No. 3:20-cv-01979-M

BRIEF OF AMICUS CURIAE
DIRECT SELLING ASSOCIATION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, Amicus Curiae Direct Selling Association ("DSA") makes the following disclosures. DSA is a nonprofit, tax-exempt organization incorporated in the State of Delaware and is a 501(c)(6) business association. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock. No publicly held corporation or its affiliate that is not a party to this case or appearing as amicus curiae has a substantial financial interest in the outcome of this litigation by reason of insurance, a franchise agreement, or an indemnity agreement. Defendant Neora, LLC is a member of the Direct Selling Association. The Direct Selling Association is in no way assisting any party with the costs of this litigation.

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

DSA is a 113-year-old national trade association headquartered in Washington, D.C. that represents companies that sell their products directly to consumers through an independent, entrepreneurial salesforce. Direct sellers are perhaps best known to the public as person-to-person, door-to-door, or home party plan sellers. Through the efforts of direct salespersons that provide personal demonstration, home delivery, and a variety of other sales-related services, direct-selling companies can offer quality products and services to consumers without substantial advertising or other barriers to entry found in other distribution systems, like brick-and-mortar stores. DSA, its over 100 member companies, and the millions of independent contractor salespeople for those companies support the prosecution of pyramid schemes which masquerade as legitimate companies, thus confusing the marketplace for the public, salespeople, customers, and negatively impacting the credibility of legitimate companies. DSA also supports a consistent, accurate, effective, and long-established definition of a pyramid scheme that allows for direct selling companies to operate within the current legal framework while providing law enforcement with the tools necessary to prevent fraudulent activities.

THE COURT SHOULD NOT DEPART FROM LONGSTANDING LAW DEFINING A PYRAMID SCHEME

On May 16, 2023, Plaintiff Federal Trade Commission's filed a Notice of Supplemental Authority (ECF No. 339) to make this Court aware of the district court's order in the case *Federal Trade Commission v. James D. Noland, Jr., et al.*, No. CV-20-00047-PHX-DWL, 2023 WL 3372517 (D. Ariz. May 11, 2023). Plaintiff argues that "notably, the *Noland* pyramid analysis

[1] DSA certifies that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; no person other than DSA and its members and DSA's counsel contributed money intended to fund the brief's preparation or submission.

makes no mention of the purported *primarily* test put forward by Defendants in the instant case." *See* ECF No. 339 at 2. This is not correct.

The court in *Noland* states that a business may be considered a pyramid scheme if "the rewards the participants received in return were *largely* for recruitment, not for product sales." *James D. Noland, Jr., et al.*, 2023 WL 3372517 at *42. The court appropriately used the test from *Federal Trade Commission v. BurnLounge* 753 F. 3d 878 (9th Cir. 2014), the most recent decision by a federal court finding a company to be a pyramid scheme. The *BurnLounge* decision relied on decades of precedent in determining whether the party in question was a pyramid scheme. *BurnLounge, Inc.*, 753 F.3d 878 (collecting cases discussing test for determining whether a company is a pyramid scheme).

Part of the test used by courts requires an analysis of whether the participants received rewards in return "*primarily* for recruitment." *Id*. The *Noland* court cites to *BurnLounge* which utilized the language "*largely* based on recruitment." *James D. Noland, Jr., et al.*, 2023 WL 3372517, at *44. The word *largely* is only used once in the decision, while the test "*primarily* based on recruitment" is used eleven times. *Id* at 880, 890, 892, 893, 895, 897, 900, and 901.

The Court should rely on past precedent, like the court in *Noland* did, and use the *primarily* test put forward by Defendants. A more thorough explanation of this precedent is included in amici's previously filed brief. *See* ECF No. 260 (Brief of Amicus Curiae, The Direct Selling Association).

CONCLUSION

For all the foregoing reasons, Amicus Curiae Direct Selling Association respectfully requests that this Court issue a ruling consistent with longstanding law, precedent and business practices distinguishing between legitimate direct selling companies and unlawful pyramid

schemes. Any ruling inconsistent with such precedent would have a profound impact on the state of the law and negatively impact operations of a sizeable portion of the United States economy.

Dated: July 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Texas using the CM/ECF system and served on all counsel herein on July 20, 2023.

/s/ Anne M. Johnson
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