

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
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Plaintiff, )  
 ) Civil Action No. 10-1362 (EGS)  
v. )  
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DANIEL CHAPTER ONE, )  
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 )  
and )  
 )  
JAMES FEIJO, )  
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 )  
Defendants. )  
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**MEMORANDUM OPINION**

Plaintiff United States brings this action against Daniel Chapter One and James Feijo ("Defendants") under Sections 5(1), 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(1), 53(b), and 56(a), alleging that Defendants have violated a final cease and desist order of the Federal Trade Commission ("FTC" or the "Commission"). Pending before the Court is the United States' Motion for Summary Judgment on Liability. The United States requests that the Court find that Defendants have violated the FTC's order and accordingly are liable for civil penalties, injunctive relief, and consumer redress. Upon consideration of the motion, the opposition and reply thereto, the relevant case law, and the entire record in

this case, the Court will **GRANT** the United States' Motion for Summary Judgment on Liability.

## **I. BACKGROUND<sup>1</sup>**

Defendant Daniel Chapter One is incorporated under the laws of the State of Washington, with its principal place of business in Portsmouth, Rhode Island. See Pl.'s SMF ¶ 1. Defendant James Feijo is the sole member and overseer of Daniel Chapter One. Pl.'s SMF ¶ 2. Defendants advertise and sell dietary supplements, including BioShark, 7 Herb Formula, GDU, and BioMixx (the "Products"), which Defendants claim can treat, cure, or prevent cancer. Pl.'s SMF ¶¶ 3-4.

### **A. Procedural Background**

On September 18, 2008, the FTC initiated an administrative proceeding alleging that Defendants' marketing of the Products constituted deceptive acts and practices in violation of Sections 5(a) and 12 of the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. §§ 45(a) and 52. Pl.'s SMF ¶¶ 4-5. Following a trial, an administrative law judge concluded that Defendants had violated the FTC Act by making unsubstantiated claims that the Products prevented, treated, or cured tumors or cancer. Pl.'s SMF ¶ 6. Defendants appealed this decision to

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<sup>1</sup> The facts are substantially derived from Plaintiff's Statement of Material Facts Not in Genuine Dispute (hereinafter, "Pl.'s SMF"); these facts are undisputed, unless otherwise indicated.

the Commission, and on December 24, 2009, the Commission upheld the decision and issued a Final Order to cease and desist certain practices. Pl.'s SMF ¶¶ 7-8.

On January 25, 2010, the FTC issued a Modified Final Order, copies of which were served on Defendants and their attorneys on January 29, January 30, and February 1, 2010. Pl.'s SMF ¶¶ 9-10; see also Pl.'s Mem. in Supp. of Mot. for Summ. J. on Liability (hereinafter, "Pl.'s MSJ"), Exs. D and V. Part II of the Modified Final Order prohibits Defendants (referred to in the Modified Final Order as "Respondents") from making "any representation, in any manner, expressly or by implication, including through the use of product or program names or endorsements"<sup>2</sup> that any product marketed by Defendants:

[P]revents, treats, or cures or assists in the prevention, treatment, or cure of any type of tumor or cancer, including but not limited to representations that:

1. BioShark inhibits tumor growth;
2. BioShark is effective in the treatment of cancer;
3. 7 Herb Formula is effective in the treatment or cure of cancer;
4. 7 Herb Formula inhibits tumor formation;
5. GDU eliminates tumors;
6. GDU is effective in the treatment of cancer;
7. BioMixx is effective in the treatment of cancer; or
8. BioMixx heals the destructive effects of radiation

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<sup>2</sup> The Modified Final Order states that the term "endorsement" shall be defined as in 16 C.F.R. § 255.0(b), which states that "an endorsement means any advertising message . . . that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser." 16 C.F.R. § 255.0(b).

or chemotherapy;  
unless the representation is true, non-misleading, and, at  
the time it is made, Respondents possess and rely upon  
competent and reliable scientific evidence that  
substantiates the representation.

Pl.'s SMF ¶ 11; see also Pl.'s MSJ, Ex. D, at 2. In addition,  
Part V.B of the Modified Final Order requires that:

Within forty-five (45) days after the final and effective  
date of this order, Respondents shall send by first class  
mail, postage prepaid, an exact copy of the notice . . . to  
all persons [who purchased the Products between January 1,  
2005 and the date of the order.]

Pl.'s SMF ¶ 12; see also Pl.'s MSJ, Ex. D, at 3. The notice,  
which is attached to the Modified Final Order, informs consumers  
of the FTC's conclusion that Defendants' advertising claims were  
deceptive because they were not substantiated by competent and  
reliable scientific evidence. See Pl.'s MSJ, Ex. D, at 7.

Defendants filed an appeal with the United States Court of  
Appeals for the District of Columbia Circuit, contesting the  
legality and constitutionality of the Modified Final Order. See  
Pl.'s SMF ¶ 13; Petition for Review, *Daniel Chapter One v. FTC*,  
No. 10-1064 (D.C. Cir. Mar. 17, 2010). Defendants also applied  
to the FTC for a stay of the Modified Final Order pending the  
outcome of their appeal, but their request was denied. Pl.'s  
SMF ¶ 14. Defendants then filed with the D.C. Circuit an  
emergency motion for a stay of the Modified Final Order. This  
motion was denied on April 1, 2010. See Per Curiam Order  
Denying Emergency Motion to Stay Case, *Daniel Chapter One*, No.

10-1064 (D.C. Cir. Apr. 1, 2010); *see also* Pl.'s MSJ, Ex. F. Because Defendants failed to obtain a stay, the Modified Final Order became effective on April 2, 2010. *See* Pl.'s MSJ at 4; *see also* 15 U.S.C. § 45(g)(2) ("An order of the Commission to cease and desist shall become final . . . upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by -- (A) the Commission; (B) an appropriate court of appeals of the United States . . . ; or (C) the Supreme Court, if an applicable petition for certiorari is pending.").

On August 13, 2010, the United States filed its Complaint in this Court seeking civil penalties and other injunctive relief pursuant to §§ 5(l), 13(b), and 16(a) of the FTC Act. Simultaneous therewith, the United States filed a Motion for a Preliminary Injunction seeking an order enjoining Defendants from violating the Modified Final Order. Pl.'s SMF ¶ 16. The Court denied the United States' Motion for a Preliminary Injunction without prejudice on September 14, 2010, finding that the Court lacked jurisdiction to enforce the Modified Final Order while Defendants' appeal challenging the legality of the Modified Final Order was pending before the D.C. Circuit. *See*

Order, Sept. 14, 2010, Docket No. 11.<sup>3</sup> The FTC then filed an emergency motion for an order of enforcement *pendente lite* with the D.C. Circuit. The Circuit granted the United States' motion on November 22, 2010. See Per Curiam Order, *Daniel Chapter One*, No. 10-1064 (D.C. Cir. Nov. 22, 2010) ("Daniel Chapter One is hereby enjoined to obey forthwith the modified final order of the Federal Trade Commission issued January 25, 2010, in Docket No. 9329, *In the Matter of Daniel Chapter One and James Feijo.*"); see also Pl.'s SMF ¶ 17. Defendants then filed a motion with the D.C. Circuit seeking a stay of the enforcement of Part V.B of the Modified Final Order. The D.C. Circuit rejected this request on December 7, 2010. See Per Curiam Order, *Daniel Chapter One*, No. 10-1064 (D.C. Cir. Dec. 7, 2010); Pl.'s SMF ¶ 18.

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<sup>3</sup> The Court also denied Defendants' Motion to Dismiss, concluding that the United States' penalty suit was properly before the Court. See 15 U.S.C. § 45(l) (permitting the Attorney General of the United States to file an action to recover civil penalties against "[a]ny person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect"); see also *United States v. Standard Educ. Soc'y*, 55 F. Supp. 189, 193 (N.D. Ill. 1943) ("The Circuit Court of Appeals is vested with exclusive jurisdiction to enforce the Commission's cease and desist orders under Section 5(d), but that court has no jurisdiction over penalty suits. . . . Continuance of the enforcement proceedings in the Circuit Court of Appeals appears to be no bar to the commencement of a penalty suit, if, prior to the commencement of the suit, the Commission's order . . . has become final . . . .").

On December 10, 2010, the D.C. Circuit denied Defendants' petition for review of the Modified Final Order, concluding that "the Commission properly exercised jurisdiction over [Daniel Chapter One]," and that "[Daniel Chapter One]'s arguments based upon the Constitution and the Religious Freedom Restoration Act are wholly without merit." *Daniel Chapter One v. FTC*, 405 F. App'x 505, 505-06 (D.C. Cir. 2010). Defendants then filed a petition for a writ of certiorari, which was denied on May 23, 2011. See *Daniel Chapter One v. FTC*, No. 10-1292, 131 S. Ct. 2917 (2011).

Following issuance of the D.C. Circuit's mandate, the United States renewed its Motion for a Preliminary Injunction in this Court. In addition, Defendants filed a Motion to Stay the proceedings pending completion of a federal criminal investigation, and disposition of any resulting indictments and prosecutions, of James Feijo and Daniel Chapter One in the State of Rhode Island. See Defs.' Mot. to Stay, Docket No. 22. The Court denied Defendants' Motion to Stay without prejudice during a hearing held on May 9, 2011. On June 22, 2011, the Court granted the United States' Motion for Preliminary Injunction and enjoined Defendants from violating the FTC's Modified Final Order. See Order and Memorandum Opinion, Docket Nos. 31 and 32.

On July 29, 2011, the United States filed a Motion for an Order to Show Cause why Daniel Chapter One, James Feijo, and

Patricia Feijo<sup>4</sup> should not be held in contempt of the Court's June 22, 2011 Order. The Court subsequently ordered Defendants to show cause why they should not be held in contempt. The Court held a contempt hearing on May 9, 2012. During that hearing, the United States presented evidence and testimony regarding Defendants' purported violations of the Modified Final Order. After receiving evidence and hearing argument, the Court found Daniel Chapter One, James Feijo, and Patricia Feijo in civil contempt. Specifically, the Court concluded that James Feijo, Patricia Feijo, and Daniel Chapter One (the "Contemnors") had continued to violate the Modified Final Order by

(1) continuing to make representations on their radio show that

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<sup>4</sup> Although Patricia Feijo is not a defendant in this action, the United States argued that she was bound by the preliminary injunction pursuant to Federal Rule of Civil Procedure 65(d)(2), which provides that a preliminary injunction binds:

- (A) the parties;
- (B) the parties' officers, agents, servants, employees, and attorneys; and
- (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B) as long as those individuals "receive actual notice of it by personal service or otherwise[.]"

Fed. R. Civ. P. 65(d)(2). The United States argued that Patricia Feijo received actual notice of the Order and that she was "in active concert or participation" with James Feijo and Daniel Chapter One. See Pl.'s Mem. of Law in Supp. of Mot. for Order to Show Cause at 11. Defendants also do not dispute that Patricia Feijo is an agent, representative, or employee of Daniel Chapter One. See Pl.'s SMF ¶ 50; Defs.' Statement of Genuine Issues ¶ 50, Docket No. 42-2.



their products treat or cure cancer without competent and reliable scientific evidence to substantiate those representations, (2) encouraging potential customers to visit websites containing Daniel Chapter One publications that contain prohibited information and endorsements of the prohibited supplements, (3) not removing certain representations from the websites within their control, which Contemnors conceded included [www.danielchapterone.com](http://www.danielchapterone.com), [www.dclministry.com](http://www.dclministry.com), and [www.dclfreedom.com](http://www.dclfreedom.com), and (4) failing to mail the required notice to all consumers who purchased the Products between January 1, 2005, and April 2, 2010.<sup>5</sup> The Court allowed the Contemnors two weeks to attempt to purge the contempt and scheduled another hearing in order to determine whether or not the contempt had been purged.

On May 22, 2012, James Feijo submitted a certification of compliance with the Court's Order. In that certification, Mr. Feijo stated that all notices had been sent out in compliance with the Court's order; that prohibited representations had been removed from [www.dclfreedom.com](http://www.dclfreedom.com), [www.danielchapterone.com](http://www.danielchapterone.com), the dcl online store, and [www.dclministry.com](http://www.dclministry.com); that Contemnors had ceased answering health questions on their radio show or

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<sup>5</sup> Because neither party has requested an official transcript of the May 9, 2012 contempt hearing, the Court relies on its own notes and recollections, as well as draft versions of the hearing transcript.

inviting other callers to answer questions; and that Contemnors were not mentioning other people's websites containing Daniel Chapter One information. See James Feijo's Certification of Compliance at 2-4, Docket No. 51. At a subsequent hearing on May 23, 2012, the United States presented additional evidence that Contemnors had not purged the contempt, but the Court gave Contemnors until May 24, 2012 at 3:30 p.m. to make a showing to the Court sufficient to demonstrate their compliance with the Court's Order. On May 24, 2012, Defendants filed a Supplemental Certification of Compliance with the Court's Order, and the United States filed a Notice of Failure to Purge. See Defs.' Supplemental Certification of Compliance with Order, Docket No. 52; Pl.'s Notice of Failure to Purge, Docket No. 53. The Court determined that Contemnors had taken sufficient actions to purge themselves of contempt, and therefore the Court vacated its Contempt Order. Minute Order, May 24, 2012.

On September 30, 2011, the United States filed a Motion for Summary Judgment on Liability. That motion is ripe for determination by the Court.

#### **B. Violations of the Modified Final Order**

The United States alleges that Defendants have made prohibited representations on their radio show and on websites within their control without possessing competent and reliable scientific evidence.

## **1. Websites**

According to the United States, from April 2, 2010 through June 6, 2011, Defendants controlled the website [www.dclfreedom.com/guilty-of-healing-cancer](http://www.dclfreedom.com/guilty-of-healing-cancer). Pl.'s SMF ¶ 21. That website contained textual content asserting that Daniel Chapter One had healed people of cancer, specifically, the web page was titled "Guilty of Healing Cancer" and it stated, "Daniel Chapter One World Ministry for Jesus Christ found guilty of healing people of cancer!" Pl.'s SMF ¶¶ 22-24; see also Pl.'s MSJ, Ex. K. The United States also alleges that Defendants and their associates have established online forums and groups where treatment advice is provided. For example, the United States contends -- and Defendants dispute -- that Daniel Chapter One controlled and had administrative privileges over the content on the online forum <http://dclfellowship.com>. Pl.'s SMF ¶ 25. That forum contains a post requesting information about treating throat cancer. In response, a user named David states: "[t]o help in healing cancer, we believe the Lord has provided the following products," and then David provided dosing information for 7 Herb Formula, Bio Shark, and GDU. The post by David is dated July 16, 2010, and it appeared on the website <http://dclfellowship.com/forum/viewtopic.php?f=1&t=291> from July 16, 2010 through June 6, 2011. Pl.'s SMF ¶¶ 26-27; see also Pl.'s MSJ, Ex. L. Additionally, the United States alleges --

and Defendants dispute -- that Defendants controlled and had administrative privileges to remove the content on the website <http://healthfellowship.org>. Pl.'s SMF ¶ 28. That website contains a forum post requesting advice about treating pancreatic cancer, along with a response from the user David on September 21, 2010, stating, "[f]or cancer, we believe the Lord has provided the following products to help with healing," and listing dosing information for 7 Herb Formula, Bio Shark, and GDU. Pl.'s SMF ¶¶ 29-30; see also Pl.'s MSJ, Ex. M.

Finally, the United States asserts -- and Defendants dispute -- that Defendants controlled the content published on <http://health.groups.yahoo.com/group/danielchapterone/files/> (the "Yahoo Group"). Pl.'s SMF ¶ 31. As discussed in more detail *infra*, Section I.B.2., the Yahoo Group has also been promoted on Defendants' radio show. The Yahoo Group contains several Daniel Chapter One publications that can be downloaded, including "The Most Simple Guide to the Most Difficult Diseases" (the "Guidebook") and a publication titled "Cancer Newsletter, Millennium Edition, 2002" (the "Cancer Newsletter"). See Pl.'s MSJ, Ex. N. The Guidebook was available on the Daniel Chapter One Yahoo Group from January 2, 2011 through June 6, 2011. Pl.'s SMF ¶ 33. The "Introduction" to the Guidebook states that it contains "protocols we used successfully," and that "[m]any have testified that these basic protocols are effective, when

adhered to as part of an overall health plan." Pl.'s SMF ¶ 34; see also Pl.'s MSJ, Ex. O. A page within the Guidebook titled "CANCER" lists 7 Herb Formula, Bio Shark, BioMixx, and GDU Caps as "the most essential products" for treating cancer. Pl.'s SMF ¶ 35; see also Pl.'s MSJ, Ex. P. The Cancer Newsletter was also available on the Daniel Chapter One Yahoo Group from January 10, 2011 through June 6, 2011. This publication contains information about using Defendants' products to treat and cure cancer, as well as stories about individuals who have allegedly used Daniel Chapter One products successfully to treat cancer. For example, the Cancer Newsletter states, "Daniel Chapter One GDU Caps contain[] proteolytic enzymes that metabolize protein and can aid the body in breaking down a tumor[,]" "7 Herb Formula helps battle cancer[,]" "[BioMixx] is used to assist the body in fighting cancer and in healing the destructive effects of radiation and chemotherapy treatments." Pl.'s SMF ¶¶ 36-37; see also Pl.'s MSJ, Ex. Q.

## **2. Radio Show**

In addition, Defendants provide information on their radio show about using their products to treat or cure cancer, and they solicit endorsements from others by encouraging listeners to call the show and answer health questions. The United States asserts that Defendants controlled the audio content published on <http://feeds.thepodzone.com/dclhw> from April 2, 2010 through

June 6, 2011. Pl.'s SMF ¶ 38. This website contains recordings of Defendants' past radio shows. The United States has also preserved recordings of these shows on CD and filed them with the Court. For example, in a show broadcast on May 27, 2010, Defendants had the following conversation with a caller named Phil:

PHIL: I've been diagnosed with Stage 4 lung cancer with lymph node involvement and I had a brain tumor, which they did gamma knife surgery on and that resolved that.

JAMES FEIJO: Yeah.

PHIL: But it's gotten into the central lymph nodes. I have a reoccurring tumor in the left lung and two smaller tumors in the right lung. What would be -- what would be -- you know, what would work for that? Is there anything that you have that would [inaudible]?

JAMES FEIJO: Well, did they tell you they've never had a successful -- they've never had a person survive lung cancer with their treatments?

PHIL: Pretty much. Pretty much that's what the doctor said.

JAMES FEIJO: Yeah.

PATRICIA FEIJO: Yeah.

PHIL: He suggested chemo starting next week.

JAMES FEIJO: Yeah, that's a waste of time.

PATRICIA FEIJO: Well, yeah, the most recent studies that we have looked at, they actually had come to the conclusion that the chemotherapy and radiation for lung cancer doesn't extend life, it does the opposite.

JAMES FEIJO: We really need to have somebody call in right now. This is --

PATRICIA FEIJO: Yeah, we can't tell you, Phil --

JAMES FEIJO: -- very important.

PATRICIA FEIJO: -- what we would do only because we're under a cease and desist order right now from the FTC. It's quite an evil order. But it's prohibiting us from free speech right now.

Pl.'s SMF ¶ 41; see also Pl.'s MSJ, Ex. R, at 14:35-15:42.

James Feijo went on to state: "You know, Phil, there's so many people, I give you this statement here -- many, many people, we

have, in just two months we gathered about eight inches high of affidavits of people with all types of cancers and illnesses that were supposed to be dead, who were told that they had nothing that could be done for them. They're still alive, they're free of their cancers. . . . We do have someone calling in with an answer for you." Pl.'s MSJ, Ex. R, at 15:55-16:30. Later, with the caller Phil still on the line, Defendants accepted a call from a caller named Bob, who discussed what Defendants' products had done for his family, and then stated:

BOB: Since you're in advanced stage -- that's what it sounds like.

PHIL: Stage 4.

BOB: Yep.

JAMES FEIJO: Yeah.

BOB: Okay, yeah, that's advanced. All right. Right now first thing, 7 Herb Formula. You want to do a half to three-quarters of a bottle for the first three to four days.

PHIL: One-half to three-quarters --

JAMES FEIJO: Yeah, don't worry about writing it down, Phil. The producer's going to be writing it down and give it to you later. So, we'll just let Bob share it with you, okay?

PHIL: Oh, okay. Okay, all right.

JAMES FEIJO: Yeah.

BOB: Okay. And then after this, Phil, do about four ounces four times a day for about two weeks.

PHIL: Uh-huh.

BOB: After that four ounces a day, until -- until you're cured.

PHIL: Okay.

BOB: The second item would be GDU. That's for inflammation and pain you might be having. I'd do three to six capsules three times a day. But you have to do them a half-hour before meals.

PHIL: Mm-hmm, okay.

BOB: One other thing, since, like I said, it's in your lungs and your lymph nodes and you have tumors, I'd get on the BioShark. I'd do at least four -- four capsules three

times a day with meals. And one other thing, it's very important, what they told my cousin, Bob, also, was to do - get the BioMixx and do about four to five scoops, like I say, in soy milk, two times a day.

JAMES FEIJO: Are you losing weight there, Phil, at all or--

PHIL: I've probably lost seven or eight, maybe ten pounds.

JAMES FEIJO: And how about the energy level here?

PHIL: It's decreased.

JAMES FEIJO: Okay. If there's no BioMixx because of the government, 1st Kings would be great and you can do four or five scoops of that, two to three times a day in place of meals, you know.

Pl.'s SMF ¶ 41; see also Pl.'s MSJ, Ex. R, at 19:25-21:20.

Later in the broadcast, James Feijo stated:

JAMES FEIJO: Phil, what Bob's saying is what we see quite often. People will start doing the guidelines that Bob just mentioned. They'll be doing great, they'll be doing terrific. We've seen it I can't tell you how many times, Phil. Well, we don't know if God's going to use this to heal you or not. We don't know God's will, you know?

PHIL: Exactly.

JAMES FEIJO: We know -- we know that as soon as you -- see, let me share one thing. The suggestions Bob just gave you, Phil, everybody listening, are suggestions to boost God's order that he has given us, our immune system, to fight the disease state of any situation. Okay?

Pl.'s SMF ¶ 41; see also Pl.'s MSJ, Ex. R, at 22:54-23:34.

Subsequently, the radio show took another call, and a caller

named Doug provided information about 7 Herb Formula and

BioShark. Pl.'s MSJ, Ex. R, at 28:20-29:17. In response to

Doug's comments about BioShark, James Feijo stated:

JAMES FEIJO: I'll share an interesting thing with you all concerning the issue of the BioShark. We had a gentleman come in. He had Gulf War -- not Gulf War, he was Agent Orange exposed. They gave him -- they put him on Hospice. Four years ago, he was supposed to die and his tumor starting shrinking using the advice that you've been given here or are being given, too. And then he came in and he



said, oh, I went back and they said -- they showed a little enlargement. So, I asked him what was going on. He said, well, I -- I was doing so well, I cut back on the BioShark. So, it's interesting that he had that kind of response. But it is about blood supply, you see?

PHIL: Right.

JAMES FEIJO: And, so -- my wife's worried that -- you know, this is --

PATRICIA FEIJO: Well, I want to --

JAMES FEIJO: See, this is the problem with the Nazis that we're -- yes, Trish!

DOUG: Well, that's what I would have told him. I mean, I didn't know about the Gulf War guy, but shutting the blood supply off to the tumor is really a very important thing.

Pl.'s SMF ¶ 41; see also Pl.'s MSJ, Ex. R, at 29:18-30:26. At the end of this conversation, James Feijo instructed Phil to join the online fellowship, and Patricia Feijo told him that "if you want to just order product, you can do that at the 800 number or online." Pl.'s SMF ¶ 41; see also Pl.'s MSJ, Ex. R, at 40:04-40:34. James Feijo's wife, Patricia Feijo, then provided the full phone number for individuals to call and stated, "you can get 7 Herb Formula. You can get GDU or BioShark for yourself or a loved one." Pl.'s MSJ, Ex. R, at 41:26-41:38.

During another radio show broadcast on May 28, 2010, James and Patricia Feijo had the following discussion with a caller:

PATRICIA FEIJO: How can we help you?

MARCIA: Well, my mom was just diagnosed with cancer.

PATRICIA FEIJO: Yeah.

JAMES FEIJO: Yeah. What type, honey?

MARCIA: Huh?

JAMES FEIJO: What type of cancer?

MARCIA: Pancreatic.

JAMES FEIJO: Oh, my. And what did they say? What did the doctors tell her?

MARCIA: Well, they --

JAMES FEIJO: Pretty advanced or what did they say?  
 MARCIA: Well, right now, I'm supposed to find out Tuesday,  
 JAMES FEIJO: Mm-hmm.  
 MARCIA: -- of what stage it's at --  
 JAMES FEIJO: Mm-hmm.  
 MARCIA: -- and if it's operable or, you know, what kind of tumor it is and, if she can, to get chemo or radiation.  
 JAMES FEIJO: Yeah. Well, let me tell you right off the bat, chemo's a lie, radiation's a lie. They've never cured anybody of pancreatic cancer with their chemo and radiation.  
 PATRICIA FEIJO: No, there was a Dr. Kelley. I have his little book in my office. And he healed his own pancreatic cancer. Now, Jim --  
 JAMES FEIJO: So, there are options out there.  
 PATRICIA FEIJO: He healed himself naturally. And he begins his little book with, it was a blessing in disguise that I didn't have health insurance and couldn't go for chemo or radiation.  
 MARCIA: Mm-hmm.  
 PATRICIA FEIJO: But I just wanted to explain to you, Marcia, that we're under a cease and desist order. So, Jim and Trish at Daniel Chapter One and the other people here,  
 MARCIA: Mm-hmm.  
 PATRICIA FEIJO: -- can't tell you what Dr. Kelly did or what we have done over the years.  
 MARCIA: Uh-huh.  
 PATRICIA FEIJO: But, hopefully, someone will call in and -- because they've heard you now and will call in and help you out with the kind of things naturally that your mom could do. And the other thing is you can join our fellowship and get -- or your mom can directly and get fellowship that way, get ministry rather.  
 MARCIA: Mm-hmm.  
 PATRICIA FEIJO: Some health ministry.  
 JAMES FEIJO: So, we're going to ask someone to give us a call right now. The other thing is, Marcia, you can go to DanielChapterOneFreedom.com.  
 MARCIA: Mm-hmm.  
 JAMES FEIJO: And you can join the DC1 fellowship and people from all over the country are helping each other, okay?

Pl.'s SMF ¶ 44; see also Pl.'s MSJ, Ex. S, at 9:15-11:20. With Marcia still on the line, James and Patricia Feijo accepted a call from a caller named Troy:

JAMES FEIJO: Can you share with Marcia what she can try to start for her dad?

PATRICIA FEIJO: Mom.

MARCIA: Mom.

JAMES FEIJO: Mom, rather. And, Marcia, by the way, the producer will be writing it down, okay?

MARCIA: Okay, thank you.

TROY: Okay, Marcia, here it goes, I'll give you two.

MARCIA: Mm-hmm.

TROY: Two of their prize products are BioShark and the ever-present 7-Herb Formula.

MARCIA: 7-Herb Formula and BioShark, okay.

TROY: That's two of them right there.

MARCIA: Okay. And I believe my husband went in to Daniel Chapter One this morning, as a matter of fact.

JAMES FEIJO: Oh, yeah?

PATRICIA FEIJO: Oh.

MARCIA: And --

JAMES FEIJO: Oh, yes.

MARCIA: Mm-hmm. And he went and bought some.

JAMES FEIJO: Oh, so you got -- you got the 7-Herb?

MARCIA: Yep.

JAMES FEIJO: Oh, okay, all right. And then did he get anything else, too? Did he get the BioShark that Troy mentioned?

MARCIA: I believe -- yes, I believe he got the BioShark and he got some kind of a -- it used to be the AM and PM drink.

JAMES FEIJO: Yes, it's 1st Kings now or ENDO-24.

MARCIA: Mm-hmm.

PATRICIA FEIJO: Yeah. Is your mom having a hard time eating, Marcia?

MARCIA: Yes, she is.

PATRICIA FEIJO: Okay, yeah, that's great that he got that then.

TROY: And another one is TPB.

MARCIA: Okay. What is that?

. . .

TROY: No, Trish's Special Blend -- Perfect Blend. Trish's Perfect Blend, the one we call TPB.

MARCIA: TPB?

PATRICIA FEIJO: Yeah, the TPB. But what was it your husband got, the ENDO or the 1st Kings?

MARCIA: He got the -- I think he got the one that has more protein and vitamins.

. . .

PATRICIA FEIJO: Just so you know, that's interchangeable for the most part.

MARCIA: Okay.

PATRICIA FEIJO: So, that's good if he got the ENDO-24.

MARCIA: Mm-hmm.

PATRICIA FEIJO: That's awesome then.

JAMES FEIJO: Well, that's awesome.

PATRICIA FEIJO: She can get started and, again, you can join the fellowship for more ministry. She can join the fellowship directly if she'd like. Thanks so much, Troy.

JAMES FEIJO: And by the way, that ENDO-24, three heaping scoops three, four times a day is better than food for her right now.

MARCIA: Yeah, exactly.

JAMES FEIJO: And please don't hesitate -- now, Marcia, if you go and join the fellowship, then more people can offer you more help. This way, Troy, who just called in, was a big help.

Pl.'s SMF ¶ 44; *see also* Pl.'s MSJ, Ex. S, at 11:45-14:20.

During a radio broadcast on February 14, 2011, James Feijo stated: "[y]ou know, our voice has been hindered by the evil of our government. We can't even give true testimony, signed affidavits of people who've cured or healed of cancer. Satan is alive and well in the FDA and the FTC and in Washington." Pl.'s SMF ¶ 46; *see also* Pl.'s MSJ, Ex. T, at 14:15-14:30. Later, James Feijo accepted a call from a caller named Greg, who informed listeners how to find and join the Daniel Chapter One Yahoo Group. *See* Pl.'s SMF ¶ 47; Pl.'s MSJ, Ex. T, at 24:13-24:40. James Feijo told Greg to "[t]ell them what the publications are on there -- awesome list, man[,] and Greg responded by listing several available publications, including "we've got the BioGuide, we've got the Most Simple Guide[.]" Pl.'s MSJ, Ex. T, at 24:40-25:05. James Feijo then told

listeners that "there's another site too, besides the Yahoo Group" and Greg responded, "yeah and that's, health, health, let's see, healthfellowship.org[.]" Pl.'s SMF ¶ 47; see also Pl.'s MSJ, Ex. T, at 25:40-25:53.

During a radio show broadcast on February 22, 2011, Defendants accepted a call from a caller named Patricia, who stated that her doctor had found a mass on her breast. See Pl.'s SMF ¶ 49; Pl.'s MSJ, Ex. U, at 7:20-7:45. James and Patricia Feijo instructed the caller not to get a biopsy, and Patricia Feijo stated that "if it is cancer, it can stir up the cells and can get them to spread[.]" Pl.'s SMF ¶ 49; Pl.'s MSJ, Ex. U, at 8:38-9:44. Patricia Feijo told the caller that she should take products "to treat it worst case scenario." *Id.* Defendants then asked someone to call in to help answer the caller's questions, and accepted a call from a caller named Greg, who said that, for "cancer . . . one thing I would add is BioShark to that." Pl.'s SMF ¶ 49; Pl.'s MSJ, Ex. U, at 22:35-22:46. Patricia Feijo confirmed this suggestion, stating, "yeah, definitely." *Id.*

Finally, during a radio show broadcast on June 23, 2011, the Feijos took a call from an individual who identified himself as Curtis, and who said that his daughter had cancer. See Pl.'s Mot. for Order to Show Cause, Ex. A, at 30:00-30:45. James Feijo advised Curtis to go online and read the testimonies on

the Daniel Chapter One website to learn more, and stated that they support "God's way" of treating cancer through the use of 7 Herb Formula, BioShark, and GDU. *Id.* at 30:45-34:15. In addition, James Feijo told Curtis that "the government is trying to stop us from helping you and your daughter . . . they want to not let us tell you about 7 Herb Formula, BioShark, and GDU, that God has given us to help people around the world." *Id.* at 37:00-38:05. Patricia Feijo added:

[W]e do care about your daughter . . . we just heard from our lawyer that a judge ruled in favor of the Trade Commission, and so, you know, basically we can be fined out of existence tonight or, or, put into prison, and we want people to know the reality that we're sitting here, willing to risk even our lives, to serve the lord and to serve you, right, but the situation is such that I would say get the product while you can, even stock up while you can, and if one day you won't be able to get our products then just, you know, try to continue to follow pretty much what those products are, the herbs, the enzymes, because that's what we have seen work for many years.

*Id.* at 38:05-39:00. James Feijo then gave Curtis information on how to order the products, and directed Curtis to the healthfellowship.org website for more information. *Id.* at 39:00-40:00. At other times during this same show, James Feijo stated that Daniel Chapter One's products, including GDU, were created and intended by God "for you, for your health and healing, as a prevention, to mitigate, to treat, to heal, to cure." *Id.* at 8:30-9:40. Patricia Feijo told listeners that they did not share their experiences with the products "until we

had used it for a while and saw that it did indeed work, and then we began to share with people, hey, this is what works for this and that." *Id.* at 23:10-23:30. Patricia Feijo stated that the testimonies the Feijos had received from their customers and placed on their website and in their BioGuide were a sampling of their customers' experiences and that the results in the testimonials were "very typical of what people experience." *Id.* at 23:40-24:35. James and Patricia Feijo went on to describe how 7-Herb Formula had cured a man who had renal cancer. *See id.* at 24:35-26:45.

### **3. Competent and Reliable Scientific Evidence**

According to the United States -- but as disputed by Defendants -- at the time the above representations were made, Defendants did not possess or rely upon competent scientific evidence, as defined in Part I.A of the Modified Final Order,<sup>6</sup> that substantiated the representations. *See* Pl.'s SMF ¶ 51.

### **4. Failure to Mail Notice**

Finally, the parties do not dispute that Defendants have failed to send the notice described in Part V.B of the Modified

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<sup>6</sup> The Modified Final Order defines "competent and reliable scientific evidence" as "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." Pl.'s MSJ, Ex. D, at 1.

Final Order. See Pl.'s SMF ¶ 52; Defs.' Statement of Genuine Issues ¶ 52.

## **II. LEGAL STANDARDS**

### **A. Summary Judgment Pursuant to Rule 56**

Summary judgment should be granted only if the moving party has shown that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A fact is material if it 'might affect the outcome of the suit under the governing law,' and a dispute about a material fact is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Steele v. Schafer*, 535 F.3d 689, 692 (D.C. Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party bears the initial burden of demonstrating the absence of genuine issues of material fact. See *Celotex*, 477 U.S. at 323. In determining whether a genuine issue of material facts exists, the Court must view all facts in the light most favorable to the non-moving party. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Keyes v. Dist. of Columbia*, 372 F.3d 434, 436 (D.C. Cir. 2004). The party opposing a motion for summary judgment "may not rest upon the mere allegations or denials of his



pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248.

**B. Sections 5(1) and 13(b) of the FTC Act<sup>7</sup>**

Section 5(1) of the FTC Act, regarding penalties for violations of orders, injunctions, and other appropriate equitable relief, provides:

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$ 10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

15 U.S.C. § 45(1).

Section 13(b) of the Act states, in relevant part:

Whenever the Commission has reason to believe

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made

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<sup>7</sup> The United States also brings this action pursuant to Section 16(a) of the FTC Act, 15 U.S.C. § 56(a). That provision sets forth the procedures for the exercise of the Commission's and the Attorney General's authority to litigate.

thereon has become final, would be in the interest of the public the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that . . . such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond . . . . [I]n proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction.

15 U.S.C. § 53(b).

The FTC Act entrusts the administration of the Act to the FTC as "a body of experts." *FTC v. Morton Salt Co.*, 334 U.S. 37, 54 (1948). "The enforcement responsibility of the courts, once a Commission order has become final . . . is to adjudicate questions concerning the order's violation, not questions of fact which support that valid order." *Id.* (internal citations omitted); see also *United States v. H. M. Prince Textiles, Inc.*, 262 F. Supp. 383, 388 (S.D.N.Y. 1966) ("[I]t is well settled that a defendant cannot attack a final cease and desist order in a subsequent enforcement proceeding."); *United States v. Vitasafe Corp.*, 212 F. Supp. 397, 398 (S.D.N.Y. 1962) (same). In an action by the government to recover civil penalties "[a]ll that the government need prove is that a cease and desist order has in fact been violated[.]" *H. M. Prince Textiles*, 262 F. Supp. at 388.

### III. ANALYSIS

In response to the United States' Motion for Summary Judgment, Defendants argue -- without setting forth their own specific facts in response -- that six issues of material fact bar summary judgment at this stage. Specifically, Defendants dispute that:

1. Defendants controlled the content published on the website <http://www.dclfreesdom.com/guilty-of-healing-cancer> from April 2, 2010 through June 6, 2011;
2. Defendants controlled the content published on the website <http://dclffellowship.com/forum/viewtopic.php?f=1&t=291> and had administrative privileges to remove content published on this website from April 2, 2010 through June 6, 2011;
3. Defendants controlled the content published on <http://healthfellowship.org/thread-313.html> and had administrative privileges to remove content published on this website from April 2, 2010 to June 6, 2011;
4. Defendants controlled the content published on the website <http://health.groups.yahoo.com/group/danielchapterone/files/> and had the administrative privileges to remove content published on this website from April 2, 2010 through June 6, 2011;
5. Defendants controlled the audio content published on the Daniel Chapter One Healthwatch feed, <http://feeds.thepodzone.com/dclhw>, from April 2, 2010 through June 6, 2011;
6. At the time the representations on Defendants' websites and radio shows were made, Defendants did not possess or rely upon competent and reliable scientific evidence, as defined in Part I.A of the Modified Final Order, that substantiated the representations.

See Defs.' Opp'n to Pl.'s MSJ at 6-10; Defs.' Statement of Genuine Issues ¶¶ 21, 25, 28, 31, 38, and 51.<sup>8</sup>

However, Defendants admitted three of these issues during the contempt hearings in this case and in their subsequent certifications filed with the Court. In particular, Defendants admitted that they control the content published on [www.dclfreedom.com](http://www.dclfreedom.com) (disputed issue 1),<sup>9</sup> and that they control the audio content published on the Daniel Chapter One Healthwatch feed (disputed issue 5).<sup>10</sup> See James Feijo's Certification of Compliance with Order at ¶¶ 7, 16, Docket No. 51. In addition, by conceding that they had violated Part II of the Modified Final Order, Defendants conceded that, at the time representations on these websites and radio shows were made,

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<sup>8</sup> Both in their Opposition and during the contempt hearing, Defendants conceded that they had not mailed the notice required in Part V.B of the Modified Final Order. See Defs.' Statement of Genuine Issues ¶ 52. Subsequent to the contempt hearing, Defendants certified that they had mailed the notice, as of May 18, 2012. See James Feijo's Certification of Compliance with Order, Docket No. 51. Defendants' failure to mail the notice between April 2, 2010 and May 18, 2012 constitutes a violation of the Modified Final Order for which Defendants are liable. Accordingly, the Court will **GRANT** as conceded the United States' Motion for Summary Judgment on Liability as to Count II (Failure to Mail Notice).

<sup>9</sup> Defendants also admitted that they control the content published on [www.danielchapterone.com](http://www.danielchapterone.com) and [www.dclministry.com](http://www.dclministry.com).

<sup>10</sup> The Daniel Chapter One Healthwatch feed was also previously accessible through [www.danielchapterone.com](http://www.danielchapterone.com), which Defendants admitted at the hearing that they controlled. See Pl.'s Reply at 4.

Defendants did not possess or rely upon competent and reliable scientific evidence to substantiate those representations (disputed issue 6). See *id.* at ¶ 1 ("We have ceased from making prohibited representations, as described in Part II of the Modified Final Order, on our radio show and on any websites that are within our control. We have ceased from directing potential customers to websites that are not in our control but which contain prohibited representations, as described in Part II of the Modified Final Order. We have worked diligently to remove the prohibited representations, as described in Part II of the Modified Final Order, from the websites within our control.").<sup>11</sup>

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<sup>11</sup> In addition, Defendants would be collaterally estopped from arguing in this proceeding that they possess and rely upon competent and reliable scientific evidence. "[O]nce a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a difference cause of action involving a party to the first case." *Yamaha Corp. of Am. v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992) (quoting *Allen v. McCurry*, 449 U.S. 90, 94 (1980)). A prior holding has preclusive effect when (1) the same issue being raised was contested by the parties and submitted for judicial determination in the prior case; (2) the issue was actually and necessarily determined by a court of competent jurisdiction in that prior case; and (3) preclusion in the second case would not work a basic unfairness to the party bound by the first determination. See *Yamaha*, 961 F.2d at 254 (citing *McLaughlin v. Bradlee*, 803 F.2d 1197, 1201 (D.C. Cir. 1986); Restatement (Second) of Judgments § 27 (1982)). The Supreme Court has held that judgments of administrative agencies should be given preclusive effect if the agency was acting in a judicial capacity, such as in cases where the agency provides a full and fair opportunity to litigate the claim. See *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 797-98 (1986). The products and representations at issue in this action are identical to the products and representations that the FTC considered. The

With respect to the other three disputed issues, Defendants affirmatively denied that they control the content published on <http://dclfellowship.com>, <http://healthfellowship.org>, and <http://health.groups.yahoo.com/group/danielchapterone> (the Yahoo Group) (disputed issues 2, 3, and 4). Defendants admitted, however, that they directed callers to these websites. See James Feijo's Certification of Compliance with Order at ¶ 13. Moreover, the excerpts of radio broadcasts from May 28, 2010 and February 14, 2011 provide independent evidence that James Feijo directed listeners to all three of these websites, which is a separate violation of the Modified Final Order. In particular, Part II of the Modified Final Order specifies that Defendants, "directly or through any corporation, partnership, subsidiary,

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administrative law judge in the FTC action determined that Defendants did not possess or rely upon competent and reliable scientific evidence to substantiate their claims that the Products treated or cured cancer. This issue was actually and necessarily determined by the FTC, and indeed, the Court of Appeals reviewed and affirmed that determination. See *Daniel Chapter One*, 405 F. App'x at 506 ("Because it is undisputed [Daniel Chapter One] did not support its claims with 'competent and reliable scientific evidence' including clinical trials with human subjects, the Commission properly concluded [Daniel Chapter One's] advertisements were deceptive for want of a reasonable basis."). Finally, the Court finds that applying collateral estoppel in this case would not work a basic unfairness to Defendants because they were able to fully present their arguments in the proceeding before the Commission and the D.C. Circuit regarding these same issues. See, e.g., *Morgan v. FAA*, 657 F. Supp. 2d 146, 153 (D.D.C. 2009) (applying issue preclusion where Merit Systems Protection Board determined the same issues and that ruling was affirmed by the Federal Circuit).

division, trade name, or other device," are barred from making certain representations about the Products. Pl.'s MSJ, Ex. D, at 2. By referring to and directing listeners to these websites during their radio broadcasts, Defendants were using the websites as a "device" through which they were able to convey the prohibited representations.

Even if Defendants' act of directing listeners to the remaining three websites did not constitute a violation of the Modified Final Order, these issues are not material to the conclusion that Defendants violated the Modified Final Order.<sup>12</sup> At the contempt hearing, the Court concluded that there was clear and convincing evidence that Defendants had violated Part II of the Modified Final Order by (1) continuing to make representations on their radio show that their products treat or cure cancer without competent and reliable scientific evidence to substantiate those representations, (2) encouraging potential customers to visit websites containing Daniel Chapter One publications that contain prohibited information and endorsements of the prohibited supplements, and (3) not removing certain representations from the websites within their control, which Defendants conceded included [www.danielchapterone.com](http://www.danielchapterone.com), [www.dclministry.com](http://www.dclministry.com), and [www.dclfreedom.com](http://www.dclfreedom.com). See Order Holding

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<sup>12</sup> The Court therefore need not draw an adverse inference from Defendants' invocation of the Fifth Amendment.

Daniel Chapter One, James Feijo and Patricia Feijo in Civil Contempt at 2-3, Docket No. 50. Notably, Defendants nowhere dispute that the representations made on these websites and their radio shows constituted violations of the Modified Final Order.

Indeed, the examples provided by the United States only further support the conclusion that Defendants violated the Modified Final Order. For example, during the May 27, 2010 radio broadcast, James Feijo made representations that BioShark was an effective treatment to shrink tumors. Pl.'s SMF ¶ 41; *see also* Pl.'s MSJ, Ex. R. In addition, Defendants accepted calls from other individuals who recommended using the Products to treat stage 4 lung cancer, and Defendants affirmed those recommendations. *See, e.g.,* Pl.'s SMF ¶ 41; *see also* Pl.'s MSJ, Ex. R, at 22:54-23:34 ("JAMES FEIJO: . . . see, let me share one thing. The suggestions Bob just gave you, Phil, everybody listening, are suggestions to boost God's order that he has given us, our immune system, to fight the disease state of any situation."). James Feijo's statements unquestionably violated Part II of the Modified Final Order. In addition, the advice provided by other callers regarding the use of the Products constituted "endorsements," as prohibited by the Modified Final Order, because listeners were likely to believe that the information provided "reflects the opinions, beliefs, findings,



or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser." 16 C.F.R. § 255.0(b).

Similarly, during the May 28, 2010 broadcast, Defendants encouraged a caller to provide advice about using the Products to treat pancreatic cancer, and Defendants affirmed and contributed to that advice. See Pl.'s SMF ¶ 44; see also Pl.'s MSJ, Ex. S, at 9:15-14:20. These representations and endorsements violated Part II of the Modified Final Order. Additionally, the June 23, 2011 radio broadcast contained numerous representations in violation of Part II of the Modified Final Order, including James Feijo's statement that Defendants support "God's way of treating cancer through the use of 7 Herb Formula, BioShark, and GDU." Pl.'s Mot. for Order to Show Cause, Ex. A, at 30:45-34:15.

Therefore, the Court concludes that the record is replete with evidence that Defendants have violated the Modified Final Order. The FTC Act authorizes awards of monetary civil penalties, mandatory injunctive relief, and other equitable relief for violations of final orders of the Commission. See 15 U.S.C. §§ 45(1), 53(b). Accordingly, there is no genuine issue as to any material fact and the United States is entitled to judgment as a matter of law on liability as to Counts I (Prohibited Representations) and II (Failure to Mail Notice).

#### **IV. CONCLUSION**

For the foregoing reasons, the United States' Motion for Summary Judgment on Liability is hereby **GRANTED**. The Court will direct the parties to file recommendations for further proceedings, including a proposed briefing schedule, if applicable, regarding the appropriate penalty or penalties. A separate Order accompanies this Memorandum Opinion.

**SIGNED:   Emmet G. Sullivan**  
          **United States District Judge**  
          **September 24, 2012**