

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	Civil No. <u>1:10CV01362 EGS</u>
)	
Plaintiff,)	
)	
v.)	
)	
DANIEL CHAPTER ONE,)	
)	
and)	
)	
JAMES FEIJO,)	
)	
Defendants,)	
)	
and)	
)	
PATRICIA FEIJO,)	
)	
Contempt Defendant.)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES’
MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS
SHOULD NOT BE HELD IN CONTEMPT**

On June 22, 2011, the Court entered an Order granting Plaintiff’s Motion for Preliminary Injunction. The Order enjoined Daniel Chapter One and James Feijo (“Defendants”), stating that they were “**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 Pl.’s Ex. A at Docket No. 16-5[.]”

Daniel Chapter One, James Feijo, and Patricia Feijo have failed to comply with this Order. In defiance of this Order, Daniel Chapter One, James Feijo, and Patricia Feijo (“Contemnors”) have continued to make representations that Daniel Chapter One’s products treat or cure cancer without competent and reliable scientific evidence that substantiates the representations, and have failed to mail the required notice to “all consumers who purchased BioShark, 7 Herb Formula, GDU, and/or BioMixx” between January 1, 2005 and April 2, 2010. These acts violate Part II and Part V.B of the Modified Final Order entered by the Federal Trade Commission on January 25, 2010 (hereafter, “Modified Final Order”), and as a result, violate the Court’s Order. Accordingly, the Court should order the Contemnors to show cause why they should not be found in contempt and why coercive and compensatory civil contempt sanctions should not be entered against them.

The Court has the Authority to Hold Daniel Chapter One, James Feijo, and Patricia Feijo in Civil Contempt for Violating the Court’s Preliminary Injunction Order

Courts have several sources of authority to hold non-compliant parties in civil contempt. First, courts may rely on their inherent power to hold a party in civil contempt in order to enforce compliance with lawful court orders. Spallone v. United States, 493 U.S. 265, 276 (1990); Shillitani v. United States, 384 U.S. 364, 370 (1966). Second, a finding of civil contempt may be premised on 18 U.S.C. § 401(3), which provides that “[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command.” See also United States ex rel. Shell Oil Co. v. Barco Corp., 430 F.2d 998, 1000 (8th Cir. 1970) (18 U.S.C. § 401(3) provides “general statutory authority for . . . both

civil and criminal contempt sanctions”); Twelve John Does v. District of Columbia, 855 F.2d 874, 876 n.14 (D.C. Cir. 1988). “[W]hen a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law’s purpose of modifying the contemnor’s behavior to conform to the terms required in the order.” Int’l Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 827 (1994) (quoting Hicks on Behalf of Feiock v. Feiock, 485 U.S. 624, 635 (1988)).

Daniel Chapter One, James Feijo, and Patricia Feijo Have Violated the Court’s Order

The Court’s Order entered on June 22, 2011, enjoined Daniel Chapter One and James Feijo,¹ stating that they were “**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 Pl.’s Ex. A at Docket No. 16-5[.]” Since the entry of this Order, the Contemnors have violated the Modified Final Order by continuing to make representations that their products treat or cure cancer without competent and reliable scientific evidence that substantiates the representation and by failing to mail the required notice to “all consumers who purchased BioShark, 7 Herb Formula, GDU, and/or BioMixx” between January

¹ While Patricia Feijo is not a defendant in this action, the evidence demonstrates that she received actual notice of the Court’s Order, and is bound by the preliminary injunction pursuant to Fed. R. Civ. P. 65(d)(2). As specified in the Federal Rules, 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).

1, 2005 and April 2, 2010. These acts violate Part II and Part V.B of the Modified Final Order, and as a result, violate the Court's Order.

The Contemnors Have Continued To Make Prohibited Representations

Part II of the Modified Final Order prohibits “any representation, in any manner, expressly or by implication, including through the use of product or program names or endorsements” that any product marketed by Daniel Chapter One:

prevents, 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 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 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.

As a result, these representations are prohibited, and they cannot be made either by the Contemnors themselves or through endorsements by others. The Modified Final Order states that the term “endorsement” is as defined in 16 C.F.R. § 255.0(b). This regulation specifically 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). The Contemnors have continued making the

prohibited representations about their products, even after the entry of the Court's Order. They make these prohibited representations on Defendants' radio show and on various websites and online forums.

Radio Show Representations Explicitly Flouting This Court's Order

In their radio show broadcast on June 23, 2011, the Contemnors took a call from an individual who identified himself as "Curtis."² Curtis said that his daughter had cancer and that he was told to call the radio show because he was told that they might be able to help his daughter.³ James Feijo advised him 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.⁴ After a commercial break, James and Patricia Feijo returned to the show, and 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."⁵ Patricia Feijo chimed in, stating that:

we 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

² A recording of this show is being filed with the Court on a CD, and is entitled Exhibit A - Radio Show 6.23.2011a. This conversation begins at 30:00.

³ Id. at 30:00 to 30:45.

⁴ Id. at 30:45 to 33:50.

⁵ Id. at 37:00 to 38:05.

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 is what we have seen work for many years.⁶

(Emphasis added). James Feijo then gave Curtis information on how to order the products, and directed Curtis to the healthfellowship.org website for more information.⁷ At other times during this same show, James Feijo stated that Daniel Chapter One's products were created and intended by God "for you, for your health and healing, as a prevention, to mitigate, to treat, to heal, to cure."⁸ Patricia Feijo told listeners that they didn't 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!" Patricia Feijo stated that the testimonies they had received from their customers and placed on their website and in their BioGuide were a sampling of their customer's experiences and that the results in the testimonials were "very typical of what people experience"⁹ James Feijo then read excerpts from a testimonial discussing someone who had been diagnosed with renal cancer, and who took 7-Herb Formula and is still alive.¹⁰

The Contemnors are violating the Court's Order. The statements detailed above demonstrate that the Contemnors are continuing to make representations that their products prevent, treat, or cure cancer. Daniel Chapter One, James Feijo, and Patricia Feijo are prohibited

⁶ Id. at 37:50 to 39:00.

⁷ Id. at 39:00 to 40:00.

⁸ Id. at 8:30 to 9:40.

⁹ Id. at 23:10 to 24:35.

¹⁰ Id. at 24:35 to 26:50.

from making statements like these pursuant to Part II of the Modified Final Order, and the Order entered by this Court on June 22, 2011. This clear and convincing evidence demonstrates that the Contemnors have violated the Court's Order.

Websites and Online Forums

These prohibited representations are not only made on the radio show. As indicated in the excerpts above, the Contemnors guide their listeners to various online forums and websites for more information. These online forums and websites contain many prohibited representations. For example, Defendants use these online resources as a way to link potential customers to their "Guide Book" and their "Cancer Newsletter," both of which contain information on Daniel Chapter One's products.¹¹ The danielchapterone Yahoo Groups page contains a copy of the Cancer Newsletter and the Guide Book.¹² The Guide Book's introduction 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."¹³ The Guide Book includes a page titled "Cancer" and subtitled "All types of Cancer" which lists recommended doses of 7 Herb Formula, BioShark, BioMixx, and GDU Caps, all of which are designated as "the most essential products" for cancer.¹⁴ The Cancer Newsletter provides

¹¹ The Guide Book's full title is "the most simple guide to the most difficult diseases" and is subtitled "the doctors' how-to quick reference guide." The full title of the Cancer Newsletter is "How to fight cancer is your choice!!!" and is subtitled "Cancer Newsletter, Millennium Edition, 2002[.]"

¹² A screen shot showing these files on the Yahoo Groups page can be seen in Exhibit B.

¹³ See Page 9 of Exhibit C.

¹⁴ See Page 26 of Exhibit C.

information on using many of Daniel Chapter One's products, including 7 Herb Formula, Bio Shark, Pre Post, BioShark, GDU, and BioMixx to treat and cure cancer.¹⁵

These online forums also contain posts from individuals seeking advice on how to treat various diseases, and responses with information on what Daniel Chapter One products should be used. For example, in response to a question from someone about their mother's pancreatic cancer on the Daniel Chapter One Health Fellowship website,¹⁶ "David" responded,

For cancer we believe the Lord has provided the following products to help with healing:

7 Herb Formula 8 ounces 4 times a day for a few days, then reduce as you feel comfortable

Bio Shark 2-4 capsules 4 times daily, to start, I would recommend at least 4 for a few days

GDU 3-6 capsules 4 times daily ½ hour before meals and before bed

Endo 24 or 1st Kings 17:6 3 scoops in clean water at least twice daily, early morning and within 1 hour of sleep. More often during the day would be most helpful considering the weight loss problem

By clean water I meant water that has been filtered to remove the chlorine, fluoride and other harmful chemicals making it safe to drink.

Here is a link to our water filter site: <http://www.waterkleenfrs.com>

Keep in mind that *we do not recommend the use of our products while using prescription drugs, chemo or radiation* as they counter act each other. The *chemo and radiation will not help your mother* and instead will cause other cancers to develop, chemo and radiation are deadly to the body.

It would be good for you to call the radio show and share this

(Italics added). Similarly, in response to a question regarding the treatment of breast cancer on the healthfellowship.org website,¹⁷ "fejjomail123" replied,

¹⁵ See Exhibit D.

¹⁶ See Exhibit E.

¹⁷ See Exhibit F.

Thank you for your question. We are glad to have you in the Fellowship. We will keep your sister-in-law's situation in prayer. We commend your faithful care for her on her behalf.

Daniel Chapter One does not recommend radiation, chemo, or surgery for cancer. Instead, we recommend these God-given nutrients to assist in her battle against cancer:

7 Herb Formula 4 ounces in juice or water 2-4x daily. After 4-7 days, switch to 4 ounces 3-4x daily.

GDU 3-6 capsules 3 times daily ½ hour before meals

Endo 24 or 1st kings 17:6 3 scoops in water (preferred) or juice or milk twice daily

If she still has tumors, then we would suggest **B[b]ioShark[b]** 2-4 capsules 3 times daily with meals

PLEASE BE SURE TO call Jim and Tricia on the radio show

(Italics added). Additionally, similar statements can be found on the various Daniel Chapter One websites. For example, one of the pages on the Daniel Chapter One Freedom website states “Daniel Chapter One World Ministry for Jesus Christ found guilty of healing people of cancer!”¹⁸

Clear and convincing evidence shows that the representations discussed in this section violate Part II of the Modified Final Order and the Court’s Order. The Contemnors encourage potential customers to visit these websites, where individuals give endorsements of Daniel Chapter One’s products and which contain Daniel Chapter One publications, including the Guide Book and Cancer Newsletter. The Contemnors’ failure to stop making these prohibited representations and failure to remove these representations from these websites violates the Court’s Order.

The Defendants Have Failed to Mail the Notice

Part V.B of the Modified Final Order states:

¹⁸ See Exhibit G.

B. 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 April 2, 2010.]

This notice will inform consumers that the advertising claims made for the Products were found to be deceptive by the FTC because they were not substantiated by competent and reliable scientific evidence, and states that the FTC is requiring that this notice be sent. Defendants have failed to send this notice. The compliance report submitted by Defendants pursuant to the Court's preliminary injunction order states:¹⁹

However, without making an admission on behalf of James Feijo or Daniel Chapter One or waiving any privilege, including the privilege against self-incrimination and the attorney-client privilege, counsel reports to the FTC that, to the knowledge of counsel, the letter described in Part V(B) of the Modified Final Order has not been sent.

The Federal Trade Commission made an undercover purchase during the course of its investigation of Defendants. As a result, the Federal Trade Commission will receive a copy of the notice whenever it is sent by Defendants. As detailed in the Colbert Declaration, the investigator who monitors the undercover mailbox has verified that the notice has not been received.

Clear and convincing evidence shows that Defendants have not mailed this notice. Defendants' failure to send this notice violates the Modified Final Order, and as a result, violates the Order.

¹⁹ The Compliance Report is attached as Exhibit H.

CLEAR AND CONVINCING EVIDENCE ESTABLISHES THAT
THE CONTEMNORS HAVE VIOLATED THE COURT'S ORDER

A contempt finding is proper where “the putative contemnor has violated an order that is clear and unambiguous” and the violation of a order is “proved by ‘clear and convincing’ evidence.” Armstrong v. Executive office of the President, Office of Admin., 1 F.3d 1274, 1289 (D.C. Cir. 1993) (quoting Project B.A.S.I.C. v. Kemp, 947 F.2d 11, 16 (1st Cir. 1991); Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co., 316 F.2d 1029, 1031 (D.C. Cir. 1980)). The contempt need not be willful as “it matters not with what intent the defendant did the prohibited act.” McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949).

This standard is met here. The evidence discussed above establishes by clear and convincing evidence that the Contemnors have disobeyed the Court’s Order. As specified in the Federal Rules, 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). Patricia Feijo’s statements on the radio show demonstrates that she received notice of the Order, and as she is “in active concert or participation” with the parties to this suit, she is bound by the Court’s Order. Additionally, Daniel Chapter One is responsible for the acts of its employees and agents, as is its “Overseer,” James Feijo. United States v. Twentieth Century Fox Film Corp., 882 F.2d 656, 661 (2nd Cir. 1989) (corporations are liable for wayward

acts of employees); United States v. Laurins, 857 F.2d 529, 535 (9th Cir. 1988) (order directed to a corporation binds those who are responsible for the conduct of the corporation's affairs).

Clear and convincing evidence demonstrates that the Contemnors are violating the Modified Final Order by continuing to make representations that their products treat or cure cancer without competent and reliable scientific evidence that substantiates the representation and by failing the mail the required notice to "all consumers who purchased BioShark, 7 Herb Formula, GDU, and/or BioMixx" between January 1, 2005, and April 2, 2010. These acts violate Part II and Part V.B of the Modified Final Order, and as a result, violate the Court's Order.

Additionally, the Court's Order is clear and unambiguous. This requirement is intended to ensure that an individual understands what is required by an Order, in order to protect against unwitting contempt. See International Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n, 389 U.S. 64, 76 (1967). This is not an issue here, as we are dealing with "a violation of a court order by one who fully understands its meaning but chooses to ignore its mandate." Id. The Contemnors are well aware of what is required by the Court's Order and the Modified Final Order. Indeed, Patricia Feijo said on the radio show that, "we can be fined out of existence tonight or, or, put into prison" for what they were saying on the radio about Daniel Chapter One's products.²⁰

After the movant "has made a prima facie showing that [Contemnors] did not comply with the Court's orders, the burden shifts to [Contemnors] to produce evidence justifying [their] noncompliance." SEC v. Bilzerian, 112 F.Supp.2d 12, 16 (D.D.C. 2000). The evidence

²⁰ Exhibit A at 37:50 to 39:00.

demonstrates that the Contemnors will be unable to justify their noncompliance. The Contemnors are well aware of what is permitted under the Court's Order, and clear and convincing evidence demonstrates that they are violating the Order. Their actions are egregious, and demonstrate that they are not even attempting to abide by the Court's Order. As a result, Contemnors cannot hide behind claims of substantial compliance or reasonable interpretation of the Order. As a result, the Court should find Defendants in contempt of the Court's Order issued June 22, 2011.

**THE COURT SHOULD ORDER COERCIVE CIVIL SANCTIONS AND
ORDER CONTEMNORS TO PAY PLAINTIFF'S ATTORNEY'S FEES**

“[C]ivil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard.” Int'l Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 827 (1994). Civil contempt sanctions are appropriately employed to coerce a party into compliance with a court order and to compensate the complainant for losses sustained. Washington Metropolitan Area Transit Authority v. Amalgamated Transit Union, 531 F.2d 617, 622 (D.C. Cir. 1976). Unlike the punitive nature of criminal sanctions, civil contempt sanctions are “wholly remedial.” Nye v. United States, 313 U.S. 33, 42 (1941). Thus, an imprisoned contemnor “‘carries the keys of his prison in his own pocket.’ He can end the sentence and discharge himself at any moment by doing what he had previously refused to do.” Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 442 (1911) (quoting In re Nevitt, 117 F.448, 461 (8th Cir. 1902)).

Coercive contempt sanctions are appropriate here in order to coerce the Contemnors into compliance with the Court's Order. Washington Metropolitan Area Transit Authority, 531 F.2d at 622. A coercive civil contempt penalty must be "avoidable through obedience." Int'l Union, United Mine Workers of America, 512 U.S. at 827. When determining the amount and duration of a coercive fine, courts "consider the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." Whittaker Corp., 953 F.2d at 517 (quoting Int'l Union, United Mine Workers of America, 512 U.S. at 827).

Here, the Contemnors have been violating the Modified Final Order since it became effective on April 2, 2010. The Contemnors continued to violate the Modified Final Order even when the Federal Trade Commission and the Court of Appeals for the District of Columbia denied their requests that the Modified Final Order be stayed during the pendency of their appeal. Their violations of the Modified Final Order continued even after they were ordered to comply by the Court of Appeals for the District of Columbia in response to the Federal Trade Commission's Emergency Motion for Order of Enforcement Pendente Lite. The Contemnor's actions show their disregard and disrespect for the judicial system.

Additionally, throughout this period, their refusal to comply has resulted in the accumulation of civil penalties.²¹ 15 U.S.C. § 45(l). As "each day of continuance of such failure or neglect [to obey a final order of the Commission] shall be deemed a separate offense," Daniel

²¹ The Federal Trade Commission Act (as modified by the Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461) authorizes the Court to award civil penalties of not more than \$16,000 for each violation of the Telemarketing Sales Rule. 15 U.S.C. § 45(l).

Chapter One and James Feijo are currently liable for over 7.75 million dollars in civil penalties.²² Despite accumulating civil penalties every day they have refused to comply, Daniel Chapter One, James Feijo, and Patricia Feijo have not changed their behavior. Defendants' liability for this civil penalty is the subject fo the ongoing litigation between the parties and not a subject of this motion, except to demonstrate the need for the contempt relief as discussed below.

The Contemnors past conduct demonstrates that accumulating civil penalties, without more, is unlikely to be successful in coercing compliance. As a result, Plaintiff recommends that the Court impose an escalating monetary civil contempt penalty that converts to imprisonment if the Contemnors do not comply. Specifically:

Day 1: \$1,000
Day 2: \$5,000
Day 3: \$10,000
Day 4: \$20,000
Day 5 and beyond: imprisonment for James Feijo and Patricia Feijo
Day 5 and beyond: \$25,000 for Daniel Chapter One

Given the Contemnor's long-lasting refusal to comply with the Modified Final Order, irrespective of the accumulation of civil penalties, an escalating monetary civil contempt penalty that converts to imprisonment is an appropriate coercive civil contempt sanction that should remain in place until the Contemnors purge the contempt.

Additionally, attorney's fees may be authorized for Plaintiff's costs in seeking contempt as it is necessary "to make the plaintiff whole[.]" Food Lion, Inc. v. United Food and Commercial Workers Intern. Union, 103 F.3d 1007, 1017 n14 (D.C. Cir. 1997). Parties, including the United States, are entitled to compensatory relief constituting attorney's fees

²² This sum assumes just one violation a day since the Modified Final Order went into effect. $\$16,000 \times 485 \text{ days} = \$7,760,000$.

incurred in prosecuting a contempt proceeding. SEC v. Bilzerian, 613 F.Supp.2d 66, 77-78 (D.D.C. 2009); United States v. American Bar Ass'n, 2006 WL 1737775, at *1 (D.D.C. June 26, 2006). Therefore, the United States requests that it be awarded its attorney's fees incurred in this case in an amount to be determined upon motion in accordance with Fed. R. Civ. P. 54(d)(2), LCvR 54.1(c), and any other briefing or hearing the Court may deem appropriate.

CONCLUSION

Based on the foregoing, the United States requests that this Court enter an order setting a hearing for Daniel Chapter One, James Feijo, and Patricia Feijo to show cause, if any, why they should not be found in civil contempt. Should the Court find that Daniel Chapter One, James Feijo, and Patricia Feijo have violated the Court's Order, the Court should impose compensatory civil sanctions by ordering that they pay Plaintiff's attorney's fees and assess a coercive civil sanction involving an escalating monetary civil contempt penalty that converts to imprisonment until Daniel Chapter One, James Feijo, and Patricia Feijo purge the contempt.

Respectfully submitted this 29th day of June, 2011.

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