

1
2
3
4
5
6
7

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

1 FEDERAL TRADE COMMISSION, No. 1:20-cv-01060-DJC-SKO
2 Plaintiff,
3 v. ORDER
4 GOLDEN SUNRISE NUTRACEUTICAL,
5 INC., et al.,
6 Defendants.

8 Plaintiff Federal Trade Commission ("FTC") brought suit against Defendants in
9 2020, alleging that Defendants had advertised their products using false and
10 unsubstantiated claims that Defendants' products could treat, mitigate the symptoms
11 of, or cure various ailments, including COVID-19, cancer, and Parkinson's disease.
12 Plaintiff also alleged that Defendants misrepresented that the Food and Drug
13 Administration ("FDA") had approved their products. Presently pending before the
14 Court is Plaintiff's long-pending Motion for Summary Judgment. (ECF No. 65.) For
15 the reasons stated below, Plaintiff's Motion for Summary Judgment is granted.

BACKGROUND

In July 2020, Plaintiff filed a complaint against Defendants Golden Sunrise Nutraceutical, Inc. ("GSN"), Golden Sunrise Pharmaceutical, Inc. ("GSP"), Huu Tieu, and

1 Stephen Meis. (Compl. (ECF No. 2).) Causes of Action One through Three of the
2 Complaint alleged that Defendants violated sections 5(a) and 12 of the FTC Act based
3 on their representations regarding the effectiveness of their products to treat, mitigate
4 the effects of, or cure COVID-19, cancer, and Parkinson's Disease. (See *id.* at 24-26
5 (citing 15 U.S.C. §§ 45(a), 52).) Cause of Action Four alleges alleged that Defendants
6 violated sections 5(a) and 12 of the FTC Act through Defendants' representation that
7 their products had been reviewed and accepted by the FDA, that their products were
8 designated by the FDA as Regenerative Medicine Advanced Therapies ("RMATs"),
9 and that "[t]he FDA's designation signifie[d] that Defendants' products are safe and
10 effective." (See *id.* at 26 (citing 15 U.S.C. §§ 45(a), 52).)

11 Shortly after the Complaint was filed, Plaintiff sought a Temporary Restraining
12 Order. (ECF No. 3.) District Judge Dale A. Drozd granted Plaintiff's Motion, ordering
13 Defendants to, among other things, refrain from "[f]urther violations of 15 U.S.C.
14 §§ 45(a), 52, as alleged in the complaint[.]" (ECF No. 16 at 14-15.) A Preliminary
15 Injunction was later entered by stipulation of the parties. (ECF Nos. 25, 26, 29, 30.)

16 On October 1, 2021, Plaintiff filed the Motion for Summary Judgment presently
17 before the Court. (Mot. (ECF No. 65).) Defendants did not initially file a timely
18 opposition to that motion. After further proceedings regarding substitution of
19 Defendants' counsel and requests by Defendants for extensions of time to respond to
20 the motion, District Judge Ana de Alba¹ issued an order denying further requests for
21 extensions of time to file a response and stating that the court would "rule on the
22 motion for summary judgment by Plaintiff Federal Trade Commission as unopposed."
23 (ECF No. 109.) On January 31, 2023, a few weeks after Judge de Alba's order,
24 Defendants sought to have the order set aside so that they could file an opposition to
25 Plaintiff's summary judgment motion. (ECF No. 117.) Both the Motion for Summary
26 Judgment and the Motion to Set Aside remain unresolved.

27

¹ In the intervening time since that order, Judge De Alba has since been elevated to the Ninth Circuit
28 Court of Appeals.

1 Separate from this civil action and before the Complaint in this action was filed,
2 Defendant Huu Tieu was indicted on two counts of mail fraud in violation of 18 U.S.C.
3 § 1341 and three counts of introduction of misbranded drugs into interstate
4 commerce with intent to defraud or mislead in violation of 21 U.S.C. §§ 331(a) and
5 333(a)(2). *United States v. Tieu*, 1:20-cr-00109-BAM (ECF No. 1). The charged
6 conduct overlapped with the conduct at issue in this action. While the motions
7 discussed above were pending in this action, Defendant Tieu reached a plea
8 agreement with the government under which he pled guilty to a superseding
9 information, which charged him with three counts of introduction of misbranded
10 drugs into interstate commerce. *United States v. Tieu*, 1:20-cr-00109-BAM (ECF Nos.
11 83-85).

12 The Court has since permitted Defendants' former counsel to withdraw from
13 Defendants' representation and permitted Defendants to file a response to the Motion
14 for Summary Judgment. On August 29, 2025, Defendant Tieu, now proceeding
15 without counsel, filed an Opposition to the Motion for Summary Judgment. (Opp'n
16 (ECF No. 152).) Plaintiff has filed a Reply. (Reply (ECF No. 154).)

17 Defendant Tieu also filed two sur-replies to Plaintiff's Reply. (ECF Nos. 155,
18 156.) Under the Local Rules, after a reply is filed, no further briefing is permitted
19 absent express leave of the Court. Local Rule 230(m). Defendant Tieu did not receive
20 leave of the Court and, as such, these sur-replies are stricken as unauthorized and will
21 not be considered.

22 **LEGAL STANDARD**

23 Summary judgment is appropriate where "there is no genuine dispute as to any
24 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
25 56(a). A dispute is "genuine" if "a reasonable jury could return a verdict for the
26 nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is
27 "material" if it "might affect the outcome of the suit under the governing law." *Id.*
28

1 The moving party bears the initial burden of informing the court of the basis for
2 the motion and identifying the portion of the record "which it believes demonstrate
3 the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S.
4 317, 323 (1986). The burden then shifts to the opposing party to "establish that there
5 is a genuine issue of material fact. . . ." *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio*
6 *Corp.*, 475 U.S. 574, 585 (1986). The parties must "(A) cit[e] to particular parts of
7 materials in the record. . . or (B) show[] that the materials cited do not establish the
8 absence or presence of a genuine dispute, or that an adverse party cannot produce
9 admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). When determining a
10 motion for summary judgment, "the inferences to be drawn from the underlying
11 facts. . . must be viewed in the light most favorable to the party opposing the motion."
12 *Matsushita Elec. Indus. Co.*, 475 U.S. at 587 (citation omitted). Ultimately, for the
13 moving party to succeed, the Court must conclude that no rational trier of fact could
14 find for the opposing party. *See id.*

15 A court may consider evidence as long as it is "admissible at trial." *Fraser v.*
16 *Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003). "Admissibility at trial" depends not on
17 the evidence's form, but its content. *Block v. City of L.A.*, 253 F.3d 410, 418-19 (9th
18 Cir. 2001) (citation omitted). The party seeking admission of evidence "bears the
19 burden of proof of admissibility." *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1004
20 (9th Cir. 2002). If the opposing party objects to the proposed evidence, the party
21 seeking admission must direct the court to "authenticating documents, deposition
22 testimony bearing on attribution, hearsay exceptions and exemptions, or other
23 evidentiary principles under which the evidence in question could be deemed
24 admissible. . . ." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 385-86 (9th Cir. 2010).
25 But if evidence falls short of the formalities of Rule 56, a district court still may exercise
26 its discretion "to be somewhat lenient." *Sch. Dist. No. 1J, Multnomah Cnty., Or. V.*
27 *ACandS, Inc.*, 5 F.3d 1255, 1261 (9th Cir. 1993) (collecting cases).

UNDISPUTED FACTS

2 In filing their Motion for Summary Judgment, Plaintiff included a lengthy
3 Statement of Undisputed Facts. (PSUF (ECF No. 65 at 33-86).) Defendant Tieu, the
4 only opposing Defendant, did not provide responses to Plaintiff's Statement of
5 Undisputed Facts or provide his own chart listing facts he believes to be undisputed.
6 (See Opp'n.) However, the Opposition does include a "Statement of Facts" section in
7 which Defendant Tieu makes various factual assertions. (See *id.* at 6-21.) From this
8 information, the Court has attempted to discern where there are disputes of fact.²
9 Where Defendant Tieu has not addressed facts that Plaintiff asserts are undisputed in
10 Plaintiff's Statement of Undisputed facts, the Court considers that fact to be
11 undisputed. Fed. R. Civ. P. 56(e).

12 Between at least 2017 and the time the Complaint in this action was filed,
13 Defendants GSP and GSN sold dietary supplement products. (PSUF ¶ 33.) These
14 included products sold under the names Imunstem, Aktiffvate, AnterFeeron-1,
15 AnterFeeron-2, CrProtein, DetoxHerb-1, DetoxHerb-2, DetoxHerb-NR, DetoxHerb-PI,
16 KemoHerb-1, KemoHerb-2, KemoHerb-NR, KemoHerb-PI, HyProtein-1, HyProtein-2,
17 HyProtein-3, HyProtein-4, and LyProtein. (*Id.* ¶¶ 37, 40, 43.) The primary ingredients
18 in Defendants' products were herbs. (*Id.* ¶¶ 45-62.) Defendants' products were sold
19 in product lines or collections of products referred to as "plans of care," which could
20 cost tens of thousands of dollars (*Id.* ¶¶ 37-38, 40-41, 43-44.) Three such plans of
21 care were the Emergency D-Virus Plan of Care, the Cancer Plan of Care, and the
22 Metabolic Plan of Care. (*Id.* ¶¶ 37, 40, 43.)

23 In advertising these plans of care, Defendants made numerous claims about the
24 health benefits of their products.³ Defendants advertised the Emergency D-Virus Plan

25 ² Defendant Tieu's Opposition is almost entirely concerned with whether Defendants had FDA approval
26 for their products. Many of the factual assertions in his Opposition, as well as the documents attached,
27 concern this issue. As such, most of the factual statements in Plaintiff's Statement of Undisputed Facts
have not been disputed by Defendant Tieu.

³ The scope of Defendants' claims regarding the purported effectiveness of their plans of care is far broader than can be included in this Order. The examples in this Order are illustrative of the

1 of Care as treating, mitigating the symptoms of, or curing COVID-19. Among other
2 things, Defendants placed billboards in California which advertised "NEW COVID 19
3 Treatment Emergency D-Virus Plan of Care" with contact information (*Id.* ¶ 79),
4 claimed that the products in the Emergency D-Virus Plan of Care were "uniquely
5 qualified to treat and modify the course" of COVID-19 (Compl. ¶ 40; Answer (ECF No.
6 40) at 6 ¶ 40), claimed the Emergency D-Virus Plan of Care would cause a reduction in
7 symptoms from COVID-19 (*id.*), and made social media posts advocating for the
8 Emergency D-Virus Plan of Care to treat, mitigate the symptoms of, or cure COVID-19
9 (PSUF ¶ 73-78; see ECF No. 6-3 at 1-10). The Metabolic Plan of Care and Cancer Plan
10 of Care (along with the products included in those lines) were advertised to treat,
11 mitigate the symptoms of, or cure cancer. (*Id.* ¶¶ 113-114.) Defendants posted
12 promotional videos claiming that these products were "cancer breakthroughs" with
13 various effects in treating, mitigating the symptoms of, or curing cancer, along with
14 reducing the effects of chemotherapy. (*Id.* ¶¶ 118-159.) Defendants also represented
15 that the Metabolic Plan of Care was "preventative of cancer," and that the Cancer
16 Treatment Plan caused effects that "arrest[ed] the fermentation process and the
17 cancer." (*Id.* ¶¶ 162, 167; see ECF No. 3-5 at 131.) Defendants advertised the Cancer
18 Treatment Plan as having survival rates and quality of life that compared favorably to
19 chemotherapy treatment. (PSUF ¶ 169-172.) Defendants also advertised the
20 Metabolic Plan of Care as a way to treat, mitigate the symptoms of, or cure Parkinson's
21 disease. (PSUF ¶ 189; Pl's App. at 362:3-21, 365:11-16.⁴) Defendants posted videos
22 claiming that Defendants' products, particularly Imunstem and Aktiffvate, were a
23 "Parkinson's Breakthrough" that could provide improvements for patients with

24 _____
25 representations made by Defendants. Defendant Tieu's Opposition does not dispute that these
26 representations were made and, in many cases, Defendants expressly admitted to making such
representations.

27 ⁴ Plaintiff's Appendix attached to their Motion for Summary Judgment spans three ECF Nos. 65-1, 65-2,
28 and 65-3. Plaintiff has utilized a Bates-stamped pagination system for this Appendix that spans these
docket entries. The Court utilizes this pagination for consistency with the parties' briefing.

1 Parkinson's disease. (PSUF ¶¶ 191-209.) Defendants also published documents that
2 similarly claimed that the Metabolic Plan of Care could cause a reduction of symptoms
3 for a variety of conditions, including Parkinson's disease. (Compl. ¶ 67; Answer at 8
4 ¶ 67.)

5 In addition to claims regarding the effectiveness of Defendants' products as a
6 treatment for these diseases, Defendants represented that their products were in
7 compliance with FDA requirements. (PSUF ¶ 227.) Defendants specifically claimed
8 that their Imunstem product had received FDA approval "to treat Serious or Life-
9 threatening diseases or conditions." (*Id.* ¶ 228; ECF No. 3-5 at 46; see ECF No. 3-6 at
10 2.) Similarly, Defendants published documents stating that Imunstem was "approved
11 as a prescription medicine and also for the indication to treat Serious or Life
12 threatening conditions" and that "It qualified for both of these under the Regenerative
13 Medicine Advance Therapy [("RMAT")] designation . . ." (PSUF ¶ 231; ECF No. 3-5 at
14 49.) Defendants also represented that the products in their Emergency D-Virus Plan
15 of Care had "proven themselves to the . . . FDA." (PSUF ¶ 233; ECF No. 3-5 at 49.)

16 **DISCUSSION**

17 **I. Non-Opposition by Defendants GSP and GSN**

18 Defendants GSP and GSN have not filed an opposition to Plaintiff's Motion for
19 Summary Judgment. Defendant Tieu, in filing his Opposition to Plaintiff's Motion, also
20 sought to file his Opposition on behalf of GSP and GSN. However, a corporation or
21 other entity may appear only by an attorney. See Local Rule 183(a); see also *D-Beam*
22 *Ltd. P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004) ("It is a
23 longstanding rule that corporations and other unincorporated associations must
24 appear in court through an attorney" (cleaned up)). As a non-attorney, Defendant
25 Tieu may not appear or file an opposition on behalf of Defendants GSP and GSN.
26 Thus, despite the long-pending nature of Plaintiff's Motion for Summary Judgment
27 and the numerous opportunities provided to do so, Defendants GSP and GSN have
28 not filed a valid opposition to Plaintiff's Motion.

1 The Court will treat that failure to file an opposition as non-opposition to the
2 Court granting the Motion. See Local Rule 230(c) ("[F]ailure to file a timely opposition
3 may also be construed by the Court as a non-opposition to the motion."). Based on
4 this non-opposition, as well as for the reasons stated below, the Court will grant
5 summary judgment to Plaintiff on their claims against Defendants GSP and GSN.

6 **II. Violations of Sections 5(a) and 12 of the FTC Act**

7 Each of Plaintiff's claims against Defendants is brought under sections 5(a) and
8 12 of the FTC Act. Section 5(a) prohibits "unfair or deceptive acts or practices in or
9 affecting commerce[,"] while section 12 "prohibits the dissemination of any false
10 advertisement in order to induce the purchase of food, drugs, devices, or cosmetics."
11 *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (internal citations and
12 quotations omitted); see also 15 U.S.C. §§ 45(a), 52. Representations, omissions, or
13 practices fall within the prohibition of section 5(a) and section 12 when: "(1) if it is likely
14 to mislead consumers acting reasonably under the circumstances (2) in a way that is
15 material." *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1199 (9th Cir. 2006); see
16 *Pantron I*, 33 F.3d at 1095. In this context, a representation is likely to mislead when
17 "(1) such representation was false or (2) the advertiser lacked a reasonable basis for its
18 claims." *FTC v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1067 (C.D. Cal.
19 2012). These are sometimes referred to as a "falsity theory" and "reasonable basis
20 theory," respectively. A communication or statement may be considered likely to
21 mislead based on "the net impression it creates[,"] even where it contains truthful
22 disclosures." *Cyberspace.com*, 453 F.3d at 1200.

23 **A. Likely to Mislead Consumers**

24 **1. Claims One, Two, and Three – Reasonable Basis**

25 Here, Plaintiff's Claims One through Three each allege that Plaintiff violated
26 sections 5(a) and 12 of the FTC Act, with the difference between each claim being
27 whether the representations were made related to COVID-19, cancer, or Parkinson's
28 disease. Plaintiff argues that Defendants' representations that their products were

1 capable of treating, mitigating symptoms of, or curing these diseases were material
 2 and likely to mislead consumers, under a reasonable basis theory. To find a
 3 representation was likely to mislead consumers under a reasonable basis theory, the
 4 Court first must determine "what level of substantiation the advertiser is required to
 5 have for his advertising claims."⁵ *Pantron I*, 33 F.3d at 1096. "Then, the [Court] must
 6 determine whether the advertiser possessed that level of substantiation." *Id.*

7 **i. Requisite Level of Substantiation**

8 In determining what level of substantiation is required, courts often utilize the
 9 *Pfizer* factors developed by the FTC, most fully described in *In re Thompson Med. Co.*,
 10 104 F.T.C. 648 (1994). See *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 490-91 (D.C.
 11 Cir. 2015) (discussing the *Pfizer* factors as identified in *Thomspn Medical*). These
 12 factors are: "[1] the type of product, [2] the type of claim, [3] the benefit of a truthful
 13 claim, [4] the ease of developing substantiation for the claim, [5] the consequences of
 14 a false claim, and [6] the amount of substantiation experts in the field would consider
 15 reasonable." *Pom Wonderful*, 777 F.3d at 490-91 (internal quotations and citations
 16 omitted). Given the substantial overlap in the types of claims Defendants made, these
 17 factors can be assessed jointly as they apply equally to each representation regardless
 18 of whether the claim is made in connection with COVID-19, cancer, or Parkinson's
 19 disease.

20 For the first and second factors, per Defendants' own admissions, the products
 21 in question are presented as treating, mitigating the symptoms of, or curing these

22 ⁵ As noted by the Plaintiff in their Motion, there are two types of advertising claims that can be
 23 addressed by a reasonable basis theory. "Establishment" claims contain a self-described level of
 24 substantiation. These are claims that contain express representations about the level of support for the
 25 claim. For example, an establishment claim might assert that a scientific study supports the
 26 effectiveness of a drug. For establishment claims, the Court does not need to determine a level of
 27 substantiation to apply, as the requisite level of substantiation is contained within the claim itself. "Non-
 28 establishment" or "efficacy" claims, on the other hand, do not provide the basis for claims within the
 representation. Plaintiff here asserts that Defendants' claims regarding their products concern the
efficacy of their products to treat, mitigate the symptoms of, or cure COVID-19, cancer, and Parkinson's
 disease. (Mot. at 13 n.14.) As such, the Court must determine the level of substantiation required as it
 is not provided by the representation itself. See *FTC v. QT, Inc.*, 448 F. Supp. 2d 908, 959 (N.D. Ill.,
 2006).

1 diseases. (Pl's App. at 43-44, 68-69.) This means that these products were presented
2 as a "drug" within the meaning of the FTC Act. See 15 U.S.C. § 55(c). This weighs in
3 favor of a higher degree of substantiation. Given the significance of viable treatments
4 for these diseases to those afflicted by them, the benefit of Defendants' claims, if
5 truthful, would be substantial.⁶ On the flip side, the consequences of a false claim are
6 significant. False claims could result in afflicted individuals not obtaining proper
7 medical care for their ailments, believing that they were receiving valid treatments
8 when they were not. Though there are undoubtedly high costs in substantiating
9 Defendants' claims, both the benefits of truthful claims and the consequences of false
10 claims counsel for the necessity of that process. Finally, given the nature of the claims
11 Defendants put forward, "competent scientific or medical tests or studies" are
12 necessary to substantiate Defendants' claims. *Pantron I*, 33 F.3d at 1096 n.23. In
13 further support of this, Plaintiff has put forward uncontested and uncountered expert
14 testimony that human clinical trials would be the substantiation experts in the field
15 would find reasonable.⁷ (Pl's App. at 447-48 (Declaration of John Schoggins, Ph.D.),
16 850-52 (Declaration of Katherine Tkaczuk, M.D.), 1269-70 (Declaration of Ramsey
17 Falconer, M.D.).)

18 Based on the above, it is clear that Defendants' claims require some level of
19 human clinical trial as substantiation. Defendant Tieu does not contest that this is the
20 necessary level of substantiation to support Defendants' representations. (See
21 generally Opp'n.) Accordingly, the Court will apply this level of substantiation in
22 determining if Defendants possessed the requisite substantiation in making their
23 advertising claims.

24 ⁶ The Court notes that this case was originally filed in July 2020, during the height of the COVID-19
25 pandemic and before vaccines were widely available.

26 ⁷ Plaintiff presents separate experts related to the COVID-19, cancer, and Parkinson's disease claims.
27 Each expert provides different specifics regarding the exact evidence they would expect to substantiate
28 Plaintiff's claims. Despite the differences, each experts agree that some form of human clinical trials
would be expected. Given that Defendants do not have substantiation of this variety, the exact
distinctions between the statements of Plaintiff's experts are insignificant.

ii. Substantiation Possessed by Defendants

In moving for summary judgment, Plaintiff asserts that Defendants lacked any form of competent and reliable scientific evidence to support their claims. Defendants' own admissions clearly suggest that this is accurate. In response to Plaintiff's request for admissions, Defendants admitted that there was no clinical trial, study, or literature that addressed or substantiated that the relevant products could treat, mitigate the symptoms of, or cure:

- COVID-19 (Pl's App. at 122 ¶ 48-49, 123 ¶ 54-55, 167 ¶ 48-49, 168 ¶ 54-55, 212 ¶ 48-49, 213 ¶ 54-55),
- cancer (*id.* at 142 ¶ 151-152, 143 ¶ 157-58, 187 ¶ 151-152, 188 ¶ 157-58, 232 ¶ 151-152, 233 ¶ 157-58), or
- Parkinson's disease (*id.* at 152 ¶ 197-98, 153 ¶ 203-04, 197 ¶ 197-98, 198 ¶ 203-04, 242 ¶ 198, 243 ¶ 203-04).

In his Opposition, Defendant Tieu mentions the existence of "patient Medical Record Results, which included fifty-four (54) COVID-19 patients."⁸ (Opp'n at 9.) This appears to be simply a collection of purported results from usage of Defendants' products that Defendants collected. (ECF No. 152 at 221-23.) This is not a competent and reliable scientific medical test or study, nor does it constitute human clinical trials, which Defendants admitted had never been conducted. Similarly, contained within the documents attached to Defendant Tieu's Opposition is a list of 42 individuals with cancer who utilized Defendants' products, along with purported outcomes. (*Id.* at 163-72.) This is also not a competent and reliable scientific medical test or study, but a self-maintained log with minimal to no supporting information.

⁸ Defendant Tieu does not appear to raise this information as an argument that Defendants possessed sufficient substantiation for their claims, but to challenge whether they had received FDA approval, as discussed further below. In fact, Defendant Tieu’s Opposition does not appear to raise any arguments related to the adequate substantiation of their claims at issue in Claims One through Three. Nevertheless, the Court addresses this information for the sake of completeness and full consideration. Plaintiff also objects to the admissibility of the documents provided by Defendant Tieu. These objections may be valid, but the Court instead addresses this information on its merits as it is ultimately insufficient to create a genuine dispute of material fact, regardless of its admissibility.

1 Based on Defendants' admissions and Defendant's failure to provide any
2 evidence to the contrary, there is no genuine dispute of material fact as to whether
3 Defendants possessed sufficient substantiation for their claims.

4 **2. Claim Four – Falsity**

5 In their fourth claim, Plaintiff asserts that Defendants violated sections 5(a) and
6 12 of the FTC Act through their representations that (1) the FDA had reviewed and
7 accepted Defendants' products, (2) the FDA designated Defendants' products as
8 Regenerative Medicine Advanced Therapies, and (3) that designation signified that
9 the products were safe and effective. (Compl. ¶ 82.) Plaintiff asserts that
10 representations were likely to mislead consumers under a falsity theory. (*Id.* ¶ 83;
11 Mot. 18-19.)

12 Plaintiff alleges that Defendants falsely claimed that the FDA had reviewed and
13 accepted Defendants' products. Plaintiff mainly points to an advertising
14 announcement that was placed on Defendants' website on July 1, 2018, that states, in
15 relevant part, that "the [FDA] has approved ImunStem . . . as the first botanical/herbal
16 medication to treat serious or life-threatening diseases or conditions."⁹ (Pl's App. at
17 374:10-14.) Plaintiff also notes that Defendants had repeatedly made similar
18 representations, such as that Defendants' products had "proven themselves" to the
19 FDA. (PSUF ¶ 233.) Plaintiff has presented substantial evidence that Defendants'
20 products never received any form of FDA approval, and that Defendants had been
21 repeatedly advised of this fact. (Pl's App. at 371-72 (deposition from Defendant Tieu
22 acknowledging that in 2013 the FDA had informed Defendants that clinical studies
23 were required for FDA approval), 300-01 (September 18, 2018 advising Defendants
24 that the NDA number being utilized "was not an approved application by FDA and the
25 product should not be listed as an approved drug), 302 (November 15, 2018 email

26
27

⁹ This is not the only purported reference to Imunstem as having FDA approval. (See PSUF ¶¶ 232,
28 234.) But the July 1, 2018 announcement is the main misrepresentation that Plaintiff notes.

1 stating that Defendants FDA application "was never approved and cannot be used as
2 a marketing authorization for the listed product.".)

3 In his Opposition, Defendant Tieu suggests that he did have FDA approval for
4 Imunstem. (See Opp'n at 11 ("It is Tieu's contention that Plaintiff FTC did not follow
5 through in their investigation of the FDA approval of ImunStem Rx only product."); 12
6 ("Tieu then received . . . notification that ImunStem Rx Only Prescription Drug and
7 Plans of Care had been reviewed, evaluated, cleared, approved, substantiated and
8 accepted by the FDA."); 18 ("As ImunStem was approved, by compliance with the FDA
9 regulations . . ."); 22 ("ImunStem was the only product for which FDA approval was
10 requested and obtained . . .").) These assertions are supported only by evidence of
11 Defendants' apparent attempts to apply for approval. Moreover, these statements are
12 directly contradictory to the factual basis agreed to by Defendant Tieu in connection
13 with his guilty plea. That factual basis, signed and agreed to by Defendant Tieu, states
14 that Imunstem and other drugs "were not FDA approved, and no Golden Sunrise
15 product had ever been approved by the FDA for any purpose or received an RMAT
16 designation from the FDA."¹⁰ *United States v. Tieu*, 1:20-cr-00109-BAM (ECF No. 83 at
17 A-1-A-2) (emphasis added). Thus, despite Defendant Tieu's suggestions to the
18 contrary, all substantive evidence and his own admissions establish that Defendants'
19 representations that the FDA had reviewed and approved Defendants' products were
20 false, and there is no genuine dispute of fact as to their falsity.

21 The evidence presented similarly establishes that Defendants falsely advertised
22 that their products were designated as RMATs. Plaintiff alleged, and Defendants
23 admitted, that Defendants had advertised their "Emergency D-Virus treatment plan"

24
25 ¹⁰ The plea agreement and factual basis therein may constitute hearsay as to the corporate Defendants
26 (but not as to Defendant Tieu. See Fed. R. Evid. 801(d)(2)). But even if it is properly considered
27 hearsay, the plea agreement and factual basis are nevertheless admissible under Federal Rule of
Evidence 807. *In re Slatkin*, 525 F.3d 805, 812 (9th Cir. 2008) (finding a plea agreement fell within the
residual hearsay exception as it was evidence of a material fact, was uniquely probative of intent, and
admission of the evidence furthered the general purposes of the Federal Rules of Evidence and the
interests of justice.)

1 as designated as an RMAT. (Compl. ¶¶ 23-24; Answer ¶¶ 23-24.) In addition to
2 Defendant Tieu's admission above that "no Golden Sunrise product had
3 ever . . . received an RMAT designation from the FDA[,"] *United States v. Tieu*, 1:20-cr-
4 00109-BAM (ECF No. 83 at A-1-A-2), Plaintiff also provides documentary evidence
5 showing that Defendants were informed that their RMAT designation application had
6 been denied (Pl's App. at 299 (April 6, 2017 letter denying RMAT designation), and
7 also cite to testimony from Defendant Tieu's deposition testimony wherein he
8 admitted that Defendants' RMAT application had been denied (*id.* at 373:13-19).
9 Defendant Tieu has not submitted any evidence establishing that Defendants'
10 products ever received an RMAT designation as had been suggested in their
11 advertising materials. As such, there is no genuine dispute of material fact as to the
12 falsity of this claim.

13 Given the above, Defendant Tieu has not raised a genuine dispute of material
14 fact as to the falsity of Defendants' claims of FDA approval for their products.¹¹ As
15 such, Plaintiff has established these claims were likely to mislead consumers acting
16 reasonably under the circumstances.

17 **B. Materiality**

18 Having determined that Defendants' claims were likely to mislead consumers
19 acting reasonably under the circumstances, the Court must then turn to whether the
20 representations were material. To determine whether a representation is material, the
21 Court must consider whether the representation "involves information that is
22 important to consumers and, hence, likely to affect their choice of, or conduct
23 regarding, a product." *Cyberspace.com*, 453 F.3d at 1201 (quoting *In re Cliffdale*
24 *Assoc., Inc.*, 103 F.T.C. 110, 165 (1984)).

25
26
27 ¹¹ The Court does not address Plaintiff's last argument of falsity on the grounds that Defendants falsely
28 claimed "that these FDA designations signified their products were safe and effective" as this allegation
is necessarily false given the fact that Defendants did not receive FDA approval for any product.

1 There can be no doubt regarding the materiality of the representations here.
2 Due to their nature as express claims and claims regarding health and safety,
3 Defendants' representations are presumed to be material. *Pantron I*, 33 F.3d at 1095-
4 96; *FTC v. Wellness Support Network, Inc.*, No. 10-cv-04879-JCS, 2014 WL 644749, at
5 *17 (N.D. Cal. Feb. 19, 2014). Even beyond these presumptions, which Defendant
6 Tieu has not contested, Defendants' representations regarding the ability of their
7 products to treat serious and potentially deadly conditions – as well as the safety of
8 those products – clearly involve information important to consumers that is likely to
9 affect their choice of product. As such, these representations are clearly material, and
10 there is no genuine dispute as to their materiality.

* * * *

12 Given the above, Defendants' representations made to advertise Defendants'
13 products were both likely to mislead reasonable consumers and material. As such,
14 these representations violated sections 5(a) and 12 of the FTC Act. Summary
15 judgment is granted in Plaintiff's favor.

III. Defendant Tieu's Individual Liability

17 Having found the representations violated the FTC Act, the Court must also
18 determine whether summary judgment is also warranted as to Defendant Tieu
19 individually. An individual may be held individually liable for injunctive relief under
20 the FTC Act where the individual either participated directly in the acts or had
21 authority to control them. *FTC v. Medlab, Inc.*, 615 F. Supp. 2d 1068, 1081 (N.D. Cal.
22 2009) (quoting *FTC v. Garvey*, 383 F.3d 891, 900 (9th Cir. 2004)). As Plaintiff only
23 seeks injunctive relief, not restitution, against Defendant Tieu, Plaintiff need not
24 establish Defendant Tieu’s knowledge. See *FTC v. Garvey*, 383 F.3d 891, 900 (9th Cir.
25 2004).

26 Here, there is no dispute that Defendant Tieu was both personally involved in
27 the acts in question and had authority to control them. Defendant Tieu admitted that
28 he operated or participated in operating the goldensunrisenutraceutical.com and

1 goldensunrisepharmaceutical.com websites (PSUF ¶¶ 247, 250; Pl's App. at 88 ¶ 19),
 2 "created the contents or contributed to" those websites, with nothing being posted to
 3 either website without Defendant Tieu's approval (Pl's App. at 332:24-333:2, 334:2-
 4 12), and operated and participated GSN and GSP's social media presence (*id.* at
 5 336:15-338:24). Defendant Tieu does not dispute any of these facts, present contrary
 6 evidence, or contest that he was personally involved in the acts and had authority to
 7 control them.¹² Accordingly, there is no genuine dispute of material fact as to
 8 Defendant Tieu's participation in the acts and authority to control them. As such,
 9 Plaintiff is entitled to summary judgment as to their claims against Defendant Tieu
 10 individually.

11 **IV. Common Enterprise**

12 Plaintiff asks that this Court recognize GSP and GSN as part of a common
 13 enterprise so that GSP and GSN are held jointly and severally liable. See *FTC v.*
 14 *Network Servs. Depot, Inc.*, 617 F.3d 1127, 1142-43 (9th Cir. 2010). To be considered
 15 a common enterprise, entities must "exhibit either vertical or horizontal
 16 commonality[,] which may be demonstrated "by a showing of strongly
 17 interdependent economic interests or the pooling of assets and revenues." *Id.* In
 18 determining whether a common enterprise exists, courts "consider[] factors such as:
 19 common control; the sharing of office space and officers; whether business is
 20 transacted through a maze of interrelated companies; the commingling of corporate
 21 funds and failure to maintain separation of companies; unified advertising; and
 22 evidence that reveals that no real distinction exists between the corporate
 23 defendants." *FTC v. Johnson*, 156 F. Supp. 3d 1202, 1207 (D. Nev. 2015).

24 Here, the undisputed evidence establishes that GSP and GSN are a common
 25 enterprise. (See PSUF ¶¶ 16-32.) More importantly, Defendants expressly stated in

26 ¹² As Plaintiff notes, while it is not necessary for Plaintiff to establish Defendant Tieu's knowledge to
 27 obtain injunctive relief, the presented evidence leaves little doubt that Defendant Tieu had knowledge
 28 of the material misrepresentations or was recklessly indifferent to the truth or falsity of those
 misrepresentations.

1 their Answer that "they have operated as a common enterprise . . ." (Answer at 3
2 ¶ 10.) Defendant Tieu also does not contest this in his Opposition. Accordingly, the
3 Court finds that GSP and GSN are part of a common enterprise and thus can be held
4 jointly and severally liable.

5 **V. Remedy**

6 In pursuing summary judgment, Plaintiff no longer seeks monetary relief. (Mot.
7 at 4 n.7; see ECF No. 1-4.) Instead, Plaintiff now only seeks permanent injunctive
8 relief. (Mot. at 3-4.) Under section 13(b) of the FTC Act, the Court has the authority to
9 grant injunctive relief. 15 U.S.C. § 53(b); see *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S.
10 67 at 1348-49 (2021). "[I]njunctive relief is appropriate when there is a cognizable
11 danger of recurrent violation, something more than the mere possibility." *John Beck*
12 *Amazing Profits*, 888 F. Supp. 2d at 1012. Factors considered include "the degree of
13 scienter involved, whether the violative act was isolated or recurrent, whether the
14 defendant's current occupation positions him to commit future violations, the degree
15 of harm consumers suffered from the unlawful conduct, and the defendant's
16 recognition of his own culpability and sincerity of his assurances, if any, against future
17 violations." *FTC v. AMG Servs., Inc.*, 558 F. Supp. 3d 946, 966 (D. Nev. 2021); see *FTC*
18 *v. Noland*, 672 F. Supp. 3d 721, 806 (D. Ariz. 2023).

19 Here, the factors weigh in favor of granting permanent injunctive relief. The
20 evidence presented suggests that Defendants were repeatedly made aware of the fact
21 that their products lacked adequate substantiation and continued to regularly make
22 these claims. GSP and GSN are companies specifically established to sell similar
23 products. Moreover, the statements made by Defendant Tieu in his Opposition
24 indicate not a recognition of his own culpability or assurance against future violations,
25 but that Defendant Tieu does not appreciate why Defendants' actions violated the
26 FTC Act. Finally, the potential harm to consumers through continued conduct would
27 be significant, as it could encourage those with serious conditions to forego
28

1 treatments with proven effectiveness. In light of these factors, the Court finds that
2 permanent injunctive relief is appropriate.

3 The scope of the proposed relief requested also seems appropriate. In their
4 proposed order Plaintiff seeks, among other things, to (1) enjoin Defendants making
5 representations regarding the ability of a product to treat, mitigate the symptoms of,
6 or cure diseases unless Defendants possess competent and reliable scientific
7 evidence substantiating the representation, (2) enjoin Defendants making
8 representations about the health benefits, performance, efficacy, safety, or side effects
9 of the covered products, (3) required Defendants to preserve records related to any
10 future human clinical test or study, (4) enjoin Defendants from misrepresenting FDA
11 approval of covered products, (5) enjoin Defendants from collecting or transferring
12 debts arising from the sale of covered products, and (6) requiring notice be provided
13 to consumers and resellers. The proposed order also provides for compliance
14 monitoring. The scope of this requested injunctive relief is reasonable. While it does
15 provide some “fencing in” to prevent similar violations in the future, such injunctive
16 relief is permissible for violations of the FTC Act and is relatively limited here. See *FTC*
17 *v. Grant Connect, LLC*, 763 F.3d 1094, 1097 (9th Cir. 2014) (“Those caught violating
18 the FTC Act must expect some fencing in. Accordingly, injunctive relief under the FTC
19 Act may be framed broadly enough to prevent respondents from engaging in
20 similarly illegal practices in future advertisements.” (cleaned up)).

21 With that said, the proposed order, as filed, appears to be in the form of a
22 stipulation between the Defendants and Plaintiff. (See ECF No. 65-4.) While this does
23 not affect the content of the order, it impacts the language therein. (See, e.g., *id.* at 4
24 (referencing “Stipulating Defendants”), 5 (same), 7 (same).) Accordingly, while the
25 Court finds that summary judgment in Plaintiff’s favor and permanent injunctive relief
26 are appropriate, it will not yet enter the permanent injunction. Instead, Defendants
27 are directed to file a new proposed order that appropriately reflects that the order is
28 not entered by stipulation of the parties.

1 **CONCLUSION**

2 For the reasons stated above, IT IS HEREBY ORDERED that:

3 1. Defendant Tieu's Unauthorized Sur-Replies (ECF Nos. 154, 155) are
4 STRICKEN;

5 2. Given the Court's order permitting Defendants to file an Opposition (see
6 ECF No. 145), Defendants' Motion to Set Aside (ECF No. 117) is DENIED
7 AS MOOT.

8 3. Plaintiff's Motion for Summary Judgment (ECF No. 65) is GRANTED.

9 Within fourteen (14) days of this order, Plaintiff shall file a revised
10 proposed order as discussed above.

11 IT IS SO ORDERED.

12 Dated: September 30, 2025


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

22 DJC1 - FTC20-cv-01060.MSJ