



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)
DANIEL CHAPTER ONE,)
a corporation, and)
)
JAMES FEIJO,)
individually, and as an officer of)
Daniel Chapter One)
)
)
_____)

Docket No. 9329
Public Document

COMPLAINT COUNSEL’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Commission Rule of Practice 3.24, 16 C.F.R. § 3.24, and in support of their motion for summary decision, Complaint Counsel submit this Statement of Material Facts as to Which There is No Genuine Issue.

A. DANIEL CHAPTER ONE AND THE FEIJOS

1. Respondent Daniel Chapter One (“DCO”) is a corporation sole organized in 2002 under the laws of the state of Washington. Respondents’ Answer to FTC’s Compl., dated Oct. 14, 2008 (hereinafter referred to as the “Answer”) at ¶ 1; *see also* Complaint Counsel’s Summary Decision Exhibit (hereinafter referred to as S.D. Ex. __) 3 (Declaration of FTC Investigator Michael Marino, dated Feb. 23, 2009, (hereinafter referred to as “Marino Dec.”) at ¶ 23, Exhibit L).
2. Respondent James Feijo is responsible for the activities of Respondent DCO as its Overseer. Answer ¶ 2.
3. Patricia Feijo, Respondent James Feijo’s wife, is the secretary for DCO. Deposition of Patricia Feijo, January 14, 2009, (hereinafter referred to as *P. Feijo Dep. Tr.*) at 10, l. 17-21; 52, l. 3-16.
4. Respondent James Feijo and his wife, Patricia, originally started DCO as a health food store in 1986. *P. Feijo Dep. Tr.* at 39, l. 14-25 - 40, l. 1-20.

5. Respondents' principal office and place of business is located at 1028 East Main Road, Portsmouth, Rhode Island 02871. Answer ¶ 1; Deposition of James D. Feijo, January 13, 2009, (hereinafter referred to as *J. Feijo Dep. Tr.*) at 99, l. 10-18.
6. James Feijo sold DCO products prior to registering as a corporation sole. *J. Feijo Dep. Tr.* at 224, l. 4-6.
7. DCO offers 150 to 200 products today. *J. Feijo Dep. Tr.* at 37, l. 11-13.
8. Respondent James Feijo is responsible for the development, creation, and production of Bio*Shark, 7 Herb Formula, GDU, and BioMixx (collectively, the "DCO Products"). S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 2*); *J. Feijo Dep. Tr.* at 116, l. 17-21.
9. Respondent James Feijo is the trustee for all Daniel Chapter One assets, including all funds which are held in trust. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 9*).
10. Daniel Chapter One has a bank account with Citizens Bank. Deposition of Jill Susan Feijo, January 22, 2009, (hereinafter referred to as *Jill Feijo Dep. Tr.*) at 33, l. 19-23.
11. Patricia Feijo is a signatory to DCO's bank account and writes checks on behalf of the DCO account. *P. Feijo Dep. Tr.* at 54, l. 8-19.
12. Jill Feijo, James Feijo's daughter and Respondents' corporate representative, also has authority to write checks on behalf of the DCO account. *Jill Feijo Dep. Tr.* at 34, l. 15-17.
13. Respondent James Feijo receives all the bank statements for the DCO account. *Jill Feijo Dep. Tr.* at 34, l. 10-11.
14. Respondent James Feijo maintains the financial records for DCO. *Jill Feijo Dep. Tr.* at 47, l. 6-8.
15. Respondent DCO defrays James Feijo's expenses as Overseer and provides for his support. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 3*).
16. Respondent James Feijo pays his daughter Jill \$700 per week cash for her work at Daniel Chapter One. *Jill Feijo Dep. Tr.* at 13, l. 3-9.
17. DCO has two buildings in Portsmouth, Rhode Island – one contains the office with the Order Center and the other contains the products that DCO offers to the public. *Jill Feijo Dep. Tr.* at 20, l. 9-24.

18. DCO is not registered with the Internal Revenue Service as a charity. *J. Feijo Dep. Tr.* at 45, l. 11-13.
19. Messiah Y'Shua Shalom, a Washington corporation sole, owns the property that Respondents use in Rhode Island. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3; *see generally* S.D. Ex. 3 (Marino Dec. at ¶ 23, Exhibit M).
20. Respondent James Feijo is the overseer for Messiah Y'Shua Shalom. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3; *see also* S.D. Ex. 3 (Marino Dec. at ¶ 23, Exhibit M).
21. Messiah Y'Shua Shalom houses the buildings where Respondents perform their ministry of Daniel Chapter One. *J. Feijo Dep. Tr.* at 72, l. 7-25 - 73, l. 1-3.
22. Daniel Chapter One owns a three-bedroom property in Deerfield Beach, Florida. *J. Feijo Dep. Tr.* at 70, l. 22-25 - 71, l. 1-15.
23. James and Patricia Feijo live in the properties owned by Messiah Y'Shua Shalom and DCO. *J. Feijo Dep. Tr.* at 70, l. 25 - 71, l. 1-2; 78, l. 20-25 - 79, l. 1.
24. Daniel Chapter One owns two cars - a 2003 Cadillac and a 2004 Cadillac. DCO purchased one Cadillac new and the other Cadillac used. *J. Feijo Dep. Tr.* at 71, l. 16-23.
25. Respondent James Feijo uses the two Cadillacs owned by DCO. *J. Feijo Dep. Tr.* at 96, l. 9-10, 14-16; 97, l. 7-13.
26. Respondents practice a science they call BioMolecular Nutrition. S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0307).
27. According to Respondents, “[t]here are two aspects of BioMolecular Nutrition, the spiritual and the physical.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0307).
28. “The principles of BioMolecular Nutrition were those missing principles needed to bind together those of the nutritionists and the biochemists.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0309).
29. According to Respondents, “[b]ecause of BioMolecular nutritional products developed at that time, we’ve been able to support other naturopathic disciplines – chiropractic, acupuncture, herbology, and homeopathy – and using the principles of BioMolecular Nutrition has allowed many natural health practitioners to be complete.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0308).

B. RESPONDENTS DISTRIBUTE THEIR PRODUCTS IN COMMERCE TO CONSUMERS

30. Respondents distribute the DCO Products in commerce. Answer ¶ 4; *J. Feijo Dep. Tr.* at 102, l. 13-16.
31. Respondent DCO has an 800 number and a call center for consumers to purchase the DCO Products. *P. Feijo Dep. Tr.* at 67, l. 7-13; *Jill Feijo Dep. Tr.* at 15, l. 5-14.
32. Respondent James Feijo created, managed, and maintained the toll-free telephone number, designed so that consumers can order the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 33*).
33. On the front page of their BioMolecular Nutrition Product Catalog, Respondents inform consumers to "Call Toll FREE 1-800-504-5511 or shop online at www.danielchapterone.com." S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0060).
34. Respondents operate the website www.danielchapterone.com. Answer ¶ 5; *J. Feijo Dep. Tr.* at 62, l. 10-13.
35. DCO also operates the Web sites dc1pages.com and dcstore.com. *J. Feijo Dep. Tr.* at 232, l. 21-25 - 233, l. 1-19.
36. Consumers learn of DCO's 800 number from the DCO Web site, the BioGuide, and the radio program. *Jill Feijo Dep. Tr.* at 15, l. 15-25.
37. Respondent James Feijo established the price of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 25*); *P. Feijo Dep. Tr.* at 77, l. 13-16.
38. Jill Feijo has supervised Respondent DCO's Order Center for the past nine years and has taken telephone orders. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 30*).
39. DCO employs Kevin Vandeburg, Axel Busche, and Jay Butler to work in the building that contains the DCO Products and to ship the DCO Products ordered by consumers. *Jill Feijo Dep. Tr.* at 21, l. 7-22.
40. DCO's Order Center is open Monday through Friday from 9:00 a.m. to 8:00 p.m. *Jill Feijo Dep. Tr.* at 16, l. 5-10.
41. DCO receives payments through its Order Center through credit card and COD. *Jill Feijo Dep. Tr.* at 18, l. 6-10.

42. DCO also accepts consumers' orders on the Internet. *Jill Feijo Dep. Tr.* at 18, l. 11-13.
43. DCO's Web site contains a tab inviting consumers to shop at DCO's "On-Line Store." S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint* at FTC-DCO 0011); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*).
44. DCO's Web site contains an icon inviting consumers to "Buy Now." S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint* at FTC-DCO 0011); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*).
45. Respondents' acquisition costs for the products they sell is 30 percent of the price Respondents charge to consumers for products such as 7 Herb Formula. *J. Feijo Dep. Tr.* at 232, l. 3-8.
46. Over a thousand consumers have purchased DCO's products. *P. Feijo Dep. Tr.* at 57, l. 13-18.
47. Respondents have generated approximately \$2 million in annual sales for the years 2006, 2007, and 2008 for all of DCO's two-hundred products. *J. Feijo Dep. Tr.* at 206, l. 18-20; 212, l. 14-24; S.D. Ex. 9 (*J. Feijo Dep. Ex. 9 - Daniel Chapter One Monthly Gross Sales*).
48. There is no indication in the BioMolecular Nutrition Product Catalog that the price listed is for a donation. *J. Feijo Dep. Tr.* at 158, l. 11-17; *P. Feijo Dep. Tr.* at 76, l. 11-17; 77, l. 5-12.
49. There is no mention of the DCO ministry in the BioMolecular Nutrition Product Catalog. *J. Feijo Dep. Tr.* at 161, l. 4-10.
50. Jill Feijo does not recall whether there is anything in writing regarding any alleged "donation policy." *Jill Feijo Dep. Tr.* at 22, l. 25 - 23, l. 1-3.
51. Most consumers pay DCO's alleged "suggested donation" price and "not many" people per day ask Jill Feijo to pay a lowered amount. *Jill Feijo Dep. Tr.* at 23, l. 14-21.
52. On January 3, 2008, FTC investigator Michael Marino ("Marino") purchased the DCO Products from Respondents' Web site. S.D. Ex. 3 (Marino Dec. at ¶ 9-10, Exhibit C).
53. Prior to making the purchase, Marino created an undercover e-mail account to confirm and monitor the progress of the purchase and received four emails from Respondents

- relating to the purchase of the DCO Products. S.D. Ex. 3 (Marino Dec. at ¶ 11, Exhibit D).
54. On or about January 24, 2008, Marino received the DCO Products. S.D. Ex. 3 (Marino Dec. at ¶ 12).
 55. Included in the shipment of the DCO Products ordered by Marino were the following: (a) BioGuide 3: The BioMolecular Nutrition Guide to Natural Health 3; (b) “BioMolecular Nutrition Product Catalog;” (c) a blank purchase order form; and (d) an invoice form. S.D. Ex. 3 (Marino Dec. at ¶ 12, Exhibits E-H).
 56. According to the UPS Ground shipping label attached to the package containing the DCO Products and the DCO materials, the shipment originated from Daniel Chapter One, 822 Anthony Road, Portsmouth Rhode Island 02871-5604 and was sent to an FTC undercover address in a state other than Rhode Island in the United States. S.D. Ex. 3 (Marino Dec. at ¶ 12).
 57. Marino inspected the contents of the shipment of the DCO Products and did not observe a separate document indicating that the purchase was a “donation” or thanking the purchaser for making a “donation” to Daniel Chapter One. S.D. Ex. 3 (Marino Dec. at ¶ 13).
 58. According to Commission records, the amount charged to the undercover credit card used for the purchase of the DCO Products was \$175.75. These records also indicate that this charged was made by “DANIEL CHAPTER ONE.” S.D. Ex. 3 (Marino Dec. at ¶ 14).
 59. DCO’s shipping and handling fees for its products are \$20.95. *J. Feijo Dep. Tr.* at 152, l. 22-25 - 153, l. 1-3.
 60. DCO offers coupons to consumers for their next online store order. *J. Feijo Dep. Tr.* at 154, l. 2-7.
 61. Respondents run promotions from time to time to “give [consumers] more of an opportunity to . . . get things at a lower rate.” *J. Feijo Dep. Tr.* at 154, l. 8-24.
 62. For example, consumers can buy multiple bottles and get a bottle free. *J. Feijo Dep. Tr.* at 232, l. 16-20.
 63. A number of stores nationally sell DCO’s products, including stores in Georgia and a store in Pennsylvania. *P. Feijo Dep. Tr.* at 72, l. 16-24.
 64. Doctors and stores that carry DCO’s product line get the product at a lesser price because they are going to be selling it. *P. Feijo Dep. Tr.* at 71, l. 3-9.

65. Respondents' Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, costs \$5.95. S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0405).
66. In their Cancer Newsletter, Respondents instruct consumers to call "1-800-504-5511" to order their products. S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0405).
67. In their Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!, Respondents state that their "[l]atest Bioguide" is "[o]nly \$9.95." S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0397).
68. Respondents' publication entitled The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide costs \$12.95. S.D. Ex. 3 (Marino Dec. at ¶ 24, Exhibit N at FTC-DCO 2825).
69. On their Web site *dc1store.com*, Respondents state: "For Information on Special offers for *purchasing* multiple bottles of 7-Herb call 1-800-504-5511 between 9-6 EST Mon-Fri." S.D. Ex. 11 (*Pages from Respondents' Web site dc1store.com listing contact information, dated Mar. 31, 2008, at FTC-DCO 0084*) (emphasis added) .
70. On their Web site *dc1store.com*, Respondents state the following regarding their affiliate program: "**Welcome to the DC1 Affiliate Program!** Our program is free to join, it's easy to sign-up and requires no technical knowledge. Affiliate programs are common throughout the Internet *and offer website owners a means of profiting from their websites. Affiliates generate sales for commercial websites* and in return receive a percentage of the value of those sales. **How Does It Work?** When you join the DC1 Affiliate Program, you will be supplied with a range of banners and textual links that you place within your site. When a user clicks on one of your links to the DC1 Affiliate Program, their activity will be tracked by our affiliate software. You will earn a commission based on your commission type. **Real-Time Statistics and Reporting!** Login 24 hours a day to check your sales, traffic, account balance and see how your banners are performing. You can even test conversion performance by creating your own custom links! Affiliate Program Details. Pay-Per-Sale: 10% of all sales you deliver. \$100.00 USD - Minimum balance required . . . Payments are made on the 1st of each month, for the previous month." S.D. Ex. 12 (*Pages from Respondents' Web site dc1store.com discussing "DC1 Affiliate Program," dated Dec. 12, 2007 at FTC-DCO 0461 - 0462*) (emphasis in bold in original; emphasis in italics supplied) .
71. When discussing the cost of DCO's products generally, Terry Brotherton, a consumer whose testimonial was provided by Respondents in discovery, stated "*[i]t wasn't cheap but it was the best money I ever spent.*" S.D. Ex. 13 (*Terry Brotherton Statement produced by Respondents as DCO 0156*) (emphasis added).

72. When discussing the cost of 7 Herb Formula specifically, Charlotte Rice, a consumer whose testimonial was provided by Respondents in discovery, stated, “I then proceeded to reduce my 7 Herb Formula to a maintenance dosage. Tricia & Jim Feijo did not agree with my decision. They felt I should stay on the maximum dosage to be safe, **but I was having financial problems, and could not afford the cost.**” S.D. Ex. 14 (*Charlotte Rice Statement produced by Respondents as DCO 0170 - 0171* at DCO 0170) (emphasis added).
73. When discussing the cost of 7 Herb Formula, GDU, Bio*Shark, and other DCO products, Earl Davis, a consumer whose testimonial was provided by Respondents in discovery, stated, “[t]he only drawback that we’ve experienced is the pricing of the products. **There should be discounts for customers who have referred lots of people and for those customers who consume lots of product monthly** because alternative therapy is expensive. . . .” S.D. Ex. 15 (*Earl Davis Statement produced by Respondents as DCO 0187*) (emphasis added).
74. When discussing the cost of 7 Herb Formula, Ernie Jensen, a consumer whose testimonial was provided by Respondents in discovery, stated “I could not afford the 7 Herb [Formula].” S.D. Ex. 16 (*Ernie Jensen Statement produced by Respondents as DCO 0189 - 0193* at DCO 0189).
75. The trademark symbol appears next to Respondents’ term “BioMolecular Nutrition” and Respondents’ products 7 Herb Formula, GDU, and BioMixx. S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0060 - 0061).

BioShark

76. Bio*Shark is a product that contains, among other ingredients, Shark Cartilage. Answer ¶ 6.
77. Respondents offer one bottle of Bio*Shark for \$65.95 (300 of the 800 mg capsules) and \$30.95 (100 of the 800 mg capsules). Answer ¶ 6.
78. Respondents pay Universal Nutrition \$3.15 per unit for the 100 capsule bottle of Bio*Shark and \$8.75 per unit for the 300 capsule bottle of Bio*Shark. Deposition of Claudia Petra Bauhoffer-Kinney, January 15, 2009, (hereinafter referred to as *Kinney Dep. Tr.*) at 44, l. 15-19.
79. During 2008, Respondents paid Universal Nutrition approximately \$1,437 to manufacture 479 units of the 100 capsule bottle of Bio*Shark and approximately \$6,256 to manufacture 782 units of the 300 capsule bottle of Bio*Shark. *Kinney Dep. Tr.* at 45, l. 3-10.
80. Universal Nutrition does two things - it has its own brand of products, and it also is a private label manufacturer. *Kinney Dep. Tr.* at 17, l. 10-23.

81. DCO falls under the private label part of Universal Nutrition. *Kinney Dep. Tr.* at 17, l. 24-25.
82. Universal Nutrition makes approximately 35-40 products for DCO, including Bio*Shark, GDU, and BioMixx. *Kinney Dep. Tr.* at 21, l. 1-19.
83. Universal Nutrition started manufacturing Bio*Shark for Respondents approximately eight to ten years ago. *Kinney Dep. Tr.* at 42, l. 23-25 - 43, l. 1.

7 Herb Formula

84. 7 Herb Formula is a liquid tea concentrate product that contains, among other ingredients, distilled water, Cat's Claw, Burdock Root, Siberian Ginseng, Sheep Sorrel, Slippery Elm, Watercress, and Turkey Rhubarb Root. Answer ¶ 8.
85. Respondents offer one 32-ounce bottle of 7 Herb Formula for \$70.95. Answer ¶ 8.
86. On their Web sites danielchapterone.com and dc1pages.com, Respondents state the following regarding 7 Herb Formula: "I think it costs too much: Essiac formulas normally retail for \$45 to \$69 per bottle. If you compare that to the cost of a hospital stay and drug treatment, this is cheap! ***Daniel Chapter One's 7 Herb Formula is equally priced with most other brands but with ours you get a great deal more.*** Remember you are not only getting 32 ounces per bottle, when some of the other brands are only 16 ounces; you are also getting 2 more expensive herbs (Cat's Claw and Siberian Ginseng). We use 3 times the herbs and prepare each individually using a double water filtering process. If that is the case you must at least double the price they are asking to get equal price comparison." S.D. Ex. 17 (*Pages from Respondents' Web sites dc1pages.com, dated April 2, 2008, at FTC-DCO 0159 - 0160, and danielchapterone.com, dated November 7, 2008, at FTC-DCO 0495, stating "I think it costs too much"*) (emphasis added).

GDU

87. GDU is a product that contains, among other ingredients, Bromelain, Turmeric, Quercetin, Feverfew, and Boron. Answer ¶ 10.
88. Respondents offer GDU for \$45.95 (300 capsules) and \$29.95 (120 capsules). Answer ¶ 10.
89. Respondents pay Universal Nutrition \$3.28 per unit for the 120 tablet [sic] bottle of GDU and \$7.07 per unit for the 300 tablet [sic] bottle of GDU. *Kinney Dep. Tr.* at 34, l. 21-25 - 35, l. 1-4.

90. During 2008, Respondents paid Universal Nutrition approximately \$5,127 to manufacture 1,709 units of the 120 tablet [sic] bottle of GDU and approximately \$52,661 to manufacture 7,523 units of the 300 tablet [sic] bottle of GDU. *Kinney Dep. Tr.* at 34, l. 5-25 - 35, l. 1-4.

BioMixx

91. BioMixx is a product that contains, among other ingredients, Goldenseal, Echinacea, and Ginseng. Answer ¶ 12.
92. Respondents offer BioMixx for \$40.95 (3 lb. powder) and \$22.95 (1 lb. powder). Answer ¶ 12.
93. Respondents pay Universal Nutrition \$11.50 per unit for the 3 pound bottle of BioMixx. *Kinney Dep. Tr.* at 46, l. 8-16.
94. During 2008, Respondents paid Universal Nutrition approximately \$8,778 to manufacture 798 units of the 3 pound bottle of BioMixx. *Kinney Dep. Tr.* at 46, l. 8-16.

C. RESPONDENTS DIRECT CONSUMERS ON HOW TO TAKE THEIR PRODUCTS

95. Respondent James Feijo and his wife, Patricia Feijo, have been solely responsible for creating, drafting, and approving the directions for usage and the recommended usages of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 16*).
96. There only has been one version of each of the DCO Products, and the information relating to the identity of each ingredient and the amount of each ingredient is contained on the labels for the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 17*).
97. Each Bio*Shark product label directs users to take 2-3 capsules three times a day or as directed by a physician or by a BioMolecular Nutrition health care professional. Answer ¶ 6; S.D. Ex. 18 (*P. Feijo Dep. Ex. 14 - Bio*Shark Labels at FTC-DCO 0065 - 0066, 0122 - 0123*).
98. Respondent James Feijo and his wife developed the suggested dosage for Bio*Shark, and the suggested dosage was based on their "reading and from experience." *P. Feijo Dep. Tr.* at 166, l. 19-25 - 167, l. 1-4.
99. Respondents' product label directs users to take 1-2 ounces of 7 Herb Formula with 2-4 ounces of hot or cold filtered or distilled water. The label further directs users to take 7 Herb Formula twice daily or as directed by a BioMolecular Nutrition Health care

professional. Answer ¶ 8; S.D. Ex. 19 (*P. Feijo Dep. Ex. 15 - 7 Herb Formula Labels at FTC-DCO 0064, 0124*).

100. Respondent James Feijo and his wife developed the suggested dosage for 7 Herb Formula. *P. Feijo Dep. Tr.* at 175, l. 13-16.
101. Respondents' GDU product label directs users to take 3-6 capsules 2 to 4 times per day or as directed by a physician or by a BioMolecular Nutrition health care professional. Answer ¶ 10; S.D. Ex. 20 (*P. Feijo Dep. Ex. 16 - GDU Caps Labels at FTC-DCO 0125 - 0126, 0067 - 0068*).
102. Respondent James Feijo and his wife developed the suggested dosage for GDU. *P. Feijo Dep. Tr.* at 192, l. 20-23.
103. Respondents' product label for BioMixx directs users to take five scoops daily. Answer ¶ 12; S.D. Ex. 21 (*P. Feijo Dep. Ex. 17 - BioMixx Labels at FTC-DCO 0127 - 0128*).

D. RESPONDENTS CLAIM THAT THEIR PRODUCTS CURE, MITIGATE, TREAT, OR PREVENT CANCER OR TUMORS.

104. DCO's Web site depicts pictures of the DCO Products next to the statement "Daniel Chapter One's Cancer Solutions." *P. Feijo Dep. Tr.* at 176, l. 20-25 - 177, l. 1-19; S.D. Ex. 7 (*J. Feijo Dep. Ex. 4 - Exhibits A - D to Administrative Complaint at FTC-DCO 0014*); S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2).
105. On their Web site dc1pages.com, Respondents publish information about the DCO Products, including, but not limited to, the following:

Supporting Products

To enhance 7 Herb Formula's healing quantities Daniel Chapter One advises [sic] to get familiar with the supporting products below:

**CANCER
TREATMENT:**

**7Herb Formula
Bio*Shark
BioMixx
GDU Caps**

also

Ezekiel Oil
topically

S.D. Ex. 22 (*Pages from Respondents' Web site dclpages.com regarding "Supporting Products," dated April 2, 2008 at FTC-DCO 0190*).

106. In DCO's The Most Simple Guide to the Most Difficult Diseases: The Doctors' How-To Quick Reference Guide, DCO recommends the following products for cancer:

CANCER

All types of Cancer

7*Herb Formula TM

2 ounces in juice or water
(minimum intake)
2 times daily

Bio*Shark ^{TM****}(for tumors only)

2 - 4 capsules
3 times daily with meals

BioMixx TM (Boosts immune system)

4 - 5 scoops in soy milk
2 times daily

GDU Caps TM

3 - 6 capsules
3 times daily; ½ hr.
BEFORE meals

S.D. Ex. 3 (M. Marino Dec. at ¶ 24, Exhibit N at FTC-DCO 2739).

107. Through the "Testimonies" tab on the danielchapterone.com Web site, Respondents provide the following titles for testimonials from their customers, who claim that DCO's Products were effective in the cure, mitigation, treatment, or prevention of cancer or tumors:

Cancer, Bladder (Drew Dellinger)
Cancer, Breast Mass (Deloris Winter)
Cancer, Cancerous Lung Tumor (Douglas Meeks)
Cancer, Cancerous Tumor (Joe Rocha)
Cancer, Leukemia, Brain Tumor (Tracey Kulikowski)
Cancer, Prostate (Jim Givens)
Cancer, Prostate Cancer (Joe)
Special Forces Officer Overcomes Prostate Cancer

Cancer, Prostate (Sherman “Red” Smith)
Cancer, Renal Cell (Jim Hatfield)
Cancer, Skin (Pastor Wayne Harms)
Cancer, Stage 4 (Joseph Jungles)

S.D. Ex. 23 (*Testimonials from Respondents’ Web site at FTC-DCO 0100 - 0119*).

108. In Respondents’ BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Tracey Kulikowski that states: “I had contracted leukemia and had three inoperable tumors. When I decided not to do chemotherapy or radiation, my father sent me **BIOMIXX** and **7 HERB FORMULA**. Each day as I took it and got it into my system more and more, the better I felt. Then I added Garlic, Siberian Ginseng, and **Bio*Shark**. I am now in complete remission. The cancer cell count has dropped, the doctors tell me. I had a tumor just above the brain stem in my brain that has completely disappeared. The tumor on my liver is shrinking and the tumor behind my heart has shrunk over 50%. . . . There are alternatives besides chemo and radiation!” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3 at FTC-DCO 0353*)(emphasis in bold added).
109. Respondent James Feijo was responsible for putting together BioGuide 3. *J. Feijo Dep. Tr.* at 243, l. 12-21.
110. Patricia Feijo was responsible for writing the BioGuide. *P. Feijo Dep. Tr.* at 20, l. 15-25.
111. Bio*Shark, 7 Herb Formula, GDU, and BioMixx all appear in Respondents’ Cancer Newsletter, entitled How to Fight Cancer is Your Choice!!!. S.D. Ex. 10 (*DCO’s Cancer Newsletter, Millenium [sic] Edition, 2002 - “How to Fight Cancer is Your Choice!!! at FTC-DCO 0390 - 405*).
112. The Cancer Newsletter is “strictly all about the products for cancer.” *J. Feijo Dep. Tr.* at 143, l. 17-22.
113. Patricia Feijo was responsible for writing the Cancer Newsletter. *P. Feijo Dep. Tr.* at 26, l. 23-25 - 27, l. 1-19; 28, l. 5-10.
114. James and Patricia Feijo are not doctors. *P. Feijo Dep. Tr.* at 114, l. 15-16.
115. James Feijo never held a position where he had to use any skills involving medicine. *J. Feijo Dep. Tr.* at 47, l. 12-17.
116. James and Patricia Feijo are not research scientists. *P. Feijo Dep. Tr.* at 114, l. 16.
117. During the July 8, 2008 DCO Healthwatch radio program, James Feijo stated that “the FTC, the FDA, the Canadian Government don’t like the fact that we’ve told people about

what to do about natural methods of health and healing, especially cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit J at 7, l. 16-19 (FTC-DCO 0506)).

118. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo stated the following: “And while the FTC does not want us saying that anything natural can be used to treat cancer and that nothing certainly can cure cancer, we know that the truth is different than what they want us to say. The truth is God has given us herbs in His creation and nutrients that can heal cancer, even cure cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 4, l. 17-23 (FTC-DCO 0612)).

BioShark

119. Respondents publish information about Bio*Shark, including, but not limited to, the following:

PRODUCTS

Bio*Shark: Tumors & Cysts

Pure skeletal tissue of sharks which provides a protein that inhibits angiogenesis - the formation of new blood vessels. This can stop tumor growth, and halt the progression of eye diseases such as diabetic retinopathy and macular degeneration. . .

Answer ¶ 7; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 1*); see also *J. Feijo Dep. Tr.* at 61, l. 11-14; 100, l. 24-25 - 101, l. 1; 107, l. 15-18; *P. Feijo Dep. Tr.* at 156, l. 14-25 - 157, l. 1-7.

120. Respondents publish information about Bio*Shark, including, but not limited to the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™ . . .

Bio*Shark™ . . . [emphasis added]

BioMixx™ . . .

GDU Caps™ . . .

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice! . . . [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility ¶ 2*); see also *J. Feijo Dep. Tr.* at 61, l. 11-14; 100, l. 24-25 - 101, l. 1; 110, l. 23-25 - 111, l. 13-20.

121. In their BioMolecular Nutrition Product Catalog, next to the pictures of the BioShark bottles, Respondents state that “Shark Cartilage protein inhibits angiogenesis, stops tumor growth, and halts eye disease.” S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0061).
122. On a prior Daniel Chapter One Web site, Respondents stated “**Bio*Shark Shark Cartilage** Stops tumor growth in its tracks.” S.D. Ex. 24 (*Respondents’ “Web Pages from prior Daniel Chapter One Web sites”* at FTC-DCO 2032) (emphasis in original).

7 Herb Formula

123. 7 Herb Formula is a product that can be used by a person who is suffering from cancer. *P. Feijo Dep. Tr.* at 171, l. 4-8.
124. Respondents publish information about 7 Herb Formula, including, but not limited to, the following:

INFO CENTER

Cancer News.

7 Herb Formula

- purifies the blood
- promotes cell repair
- **fight tumor formation** [emphasis in original]
- fights pathogenic bacteria

...

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™... [emphasis added]

Bio*Shark™...

BioMixx™...

GDU Caps™...

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice!... [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 60, l. 17-22; 101, l. 2-6; 110, l. 23-25; 111, l. 13-20.

125. Respondents publish information about 7 Herb Formula, including, but not limited to, the following:

7 Herb Formula battles cancer.

Tracey was given no hope!

The doctors had pretty much given up on Tracey. She had leukemia and tumors on the brain, behind the heart and on her liver. . .

This is Tracey's story in her own words as told in 1997: 'I had contracted leukemia and had three inoperable tumors. When I decided not to do chemotherapy or radiation, my father sent me Bio*Mixx and 7 Herb Formula. Each day as I took it and got it into my system more and more, the better I felt. Then I added Garlic Pur, Siberian Ginseng and BioShark.' "I am now in complete remission. . .'

Answer ¶ 9; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 60, l. 17-22; 101, l. 2-6; 110, l. 23-25; 111, l. 13-20.

126. In their BioMolecular Nutrition Product Catalog, next to the picture of the 7 Herb Formula bottle, Respondents state that the herbs in 7 Herb Formula "purify the blood and promote cell repair, clear skin, cleanse the liver, decrease cell mutation, fight pathogenic bacteria and **tumor formation.**" S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0061) (emphasis added).
127. In Respondents' BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Buzz McKay: "I had beam radiation for **prostate cancer**. I also took 7 Herb Formula, 6 ounces a day, and BioMixx; I never had a bad day, never felt sick. When my PSA went from 7.6 to 0.5 in the month after I finished radiation, my doctor was surprised. Several months later, it was down to 0.16! 7 Herb Formula is extremely well done - fantastic. I still take 2 ounces of **7 Herb Formula** every morning; I plan to stay on that forever! **I figure 6 ounces (2 morning, 2 afternoon, 2 evening) did such a good job fighting cancer**, 2 ounces is a good prophylaxis!" S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0330) (emphasis added).
128. On their Web sites danielchapterone.com and dc1pages.com, Respondents publish information about 7 Herb Formula, including, but not limited to, the following: "With Jim Feijo's addition to the [7 Herb] formula, we now have the most effective and potent formula available in the battle against tumors." S.D. Ex. 25 (*Pages from Respondents' Web sites dc1pages.com, dated April 2, 2008, at FTC-DCO 0142, and danielchapterone.com, dated November 7, 2008, at FTC-DCO 0493, regarding "I want the Original Essiac Formula, not some knock off brand"*).
129. On their Web site dc1pages.com, Respondents publish information about 7 Herb Formula, including, but not limited to, the following: "The 7 Herb Formula has been used by patients involved in clinical studies in cancer clinics and sold in doctor's offices around the country." S.D. Ex. 26 (*Pages from Respondents' Web site dc1pages.com regarding "I use Brand X," dated April 2, 2008, at FTC-DCO 0157*).

130. During the July 8, 2008 DCO Healthwatch radio program, James Feijo stated the following: “Here’s a testimony from Pastor Wayne Hamm, Henderson, Nevada. He had the Gulf War illness. He was told that he needed surgery and radiation treatment for his cancer, that he developed skin cancer because of the Gulf War, he was exposed out there. He didn’t take it. He decided to use Daniel Chapter One 7 Herb Formula, internally and topically. He also used Ezekiel Oil topically, BioShark and GDU. My skin cleared up after a few months in the late 1980s, early ‘99, I was told there was no trace of cancer. The FDA does not want us to let you know about this.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit J at 104, l. 13-24 (FTC-DCO 0603)).
131. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo stated that 7 Herb Formula is “great for cancer.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 83, l. 8-13 (FTC-DCO 0691)).

GDU

132. Respondents publish information about GDU, including, but not limited to, the following:

PRODUCTS

...

Contains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein - even that of unwanted **tumors** and cysts. This formula also helps to relieve pain and heal inflammation. . . .and as an adjunct to **cancer** therapy. [emphasis added]

Answer ¶ 11; S.D. Ex. 8 (*Respondents’ Responses and Objections to Complaint Counsel’s Request for Admissions, Respondents’ Answer to Complaint Counsel’s Req. for Admis. Regarding Authenticity and Admissibility* ¶ 3); see also *J. Feijo Dep. Tr.* at 101, l. 7-9; 138 l. 22-25 - 139, l. 1-2; *P. Feijo Dep. Tr.* at 185, l. 24-25 - 186, l. 1-16.

133. Respondents publish information about GDU, including, but not limited to, the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula TM . . .

Bio*Shark TM . . .

BioMixx TM . . .

GDU Caps TM . . . [emphasis added]

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One’s Cancer solutions

To Buy the products click here

How to fight cancer is your choice! . . . [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 101, l. 7-9; 110, l. 23-25; 111, l. 13-20.

134. In their BioMolecular Nutrition Product Catalog, next to the pictures of the GDU bottles, Respondents state that GDU “[c]ontains natural proteolytic enzymes (from pineapple source bromelain) to help digest protein, *even that of unwanted tumors* and cysts. Helps to relieve pain, inflammation, and as *an adjunct to cancer therapy.*” S.D. Ex. 6 (*J. Feijo Dep. Ex. 6 - BioMolecular Nutrition Product Catalog* at FTC-DCO 0062)(emphasis added).
135. In Respondents' BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents published the following testimonial from Deloris Winter: “I went in for a breast examination by mammography. On 10/8/01 they said they found a mass that they believed was not cancerous, but benign. I began taking GDU six times a day: 2 before breakfast, 2 before lunch, and 2 before dinner, and in a month I went to my doctor for the breast examination, and he found nothing on either breast.” S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0331); see also *P. Feijo Dep. Tr.* at 190, l. 5-19.
136. During the July 14, 2008 DCO Healthwatch radio program, Patricia Feijo advised a consumer whose father was diagnosed with colon cancer that she should get her father “on . . . GDU, BioShark and 7 Herb Formula. And if you can get him to, you know, go right now to the website, How To Fight Cancer Is Your Choice, or you can get him a hard copy from our order center, while we have them. It's what the FTC wants to shut us down over and they certainly want us to, you know, crash the website and they want to, you know, burn our material. They don't want us circulating How To Fight Cancer Is Your Choice.” S.D. Ex. 3 (Marino Dec. at ¶ 22, Exhibit K at 85, l. 13-25 - 86, l. 1-25 (FTC-DCO 0693 - 0694)).

BioMixx

137. Respondents publish information about BioMixx, including, but not limited to, the following:

Bio*Mixx boosts the immune system, cleanses the blood and feeds the endocrine system to allow for natural healing. It is used to assist the body in **fighting cancer** and in healing the destructive effects of **radiation** and **chemotherapy** treatments. [emphasis added]

Answer ¶ 13; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 4); see also *J. Feijo Dep. Tr.* at 101, l. 10-11.

138. Respondents publish information about BioMixx, including, but not limited to the following:

If you suffer from any type of cancer, Daniel Chapter One suggests taking this products [sic], to fight it: [emphasis added]

7*Herb Formula™ . . .

Bio*Shark™ . . .

BioMixx™ . . . [emphasis added]

GDU Caps™ . . .

[depiction of bottles of BioMixx, 7 Herb Formula, Bio*Shark, and GDU]

Daniel Chapter One's Cancer solutions

To Buy the products click here

How to fight cancer is your choice! . . . [emphasis added]

Answer ¶ 9; S.D. Ex. 8 (*Respondents' Responses and Objections to Complaint Counsel's Request for Admissions, Respondents' Answer to Complaint Counsel's Req. for Admis. Regarding Authenticity and Admissibility* ¶ 2); see also *J. Feijo Dep. Tr.* at 101, l. 10-11; 110, l. 23-25; 111, l. 13-20.

139. In Respondents' BioGuide: The BioMolecular Nutrition Guide to Natural Health 3, Respondents state the following regarding BioMixx: "What separates BioMixx is that it was developed specifically to maximize the immune system, particularly for those individuals whose immune systems were compromised through chemotherapy and radiation." S.D. Ex. 5 (*J. Feijo Dep. Ex. 12 - BioGuide: The BioMolecular Nutrition Guide to Natural Health 3* at FTC-DCO 0334).
140. In their Cancer Newsletter, entitled How To Fight Cancer is Your Choice!!!, Respondents state that BioMixx "is used to assist the body in **fighting cancer** and in healing the destructive effects of **radiation** and **chemotherapy** treatments." S.D. Ex. 10 (*DCO's Cancer Newsletter, Millenium [sic] Edition, 2002 - "How to Fight Cancer is Your Choice!!!"* at FTC-DCO 0400) (emphasis added).

E. RESPONDENTS DISSEMINATE CLAIMS ABOUT THEIR PRODUCTS TO CONSUMERS

141. Respondents operate the Web sites www.danielchapterone.com, dc1pages.com, and dcstore.com that provide information on the DCO Products. Answer ¶ 5; *J. Feijo Dep. Tr.* at 62, l. 10-13; see also *J. Feijo Dep. Tr.* at 232, l. 21-25 - 233, l. 1-19.
142. Respondents disseminate information about the DCO Products through written materials, including, but not limited to, the BioGuide, the Cancer Newsletter, the websites www.danielchapterone.com, www.7herbformula.com, www.gdu2000.com, and the radio program, "Daniel Chapter One Health Watch." S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents' Responses to Complaint Counsel's First Set of Interrogs., Resp. to Interrog. No. 11*); see also *J. Feijo Dep. Tr.* at 103, l. 19-21.

143. Respondent James Feijo and his wife, Patricia Feijo, are responsible for the information contained in the written materials, including the BioGuide, the Cancer Newsletter, the websites www.danielchapterone.com, www.7herbformula.com, www.gdu2000.com, and the radio program, “Daniel Chapter One Health Watch,” that describe the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents’ Responses to Complaint Counsel’s First Set of Interrogs., Resp. to Interrog. No. 12*); *J. Feijo Dep. Tr.* at 62, l. 10-13.
144. Consumers can locate Respondents’ Web site by entering the term “cancer” in a Google search. *J. Feijo Dep. Tr.* at 136, l. 12-17.
145. FTC Investigator Michael Marino found and accessed DCO’s Web site www.danielchapterone.com through Microsoft Internet Explorer. S.D. Ex. 3 (Marino Dec. at ¶ 3).
146. Respondent James Feijo and his wife, Patricia Feijo, co-host the Daniel Chapter One radio program for two hours a day, Monday through Friday. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents’ Responses to Complaint Counsel’s First Set of Interrogs., Resp. to Interrog. No. 5*); *J. Feijo Dep. Tr.* at 16, l. 25 - 17, l. 4.
147. Respondents have counseled cancer patients who have called into the Daniel Chapter One radio program about taking the DCO Products. *P. Feijo Dep. Tr.* at 96, l. 10-25 - 97, l. 1-8.
148. The DCO radio program and the DCO Web site were the natural vehicle for Respondents to reach out to people in other states. *P. Feijo Dep. Tr.* at 62, l. 3-8.

F. RESPONDENTS DID NOT POSSESS SUBSTANTIATION FOR SUCH CLAIMS AT THE TIME THEY WERE MADE.

149. Respondents conducted no scientific testing on any of the DCO Products. *P. Feijo Dep. Tr.* at 161, l. 12-16; *see also J. Feijo Dep. Tr.* at 201, l. 22-25 - 201, l. 1-3.
150. Respondents have not conducted any double-blind studies on the DCO Products. *J. Feijo Dep. Tr.* at 58, l. 17-22; *see also J. Feijo Dep. Tr.* at 205, l. 25 - 206, l. 1-10.
151. Respondents’ have not conducted any controlled studies on any of the DCO Products. *J. Feijo Dep. Tr.* at 54, l. 23-25; 55, l. 11.
152. No person has been involved in the scientific testing, research, substantiation, or clinical trials of the DCO Products. S.D. Ex. 4 (*J. Feijo Dep. Ex. 7 - Respondents’ Responses to Complaint Counsel’s First Set of Interrogs., Resp. to Interrog. No. 15*).
153. Respondents have no documents relating to their policies, procedures, or requirements for evaluating or reviewing each safety, efficacy, or bioavailability representation made

for the DCO Products. S.D. Ex. 27 (*Respondents' Responses to Complaint Counsel's First Req. For Produc. of Documentary Materials and Tangible Things, Resp. to Req. No. 6*).

154. It was not Respondents' practice to obtain scientific studies about any of the components in their products. *P. Feijo Dep. Tr.* at 120, l. 9-19.
155. Respondents did not search for scientific studies regarding the components in their products because "[w]e're working with people, and again, it's experiential and it's working with the whole person." *P. Feijo Dep. Tr.* at 120, l. 20-22.
156. James Feijo agrees that individual results may vary and that what one person says in her testimonial may not apply to other people. *J. Feijo Dep. Tr.* at 141, l. 19-25 - 142, l. 1-8.
157. According to Patricia Feijo, "only God can cure cancer." *P. Feijo Dep. Tr.* at 115, l. 19-20.
158. According to Patricia Feijo, "We [James and Patricia Feijo] do have knowledge that is experiential. We have seen how these products work. God has shown us [James and Patricia Feijo] and given us a wealth of knowledge and information that - - and we felt it is very truthful and actually our duty to share with people." *P. Feijo Dep. Tr.* at 116, l. 12-26.

BioShark

159. Respondents conducted no scientific testing on Bio*Shark. *P. Feijo Dep. Tr.* at 161, l. 12-16.
160. Respondents' substantiation for the statement that "[p]ure skeletal tissue of sharks . . . can stop tumor growth" is "from the material that [they] had read that shark cartilage provides a protein that inhibits angiogenesis and the information [they] have that [they] have . . . read and complied for many years now." *P. Feijo Dep. Tr.* at 157, l. 16-20.
161. Patricia Feijo is not aware of any other studies that might have been done on Bio*Shark or shark cartilage other than Dr. Lane's studies. *P. Feijo Dep. Tr.* at 162, l. 5-16.
162. Universal Nutrition did not conduct any testing, quality or otherwise, on Bio*Shark. *Kinney Dep. Tr.* at 45, l. 19-25 - 46, l. 1.

7 Herb Formula

163. Respondents never had an outside lab study the components of 7 Herb Formula to see whether its components actually have the effect that Respondents believe it has. *P. Feijo Dep. Tr.* at 132, l. 11-15.

164. Rather than having an outside lab study the components of 7 Herb Formula to determine whether its components were actually having the effect Respondents believe, Respondents have “experiential information [and] many testimonies, many hundreds if not thousands of testimonies.” *P. Feijo Dep. Tr.* at 132, l. 16-18.
165. Respondents’ basis for asserting that using 7 Herb Formula will help someone with any type of cancer is “their knowledge about the structure/function of the separate ingredients and the history of the herbal formally, so experientially . . . [they] can say generally that if you suffer from any type of cancer that [Respondents] suggest taking [7 Herb Formula].” *P. Feijo Dep. Tr.* at 175, l. 23-25 - 176, l. 1-7.

GDU

166. GDU was never subjected to clinical trials. *P. Feijo Dep. Tr.* at 190, l. 20-21.
167. Respondents have not done any studies to know whether GDU would counteract with any conventional cancer medicine someone was taking. *P. Feijo Dep. Tr.* at 194, l. 11-14.

BioMixx

168. Respondents did not conduct any tests or clinical studies on BioMixx. *P. Feijo Dep. Tr.* at 199, l. 15-18.
169. Respondents did not engage anybody else to do any kind of clinical tests on BioMixx. *P. Feijo Dep. Tr.* at 199, l. 19-21.
170. Respondents’ basis for asserting that BioMixx fights cancer is “[b]ased on the structure of the ingredients, what we know that to be, and based on the function of those ingredients, what we know that to be, and based on the experiential evidence, the witness of many.” *P. Feijo Dep. Tr.* at 199, l. 22-25 - 200, l. 1-4.
171. Universal Nutrition has not conducted any testing on BioMixx. *Kinney Dep. Tr.* at 50, l. 8-9.

G. DR. MILLER CONFIRMS THAT THERE IS NO COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE TO SUBSTANTIATE THE CLAIMS THAT DCO’S PRODUCTS TREAT, CURE, OR PREVENT CANCER

Introduction

172. Denis R. Miller, M.D. is a board-certified pediatric hematologist/oncologist. S.D. Ex. 1 (Declaration of Complaint Counsel’s Expert Denis R. Miller, M.D., dated February 18, 2009, attaching Denis R. Miller, M.D. Expert Report (hereinafter referred to as *D. Miller Expert Report*) at 1).

173. For over 40 years, Dr. Miller has directed clinical care, education, laboratory and clinical research, and administration, heading divisions or departments at University of Rochester Medical Center, New York Hospital-Cornell Medical Center, Memorial Sloan Kettering Cancer Center, and Northwestern University Medical School. S.D. Ex. 1 (*D. Miller Expert Report* at 1).
174. Dr. Miller also has served as Associate Medical Director of Cancer Treatment Centers of America (“CTCA”) as well as Scientific Director of CTCA’s Cancer Treatment Research Foundations. S.D. Ex. 1 (*D. Miller Expert Report* at 1).
175. As Scientific Director, Dr. Miller supervised the clinical research program and was principal investigator for a number of Phase I/II clinical studies involving treatments for hematological malignancies and cancers of the head and neck, lung, breast, pancreas, and colon. S.D. Ex. 1 (*D. Miller Expert Report* at 1-2).
176. Dr. Miller has authored or co-authored over 300 book chapters, peer-reviewed articles, and abstracts, and has served on the editorial boards of the British Journal of Hematology and the American Journal of Clinical Oncology. S.D. Ex. 1 (*D. Miller Expert Report* at 3).
177. Dr. Miller currently is the Oncology/Hematology Therapeutic Area Leader at PAREXEL International, a leading contract research organization, where he manages clinical trials for the pharmaceutical industry. S.D. Ex. 1 (*D. Miller Expert Report* at 2).
178. To constitute competent and reliable scientific evidence, a product that purports to treat, cure, or prevent cancer must have its efficacy and safety demonstrated through controlled clinical studies. S.D. Ex. 1 (*D. Miller Expert Report* at 7).
179. Only data from well-designed, controlled, clinical trials will substantiate claims that a new therapy is safe and effective to treat, cure, or prevent cancer. S.D. Ex. 1 (*D. Miller Expert Report* at 30).
180. Anecdotal reports of product efficacy are the weakest form of evidence supporting the anticancer activity of a new agent. S.D. Ex. 1 (*D. Miller Expert Report* at 12).
181. Testimonials do not substitute for a well-designed clinical trial in proving the efficacy of a supposed cancer fighting product. S.D. Ex. 1 (*D. Miller Expert Report* at 30).
182. Dr. Miller’s thorough review of peer-reviewed literature and all of the documents produced by DCO indicates that there is no competent and reliable scientific evidence that the DCO Products are effective either alone or in combination with other DCO products in the treatment or cure of cancer, in inhibiting tumor formation, and in preventing the destructive effects of radiation and chemotherapy. S.D. Ex. 1 (*D. Miller Expert Report* at 31).

Bio*Shark

183. Dr. Miller's review of the peer-reviewed literature and all of the documents Respondents submitted as substantiation indicates that there was no competent and reliable scientific evidence that Bio*Shark inhibits tumor growth in humans or that it is effective in the treatment of cancer in humans. S.D. Ex. 1 (*D. Miller Expert Report* at 13).
184. Dr. Miller found that there were no adequate and well-controlled studies demonstrating that Bio*Shark is antiangiogenic or is effective in the treatment of cancer, and even supporting non-clinical studies of crude or partially-purified shark cartilage products were extremely limited, particularly with regard to mechanisms of action, pharmacokinetics, pharmacodynamics, and dose response. S.D. Ex. 1 (*D. Miller Expert Report* at 17).
185. Dr. Miller observed that Respondents' reliance on Dr. I. William Lane's book, "Sharks Don't Get Cancer" was misplaced, as studies at Johns Hopkins University indicate that sharks do indeed get cancer. S.D. Ex. 1 (*D. Miller Expert Report* at 16).

7 Herb Formula

186. Dr. Miller's review of the peer-reviewed literature and all of the documents Respondents submitted as substantiation indicates that there was no competent and reliable scientific evidence that 7 Herb Formula inhibits tumor formation and is effective in the treatment or cure of cancer in humans. S.D. Ex. 1 (*D. Miller Expert Report* at 18).
187. Dr. Miller found neither non-clinical nor clinical studies supporting claims that 7 Herb Formula or any of its individual ingredients are effective anticancer agents or inhibit tumor formation. S.D. Ex. 1 (*D. Miller Expert Report* at 19).
188. Any relevant studies on the ingredients Burdock root, Cat's Claw, sheep sorrel, slippery elm bark, turkish rhubarb root, Siberian ginseng, and watercress were performed either in vitro or on animals, not on humans with cancer. S.D. Ex. 1 (*D. Miller Expert Report* at 19-22).

GDU

189. Dr. Miller's review of the peer-reviewed literature and all of the documents Respondents submitted as substantiation indicates that there was no competent and reliable scientific evidence that GDU eliminates tumors and is effective in the treatment of cancer in humans. S.D. Ex. 1 (*D. Miller Expert Report* at 22).
190. Dr. Miller found no randomized, controlled clinical trials of any of the individual components of GDU or of GDU itself in patients with cancer. S.D. Ex. 1 (*D. Miller Expert Report* at 27).

191. Dr. Miller, however, did note that curcumin (tumeric), one of GDU's ingredients, is currently being evaluated in controlled clinical trials to determine its potential as a chemoprotective and cancer preventive agent. S.D. Ex. 1 (*D. Miller Expert Report* at 22).
192. Animal studies have suggested that curcumin may have activity as a cancer preventive and therapeutic agent. S.D. Ex. 1 (*D. Miller Expert Report* at 23).
193. Nevertheless, Dr. Miller cautioned that some studies have suggested that curcumin may actually inhibit the anticancer activity of some approved anticancer agents as well as exacerbate iron deficiency. S.D. Ex. 1 (*D. Miller Expert Report* at 27).
194. Thus, Dr. Miller advised that further research on curcumin was necessary. S.D. Ex. 1 (*D. Miller Expert Report* at 27).

BioMixx

195. Dr. Miller's review of the peer-reviewed literature and all of the documents Respondents submitted as substantiation indicates that there was no competent and reliable scientific evidence that BioMixx is effective in the treatment of cancer and heals the destructive effects of radiation and chemotherapy. S.D. Ex. 1 (*D. Miller Expert Report* at 27).
196. Dr. Miller found that there are no reported studies of either BioMixx or its constituent ingredients being effective in the treatment of cancer. S.D. Ex. 1 (*D. Miller Expert Report* at 27-28).
197. Dr. Miller also found "absolutely no data" to support the claim that BioMixx is used to heal the destructive effects of radiation and chemotherapy treatments. S.D. Ex. 1 (*D. Miller Expert Report* at 29).

H. RESPONDENTS' EXPERTS DO NOT POSSESS ANY INFORMATION SUBSTANTIATING RESPONDENTS' CLAIMS

Introduction

James Duke, Ph.D.

198. James Duke, Ph.D. ("Duke") has never met Jim and Patricia Feijo. Deposition of James Duke, Ph.D. (hereinafter referred to as *Duke Dep. Tr.*) at 8, l. 6-9.
199. Duke is not a medical doctor. *Duke Dep. Tr.* at 56, l. 3-5.
200. Duke is not licensed to practice medicine in any state. *Duke Dep. Tr.* at 56, l. 6-8.
201. Duke is not a board-certified oncologist. *Duke Dep. Tr.* at 56, l. 9-10.

202. Duke does not recall ever publishing any articles in any peer-reviewed medical journals. *Duke Dep. Tr.* at 56, l. 11-14.
203. Duke has never practiced medicine. *Duke Dep. Tr.* at 18, l. 8.
204. Duke would not recommend that people self-medicate with herbal remedies in treating cancer. *Duke Dep. Tr.* at 135, l. 17-22.
205. Duke is sure that there is a risk that some people will pursue herbal medications instead of effective pharmaceutical medications and thereby die. *Duke Dep. Tr.* at 136, l. 20-23.
206. Duke does not recall any holistic physicians who have consulted with him on the treatment of cancer. *Duke Dep. Tr.* at 19, l. 10-13.
207. Duke does not recall any homeopaths who have consulted with him on the treatment of cancer. *Duke Dep. Tr.* at 19, l. 14-17.
208. Duke has never managed or participated in any studies to measure the efficacy of an herb in treating cancer. *Duke Dep. Tr.* at 29, l. 15-22.
209. Duke does not remember ever being a consultant on a study where the anticancer effects of an herb were being measured on a group of patients. *Duke Dep. Tr.* at 29, l. 23-25 - 30, l. 1-2.
210. Duke does not remember seeing the FTC's Complaint against Respondents. *Duke Dep. Tr.* at 36, l. 19-22.
211. Duke has no knowledge of any of the advertisements that the FTC has challenged as the predicate for the Complaint. *Duke Dep. Tr.* at 36, l. 23-25 - 37, l. 1-2.
212. Duke was not sent any of Respondents' products. *Duke Dep. Tr.* at 37, l. 3-5.
213. Duke has not spoken to any persons who have taken DCO products for the treatment of cancer. *Duke Dep. Tr.* at 38, l. 23-25.
214. Duke has not reviewed the medical records of anyone who claims to have taken DCO products for the treatment of cancer. *Duke Dep. Tr.* at 39, l. 1-4.
215. Duke had never heard of DCO until this case. *Duke Dep. Tr.* at 39, l. 9-10.
216. Duke has never listened to the DCO Radio program. *Duke Dep. Tr.* at 39, l. 11-14.

217. Duke knows of no tests where the patient prays and one group of patients gets a Biblically referenced herb and the other group of patient prays and gets an allopathic treatment. *Duke Dep. Tr.* at 41, l. 20-25 - 42, l. 1-2.
218. Duke does not think that “the FDA permits advertising for cancer unless clinically proven.” *Duke Dep. Tr.* at 46, l. 19-22.
219. Duke’s “Multiple Activity Menus” (“MAMs”) are an attempt to identify herbs that show promise in fighting disease. *Duke Dep. Tr.* at 91, l. 20-23.
220. The MAM and the ratio that it yields does not prove that any one of these herbs is effective in fighting or treating cancer. Rather, “[i]t adds a listing of the chemicals in that herb that have been shown or assumed to help with cancer.” *Duke Dep. Tr.* at 92, l. 5-11.
221. When entering in the MAM an activity for an herb, Duke only enters references to that source “as it may be a good source [or] it may be a bad source.” *Duke Dep. Tr.* at 93, l. 8-13.
222. Duke acknowledged that it is a “gut feeling” on how he makes sure that the studies he references in the MAMs are reliable. *Duke Dep. Tr.* at 108, l. 17-21.
223. Duke acknowledged that his MAMs have not been cited in any peer-reviewed journal. *Duke Dep. Tr.* at 113, l. 2-4.
224. Duke explained that his Indication Evaluations (“IE”) is where he has “gone through all these abstracts over the years [and] I’ve scored for a given indication. If it’s folklore and that’s all I have, it would receive an ‘f’; if it has a chemical or an epidemiological or an animal or an in vitro evidence, I’ve given it a 1; and then the 2, as we mentioned earlier, that means it’s either been clinically approved - - an extract of the plant has been clinically approved or it’s been approved by the Commission E or the Tramil Commission for that indication. These are lines of evidence that point to me which ones are most important and should be studied for cancer.” *Duke Dep. Tr.* at 59, l. 7-21; 118, l. 10-13; 119, l. 7-9.
225. The IE is a “compendium of information.” *Duke Dep. Tr.* at 109, l. 8-10.
226. There is no relationship between the MAMs and the IE. *Duke Dep. Tr.* at 92, l. 12-20.
227. Neither the MAMs nor the IE reflect information that indicates that turmeric, for example, is effective in the treatment of cancer. *Duke Dep. Tr.* at 109, l. 25 - 110, l. 1-6.
228. Duke has never measured the efficacy of herbs as a treatment for cancer in a controlled patient population. *Duke Dep. Tr.* at 55, l. 21-24.

229. Duke is not able to express opinions on what the minimum dosage would be necessary to achieve cancer-fighting. *Duke Dep. Tr.* at 67, l. 24-25 - 68, l. 1.
230. Duke recognizes the difference between something being efficacious in an in vitro study and something being efficacious in human beings. *Duke Dep. Tr.* at 71, l. 20-24.
231. As a matter of science, Duke does not believe that the herbal extract working in vitro proves that it would work in a human. *Duke Dep. Tr.* at 77, l. 10-24.
232. Rather than relying solely on in vitro studies, Duke recommends “the third arm-trial where the whole plant or an extract thereof is compared with a competing pharmaceutical.” *Duke Dep. Tr.* at 77, l. 17-24.
233. According to Duke, “[t]he third arm would compare a given herb with a given pharmaceutical and placebo.” *Duke Dep. Tr.* at 81, l. 17-23.
234. Other than the St. John’s Wort trial that used a placebo and Zoloft, Duke is not aware of any other studies where an herb, a pharmaceutical, and a placebo were studied in a side-by-side manner. *Duke Dep. Tr.* at 82, l. 1-17.
235. Duke does not think of black cohosh as a major anticancer herb. *Duke Dep. Tr.* at 123, l. 5-13.
236. Duke stated that there is no reference to cancer in eleuthero because “that’s not one of the major things that are said about it.” *Duke Dep. Tr.* at 125, l. 23-25 - 126, l. 1-2.
237. Most of the studies Duke has seen have been for preventing cancer. *Duke Dep. Tr.* at 128, l. 22-24.
238. Duke does not remember any studies specifically about treating cancer. *Duke Dep. Tr.* at 128, l. 25 - 129, l. 1-3.
239. Duke testified that anecdotal reports are “even below . . . my lines of evidence.” *Duke Dep. Tr.* at 131, l. 15-20.
240. Duke attributes the increase in life expectancy in the 150 years that pharmaceuticals have been around to pharmaceuticals themselves. *Duke Dep. Tr.* at 133, l. 9-15.
241. Duke does not believe that homeostatic balancing has been the subject of any peer-reviewed articles in connection with the treatment or cure of cancer. *Duke Dep. Tr.* at 133, l. 25 - 134, l. 1-12.
242. In Duke’s IE, there have been no clinical trials as to the efficacy of black cohosh for cancer. *Duke Dep. Tr.* at 147, l. 8-25.

243. There are no clinical trials regarding garlic's efficacy as to cancer in Duke's IE. *Duke Dep. Tr.* at 148, l. 1-5.
244. There are no clinical trials regarding Yellow Root's efficacy as to cancer in Duke's IE. *Duke Dep. Tr.* at 149, l. 1-5.
245. There are no clinical trials regarding eleuthero's efficacy as to cancer in Duke's IE. *Duke Dep. Tr.* at 153, l. 3-7.
246. There are no clinical trials regarding soybean's efficacy as to cancer in Duke's IE. *Duke Dep. Tr.* at 153, l. 24-25 - 154, l. 1-7.
247. There are no entries for sarsaparilla in Duke's IE indicating that it has been evaluated for its efficacy in treating cancer in clinical trials. *Duke Dep. Tr.* at 156, l. 21-24.
248. The editors of Duke's book, The Green Pharmacy Guide to Healing Foods, advised Duke to "shy away from" a section on cancer treatment. *Duke Dep. Tr.* at 178, l. 6-18.
249. Duke does not recall seeing any articles that Mr. and Mrs. Feijo believe substantiated the claims that they made regarding the particular DCO Products. *Duke Dep. Tr.* at 185, l. 7-11.
250. Duke has made no effort to evaluate whether the combination of the ingredients in each of the products that DCO sells - GDU, 7 Herb Formula, and BioMixx – has any synergistic effects. *Duke Dep. Tr.* at 190, l. 10-21.
251. Duke made no effort to see whether there were any studies of any sort regarding the particular products that DCO sells - GDU, 7 Herb Formula, and BioMixx. *Duke Dep. Tr.* at 190, l. 22-25 - 191, l. 1-4.

James K. Dews

252. Respondents offer James K. Dews ("Dews") as an expert in "[h]erbal formulations, specifically 7 Herb Formula." Deposition of James K. Dews (hereinafter referred to as *J. Dews Dep. Tr.*) at 4, l. 25 - 5, l. 1.
253. Dews attended the University of Texas at Arlington and Texas Wesleyan, but he did not finish college degrees at either institution. *J. Dews Dep. Tr.* at 11, l. 2-15.
254. According to Dews, nutraceuticals involves the merging of food supplements and pharmaceuticals. *J. Dews Dep. Tr.* at 17, l. 25.
255. Nutraceuticals involves the extraction of certain chemical compounds that are in many foods or herbs. *J. Dews Dep. Tr.* at 18, l. 14-18.

256. Consumers ingest nutraceuticals. *J. Dews Dep. Tr.* at 18, l. 6.
257. The difference between a pharmaceutical and a nutraceutical is that one can make a disease-curing claim with a pharmaceutical; one cannot make a disease-curing claim with a nutraceutical. *J. Dews Dep. Tr.* at 62, l. 17-18; *see also* 15, l. 12-13.
258. According to Dews, animal studies cannot be extrapolated to humans. *J. Dews Dep. Tr.* at 63, l. 18-25 - 64, l. 1-8.

Rustum Roy, Ph.D.

259. Respondents offer Rustum Roy, Ph.D. (“Roy”) as “an expert in the conduct of scientific research and with the focus on health and materials.” Deposition of Rustum Roy, Ph.D. (hereinafter referred to as *R. Roy Dep. Tr.*) at 7, l. 5-10.
260. Roy did not review the complaint that the FTC filed against Respondents. *R. Roy Dep. Tr.* at 7, l. 17-21.
261. Roy did not review any of the advertisements on which the FTC’s complaint is predicated. *R. Roy Dep. Tr.* at 7, l. 22-24.
262. Roy did not review or obtain any of the product or product labels for the products at issue in the litigation. *R. Roy Dep. Tr.* at 7, l. 25 - 8, l. 1-3.
263. Roy did not conduct any work or tests on any product made by Respondents. *R. Roy Dep. Tr.* at 8, l. 15-22.
264. Roy is not an expert in homeopathy. *R. Roy Dep. Tr.* at 12, l. 11.
265. Roy and his laboratory do “zero clinical trials.” *R. Roy Dep. Tr.* at 13, l. 20.
266. Roy and his laboratory “have nothing to do with causing healing or not in a human being.” *R. Roy Dep. Tr.* at 13, l. 20-21.
267. Roy has not measured the efficacy of the DCO Products. *R. Roy Dep. Tr.* at 14, l. 2-5.
268. Roy has never done any experiments to measure the efficacy of any medical treatments “at the human level.” *R. Roy Dep. Tr.* at 14, l. 6-9.
269. Roy has no idea what the DCO Products contain. *R. Roy Dep. Tr.* at 24, l. 21-25.
270. Roy has not done any literature searches or any literature research concerning any of the ingredients in DCO’s products. *R. Roy Dep. Tr.* at 25, l. 3-7.
271. Roy does not have any formal training in medicine. *R. Roy Dep. Tr.* at 26, l. 9-11.

272. Roy has never treated or consulted with healers who were treating particular patients. *R. Roy Dep. Tr.* at 28, l. 9-11.
273. Roy does not know what Daniel Chapter One sells. *R. Roy Dep. Tr.* at 43, l. 6-8.
274. The practice of Daniel Chapter One selling products over the Internet to people that it had never seen, met, or examined the medical records for “obviously limits” homeopathy. *R. Roy Dep. Tr.* at 50, l. 5-19.
275. Roy’s ideal description of homeopathy would not include selling products over the Internet to persons that the seller has not met. *R. Roy Dep. Tr.* at 51, l. 11-14.
276. It is not Roy’s view that all herbal remedies are effective. *R. Roy Dep. Tr.* at 60, l. 60, l. 23-25 - 61, l. 1.
277. Roy has never been involved in trying to secure FDA approval for some medication. *R. Roy Dep. Tr.* at 79, l. 14-16.

Jay Lehr

278. No one has ever consulted Jay Lehr (“Lehr”) about using herbs in connection with cancer. Deposition of Jay Lehr (hereinafter referred to as *J. Lehr Dep. Tr.*) at 10, l. 24-25 - 11, l. 1.
279. Lehr is not a cancer expert. *J. Lehr Dep. Tr.* at 15, l. 11.
280. Lehr would not speculate on whether Respondents’ products could cure cancer; “that’s now outside my area of expertise.” *J. Lehr Dep. Tr.* at 33, l. 19-22.
281. Lehr has never spoken to Jim Feijo about his products that supposedly treat cancer or tumors. *J. Lehr Dep. Tr.* at 34, l. 2-5.
282. The only testing of pharmaceutical drugs and herbal supplements that Lehr has been involved in involves testing on himself. *J. Lehr Dep. Tr.* at 15, l. 18-25 - 16, l. 1-6.
283. Lehr takes three DCO products every day - Endurosine, Mito/ATP, and Electrocarb. *J. Lehr Dep. Tr.* at 17, l. 18-25 - 18, l. 1-14.
284. The label for PrePost speaks to athletic training. *J. Lehr Dep. Tr.* at 38, l. 1-5.
285. Endorosine increases the oxygen-carrying capacity of the blood. *J. Lehr Dep. Tr.* at 38, l. 9-12.
286. Mito/ATP is a pure energy distillate. *J. Lehr Dep. Tr.* at 38, l. 13-14.

287. Lehr has not spoken to any person who has taken DCO products to treat cancer. *J. Lehr Dep. Tr.* at 19, l. 14-17.
288. Lehr has never reviewed any of the medical claims of someone who stated that DCO's products have helped them to cure their cancer. *J. Lehr Dep. Tr.* at 19, l. 18-21.
289. Beyond his own personal study, Lehr has not conducted any studies on the four DCO Products. *J. Lehr Dep. Tr.* at 23, l. 2-5.
290. Respondent James Feijo has never suggested that Lehr take Bio*Shark, 7 Herb Formula, or BioMixx. *J. Lehr Dep. Tr.* at 25, l. 5-6.
291. The products that Respondent James Feijo has suggested to Lehr "have entirely been to improve [his] athletic performance." *J. Lehr Dep. Tr.* at 25, l. 6-8.
292. Lehr "can only substantiate the claims that [Respondents] have made on the three products [Endurosine, Mito/ATP, and Electrocarb] that [he has] taken regularly now for ten years." *J. Lehr Dep. Tr.* at 25, l. 9-17.
293. Lehr has not reviewed Respondents' Web site. *J. Lehr Dep. Tr.* at 27, l. 7-10.
294. Lehr does not have any familiarity with Respondents' products that are being sold to help people in the treatment of cancer. *J. Lehr Dep. Tr.* at 28, l. 3-6.
295. The only testing that Lehr is aware of that Respondent James Feijo conducted is that which he has done on PrePost and the other products that Respondent James Feijo has shared with him. *J. Lehr Dep. Tr.* at 28, l. 20-22.
296. Lehr's opinion is that because PrePost works so well on him that Respondents' other products should be as effective. *J. Lehr Dep. Tr.* at 32, l. 21-25 - 33, l. 1-18.
297. Lehr is familiar with radiation therapy and chemotherapy. *J. Lehr Dep. Tr.* at 34, l. 6-9.
298. Lehr has seen people positively impacted by conventional cancer treatments like radiation therapy and chemotherapy. *J. Lehr Dep. Tr.* at 34, l. 16-19.
299. Lehr has not been involved in any kinds of studies regarding the prevention, cure, or treatment of cancer in humans. *J. Lehr Dep. Tr.* at 35, l. 1-4.
300. Lehr did not have the opportunity to read any of the scientific studies that Daniel Chapter One has about its products. *J. Lehr Dep. Tr.* at 35, l. 18-21.
301. Lehr has had no need for any other supplements from DCO for any medical problems. *J. Lehr Dep. Tr.* at 40, l. 3-4.

302. Lehr's interests in DCO's products have "strictly been athletic." *J. Lehr Dep. Tr.* at 40, l. 4-5.
303. In preparing for giving expert testimony in this case, Lehr did not talk with Respondent James Feijo about the DCO Products that are the subject of this action. *J. Lehr Dep. Tr.* at 40, l. 6-15.
304. Lehr is not aware of what Daniel Chapter One has done in the double-blind type of study. *J. Lehr Dep. Tr.* at 47, l. 12-13.
305. Lehr is not aware of any studies done in connection with the DCO products that he takes. *J. Lehr Dep. Tr.* at 47, l. 14-17.
306. Lehr is not aware of Jim Feijo's background in science. *J. Lehr Dep. Tr.* at 52, l. 16-18.

Sally B. LaMont, N.D.

307. Respondents offer Sally B. LaMont, N.D. ("LaMont") as "an expert in naturopathic medical, herbal medicine, functional medicine . . . [and] as an expert on nutritional supplements and botanical medicines in the prevention and treatment of illness and as an expert in reviewing the evidence that supports the functional issues of the four products that are the challenged products." Deposition of Sally B. LaMont, N.D. (hereinafter referred to as *LaMont Dep. Tr.*) at 7, l. 20-25 - 8, l. 1-2.
308. LaMont has never previously been asked to be an expert. *LaMont Dep. Tr.* at 54, l. 9-12.
309. Lamont's charge from Respondents is "to provide opinions on the use of nutritional supplements and botanical medicines in the prevention and treatment of illness, including but not limited to cancer, and to review the evidence that exists regarding the mechanisms of action of the major constituents of Daniel Chapter One's products." *LaMont Dep. Tr.* at 33, l. 13-22.
310. LaMont is a naturopathic doctor. *LaMont Dep. Tr.* at 9, l. 9-11, 15, l. 23-25 - 16, l. 1.
311. According to LaMont, naturopathic medicine "is a primary healthcare practice that focuses on health promotion and disease prevention and the treatment of disease with an array of natural therapies that strengthen the body's innate healing capacities." *LaMont Dep. Tr.* at 9, l. 14-18.
312. Naturopathic doctors "provide patient-centered care and practice what would be termed functional medicine, which addresses the unique genetic, environmental and lifestyle factors that contribute to chronic disease and . . . influence our health." *LaMont Dep. Tr.* at 9, l. 19-24.

313. While engaged in naturopathic medicine, LaMont has worked in conjunction with traditional physicians. *LaMont Dep. Tr.* at 10, l. 2-5.
314. In the course of doing a workup on a patient, if LaMont finds “a diagnosis that looks like it could be cancer,” she absolutely would refer the patient to a traditional physician and would comanage that patient’s care with the physician. *LaMont Dep. Tr.* at 10, l. 16-22.
315. LaMont has not focused her naturopathic practice on naturopathic oncology; rather, she “ha[s] kept [her] practice very general.” *LaMont Dep. Tr.* at 11, l. 20-25 - 12, l. 1-2.
316. LaMont does not know what additional specialized training naturopathic oncologists take. *LaMont Dep. Tr.* at 12, l. 7-11.
317. LaMont has not done the specialized training for naturopathic oncology. *LaMont Dep. Tr.* at 12, l. 9-10.
318. After LaMont’s first husband passed away from non-Hodgkin’s lymphoma, she “chose to step back from [dealing with cancer patients] for several years.” *LaMont Dep. Tr.* at 12, l. 12-22.
319. LaMont started practicing naturopathic medicine in 1981 and stopped in 2000 to raise her daughter and to lead the campaign to license naturopathic doctors in California. *LaMont Dep. Tr.* at 13, l. 8-19.
320. LaMont returned to the private practice of naturopathic medicine almost a year ago by working part-time, practicing one day a week and beginning to add a second day. *LaMont Dep. Tr.* at 13, l. 20-25.
321. If LaMont ever found, for example, an abnormal pap smear with carcinoma inside, then she “would refer that patient to a gynecologist for a comprehensive workup and recommend that [her] patients follow the advice of their oncologist.” *LaMont Dep. Tr.* at 14, l. 11-17.
322. LaMont’s understanding is that “cancer must be treated with conventional therapies.” *LaMont Dep. Tr.* at 15, l. 1-4.
323. LaMont has seen conventional cancer therapies helpful in sometimes resolving the condition. *LaMont Dep. Tr.* at 15, l. 1-6.
324. LaMont would always make a referral to a cancer specialist because “it’s an important part of the treatment of cancer at this point.” *LaMont Dep. Tr.* at 15, l. 12-17.
325. Fourteen states license N.D.s. *LaMont Dep. Tr.* at 17, l. 3-8.

326. A licensed naturopathic doctor's responsibilities are "to diagnose and to treat disease and to promote health, which is honestly the focus of our practice, to really strengthen our body's ability to heal itself." *LaMont Dep. Tr.* at 17, l. 17-24.
327. The core of LaMont's practice is "[w]orking with diet and nutrition [and] nutritional supplements." *LaMont Dep. Tr.* at 20, l. 1-2.
328. LaMont also uses botanical medicine. *LaMont Dep. Tr.* at 20, l. 7.
329. LaMont works with mind-body therapies and regularly suggests meditation, qigong, yoga, and other biofeedback-type of therapies that would strengthen the person's connection between their mind and their immune system. *LaMont Dep. Tr.* at 20, l. 7-12.
330. LaMont does acupuncture on most patients. *LaMont Dep. Tr.* at 20, l. 15.
331. Nutritional supplements come from food and are an extension of food. *LaMont Dep. Tr.* at 20, l. 22-23.
332. Botanical medicine "comes from the plant world, and so there are phytochemicals in plants and then there's the whole plant." *LaMont Dep. Tr.* at 20, l. 24-25 - 21, l. 1.
333. Almost all the patients who come to LaMont who have been diagnosed with cancer come to her with that diagnosis and are looking for supportive care. *LaMont Dep. Tr.* at 23, l. 5-10.
334. LaMont thinks that the amount of dosage is important to the individual taking it and their health regimen. *LaMont Dep. Tr.* at 28, l. 11-15.
335. For someone who is in the "throes of chemotherapy," LaMont would have them not to use many of their nutritional supplements the week that they are on chemotherapy. *LaMont Dep. Tr.* at 31, l. 5-9.
336. The reason why LaMont would advise someone not to use nutritional supplements during chemotherapy is because "we don't fully understand yet all of the different ways in which this and other natural therapies may interact with chemotherapy." *LaMont Dep. Tr.* at 31, l. 10-20.
337. LaMont only became familiar with DCO at the end of December 2008. *LaMont Dep. Tr.* at 22, l. 23-25 - 23, l. 1-4.
338. Prior to LaMont's work on this case, she had never come across Bio*Shark, 7 Herb Formula, GDU, and BioMixx. *LaMont Dep. Tr.* at 34, l. 5-7.
339. LaMont looked at the labels for the DCO Products and did literature search on the main constituents of each of the products. *LaMont Dep. Tr.* at 34, l. 11-18.

340. LaMont acknowledged that since they have not been tested, we do not know the effectiveness of GDU, BioMixx, Bio*Shark, and 7 Herb Formula in the prevention, treatment or cure of cancer. *LaMont Dep. Tr.* at 47, l. 25 - 48, l. 1-11.
341. LaMont acknowledged that there have been no clinical studies performed on the DCO Products. *LaMont Dep. Tr.* at 48, l. 21-23.
342. The DCO products “are not silver bullets.” *LaMont Dep. Tr.* at 127, l. 3-5.
343. LaMont does not know the Feijos. *LaMont Dep. Tr.* at 49, l. 2-5.
344. LaMont thinks that it is “best that people follow the recommendations of their oncologist and utilize protocols that are proven to be most effective for their cancer and that they should be well-informed of the potential value of the array of other therapies.” *LaMont Dep. Tr.* at 49, l. 19-25.
345. LaMont testified that “as a doctor, if I’m working with a patient, I’m going to insist that they work with their oncologist and follow their advice and I’m going to comanage their care.” *LaMont Dep. Tr.* at 51, l. 24-25 - 52, l. 1-2.
346. LaMont believes that “[t]he awareness of the powerful chemoprotective effects of plant foods and medicines should not influence patients with cancer and other serious diseases to abandon using the most effective methods that modern medicine has to offer.” *LaMont Dep. Tr.* at 52, l. 11-20.
347. LaMont would not be comfortable with the Feijos saying that the DCO products are going to cure cancer. *LaMont Dep. Tr.* at 53, l. 4-19.
348. LaMont can see why the Federal Trade Commission would have concerns about the statement that DCO’s products are cancer solutions. *LaMont Dep. Tr.* at 127, l. 15-24.
349. LaMont would not have written the text that way to include “cancer solutions” next to the DCO products. *LaMont Dep. Tr.* at 128, l. 2-4.
350. LaMont does not “believe that on their own across the board these [DCO] products are going to effectively treat cancer.” *LaMont Dep. Tr.* at 53, l. 20-24.
351. LaMont did not listen to the Feijo’s radio show nor did she have the interest in listening to their show. *LaMont Dep. Tr.* at 77, l. 1-8.
352. LaMont did not say that she would defend the DCO products because she has limited knowledge of their products. *LaMont Dep. Tr.* at 78, l. 16-18.
353. LaMont has never used the DCO products. *LaMont Dep. Tr.* at 78, l. 18.

354. LaMont has not studied the DCO products specifically. *LaMont Dep. Tr.* at 87, l. 25 - 88, l. 1-5.
355. LaMont acknowledges that traditional use evidence does not replace human clinical trials. *LaMont Dep. Tr.* at 89, l. 19-22.
356. LaMont acknowledges that it is not a common occurrence in the industry to make cancer cure or cancer treatment claims. *LaMont Dep. Tr.* at 144, l. 20-25 - 145, l. 1-2.
357. LaMont does not know of other companies that make claims that their products treat or cure cancer. *LaMont Dep. Tr.* at 145, l. 3-5.
358. Until there are clinical trials, LaMont agrees that “we don’t know” whether DCO’s products would effective in battling cancer. *LaMont Dep. Tr.* at 147, l. 20-24.
359. LaMont “wouldn’t want to have anybody say, [t]ake this, it’s going to cure your colon cancer.” *LaMont Dep. Tr.* at 161, l. 12-15.
360. LaMont thinks the approach of referring to some doctors as Dr. Dumb-Dumb, as James Feijo does on his radio show, is disrespectful. *LaMont Dep. Tr.* at 166, l. 7-10.
361. LaMont agrees that there is a danger if consumers do not continue with traditional cancer therapy. *LaMont Dep. Tr.* at 166, l. 20-22.
362. LaMont personally does not think that the Feijos should be suggesting that people should not get colonoscopies, as they suggest on their radio show. *LaMont Dep. Tr.* at 182, l. 8-17.
363. LaMont recognizes that there’s always that danger that people will take DCO products and not go and see their physicians. *LaMont Dep. Tr.* at 183, l. 12-15.
364. LaMont has never conducted a scientific controlled study of any sort. *LaMont Dep. Tr.* at 184, l. 12-14.
365. LaMont does not take any DCO products. *LaMont Dep. Tr.* at 184, l. 25 - 185, l. 1-2.
366. LaMont has not reviewed the medical records of anyone who has taken DCO products. *LaMont Dep. Tr.* at 185, l. 3-5.

BioShark

James Duke, Ph.D.

367. Duke is not offering opinions on BioShark “[b]ecause the major ingredient is an animal, and I don’t deal in animals.” *Duke Dep. Tr.* at 63, l. 19-25.
368. Duke was not asked to provide an opinion on BioShark. *Duke Dep. Tr.* at 64, l. 1.
369. Duke does not think highly of the studies that have been published on shark cartilage. *Duke Dep. Tr.* at 64, l. 2-9.
370. Duke “was not convinced of the efficacy of shark cartilage in the studies that [he] read.” *Duke Dep. Tr.* at 64, l. 13-15.

James K. Dews

371. Dews never has heard of Bio*Shark. *J. Dews Dep. Tr.* at 53, l. 10-12.
372. Dews is not familiar with the use of shark cartilage in the treatment of cancer, and he has never seen any data relating to the use of shark cartilage in the treatment of cancer. He only has heard of this. *J. Dews Dep. Tr.* at 54, l. 4-7.

Jay Lehr

373. Lehr is not familiar with the product called Bio*Shark. *J. Lehr Dep. Tr.* at 21, l. 20-22.
374. Lehr has never spoken to Respondent James Feijo about Bio*Shark. *J. Lehr Dep. Tr.* at 25, l. 23-24.
375. Lehr has not done any literature searches on Bio*Shark. *J. Lehr Dep. Tr.* at 25, l. 24-25 - 26, l. 1.
376. Lehr is not aware whether Jim Feijo has ever done any testing on Bio*Shark. *J. Lehr Dep. Tr.* at 28, l. 13-15.
377. Lehr is not aware of any double-blind studies done in connection with Bio*Shark. *J. Lehr Dep. Tr.* at 47, l. 18-22.

Sally B. LaMont, N.D.

378. LaMont does not know whether the product Bio*Shark inhibits tumor growth. *LaMont Dep. Tr.* at 91, l. 15-19.
379. LaMont does not know whether Bio*Shark is effective in the treatment of cancer. *LaMont Dep. Tr.* at 92, l. 6-8.
380. LaMont acknowledged that there are no well-controlled studies demonstrating that the product Bio*Shark is antiangiogenic. *LaMont Dep. Tr.* at 101, l. 3-7.

