

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**ORDER HOLDING DANIEL CHAPTER ONE, JAMES FEIJO
AND PATRICIA FEIJO IN CIVIL CONTEMPT**

This matter is before the Court on the United States' Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt. In accordance with the ruling issued on the record in open court during the May 9, 2012 Contempt Hearing, the Court sets forth the bases for its contempt finding and the manner in which the contempt may be purged.

A contempt finding is proper where "the putative contemnor has violated an order that is clear and unambiguous," and the violation has been proved by "clear and convincing evidence." *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1289 (D.C. Cir. 1993) (internal citations omitted). As stated

more fully in the Court's oral ruling, this standard was met here. On June 22, 2011, the Court granted the United States' Motion for a Preliminary Injunction and ordered that Daniel Chapter One and James Feijo were "ENJOINED to obey forthwith the Modified Final Order of the Federal Trade Commission issued January 25, 2010, in Docket No. 9329, *In the Matter of Daniel Chapter One and James Feijo*, see Pl.'s Ex. A at Docket No. 16-5[.]" Order, Docket No. 31 (June 22, 2011).

It is undisputed that the Court's Order is clear and unambiguous. In addition, the United States has demonstrated by clear and convincing evidence that Daniel Chapter One, James Feijo, and Patricia Feijo ("Contemnors") have failed to comply with this Order. Specifically, the Contemnors are violating the Modified Final Order by (1) continuing to make representations on their radio show that their products treat or cure cancer without competent and reliable scientific evidence to substantiate those representations, (2) encouraging potential customers to visit websites containing Daniel Chapter One publications that contain prohibited information and endorsements of the prohibited supplements, (3) not removing certain representations from the websites within their control, which Contemnors conceded included www.danielchapterone.com, www.dclministry.com, and www.dclfreedom.com, and (4) failing to

mail the required notice to all consumers who purchased BioShark, 7 Herb Formula, GDU, and/or BioMixx between January 1, 2005, and April 2, 2010. These acts violate Part II and Part V.B of the Modified Final Order and, as a result, violate the Court's Order.

Because the United States made a showing by clear and convincing evidence that the Contemnors have violated the Court's Order, the burden shifts to the Contemnors to produce evidence justifying their noncompliance. See *SEC v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000). Contemnors did not attempt to meet this burden. Indeed, Contemnors conceded that the evidence demonstrates that they are not complying with the Court's Order. Accordingly, the Court finds James Feijo, Patricia Feijo, and Daniel Chapter One in contempt of the Court's June 22, 2011 Order.

Courts have broad discretion to fashion contempt remedies, and monetary sanctions can be imposed both to coerce compliance and to compensate for losses incurred as a result of the contempt. See *Sheet Metal Workers v. EEOC*, 478 U.S. 421, 443 (1986); *In re Fannie Mae Sec. Litig.*, 552 F.3d 814, 823 (D.C. Cir. 2009). The Court finds that coercive contempt sanctions are appropriate here in order to coerce Contemnors into compliance with the Court's Order. A coercive, civil contempt

penalty is one that is "avoidable through obedience." *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). Here, Contemnors can purge the sanctions by complying with the Court's Order.

The Court has "consider[ed] the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the desired result." *Id.* The Court has found that the harm threatened by Contemnors' continued contumacy is great, and that a per diem monetary fine that escalates to imprisonment, as set forth below, is the sanction most likely to effectively coerce Contemnors to comply with the Court's Order. Based on the foregoing, and having considered the briefs filed in connection with the instant motion, the relevant case law, the arguments made during the contempt hearing held on May 9, 2012, and the entire record in this case, it is hereby

ORDERED that Daniel Chapter One, James Feijo, and Patricia Feijo are in contempt of the Court's Order entered on June 22, 2011; and it is

FURTHER ORDERED that Contemnors shall have two weeks from the entry of this Order in which to purge contempt. Specifically, by **May 23, 2012 at 10:00 a.m.**, Contemnors shall (1) mail the notice required by Part V.B of the Modified Final

Order and provide evidence of such mailing to the Court, (2) certify to the Court - orally and in writing - that they will cease from making prohibited representations, as described in Part II of the Modified Final Order, on their radio show and on any websites that are within their control, including www.danielchapterone.com, www.dclministry.com, and www.dclfreedom.com, (3) certify to the Court - orally and in writing - that they will cease from directing potential customers to websites that are not in their control but which contain prohibited representations, as described in Part II of the Modified Final Order, including the Daniel Chapter One Yahoo Group, and (4) remove the prohibited representations, as described in Part II of the Modified Final Order, from the websites within their control, including www.danielchapterone.com, www.dclministry.com, and www.dclfreedom.com; and it is

FURTHER ORDERED that a hearing shall take place on **May 23, 2012 at 10:00 a.m.** in Courtroom 24A to determine whether or not Contemnors have purged contempt; and it is

FURTHER ORDERED that if Contemnors have not purged the contempt by that time, beginning on May 24, 2012, Contemnors shall be assessed escalating monetary civil contempt fines that will convert to imprisonment if the Contemnors do not comply:

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

These coercive civil contempt sanctions shall remain in place until Contemnors purge the contempt through compliance with the Court's June 22, 2011 Order, and make a showing to this Court sufficient to demonstrate their compliance. Daniel Chapter One, James Feijo, and Patricia Feijo are jointly and severally liable for the payment of any fine that accrues.

SO ORDERED.

**Signed: Emmet G. Sullivan
United States District Judge
May 9, 2012**