UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
DANIEL CHAPTER ONE, **a corporation, and**	)	**Docket No. 9329**
JAMES FEIJO, **individually, and as an officer of** **Daniel Chapter One.**	)	**PUBLIC DOCUMENT**

COMPLAINT COUNSEL'S MOTION AND MEMORANDUM IN SUPPORT OF THEIR MOTION TO EXCLUDE THE TESTIMONY AND REPORTS OF RESPONDENTS' EXPERT WITNESSES RUSTUM ROY, JAY LEHR, AND JIM DEWS.

I. INTRODUCTION

Complaint Counsel hereby moves to exclude the expert testimony of Rustum Roy, Jay Lehr, and Jim Dews from the trial regarding the alleged deceptive advertising of Respondent Daniel Chapter One ("DCO") and its principal, Respondent James Feijo ("Respondents"), in connection with their sale of their products Bio*Shark, 7 Herb Formula, BioMixx and GDU ("DCO Products"), because this testimony fails to meet the criteria for admissibility of expert testimony established in *Daubert.*

Respondents have tendered Rustum Roy as an expert on "the appropriateness of relying on and the lack of scientific validity of randomly-controlled trials to evaluate whole person healing; the science of homeopathy; and the scientific validity of traditional testing of herbal medicines." Proposed experts Jay Lehr and Jim Dews are tendered to provide "pre-claim substantiation" for Respondents' claims about the DCO Products. As set forth below, the

proposed expert witness testimony is unreliable because it is not based on sufficient facts and data or proper scientific methodology. Moreover, their testimony is irrelevant and cannot assist the Court in determining whether Respondents had a reasonable basis for their claims that the DCO Products treat, cure or prevent cancer. Accordingly, the Court should exclude their testimony and reports from any trial in this case.

II. FACTS

During discovery, Respondents identified five individuals, Rustum Roy, Ph.D., Jay Lehr, Ph.D., James Dews, James Duke, Ph.D, and Sally LaMont, N.D.,[1] who would provide expert testimony to substantiate Respondents' health claims about the DCO Products. Roy is a materials scientist who has no formal medical training (Deposition Transcript of Rustum Roy, dated February 12, 2009, at Tr. 26: 1.9-11) ("Roy Tr.")[2]. Lehr is an environmental scientist who conducts research to locate clean water supplies (Deposition Transcript of Jay Lehr, dated February 13, 2009, at Tr. 14: l.21-23) ("Lehr Tr."). Lehr is not a medical doctor or a cancer expert (Lehr. Tr. 15: l.11). Finally, proposed expert James Dews is a manufacturer of neutraceuticals[3] and in that capacity, he works with herbs and is familiar with their traditional

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[1]Respondents' Final Proposed Witness List, dated March 3, 2009, attached hereto as Exhibit A. Complaint Counsel has filed separate motions seeking to exclude the proposed testimony of Sally Lamont and James Duke.

[2]Complaint Counsel refers the Court to the two copies of the deposition transcript of proposed experts Rustum Roy, Jay Lehr and Jim Dews which were previously filed with the Court 1) as an exhibit to the Motion for Summary Decision and 2) as a proposed trial exhibit. In consideration of not burdening the Court with additional copies and in order to preserve natural resources, Complaint Counsel has not attached the pages referenced in this memorandum.

[3]A neutraceutical is a product that is created by merging "food supplements and pharmaceuticals" (Deposition Transcript of Jim Dews, dated February 11, 2009, Tr.17: l.25) ("Dews Tr.") whereby certain chemical compounds found in foods or herbs are extracted and made into a product that consumers can ingest (Dews Tr. 18: l.6).

uses. Dews is neither a scientist nor a medical doctor. Based on these experts' deposition testimony and reports as detailed below, they should not be permitted to testify in this trial.

III. LEGAL STANDARD FOR ADMISSIBILITY OF EXPERT TESTIMONY

Commission Rule of Practice 3.43(b) requires that evidence must be relevant, material and reliable in order to be admitted. Rule of Practice 3.43(b). With respect to expert witness testimony, an expert witness may testify if: "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." Fed. R. Evid. 702; *see also, Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579 (1993) and *Kumho Tire Co. Ltd. v. Carmichael,* 526 U.S. 137, 153-54 (1996). The proponent of the expert testimony has the burden of proving its admissibility. *Graf v. Baja Marine Corp., et al.*, 2009 U.S. App. LEXIS 1986 at *21 (11th Cir. Feb. 2, 2009) *citing U.S. v. Frazier,* 387 F.3d 1244, 1260 (11th Cir. 2004). For expert scientific testimony to be admissible, a witness must not only be qualified to testify competently regarding the matters he intends to address, but he also must demonstrate that his proposed testimony is *reliable* – that is, based on scientific methods and procedures rather than speculation. *Daubert*, 509 U.S. at 590; Fed. R. Evid. 702. "This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology can be applied to the facts in issue." *Daubert,* 509 U.S. at 592-93.

Moreover, this Court has the authority to exclude expert testimony of any nature, whether it is based on "scientific, technical, or other specialized knowledge," if it lacks appropriate indicia of helpfulness to the fact finder. *Kumho Tire*, 526 U.S. at 141. In exercising

what has been characterized as "general 'gatekeeping' authority," *id.*, the trial court may reject expert testimony that will not "assist the trier of fact to understand the evidence or determine a fact in issue." *Daubert*, 509 U.S. at 591. Indeed, the law is well-established that "[e]xpert testimony that does not relate to any issue in the case is not relevant and, ergo, non-helpful."*Id.*

Respondents cannot meet their burden under the Commission's Rules of Practice, FRE 702 and the principles set forth in *Daubert* of demonstrating that the expert reports and testimony of Roy, Lehr and Dews are admissible. The proffered reports and testimony are irrelevant, are not based on sufficient facts or data and the proposed testimony is not the product of reliable principles and methods. Consequently, the Court should exclude the expert reports and testimony of Roy, Lehr and Dews from any trial in this case.

A. THE COURT SHOULD EXCLUDE ROY'S TESTIMONY BECAUSE IT IS IRRELEVANT AND HIS OPINION IS NOT RELIABLE NOR IS IT BASED ON SUFFICIENT FACTS OR DATA.

Respondents tendered Rustum Roy as an expert "on the appropriateness of relying on and the lack of scientific validity of randomly-controlled trials to evaluate whole person healing; the science of homeopathy; and the scientific validity of traditional testing of herbal medicines." (Exhibit A). With regard to his qualifications, Roy has no formal medical training (Roy Tr. 26: l.9-11) nor does he conduct clinical trials (Roy Tr.13: l.20). Although, he operates a laboratory, Roy does not conduct any studies "connected with causing healing or not in a human being" (Roy Tr. 13: l.20-21). Neither has Roy ever conducted any experiments to measure the efficacy of medical treatments "at the human level." (Roy Tr. 14: l.6-9).

With respect to the DCO products, Roy does not know what the DCO Products contain (Roy Tr. 24: l.21-25) and has not reviewed the advertisements for the DCO Products to know what cancer treatment claims Respondents make (Roy Tr. 7: l.22-24). Further, he did not

conduct any studies on the DCO Products' efficacy in developing his opinion (Roy Tr. 14: l.2-5). Roy conducted no literature searches to see if there were any studies pertaining to the DCO Products' effectiveness in treating cancer. Roy's overall opinion based on his knowledge of science and the medical field, was that "[i]t is inappropriate to use traditional randomly controlled double-blind studies to evaluate whole-person healing approaches" (Roy Tr. 43: l.9-23). Roy's opinion does not consist of an application of well-accepted scientific principles to the specific facts of this case, but rather a philosophic difference of opinion with the way the medical community evaluates the efficacy of cancer treatments. Accordingly, the Court should exclude the proffered opinion as irrelevant.

The Court should exclude Roy's expert testimony first, because it is irrelevant to the ultimate issue of whether Respondents made deceptive claims about the DCO Products. The law regarding the requirement of having randomly controlled double-blind studies to support serious health claims, has been well-established. *See, e.g., Pantron I*, 33 F.3d at 1097-98 (placebo-control required for hair growth product); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1274 (S.D. Fla. 1999) ("Scientific validation of the defendants' product claims requires a double blind study of the combination of ingredients used in [the product formula]."); *Sabal*, 32 F. Supp. 2d at 1008-09 (rejecting study as valid substantiation, in part, because it was not blinded or placebo-controlled); and *FTC v. QT, Inc.*, 448 F. Supp. 2d at 962 ("[W]ith medical, health-related claims, a well-conducted, placebo-controlled, randomized, double-blind study, the gold standard, should have been conducted"). There is nothing within Roy's report or testimony that might lead this court to overthrow longstanding principals about the kind of science necessary to make a serious health claim.

Moreover, Roy's opinion fails to meet the reliability standard of FRE 702. Roy cites not

one study that he has conducted about this scientific methodology in support of his opinion that evidence gathered through controlled double-blind studies is "inappropriate" to use. (Report of Rustum, dated February 4, 2009, p.1) ("Roy Rpt.), attached as Exhibit B. Courts have routinely found that an important indicia of reliability is whether an expert is "proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their own opinions expressly for purposes of testifying when determining reliability of testimony. *See, Daubert v. Merrell Dow Pharmaceuticals Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995). There is no indication in Roy's CV or extensive publications listings that he has ever formally studied this area. Thus, his opinion is nothing more than speculative conjecture without a legitimate scientific basis and should be exluded. *See, O'Connor v. Commonwealth Edison*, 13 F.3d 1090 (7th Cir. 1994 (expert testimony based on a completely subjective methodology held properly excluded).

Finally, Roy's testimony should be excluded because it is not based on sufficient facts or data as required under FRE 702 and *Daubert*. Roy is not familiar with any of the products Respondents sell, he does not know what the DCO Products themselves contain nor did he conduct any studies on the products' efficacy in developing his opinion. Moreover, Roy is not even aware of the complaint allegations in this action and never reviewed any of the advertisements for the DCO Products (Roy Tr. 7:l. 22-24).

B. THE COURT SHOULD EXCLUDE LEHR'S TESTIMONY BECAUSE IT IS IRRELEVANT AND UNRELIABLE BECAUSE IT IS NOT BASED ON ACCEPTABLE METHODOLOGY NOR ON SUFFICIENT FACTS AND DATA.

Respondents offer proposed expert Jay Lehr to provide "pre-claim substantiation" for the DCO Products. Lehr is an environmental scientist whose work includes conducting studies to

find clean, uncontaminated water (Lehr Tr. 14: l.21-23). None of this work relates to cancer causes or treatment. Indeed, Lehr testified expressly that he is not a cancer expert (Lehr Tr. 15: l.11) and that it is outside of his "area of expertise" to opine on whether the DCO Products effectively cure or treat cancer (Lehr Tr. 33: l.19-22).

As with proposed expert Roy, Lehr never heard of the DCO Products (except GDU which he had recently started taking to help him with his arthritis) and knew nothing about Respondents' claims that the products could treat or cure cancer (Lehr Tr. 28: l.3-6). Moreover, Lehr never performed any literature searches on the DCO Products in developing his opinion that the products work (Lehr Tr. 25: l.24- 26: l.1; Lehr Tr. 24: 1.25 - 25: l.2; Lehr Tr. 26: l.7-8; Lehr Tr. 26: l.5-6). Nor was he aware of whether there were any double-blind studies conducted on any of the DCO Products (Lehr Tr. 47: l.18-22; Lehr Tr. 47: l.25 - 48: 11; Lehr Tr. 47: 1.23-24). Lehr's opinion is based solely on his use of three DCO products not at issue here, which he used to enhance his performance as a runner and tri-athlete (Lehr Tr. 25: l.6-8). In that regard, Lehr has "tested" Respondents' performance enhancing products only on himself and his wife, by taking the products for a period of time, stopping from taking the products, and comparing the difference in their performance during the use versus non-use periods of time (Lehr Tr. 53: l.24 - 55: l.19). He could substantiate only the claims that Respondents made on the three products he takes (Lehr Tr. 25: l.9-17). Lehr's opinion was also based on the many conversations he had had with James Feijo about science where Mr. Feijo impressed him with his understanding of the scientific theories underlying the performance enhancing products. He never spoke to Mr. Feijo about the DCO Products, however, even in preparation for giving his testimony (Lehr Tr. 40: l.6-15). In Lehr's opinion, however, because Respondents' athletic enhancing products worked well on him, Respondents other products must also be effective (Lehr Tr. 32: l.21 - 33: l.18).

The Court should exclude Lehr's testimony for several reasons. First, the testimony is irrelevant to the issue of whether Respondents have substantiated their claims about the DCO Products. Lehr, while ostensibly tendered to provide "pre-claim substantiation" for the DCO products, can only attest to his personal experience with three DCO performance enhancing products. Because Lehr has had a positive personal experience with these products is irrelevant. In no way can this information assist the Court in ruling on the issue at hand.

Second, the methodology underlying his opinion is not scientifically valid. Lehr's opinion is that the DCO Products must be effective because Respondents' performance enhancing products assist his athletic performance. First, Lehr's own testing of the performance enhancing products is not valid. Clearly, to study the products just on himself does not rise to the level of reliability of conducting placebo controlled, double blind studies. Further, even if his methodology were acceptable, there is no scientific basis for extrapolating his findings to other products. The products at issue are different from those Lehr took and claim to have affect different functions in the body. To say that if one DCO product works well, all must work is purely speculative. Courts have routinely held such evidence to be inadmissible. *See Daubert,* 509 U.S. at 590.

Finally, Lehr lacks sufficient facts and data to render an opinion about the DCO Products. He has never heard of the DCO Products (except for GDU which he is using to treat arthritis not cancer), and does not know what claims Respondents make about the products. Lehr has never studied the DCO Products nor has he done scientific research on them to see if their efficacy has ever been studied. Lehr himself has indicated that he could not opine on the products' effectiveness in treating cancer, since this is out of "his area of expertise" (Lehr Tr. 33: l.19-22), and thus, he cannot provide any assistance to the Court in this matter.

Accordingly Lehr's testimony and report should be excluded.

C. THE COURT SHOULD EXCLUDE THE TESTIMONY OF JIM DEWS BECAUSE HE IS NOT QUALIFIED AS AN EXPERT AND HIS OPINION IS NOT RELIABLE BECAUSE IT IS NOT BASED ON SUFFICIENT FACTS AND DATA.

Respondents' final expert, Jim Dews, was also tendered as an expert who could provide "pre-claim substantiation". At deposition, Respondents' counsel clarified this representation to Complaint Counsel stating that Dews' opinion and testimony was limited solely to the formulation of just one DCO product, 7 Herb Formula (Dews Tr. 5: l.7).

Dews's qualifications consisted of his having attended college for several years, although not obtaining a degree, and over 35 years of experience manufacturing neutraceuticals. Dews' company manufactures neutraceuticals at the request of their customers. Dews is not a clinician nor does he practice medicine or any part of healthcare (Dews Tr. 29: l.8-12). His main role in the product manufacture is to "make sure that [a product] is probably safe for its intended use. *Id.* In his capacity as manufacturer, he works with numerous herbs and is familiar with their side effects and uses (Dews Tr. 15: l.10-14) .

With regard to 7 Herb Formula, Dews was not involved in the creation or manufacture of this DCO product and in fact,"had never heard of the 7 Herb Formula until" the present lawsuit (Dews Tr. 59: l.12-13). Dews was familiar with the components of 7 Herb Formula which are: sheep sorrel, burdock root, Siberian ginseng, Slippery elm, rhubarb root watercress and cat's claw. According to Dews, no scientific studies have been conducted on 7 Herb Formula to support the claim that the product "inhibits tumor formation (Dews Tr. 59: l.9-12). Nor was he aware of any scientific studies performed on 7 Herb Formula's components showing them to be

effective in treating or curing cancer (Dews Tr. 45: l.12 - 46: l.9).[4] Dews has only ever heard of 7 Herb Formula's components being touted as cancer treatment as a "folk" remedy, not in any scientific fashion (Dews Tr. 45: l.12-23) . In Mr. Dews' opinion, there was no evidence to support a claim that 7 Herb Formula could treat cancer; at most, in his opinion, taking 7 Herb Formula might not be "detrimental" (*Id.*).

The Court should exclude Dews' testimony for several reasons. First, Dews lacks the knowledge, skill, experience, training or education to testify about the serious claims that Respondents make that their product, 7 Herb Formula, can prevent, treat or cure cancer or tumors. Dews' is not a scientist or a medical doctor and has nothing to do with treating patients (Dews Tr. 29: l.8-12). Dews' company manufactures neutraceuticals at the request of their customers. (Dews Tr. 12: l.10-14). His main role in the product manufacture is to "make sure that [a product] is probably safe for its intended use. *Id.* Although he is familiar with the components of 7 Herb Formula, he is not sufficiently knowledgeable about the treatment of cancer. Thus, Dews is not qualified to give an expert opinion in this case.

Second, Dews lacks sufficient facts and data about 7 Herb Formula to render an opinion. With regard to 7 Herb Formula, Dews was not involved in the creation or manufacture of this DCO product and in fact,"had never heard of the 7 Herb Formula until" the present lawsuit (Dews Tr. 59: l.12-13). Dews was familiar with the components of 7 Herb Formula which are: sheep sorrel, burdock root, Siberian ginseng, Slippery elm, rhubarb root watercress and cat's claw. According to Dews, no scientific studies have been conducted on 7 Herb Formula to support the

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[4]Mr. Dews testified that in conducting his manufacturing business, he is careful not to be involved with companies who are interested in producing a product that claims to cure cancer because it is too dangerous to do so.

claim that the product "inhibits tumor formation (Dews Tr. 59: l.9-12). Nor was he aware of any scientific studies performed on 7 Herb Formula's components showing them to be effective in treating or curing cancer (Dews Tr. 45: l.l2 - 46:l.9). He never reviewed the labels for 7 Herb Formula and was not even aware of the advertising claims Respondents have made about the product. (Dews Tr. 21: l.10-20).[5]

Accordingly, the Court should exclude Dews from testifying as an expert.

IV. CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Court enter the proposed order annexed hereto, excluding the testimony of Respondents' expert witnesses Rustum Roy, Jay Lehr and Jim Dews from testifying at trial.

Respectfully submitted,

Leonard L. Gordon (212) 607-2801
Theodore Zang, Jr. (212) 607-2816
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Federal Trade Commission
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004

Dated: March 16, 2009

[5]Dews had only ever heard of 7 Herb's components being touted as "cancer treatment" in terms of "folk" remedies unsupported by scientific analysis. (Dews Tr. 45: 1.12-23). In Dews' opinion, there was no evidence to support a claim that the 7 Herb could treat cancer." (*Id*).

Exhibit A

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

In the Matter of	)	
	)	
DANIEL CHAPTER ONE,	)	
a corporation, and	)	
	)	**Docket No. 9329**
JAMES FEIJO,	)	
individually, and as an officer of	)	**Public Document**
Daniel Chapter One	)	
	)	

RESPONDENTS' FINAL PROPOSED WITNESS LIST

Pursuant to the Court's Scheduling Order, dated October 28, 2008, Respondents submit their *Final Proposed Witness List,* identifying the individuals likely to testify as part of Respondents' direct case and a description of each witnesses' anticipated testimony.

The information disclosed herein is based upon the information reasonably available to Respondents' Counsel at the current time. Without prejudicing the ability of Respondents' Counsel to supplement this *Final Proposed Witness List* on motion to the Court for good cause shown, Respondents' Counsel offer their *Final Proposed Witness List.*

The order of witnesses on the attached list is not necessarily the order in which the witnesses will be called.

Swankin & Turner
Attorneys for Respondents

By: _____
James S. Turner

Dated: March 3, 2009

Respondents' Final Proposed Witness List
In the Matter of Daniel Chapter One
(Docket #9329)

Respondents expect to call the following witnesses:

A. With regard to the operation of the Daniel Chapter One Ministry including the collection and dissemination of information and the management of ministry programs:

1. James Feijo
   P.O. Box 223
   Portsmouth. R.I. 02871

   We anticipate that Mr. Feijo, Overseer of Daniel Chapter One Ministry ("DCO"), will testify about the organization and management of the ministry, the health message the Ministry delivers, the relationship between the health message and supplement products DCO provides its followers and the background of DCO and its activities.

2. Patricia Feijo
   P.O. Box 223
   Portsmouth. R.I. 02871

   We anticipate that Mrs. Feijo, trained in homeopathy, will testify about the nature of the DCO ministry, its basis on religious faith and on the efforts she went through to ensure that statements made about health and the supplements DCO provides its followers complied with legal rules as she understood them.

3. Jedidiah Harrison
   14171 176th St.
   McAlpin, FL 32062

   We anticipate that Mr. Harrison, who manages some activities of DCO, will testify about aspects of the Daniel Chapter One Ministry, how it is organized, how it operates and how it affects him and his family

4. Jill Feijo
   33 North Drive
   Portsmouth, R.I. 02871

   We anticipate that Ms. Feijo, who manages certain DCO tasks, will testify about the operation of DCO with which she is familiar.

5. Dean Mink, D.C.
   Mink Chiropractic Center
   409 Northside Dr.
   Valdosta, GA. 31602-1895

   We anticipate that Dr. Mink will testify to the quality, safety, and efficacy of DCO supplements. He will also testify on his role in making these supplements available to clients. He has made DCO supplements available in his Chiropractic Center for many years and has found it to be the best group of supplements he has experienced. He will also testify on his experience of the nature of James Feijo's activities as the Overseer of Daniel Chapter One.

6. Pastor Wayne Robertson
   Morningside Baptist Church
   Northside Drive at Bemiss Rd.
   Valdosta, GA. 31604

   We anticipate that Pastor Robertson will testify about the charitable program he has worked out with DCO and the positive impact that DCO has had on hundreds of lives of which he is aware, and that which DCO gives to the Ministry of Morningside Baptist Church. He will also testify on the role of James Feijo as Overseer of Daniel Chapter One.

7. David Bertrand
   36 Mary Lane
   Tiverton, R.I. 02878

   We anticipate that Mr. Bertrand will testify that he has been part of the house church for many years, how the house church approach works and how he worked in the DCO ministry including recounting how DCO programs including its information and products have enhanced his life and health, and the life and health of others.

8. Richard Duffy
   P.O. Box 1366
   Jerusalem, Israel

   We anticipate that Mr. Duffy will testify that the DCO 7 Herb Formula website was the idea and creation of him and his late wife Ruth, to be a source of information. Ruth designed the website as a ministerial offering, and did not receive payment from DCO for it.

   We anticipate that Mr. Duffy will also testify that DCO helped support the home church in Israel, and that it paid for the Israeli Jr. Men's Fastpitch Softball Team to travel to Australia to compete in the World Championship the year they qualified and could not otherwise afford to go.

9. Tracy Kulikowski (website contribution quoted in the FTC Complaint).

200 E. Burgess Rd., #8 B
Pensicola, FL 32503

We anticipate that Ms. Kulikowski will testify that she created her DCO web entry because she wanted to share with other DCO followers her belief that DCO 7 Herb Formula, Bio*Mixx, GDU, and BioShark helped save her life from leukemia and tumors on the brain, liver, and behind her heart. We anticipate that she will also testify that she has remained cancer free for over ten years.

B. With regard to their belief about their experience with DCO products:

1. Ernie Jensen
   5329 Mum Ct.
   Las Vegas, NV 89031

   We anticipate that Mr. Jensen will testify that he was diagnosed with incurable non-Hodgkin's lymphoma, and that after a bone marrow transplant failed, DCO products including 7 Herb Formula helped him. His doctor is amazed he survived.

2. Sherman C. "Red" Smith
   P.O. Box 770
   Cooper Landing, AK 99572

   We anticipate that Mr. Smith will testify that DCO 7 Herb Formula has helped him combat prostate cancer. He has taken the product for many years, and has referred to it as "7 Herb Savior."

3. Robert Hicks
   P.O. Box 1013
   Jackson, AL 36545

   We anticipate that Mr. Hicks will testify that his son Cole (age 3) drowned at age 2. After Cole miraculously survived, the prognosis was poor for rehabilitation. Mr. Hicks credits the many DCO products he gives his son to saving Cole's life and helping him to recover.

4. Glenda Shaw
   1610 Reynolds Rd. Lot 261
   Lakeland, FL 33801

   We anticipate that Mrs. Shaw will testify to having had breast cysts. Now, after she used DCO 7 Herb Formula and GDU, the cysts are gone.

5. Laura Phair-Rudin
   38 Ridgefield Rd.
   Center Port, NY 11721

   We anticipate that Mrs. Phair-Rudin will testify that her dog had glioblastoma and the

dog survived well beyond the prognosis from the vet after being given DCO 7 Herb Formula, BioShark, and GDU, that she attributes the extended survival of her dog to use of BioShark and GDU by her dog, and that she desires to share her belief that these products contributed to the significant shrinkage of the dog's brain tumor that is shown in the dog's veterinary medical records.

C. With regard to the FTC activities that identified Daniel Chapter One as the focus of FTC actions, Respondents seek to call the following FTC witnesses who do not appear on Complaint Counsel's witness list (A motion with regard to these witnesses will be submitted separately):

1. Richard Cleland
   600 New Jersey Avenue, NW
   Washington, DC 20580

   We anticipate that Mr. Cleland to testify to the details of the process by which the FTC organized its case against Respondents.

2. Lynn J. Colbert
   600 New Jersey Avenue, NW
   Washington, DC 20580

   We anticipate that Ms.Colbert will testify about the organization, conduct and review of the FTC cancer cure internet "surf" that provided the basis for the allegations made against Daniel Chapter One.

D. Daniel Chapter One Expert Witnesses:

1. James Duke, Ph. D.
   8210 Murphy Road
   Fulton, MD 20759

   We anticipate tha t Dr. Duke will provide substantiation for health claims about natural products generally and the use of herbs as medicine in the Bible.

2. Sally LaMont, N.D.
   Marin Natural Medicine Clinic
   131 Camino Alto, Suite F
   Mill Valley, CA 94941

   We anticipate that Ms. LaMont will provide pre-claim substantiation for Respondents' challenged claims; substantiation for health claims about natural products generally; contradict FTC claims of the safety and effectiveness of conventional cancer treatments, including the inadequacy of the "scientific method" in evaluating the usefulness of nutritional supplements and natural healing.

3. Rustum Roy, Ph. D.
Evan Pugh Professor of the Solid State Emeritus
Professor of Science Technology and Society Emeritus
The Pennsylvania State University
102 MRL
University Park, PA. 16802

Visiting Professor of Medicine
University of Arizona
Distinguished Professor of Materials
Arizona State University

We anticipate that Dr. Rustum Roy will testify on the inappropriateness of relying on and the lack of scientific validity of randomly-controlled trials to evaluate whole person healing; the science of homeopathy; and the scientific validity of traditional testing of herbal medicines.

4. James Dews
Dews Research , LLC
P.O. Box 637
Mineral Wells, TX 76068

We anticipate that Mr. Dews will provide pre-claim substantiation of Respondents' challenged claims.

5. Jay Lehr Dr
6011 Houseman Rd.
Ostrander, OH 43061

We anticipate that Dr. Lehr will provide pre-claim substantiation of Respondents' challenged claims.

Exhibit B

REPORT OF EXPERT WITNESS RUSTUM ROY
In the Matter of Daniel Chapter One
FTC Docket #9329

I. QUALIFICATIONS

See attached curriculum vitae

II. SCOPE OF WORK

To provide expert opinions concerning: (1) the scientific validity of randomly-controlled trials to evaluate whole person healing; (2) the science of homeopathy; and (3) the scientific validity of traditional testing of herbal medicines.

Compensation: $3500

Prior Expert Testimony: No expert testimony in past four years

III. MATERIALS CONSIDERED

See attached list of published reports.

IV. SUMMARY OF OPINIONS

1. It is inappropriate to use traditional randomly controlled double blind studies to evaluate whole person healing approaches.

2. Homeopathy is an empirical science based health modality and its practitioners are knowledgeable about what constitutes an effect on the structure and function of the whole person, the true approach to healing as distinct from using a drug to cure the symptoms of a disease.

3. Herbal medicines have been tested epidemiologically by nature over thousands of years and hundreds of human generations, in many different peoples. Humans have evolved side by side with the natural substances in herbs, so they are not new chemicals to us. New chemicals, like those in pharmaceuticals, are totally new to the very complex

body, and we have no way of really knowing their systemic and long term effects, which may take decades, and in some cases, generations, to become clear.

4. Cancer is a particular instance where whole body healing approaches make far more scientific sense than relying solely on pharmaceutical approaches.

5. There is no conflict between science and religion, because they are incommensurable.

6. The health modalities that have the greatest impact on public health are known to be those that affect the whole person: diet, exercise, clean water.

V. ANALYSIS AND FINDINGS

1. It is inappropriate to use traditional randomly controlled double blind studies to evaluate whole person healing approaches.

a. Based on my experience, as an active professional scientist and educator in the physical sciences for over six decades, and in integrative medicine for nearly half that long, it is clear that biochemically-based health science has been unable or unwilling to integrate an enormous body of empirical data because it totally ignores physics, materials science, and the profound psychology of expectation effects, now yearly confirmed by scientists when they look. (See Alan Alda and Ted Kaptchuck demonstration at Harvard. (PBS, Jan. 29, 2009). The narrow focus on the single drug-single disease/symptom treatment option has caused incalculable harm and held back a truly interdisciplinary scientific health paradigm, which would broaden that focus to include the sciences noted above, approaches that have been found to promote healing the whole person.

b. A true scientific method is based on first, an observation; then, the formulation of a hypothesis; then the testing of that hypothesis. The uses of natural medicines are almost universally based on observation, which has led to broader and broader "testing" as more people use them over longer periods of time. The development of pharmaceuticals is based largely on starting with a hypothesis based on previous studies, and does not have the appropriate predicate of having been observed to produce a desired effect on real whole persons in actual use, except by the use of very widely varying statistics.

2. Homeopathy is a science based health modality and its practitioners are knowledgeable about what constitutes an effect on the causes and function of the whole person (i.e., a whole person healing approach) as distinct from trying a specific biochemical drug to cure a symptom.

a. Homeopathy was developed empirically, from observations of the effects of different materials on the functioning of healthy subjects, and has been in widespread use all around the world for nearly two hundred years. In the materials laboratory that I founded and directed for 23 years at The Pennsylvania State University I and my colleagues have demonstrated that through scientifically accepted variables (pressure, nanobubbles, acoustic , epitaxy) one can change the structure of water, that water can hold that change, and that water of different structures necessarily has different properties. We have tested different homeopathic remedies and shown that they each alter the structure of water in a systematic pattern. We made no clinical tests whatsoever.

b. An example of ultradilute physical materials affecting water is the use of small particles of metallic silver in suspension, which has been in continual use for over

5,000 years to purify water and promote healing. Today, worldwide, it is showing remarkable results on dozens of diseases.

c. Another example showing that water is not as simple as conventionally assumed is the recent demonstrations that very weak radiofrequency beams can break nearly pure water down into hydrogen and oxygen so that it can burn instantly. In addition to radiofrequencies, microwave, visible light and acoustic frequencies can all be used to definitively change the structure and hence properties of water.

d. The implication for whole person healing is that we may now be able to make all kinds of new water-transmitted healing vectors. We can imprint water, which the body has learned to assimilate since the beginning of life on the planet, with materials that have a positive impact on the body's functions, including immunity, selected by our evolutionary processes.

3. Herbal medicines have been tested epidemiologically by nature over thousands of years and hundreds of human generations, in many different peoples. We have evolved with the natural substances in herbs, so they are not new chemicals to us. New chemicals, like those in pharmaceuticals, are totally new to the body, and we have no way of knowing their systemic and long term effects, which may take decades, and in some cases, generations, to become clear. Where natural products have been safety tested by vast numbers of individuals over time, and adapted to by us through evolution, by contract pharmaceutical drugs rely for both safety and efficacy data on statistical projections from small controlled trials. "Science" has only one gold standard: reproducible experimental data obtained more than once that a specific cause produces a specific effect. The trials on which pharmaceutical companies and FDA rely cannot

produce that information, which is why so many drugs do not work for everyone or have dangerous side effects in a predictable, but unidentifiable, portion of their users.

4. Cancer is a particular instance where whole body healing approaches make far more scientific sense than relying solely on pharmaceutical approaches because it is a slow grower.

a. Everyone's body has cancer cells essentially all the time. They are constantly forming and constantly being destroyed by the immune system. Anything that strengthens the immune system helps the body destroy the vast majority of these cells before they grow beyond its ability to control. It's always better to have an effective defensive system operating, rather than relying on just attacking the problem once it has manifested itself. Herbal remedies, like homeopathic remedies, have proven their ability to strengthen the immune system without harmful side effects because of their whole person, balanced action.

b. Randomly controlled double blind studies don't tell you what will work for a particular person, or whether the positive effect a drug may have will outweigh its side effects. As currently used, these studies are just statistical exercises that tell you what kinds of effects you can expect on average over a large group, not actual cause and effect in a particular person.

5. There is no conflict between science and traditional belief systems. Both are methods for understanding reality. In parallel modern medical technologies and traditional religious practices of body, mind and spirit can contribute to improved physical, mental, emotional and spiritual health. Just as medical science must be broadened to include not just biology and chemistry, but all the sciences that can be put

to the service of health – so do the various aspects of the human being, including people's beliefs, expectations, and experiences, need to be integrated into our model of the whole and healthy person.

6. The health modalities that have the greatest impact on public health are known to be those that affect the whole person: diet, exercise, clean water. All whole person approaches have this in common, that they strengthen the individual's own resources – generally called the immune system – to achieve and maintain health. Natural products are a major part of this effect, by raising the overall ability to resist, endure and recover.

February 4, 2009

Rustum Roy

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

In the Matter of	)	
DANIEL CHAPTER ONE,	)	
a corporation, and	)	**Docket No. 9329**
JAMES FEIJO,	)	**Public Document**
individually, and as an officer of	)	
Daniel Chapter One	)	

[Proposed] ORDER GRANTING MOTION IN LIMINE

On March 16, 2009, Complaint Counsel filed a Motion in Limine to exclude the testimony and reports of Respondents' proposed expert witnesses Rustum Roy, Jay Lehr and Jim Dews from any trial in this case.

IT IS HEREBY ORDERED that Complaint Counsel's Motion in Limine is GRANTED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2008, I have filed and served **COMPLAINT COUNSEL'S MOTION AND MEMORANDUM IN SUPPORT OF THEIR MOTION TO EXCLUDE THE TESTIMONY AND REPORTS OF RESPONDENTS' EXPERT WITNESSES RUSTUM ROY, JAY LEHR AND JIM DEWS** and **[Proposed] ORDER GRANTING MOTION IN LIMINE** upon the following as set forth below:

The original and one paper copy via overnight delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580
E-mail: secretary@ftc.gov

Two paper copies via overnight delivery to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-528
Washington, DC 20580

One electronic copy via email and one paper copy via overnight delivery to:

James S. Turner, Esq.
Betsy Lehrfeld, Esq.
Martin Yerick, Esq.
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One electronic copy via email to:

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Complaint Counsel