UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DANIEL CHAPTER ONE, a corporate sole, and JAMES FEIJO, individually, and as an officer of Daniel Chapter One, Petitioners, v. FEDERAL TRADE COMMISSION, Respondent.	)	No. 10-1064

PETITIONERS' EMERGENCY MOTION FOR STAY
PENDING REVIEW OF FTC MODIFIED FINAL ORDER

Petitioners, pursuant to 15 U.S.C. § 45(g)(2)(B) and in accordance with F.R.App.P. 18 and D.C. Cir. R. 18, respectfully move this Court for entry of an order to stay, pending review, the Modified Final Order ("Order") issued by the Federal Trade Commission ("FTC") on January 25, 2010 (attached as Exhibit A), in the case of *In the Matter of Daniel Chapter One, et al.*, FTC Docket No. 9329.

Pursuant to D.C. Cir. R. 27(f), Petitioners request expedited consideration of this motion on the ground that, to avoid irreparable harm, relief is needed in less time than would ordinarily be required for this Court to consider and determine the matter. Absent emergency treatment, Petitioners' request for a stay would not be

briefed and decided by the date the Order becomes effective — April 2, 2010. Accordingly, Petitioners request the Court to order the matter to be briefed by such time as would permit the motion to be decided by this Court by April 1, 2010.[1]

Petitioners aver that they previously submitted to the FTC an application for stay of the Order, but such application was denied on March 23, 2010 ("Denial Order") (Exhibit B). Petitioners submit that an emergency stay is warranted because (i) Petitioners' arguments for overturning the Order on appeal are likely to be successful or, alternatively, present substantial questions; (ii) the injuries to Petitioners if enforcement of the Order were not stayed would be irreparable; (iii) no party or the public would be injured by granting the requested stay; and (iv) a stay of the Order would be in the public interest, all as more fully set forth below.[2]

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[1] Pursuant to D.C. Cir. R. 18(a)(2), Petitioners, through counsel, notified by telephone the Clerk's office, as well as counsel for Respondent, of their intent to file this motion and to seek expeditious consideration. Petitioners' D.C. Cir. R. 28(a)(1) provisional certificate is being submitted as an addendum to this emergency motion. Petitioners' Rule 26.1 corporate disclosure form has been filed previously herein.

[2] Copies of the following documents also are attached: Respondents' Application for Stay and Supporting Memorandum before the FTC ("Resp. Mem.") (Exhibit C); supporting Declarations of James Feijo, Patricia Feijo, Deane Mink, D.C., Karen S. Orr, D.C., Charles Sizemore, D.D.S., and Jerry Hughes (Exhibit D); FTC Counsel's Opposition to the Motion for Stay before the FTC ("Compl. Opp.") (Exhibit E); Respondents' Reply to the Opposition ("Resp. Reply") (Exhibit F); and FTC's Opinion issued on December 24, 2009 ("Comm. Op.") (Exhibit G). (Petitioners before this Court were Respondents below.)

ARGUMENT

I. INTRODUCTION

Petitioner Daniel Chapter One ("DCO") is a Christian house church organized as a nonprofit corporation sole under the laws of the State of Washington, operating a healthcare ministry based on the spiritual gifts, education, training, and experience of its founders, James and Patricia Feijo. Headquartered in Portsmouth, Rhode Island, DCO presents the Gospel of Jesus Christ, teaches Biblical principles of healthcare and healing, and offers a number of herbal and nutritional products for sale to the public (including the District of Columbia). DCO educates by the Internet, publications, speaking engagements, and a daily radio show.

Now its ministry is under attack by the FTC for offering Scripturally-based health-promoting, life-affirming, products drawn from God's creation as alternatives to toxic "conventional" medicine — such as chemotherapy — therapeutic options which Americans increasingly view as dangerous and unsuccessful, and whose selection apparently depends on the power of the government to suppress alternative approaches, diversity and free choice. *See* Exh. D, P. Feijo Declaration, ¶¶ 3, 6-28.

DCO offers a number of herbal and nutritional products that it developed according to Scriptural principles, its study of the combined legacy of 6,000 years

of the use of herbs and nutrition, a lifetime of personal experience and observation around the world, and the personal testimonials of others. DCO's products have been remarkably effective in promoting the health of Christians and non-Christians alike across the country. These products help the body rid itself of toxins and pathogens, and use substances naturally-occurring in God's created order to trigger the body's own curative powers as God designed — all subject to God's sovereign will for each individual. The safety of DCO's products has never been challenged — even by the FTC. Indeed, the FTC was **unable to find a single person harmed** by them. Moreover, the FTC was **unable to find even one person to make a complaint** of any kind against DCO, as no such witnesses testified against DCO. Instead, the FTC relied upon the testimony of one medical doctor who no longer treats patients, but designs studies to show the efficacy of chemotherapy. This same expert was so unfamiliar with alternative medicine that he could not even answer a question as to whether an herb was a plant. Exh. F, Resp. Reply, pp. 4-5. Finally, rather than prove that DCO's actual statements about its products were, in fact, false and deceptive, the FTC substituted its "overall net impression" of those statements, and found that DCO had failed to substantiate those impressions by what the FTC thinks at the moment, in its unbridled discretion, to be competent and reliable scientific evidence, imposing its views on all Americans. Exh. G, Comm. Op., pp. 9-11, 18-22.

Up to this point, DCO's actions have been judged by an administrative agency exercising legislative, executive, and judicial powers. As James Madison warned in *Federalist No. 47,* "[t]he accumulation of all [such] powers ... in the same hands ... may justly be pronounced the very definition of tyranny."

Now for the first time, DCO is allowed to go before an Article III court to have its claims and defenses impartially adjudicated, including its request for a stay of the FTC cease and desist order. Although the FTC purported to apply the four-factor test by which an application for stay is to be measured under FTC Rule 3.56(c) (16 C.F.R.), it failed to adhere to the standards governing such applications established by this Court in Washington Metro. Area Transport Comm. v. Holiday Tours, Inc., 559 F.2d 841, 844-45 (D.C. Cir. 1977), and United States v. Philip Morris, Inc., 314 F.3d 612, 617, 621-22 (D.C. Cir. 2003).

II. PETITIONERS' LEGAL AND CONSTITUTIONAL CHALLENGES TO THE MODIFIED FINAL ORDER ARE SUBSTANTIAL.

The FTC has acknowledged that, to meet the standard of likelihood of success on appeal, Petitioners need only demonstrate that "their argument on at least one claim is 'substantial' — so long as the other three factors weigh in their favor." *See* Exh. B, Denial Order, p. 3. *See also* Deu Thapa v. Gonzales, 460 F.3d 323, 335-36 (2d Cir. 2006). Petitioners have raised substantial legal and constitutional claims and defenses, matters to be decided *de novo* by this Court.

A. PETITIONERS' JURISDICTIONAL ARGUMENT.

In their Application for a Stay before the FTC, Petitioners contended that the FTC had failed to apply the correct **legal standard** governing FTC jurisdiction over DCO, a religious nonprofit corporation sole organized under the laws of the State of Washington. *See* Exh. C, Resp. Mem., pp. 3-5. *See also* Exh. F, Resp. Reply, pp. 11-12. In its Denial Order, however, the FTC asserts that the jurisdictional dispute raised by Petitioners is a **factual** one, subject to the discretion of the FTC. *See* Exh. B, Denial Order, p. 4 n.1.

When challenged, however, the FTC bears the burden of establishing its jurisdiction. *See* Community Blood Bank v. FTC, 504 F.2d 1011, 1015 (8th Cir. 1969). Moreover, Petitioners' claim that the FTC lacked jurisdiction "is not one of the sufficiency of the evidence." *See* Exh. F, Resp. Reply, p. 12. Rather, Petitioners have argued that the FTC failed to apply the legal rule governing FTC jurisdiction over nonprofit corporations, as stated in Community Blood Bank, 504 F.2d at 1015 (8th Cir. 1969). *See* Exh. C, Resp. Mem., pp. 3-4.

Petitioners contend that the FTC ruling that DCO was subject to FTC jurisdiction was erroneous because the rule in Community Blood Bank requires the FTC to show that the profits earned, and expenses paid, were **not** dedicated to the perpetuation or maintenance of the corporate's nonprofit purpose, but inured to the corporate member's individual and personal profit. *See* Exh. C, Resp. Mem.,

pp. 3-5. Thus, there is a substantial issue as to whether the FTC met its statutory burden of showing that DCO "derived a profit over and above the ability to perpetuate or maintain its existence,"[3] and whether the expenses paid to Mr. Feijo were for his personal "pecuniary gain," or necessary for the perpetuation and maintenance of DCO's charitable purposes. Community Blood Bank, 405 F.2d at 1017. In this case, in **what appears to be the first instance in which the FTC has attempted to apply its advertising rules to silence a religious organization**, that jurisdictional issue is one to be determined *de novo* by this Court, without deference to the FTC. *See id.*, 405 F.2d at 1015-22.

B. PETITIONERS' ARGUMENT AGAINST THE FTC'S "SUBSTANTIATION" REQUIREMENT.

The FTC dismissed Petitioners' argument that neither section 5 nor section 12 of the FTC Act authorizes the FTC to have required Petitioners to substantiate their claims of product efficacy by competent and reliable scientific evidence. *See* Exh. B, Denial Order, pp. 4-5. But the FTC failed to cite even one case where a party "question[ed] the propriety of the FTC's substantiation doctrine," as it acknowledges that Petitioners have done here. Instead, the cases cited by the FTC and FTC Complaint Counsel have simply **applied**, uncontested, the substantiation doctrine. *Compare* the cases cited in Exh. B, Denial Order, pp. 4-5 and in Exh. E,

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[3] *See* Community Blood Bank, 405 F.2d at 1019.

Compl. Opp., pp. 5-6, *with* Exh. F, Resp. Reply, pp. 7-10.

Thus, **apparently for the first time, the legitimacy of the FTC's substantiation doctrine is being challenged** as outside the FTC's statutory authority. Indeed, the FTC's substantiation doctrine is not one derived from statutory language, but from the FTC's "reasonable basis theory." *See* FTC v. National Urological Group, Inc., 2008 U.S. Dist. LEXIS 44145, *44-*45 (D. Ga. 2008). The "reasonable basis theory," in turn, was created to relieve the FTC of its burden of proving that an advertisement is false or deceptive, *see* FTC v. Garvey, 383 F.3d 891, 901 (9th Cir. 2004), and to require the advertiser to substantiate by "competent and reliable scientific evidence" any health benefit claim. *See* Thompson Medical Co., Inc. v. FTC, 791 F.2d 189 (D.C. Cir. 1986).[4] In its opinion denying Petitioners' Application for Stay, the FTC attempts to defend its substantiation doctrine, claiming it to be rooted in the FTC Guide, *Dietary Supplements: An Advertising Guide for Industry.* *See* Exh. B, Denial Order, p. 5. But an Industry Guide — having been neither designed as a rule of law, nor produced in accordance with APA rule-making procedures — cannot

[4] This shift in the burden of proof has prompted one court to observe that it makes no sense for the FTC to bear its burden to prove falsity or deception, in that "it is difficult to imagine how the Commission could fail to prevail on [the] reasonable basis theory." FTC v. Pantron I, 33 F.3d 1088, 1096 n.23 (9th Cir. 1994).

legitimize the application of the FTC substantiation doctrine in an FTC enforcement action. *See* Exh. C, Resp. Mem., pp. 7-9. The "propriety" of the FTC's substantiation doctrine is a substantial question of statutory interpretation, apparently never raised before, to be decided by this Court.

C. PETITIONERS' FIRST AMENDMENT COMMERCIAL SPEECH CLAIM.

The FTC rejected Petitioners' claim that the FTC's substantiation doctrine violated the commercial speech doctrine of the First Amendment on the sole ground that "misleading or deceptive commercial speech is afforded no protection under the First Amendment." Exh. B, Denial Order, p. 5. The FTC's ruling does not rest upon a finding that Petitioners' representations were, in fact, false or deceptive. Rather, those representations were found to be "deceptive" **solely** because the FTC found that Petitioners failed to substantiate them by what the FTC deems to be "competent and reliable scientific evidence." *See* Exh. B, Denial Order, p. 5. *See also* Exh. G, Comm. Op., pp. 18-22.

In Pearson v. Shalala, 164 F.3d 650 (D.C. Cir. 1999), marketers of dietary supplements, like Petitioners here, made claims that their products would help people fight cancer. *Compare* Pearson, 164 F.3d at 652, *with* Exh. B, Denial Order, p. 2. In Pearson, the Federal Drug Administration ("FDA") found such claims to be "misleading" because they did not meet a pre-determined "scientific"

standard, just as the FTC found Petitioners' claims to be "deceptive" because they did not meet its standard of "competent and reliable scientific evidence." *Compare* Pearson, 164 F.3d at 652-55, *with* Exh. B, Denial Order, pp. 2, 5. In Pearson, the FDA ruled that the health claims there were "entirely outside the protection of the First Amendment," just as the FTC has ruled here that Petitioners' representations are "afforded no protection under the First Amendment." *Compare* Pearson, 164 F.3d at 655, *with* Exh. B, Denial Order, p. 5.

In Pearson, this Court rejected the FDA's ruling as based upon a "paternalistic assumption" that claims lacking "'significant scientific agreement'" are "inherently misleading." *Id.*, 164 F.3d at 655. The FTC ruling in this case is no different, based upon the same paternalistic assumption. Even though the FTC introduced "no evidence that any consumer was economically harmed or misled by [Petitioners'] representations," the FTC "believes" consumers were misled, not because such representations were, in fact, deceptive, but because "there is no substantiation for those claims." *See* Exh. B, Denial Order, p. 8.

In Pearson, this Court rejected the FDA's claim that its "science" policy immunized the FDA enforcement action from scrutiny under the First Amendment commercial speech doctrine. *Id.*, 164 F.3d at 655. The FTC claim of constitutional immunity is based upon a comparable pre-determined "science" policy and, likewise, should be rejected. As the U.S. Supreme Court has insisted,

there must be concrete evidence that an advertisement is, in fact, misleading or deceptive; otherwise, the First Amendment commercial speech doctrine applies. *See* Peel v. Atty. Reg. and Discipl. Comm. of Ill., 496 U.S. 91, 100-01, 106 (1990); Ibanez v. Flor. Dept. of Busi. and Prof. Regulation Board of Accountancy, 512 U.S. 136, 138-39, 142 (1994). Not only did the FTC ignore Pearson, it also ignored Peel and Ibanez. *See* Exh. B, Denial Order, p. 5. Petitioners' argument that the FTC's ruling is erroneous is substantial.

D. PETITIONERS' DUE PROCESS CLAIM.

The FTC has acknowledged that Cinderella Career & Finishing Schools, Inc. v. FTC, 425 F.2d 583 (D.C. Cir. 1970), is both relevant to, and controlling of, Petitioners' due process claim. According to Cinderella, "due process" requires the FTC to make its decision "in light of the evidence" on the record. *Id.*, 425 F.2d at 585. At the heart of Petitioners' due process claim is the fact that two of the four commissioners made official statements prior to a hearing implying that Petitioners' products were **unsafe**, not just inefficacious. Exh. C, Resp. Mem., pp. 17-19. The record evidence in this case concerns only representations as to the efficacy of DCO's products, not as to their safety. *See* Exh. B, Denial Order, p. 2. *See* also Exh. E, Comp. Opp., pp. 1-2; Exh. C, Resp. Mem., pp. 17-18. Nevertheless, the FTC claims that it was perfectly permissible for Commissioner Harbour to have "inquire[ed] into the **potential** that the continued sale of 'cancer

cures' whose efficacy is unsubstantiated **could harm** consumers who **might** turn to such products in place of other medical treatment." *See* Exh. B, Denial Order, p. 6 (emphasis added). According to Cinderella, however, it is the duty of each Commissioner on appeal "not to speak as *verbum regis,"*[5] but to "consider the evidence adduced at the hearing." *Id.*, 425 F.2d at 588.

Cinderella also holds that "individual Commissioners [do not] have a license to ... make speeches which give the appearance that the case has been prejudged." *Id.*, 425 F.2d at 590. Yet, that is precisely what happened when Commissioner Rosch made public remarks that the FTC "'Bogus Cancer Cures' sweep" — one target of which was DCO — was designed to protect the consuming public from **harmful** products. *See* Exh. D, Resp. Mem., pp. 17-18. Such remarks could lead a "'disinterested observer [to] **conclude** that [Commissioner Rosch had] in some measure adjudged the facts as well as the law of a particular case **in advance** of hearing it.'" Cinderella, 425 F.2d at 591 (emphasis added). The FTC has only given lip service to this standard (*see* Exh. B, Denial Order, p. 6), dismissing Petitioners' due process claim on the ground that "there was ample evidence in the record to support the Commission's decision in this matter." *See id*., p. 6. The due process standard, however, is more

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[5] Literally, "the word of the king."

exacting, requiring "an administrative hearing '[to] be attended, not only with every evidence of fairness but with the **very appearance of complete fairness**." Cinderella, 425 F.2d at 591 (emphasis added).

E. PETITIONERS' RELIGIOUS FREEDOM RESTORATION ACT AND FIRST AMENDMENT DEFENSE.

The FTC has persisted in misstating Petitioners' First Amendment and Religious Freedom Restoration Act ("RFRA") defenses in this matter. Except for their First Amendment commercial speech defense, Petitioners have not claimed that their sales promotion activities — taken in isolation — are protected either by the First Amendment speech and religion guarantees or by RFRA, as the FTC appears to contend. Exh. B, Denial Order, pp. 6-8.

Rather, Petitioners have argued that their product sales are an integral part of an overall Christian ministry actively engaged in the national debate on health care in which Petitioners' commercial speech is blended with noncommercial speech on an issue of public importance. *See* Exh. C, Resp. Mem., pp. 15-16. The FTC, in turn, has summarily dismissed this claim on the ground that "the primary purpose and effect of the speech ... was to sell ... products." Exh. B, Denial Order, p. 5. Under the First Amendment speech guarantee, the question is not whether a person's "primary purpose and effect" of his speech is economic. If it were, then sellers of books, newspapers, magazines, and other publications could lose First

Amendment protection. *See* Smith v. California, 361 U.S. 147, 150 (1959). The question is whether the communication "does 'no more than propose a commercial transaction.'" Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 762 (1976). The FTC made no such finding, thereby wrongfully denying Petitioners their full speech rights. *See* Exh. D, Resp. Mem., pp. 15-16.

Additionally, Petitioners have argued that they cannot be compelled to send a letter carrying a message dictated by the FTC, for to do so would violate the well-established First Amendment principle of speaker autonomy. Exh. C, Resp. Mem., pp. 21-23. The FTC attempts to refute this claim, contending that it has a "compelling interest ... in protecting cancer patients from deceptive advertising claims." Exh. B, Denial Order, p. 8. In support of its claimed "compelling interest," the FTC avers that the letter does not "force Respondents to say they agree with the FTC's findings" or "compel Respondents to state they have repudiated their faith or endorsed the FTC's opinion," but only to "inform" the recipient of the FTC's findings, Opinion and Order. Exh. B, Denial Order, p. 8. But the principle of speaker autonomy does not turn upon such distinctions. It is enough that the FTC order would require Petitioners to speak upon demand. *See* Pacific Gas and Electric Company v. Cal. P.U.C., 475 U.S. 1, 18 (1986).

Third, Petitioners have argued that the cease and desist order substantially

burdens their exercise of religion. Exh. C, Resp. Mem., pp. 19-21. The FTC has responded that "it has only limited how DCO can sell its products." Exh. B, Denial Order, p. 6. The FTC's response is myopic, both as to the definition of "exercise of religion" and as to the limitation it has placed on DCO in the sale of its products. According to the FTC, the exercise of religion extends only to a "religious ceremony or sacrament" participated in by true believers. *See* Exh. B, Denial Order, p. 6. But the free exercise of religion includes "proselytizing" persons of other faiths or of no faith. Employment Division, Dept. of Human Resources v. Smith, 494 U.S. 872, 877 (1990). The free exercise of religion also extends to "the performance (or abstention from) physical acts." *Id.*, 494 U.S. at 877. Thus, the exercise of religion cannot be automatically excluded from the FTC's cease and desist order just because it is directed at DCO's products. Petitioners have argued that they cannot adhere to the FTC's cease and desist order because it would coerce Petitioners to endorse the FTC's secular belief in science as their own. Exh. C, Resp. Mem., pp. 19-20. Such an order would "substantially burden" Petitioners' exercise of religion which commands Petitioners not to engage in any physical act, including the sale of one of their products, on any basis other than their belief and trust in God. *See* Exh. C, Resp. Mem., p. 20. RFRA requires the FTC to show a compelling interest to justify such

a burden,[6] a requirement that the FTC has not even attempted to meet.

II. IF THE STAY IS NOT GRANTED, PETITIONERS WILL SUFFER IRREPARABLE HARM.

By accepting Petitioners' declarations supporting their irreparable harm argument, the FTC has not contested that the Modified Final Order would "prevent them from selling any of their products, essentially shut down DCO, and injure the business's good will with its steady customers." *See* Exh. B, Denial Order, p. 7 n.5. Yet, the FTC has found that such uncontested evidence of a complete shutdown is not "sufficient to meet [Petitioners'] burden of showing irreparable harm," apparently because Petitioners can still engage in "religious speech or practices," so long as they no longer promote their products, unless substantiated by competent and reliable scientific evidence. *Id.* The FTC's position is curious, to say the least. It acknowledges that the order will "essentially shut down DCO," but asserts that the injury is not irreparable because Petitioners can still do something else. This is not the law. *See* WMAT, 559 F.2d at 843.

Apparently, the FTC does not believe that Petitioners can suffer irreparable harm because its "Order merely requires [Petitioners] to follow the law." *Id.* In

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[6] *See* Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 431 (2006). *See also* Exh. C, Resp. Mem., pp. 20-21.

short, the FTC does not dispute the injuries claimed by Petitioners, but believes that they are not irreparable — not because they are not serious or irreversible, but because they are the necessary consequence of the Petitioners following what the FTC believes to be the law. *Id*. at 7. Such a position not only ignores the arguments Petitioners have raised respecting the illegality and unconstitutionality of the FTC Order, but merges the "irreparable injury factor" with likelihood of success on appeal. Thus, the FTC pays only lip service to its own Rules of Practice, which requires independent consideration of irreparable injury. *See* 16 C.F.R. § 3.56(c).

Not only should this Court reject the FTC's "Catch-22" argument, it should find that Petitioners clearly have established irreparable injury. As Petitioners argued before the FTC, compliance with the cease and desist order would be nearly fatal to the DCO ministry, causing a virtual stoppage of all dietary supplement activity and imposing significant and unrecoverable economic loss on Petitioners. Exh. C, Resp. Mem., pp. 23-31. *See also* Exh. D, Declarations of J. Feijo and P. Feijo. FTC Complaint Counsel having made no effort to refute Petitioners' factual declarations demonstrating irreparable harm (Exh. F, Resp. Reply, pp. 17-18), and the FTC having accepted them (Exh. B, Denial Order, p. 7 n.5.), they should be deemed accepted for purposes of this motion.

IV. GRANTING A STAY WOULD NOT INJURE ANY PARTY OR THE PUBLIC INTEREST.

The FTC does not deny that "there is no evidence that any consumer was economically harmed or misled ... and no evidence in the record that the four Challenged Products have actually harmed anyone's medical or cancer treatment." *See* Exh. B, Denial Order, p. 8. Yet it makes unsubstantiated claims that "consumers" are generally "harmed" when they purchase products marketed without the kind of "substantiation for those claims" as required by the FTC. *Id.* Indeed, the lack of such record evidence does not deter the FTC from stating further that "harm arises **if** consumers forego beneficial and effective therapy for untested therapies **like** the ones here." *Id.* (emphasis added).

While the FTC claims that "[t]hese harms are real and they are substantial," it cites no supporting record evidence. The FTC's claim, then, rests solely upon its word, even though there is no evidence that the FTC has any special expertise in health matters. Theoretical or hypothetical claims are no substitute for sworn testimony offered at trial, or for sworn declarations submitted in support of the FTC denial order. Even though the FTC had ample opportunity to present such evidence in the administrative hearing, it failed to call a single witness to testify that he was misled by DCO's representations as to its products, or that such representations caused him to forego any "beneficial and effective therapy."

Indeed, the FTC deliberately elected to try this case on the "reasonable basis" theory, rather than the "falsity theory," and thereby bypassed having to prove that anyone was actually deceived. *See* Exh. G, Comm. Op., p. 12.

Petitioners presented several declarants who provided sworn statements that they or others have been so benefitted. Exh. D, P. Feijo Decl. ¶ 9; Mink Decl. ¶¶ 4-6; Orr Decl. ¶¶ 4, 6; Hughes Decl. ¶ 3. Additionally, Petitioners presented scholarly studies calling into question the conventional science upon which the FTC relies, indicating that such science is not as "competent and reliable" as the FTC claims. *See* Exh. D, P. Feijo Decl. ¶¶ 3, 27.

In short, the record in this case fails to document any injury to any consumer. The only harm to the FTC and/or consumers resulting from granting a stay of the Order (assuming the FTC prevailed on appeal) would be a period of delay in obtaining compliance with the Order. Petitioners submit that the prospect of such delay carries no prejudice or risk of harm to the FTC or the public. Indeed, delay in obtaining compliance does not measure up as a significant factor under federal standards governing stays. *See* United States v. Baylor University Medical Center, 711 F.2d 38, 40 (5th Cir. 1983). *See also* EEOC v. Quad/Graphics Inc., 875 F. Supp. 558, 560-61 (E.D. Wis. 1995).

Petitioners also submit that the public interest would actually benefit from the grant of a stay. As demonstrated above, enforcement of the Order would

threaten the continued existence of Petitioners' ministry. Exh. D, Hughes Decl. ¶¶ 4, 6. Even a severe cut-back in DCO's outreach would deprive persons who are continuing to benefit from DCO's nutritional programs, dietary supplements, and herbal products. Exh. D, Orr Decl. ¶¶ 4-8; Mink Decl. ¶¶ 4-6; Hughes Decl. ¶¶ 3-6. This is particularly true for those persons who have been through surgery, chemotherapy, and/or radiation unsuccessfully and been sent home by their doctors to die. *See* Exh. D, P. Feijo Decl. ¶ 6.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that their motion be granted, and that this Court enter an order staying enforcement of the FTC Modified Final Order herein pending review of that Order by this Court.

Respectfully submitted,
/s/

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March 26, 2010

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DANIEL CHAPTER ONE, a corporate sole, and JAMES FEIJO, individually, and as an officer of Daniel Chapter One, Petitioners, v. FEDERAL TRADE COMMISSION, Respondent.	)	No. 10-1064

PETITIONERS' PROVISIONAL CERTIFICATE
PURSUANT TO CIRCUIT RULE 28(a)(1)

The petitioners, Daniel Chapter One and James Feijo, through their undersigned counsel, pursuant to D.C. Circuit Rule 28(a)(1), certify as follows:

A. Parties

Petitioners in this case are Daniel Chapter One, a corporation sole, and James Feijo, individually and as an officer of Daniel Chapter One. Respondent is the Federal Trade Commission.

B. Rulings Under Review

Petitioners seek this Court's review of the Modified Final Order issued by the Federal Trade Commission on January 25, 2010, in the case before the Federal

Trade Commission entitled *In the Matter of Daniel Chapter One, et al.,* Docket No. 9329.

C. Related Cases

There are no related cases.

Respectfully submitted,

/s/

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March 26, 2010

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2010, the foregoing Petitioners' Emergency Motion for Stay Pending Review of FTC Modified Final Order, Exhibits A-G, and Provisional Certificate Pursuant to Circuit Rule 28(a)(1) were served upon respondent, the Federal Trade Commission, by the Court's Case Management/Electronic Case Files system upon the following attorneys for respondent:

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