

certain misrepresentations about endorsements of Covered Products. Finally, Section VIII prohibits seven specific misrepresentations made “in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any good or service.” *Id.* at 14.

The Plaintiffs contend that the Contempt Defendants violated Section II.H of the Judgment by making unsubstantiated claims that four products—Neupathic, Black Garlic Botanicals, BG18, and The Ultimate Heart Formula—cure, treat, or mitigate the following diseases: diabetes, diabetic neuropathy, cardiovascular disease, atherosclerosis, and hypertension. The Contempt Defendants respond that Section II.H was not intended to cover representations relating to diabetes, diabetic neuropathy, cardiovascular disease, atherosclerosis, and hypertension. In keeping with my procedural order dated April 8, 2020, I now address whether the scope of Section II.H is facially ambiguous.

II. LEGAL STANDARD

When determining the scope of a consent decree such as the Judgment, courts apply “[o]rdinary contract principles.” *Navarro-Ayala v. Hernández-Colón*, 2019 WL 1000000, at *1 (D.P.R. 2019). Courts read “in the context of the decree as a whole.” *Quinn v. City of Boston*, 325 F.3d 18, 30 (1st Cir. 2003) (citing *Newport Plaza Assocs. v. Durfee Attleboro Bank*, 2003 WL 1000000, at *1 (1st Cir. 2003)). Courts consider the language contained within the “four corners” of the decree along with the circumstances surrounding its formation, any technical meaning the words used may have had to the parties, and any other documents expressly incorporated in the decree. *United States v. Charter Int’l Oil Co.*, 83 F.3d 51 (1st Cir. 1997).

susceptible of different interpretations.” *Williams v. Williams*, 161 A.3d 710, 713 (Me. 2017) (quoting *Am. Prot. Ins.*, . . . 1

The determination of facial ambiguity is “particularly important” in a civil contempt proceeding. *Converse Inc.*, 328 F. Supp. 2d at 176. “Civil contempt may be imposed to compel compliance with a court order or to compensate a party harmed by non-compliance.” *United States v. Saccoccia*

McComb v. Jacksonville Paper Co. “To prove civil

contempt, a movant must show that (1) the alleged contemnor had notice of the order,

(2) ‘the order was clear arrdegm001 Tc 0u[(t)-1001 Tc 08 ag4 (rde(-)Tjus(t 0v)-Td(“Tj0.001 Tc -0.0

conduct on which the contempt allegation is based.” *Id.* (emphasis omitted) (citing

The Plaintiffs assert that the phrase “any disease” in Section II.H, on its face, clearly and unambiguously encompasses all diseases, including diabetes, diabetic neuropathy, cardiovascular disease, atherosclerosis, and hypertension. The Plaintiffs’ argument comports with the plain meaning of the phrase “any disease.” This is powerful evidence supporting the Plaintiffs’ interpretation, but it is not dispositive on its own: I must read Section II.H “in the context of the [Judgment] as a whole,” not in isolation. *Quinn*, 325 F.3d at 30 (citing *Newport Plaza Assocs.* . . . F.2d at 646).

The Contempt Defendants assert that Section II.H, on its face, does not clearly and unambiguously prohibit representations relating to diabetes, diabetic neuropathy, cardiovascular disease, atherosclerosis, and hypertension. Rather, the Contempt Defendants contend that the phrase “any disease” in Section II.H

Covered Product,” unless the representation is non-misleading and substantiated by competent and reliable scientific evidence. *Id.*

misrepresentations that “the performance or benefits of any Covered Product are scientifically or clinically proven or otherwise established,” *id.* at 10, and Section IV.C prohibits misrepresentations about the “existence, contents, validity, results, conclusions, or interpretations of any test, study, or other research,” *id.* at 11. Sections VII and VIII similarly enjoin certain misrepresentations regardless of whether the representations relate to weight loss, arthritis, joint and back pain, or cognitive decline.

Because the text of the Judgment plainly enjoins a broader scope of conduct than the conduct alleged in the complaint, the Plaintiffs’ interpretation of Section II.H to encompass diseases beyond those discussed in the complaint is consistent with the purpose of the Judgment.

B. Structure

The Contempt Defendants further assert that the Plaintiffs’ broad interpretation of the phrase “any disease” in Section II.H is inconsistent with the structure of the Judgment because it would render Section III’s prohibition on “Other Health-Related Claims” redundant and therefore meaningless. However, Section III prohibits a broader swath of representations than Section II.H: Section III prohibits misleading or unsubstantiated representations about “the health benefits, safety, performance, or efficacy of any Covered Product,” *id.*

prohibits only misleading or unsubstantiated representations that any Covered Product “[c]ures, mitigates, or treats any disease,” *id.* at 8. As such, Section III

retains legal force and effect even if the phrase “any disease” is interpreted to include all diseases, as the Plaintiffs suggest. Further, Section III specifies that it pertains only to the representations not already covered under Sections I and II. Accordingly, Sections II and III are not duplicative even if Section II.H is interpreted broadly.³

The Contempt Defendants object that at least portions of Section III would be rendered nonsensical by an expansive interpretation of Section II.H because Section III contains the word “disease,” which would not be appropriate if Section II.H covers representations relating to any and all diseases. However, Section II.H covers only representations that a Covered Product “[c]ures, mitigates, or treats” a disease. *Id.* at 8. It is plausible that at least some disease-related representations—such as representations that a Covered Product prevents a certain disease—would not fall within the ambit of Section II.H. Further, it is likely that any disease-related representations not covered by Section II.H would fall within the scope of Section III. Thus, there is no inconsistency between Section III of the Judgment and a broad interpretation of the phrase “any disease” in Section II.H.

³ The Plaintiffs assert that the canon against surplusage—the principle that courts should avoid interpretations that render terms in a contract redundant—is only relevant when resolving ambiguity, not when determining whether a disputed term is ambiguous. The Plaintiffs rely on *Ardente v. Standard Fire Ins. Co.*, 744 F.3d *Ardente* discusses redundancy only in the specific context of insurance policies, and it acknowledges that in general, “redundancy may itself be a form of ambiguity.” *Ihy8(v)2n)5g)2n)5g)8n .6)52)5(-2)n(d)5)5al5)2()1(v)6)5v)TJTT2If(0.07(am)8*

C. Text

As mentioned above, the Plaintiffs' interpretation of the phrase "any disease" in Section II.H as encompassing all diseases is consistent with the plain meaning of Section II.H. However, the Contempt Defendants contend that the Plaintiffs' interpretation is inconsistent with the text of Section II as a whole, including the section heading.⁴

Section II's heading lists three specific categories of "Prohibited Representations": (1) "Other Weight-Loss Claims," i.e., weight-loss claims not already covered by Section I, (2) "Joint-Related Disease Claims," and (3) "Alzheimer's Disease,

representations that any Covered Product “protects the brain against Alzheimer’s disease or dementia,” “reverses memory loss,” or “improves memory, concentration, or cognitive performance.” *Id.* None of the three specific categories listed in the section heading corresponds directly to Section II.H, which prohibits misleading or unsubstantiated representations that any Covered Product “[c]ures, treats, or mitigates any disease.”

As the Contempt Defendants contend, the Plaintiffs’ broad interpretation of Section II.H is not consistent with the entire text of Section II. Interpreting the phrase “any disease” in Section II.H as encompassing all diseases would render the section heading underinclusive: The section heading enumerates the categories of for the broad category of representations that would be prohibited by an expansive reading of Section II.H. Relatedly, interpreting Section II.H expansively would render the section heading misleading because the heading tends to suggest that the scope of Section II is limited to representations regarding the enumerated health benefits and diseases and does not encompass representations regarding other diseases.

The Contempt Defendants offer an alternative interpretation of Section II.H which avoids these inconsistencies. Under the Contempt Defendants’ interpretation, the phrase “any disease” in Section II.H would encompass only diseases involving or relating to the health benefits and diseases enumerated in Section II’s heading—i.e., diseases involving or relating to weight loss, joint disease, Alzheimer’s disease, memory, and cognitive decline. The text of Section II provides some support for this interpretation. The close correspondence between the categories in Section II’s

heading and the content



II.H is susceptible to reasonable alternative interpretations, I conclude that it is facially ambiguous. Accordingly, I also conclude that Section II.H does not, on its face, clearly and unambiguously cover rep
