**Statement of Chairwoman Edith Ramirez, Commissioner Julie Brill, and Commissioner Terrell McSweeny**
***Federal Trade Commission v. Genesis Today, Inc., Pure Health LLC, and Lindsey Duncan***
**January 26, 2015**

This statement describes our support for the complaint and order against defendants Genesis Today, Inc., Pure Health LLC, and Lindsey Duncan ("Duncan") (collectively, "defendants"). As alleged in the Commission's complaint, the defendants deceptively advertised and promoted their green coffee bean extract ("GCBE") supplements by claiming that consumers could lose 17 pounds and 16 percent of body fat in just 12 weeks, without diet or exercise. The launching pad for their GCBE advertising was Duncan's appearance on *The Dr. Oz Show*, which first aired on April 26, 2012, and during which Duncan touted the results of a scientific study that he claimed demonstrated these results. Duncan made similar claims on other television programs, including ABC's *The View*, and highlighted the study results in other media, including his companies' websites.

As detailed in the complaint, the defendants' television appearance on *The Dr. Oz Show* was part of a calculated strategy to create and then promote their GCBE product to consumers. When Duncan first learned he had been invited to appear on the show's segment on GCBE, he was unfamiliar with this product. Nonetheless, he immediately agreed TJ 0 Tc 0 Tw -19.88 -1.15 Td [(w)2(h

products, which likely led consumers to give his recommendation of GCBE added weight
has now alleged that his use of that title was deceptive because Texas does not recognize
"Naturopathic Doctor," and because the now defunct Clayton College of Natural Health th
degree was never accredited in any state during its existence. Plaintiff's Original Petition
1-GN-14-004288 (Dist. Ct. Travis Cnty. Tex. Oct. 15, 2014), *available at*
https://www.texasattorneygeneral.gov/files/epress/files/RobertDuncanStateLawsuit.pdf

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[2] For example, Duncan urged viewers to search for "pure" GCBE in capsules for 800 mg servings, a dosage size easily adapted to the 400 mg capsules that the defendants, prior to the taping, had begun preparing to produce and sell under the "Pure Health" brand.

referenced in their advertising, even absent Duncan's mischaracterizations of it, suffered from serious facial flaws that should have been evident to the defendants.[3] Accordingly, our complaint alleges that the defendants' efficacy claims were false or unsubstantiated, and that their clinical proof claim was false. The proposed order approved by the Commission includes appropriately strong injunctive relief and requires the defendants to pay $9 million in equitable monetary relief.

Commissioners Ohlhausen and Wright do not object to the order's injunctive provisions or to the fact that the order includes a monetary judgment. They believe, however, that the amount of

the pamphlet, which stated that “the pamphlet has been contributed as a public service by [the

*accord FTC v. Kuykendall*, 371 F.3d 745, 766 (10th Cir. 2004) (holding no basis to offset gross receipts "by the value of the magazines the consumers received"); *McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000) (refusing to deduct the value of office toner, holding that "[w]hile it may be true that the defrauded businesses received a useful product. . . the central issue is whether the seller's misrepresentations tainted the customer's purchasing decisions").[13]

Finally, given the facts of this case, we do not believe there is any danger that this order will over-deter marketers from supplying truthful information about products. As we stated earlier, defendants falsely cast their CEO as an impartial expert and touted a facially flawed study to promote their product. Under these circumstances, we are more concerned about other marketers' incentive to emulate the defendants' conduct, believing that they will ultimately retain the lion's share of their ill-gotten gains.

For the foregoing reasons, we believe that the complaint and relief imposed against the defendants are justified and appropriate. The settlement benefits the public by requiring the defendants to disgorge their profits and allowing for meaningful redress for consumers.

[13] *See also FTC v. Lights of America*, No. SACV10-01333, 2013 WL 5230681, at *51-54 (C.D. Cal. Sept. 17, 2013) ("Whether consumers received something of value from a defendant is not relevant in determining liability of restitution under the FTC Act."; "[D]efendants are not entitled to any value which consumers may have received."); *FTC v. BlueHippo Funding, LLC*, 762 F.3d 238, 245 (2d Cir. 2014) (holding that "the full amount paid by the injured consumer must serve as the baseline for calculating damages because the 'seller's misrepresentations tainted the customer's purchasing decision'") (quoting *McGregor*, 206 F.3d at 1388).