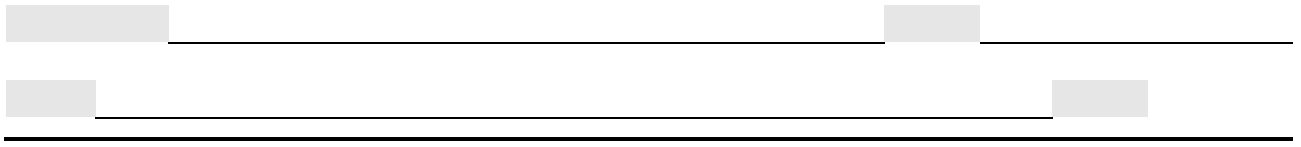


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CENTRAL DISTRICT OF CALIFORNIA
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while Jason was managing member, owner, and President. SUF 45, 53, 57-59, 209, 224. Eunjung changed AMI’s name to Redwood Scientific Technologies, LLC in November 2014, and then converted it to its corporate form, Redwood California. SUF 61, 210-11. Between January 1, 2014 and October 3, 2018, Jason was the sole owner, President, CEO, Chief Financial Officer (“CFO”), Secretary, and director of Redwood California, and Eunjung was its owner, director, Secretary, Chief Operating Officer (“COO”), and Director of Marketing. SUF 9-24, 61-65, 256. Redwood Nevada was incorporated in December 2014, and Redwood CA became a wholly-owned subsidiary of Redwood Nevada. SUF 212-13, 215. Redwood Delaware was formed when Redwood Nevada merged with a Delaware corporation in 2017. SUF 217. The Cardiffs retained similar positions in Redwood Nevada and Redwood Delaware to the ones they held in Redwood CA. SUF 25-31, 66-67. The principal places of business for both Redwood Nevada and Redwood Delaware are in California. SUF 214, 218.

In 2017, Jason became the sole member and manager of Defendant Identify LLC and used it as an umbrella to register Redwood Scientific Technologies, Runaway Products, Advanced Men’s Institute, and TBX-FREE as Identify’s trade names. SUF 32-33, 47-48, 254. Jason and Eunjung were also named benefici

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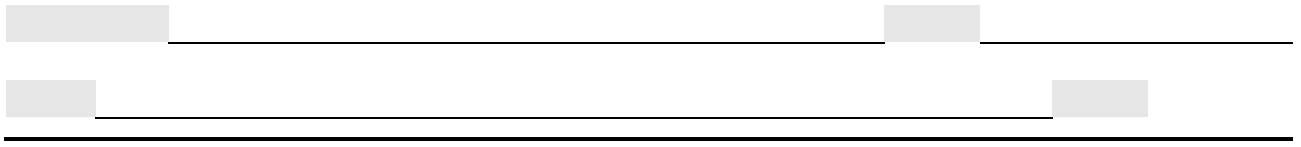
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merchant accounts to process payments for the Products, and purchased or acted as consignees for oral film strips from suppliers in China and ~~la~~. SUF 236-39. In response to one supplier's bank's request to clarify that all of these ~~comp~~ companies whose names appeared on invoices are related, Jason Cardiff signed a statement as President of ~~Identify, LLC~~ Identify, LLC that declared that Redwood, AMI, Run Away, and Identify were "our group of companies (our sister ~~con~~cern companies)." SUF 240.

Undisputed evidence shows that both ~~Cardi~~ Cardiff controlled the Entity Defendants' bank accounts and used various bank accounts to ~~oper~~ate operational costs for Redwood and their other businesses and to pay for the ~~Cardi~~ Cardiff's personal expenses such as ~~lux~~ury car leases, cruises, resort lodging, private charter air travel, and clothing ~~ing~~ department store purchases. SUF 51, 72-75, 78, 170, 173-77, 234-46, 251. Between April 2015 and May 2018, the Entity Defendants transferred almost \$4 million between themselves ~~SUF~~ SUF 264. Both Cardiff's have also personally guaranteed payments promised by one or more ~~of~~ their businesses. ~~SUF~~ SUF 23, 171, 266. While the Cardiff's assert that they invested \$3 million of their "own money" into Redwood, and Eunjung asserts that she invested \$800,000 personally into Redwood, ~~no~~ ~~rec~~ financial documents support either ~~ass~~ertion. DSUMF 1, 28.

The Cardiff's do not dispute that they had ~~fin~~ authority over most, if not all, business decisions regarding the Entity Defendants. SUF ~~4206~~ 4206. For example, Jason Cardiff had final approval of Redwood's websites ~~and~~ all Redwood product advertisi



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through national television campaigns and websites. ^{SUF 459-60, 482-522} The active ingredient is “Paulinia cupana H.B.K. et K. 1x,” or ^{gam} ~~gam~~. ^{SUF 194, 453; Jason Decl., Ex. 1 [Doc. # 441-2].} Cannella alone arranged for 8,039 airings of ^{SUF 474.} Eupepsia Thin advertisements. ^{SUF 474.}

Below are some of the representations made by Defendants’ Eupepsia Thin television advertising:

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all three were in fact registered in the National Drug Code Directory as an “unapproved homeopathic” drug, which does not denote FDA approval. DSUMF 54, 59, 65.

The Cardiffs were aware of the need for substantiation for the claims of the Products’ effectiveness and provided substantiation packets to networks consisting of articles about TBX-FREE’s and Eupepsia Thin’s active ingredients. SUF 157-58, 190, 192; Cardiff Decl. at ¶¶ 23-25, Ex. 1-2 [Doc. # 441-2]. Eunjung in particular handled requests for substantiation. See, e.g., SUF 162-63 (she was informed that FDA approval, not registration, was needed to satisfy certain networks); 165 (she was informed that “[t]estimonials will need to be provided, to make sure weight loss claims were due to being paid”).

The FTC has retained experts in the fields of smoking cessation, weight-loss, and male sexual health who each concluded that Defendants’ efficacy claims are not substantiated by competent and reliable scientific evidence and did not find any clinical testing of TBX-FREE, Eupepsia Thin, or Prolongz to support Defendants’ “clinically proven” claims. The Cardiffs have submitted no expert testimony rebutting the analysis of the FTC’s experts.

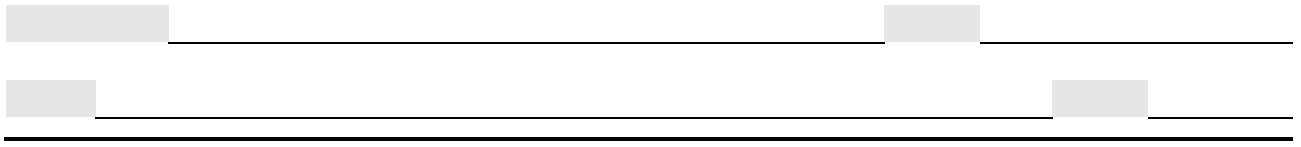
1. TBX-FREE

The FTC’s smoking cessation expert, Dr. Judith Prochaska, opines that Defendants do not have substantiation for the challenged TBX-FREE claims. SUF 433-437. She says that to substantiate these claims, experts in the field of nicotine addiction would require randomized,

⁵ It is not clear what Eunjung offered as substantiation for Prolongz besides asserting that “[t]he FDA registration is proof that our product is certified by the FDA as an over the counter drug that treats the condition[.]” SUF 160. The package for Eupepsia Thin was put together by contract researcher. SUF 192.

⁶ The Cardiffs argue that each of the experts’ opinions should be excluded for analyzing claims made about the Products prior to February 2018. See, e.g., SUF 376, 539, 649. As discussed below in Section III.A.2, some misleading advertisements continued after February 2018. Defendants continued to sell the Products until October 2018. Furthermore, the lack of substantiation for prior claims made about the Products is relevant to the Cardiffs’ liability and likelihood for violations to recur. The Court VERRULES the objection.

⁷ The Cardiffs argue that Dr. Prochaska’s opinions should be excluded because her expert report, which was produced in support of the FTC’s application for TRO in October 2018, does not comply with Rule 26(a)’s requirement to provide a list of all other cases in which she testified as an expert at trial or by deposition and a statement of the compensation to be paid for her testimony. SUF 376. Information may be introduced if the parties’ failure to disclose the required information is substantially justified or harmless. Fed. R. Civ. P. 37(c)(1). The Cardiffs have not sought discovery sanctions under Rule 37, and there is no indication of harm the Cardiffs have suffered since 2018 from the lack of disclosure. The Court VERRULES the objection.



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that high doses (more than 400 mg) of caffeine are associated with appetite suppression, but that there is no evidence that Eupepsia Thin, a homeopathic product, contains that much caffeine or that caffeine consumption causes weight loss. SUF 573-75.

In addition, as discussed above, the Eupepsia Thin advertisements and websites used false testimonials from individuals who did not use Eupepsia Thin to lose weight. SUF 762-63.

Defendants' claim on Eupepsia Thin product packaging and their websites that Eupepsia Thin was "Made in USA" is also false, as the Defendants were aware that Eupepsia Thin strips and packaging was manufactured in China and India. SUF 712-16, 718-21.

3. Prolongz

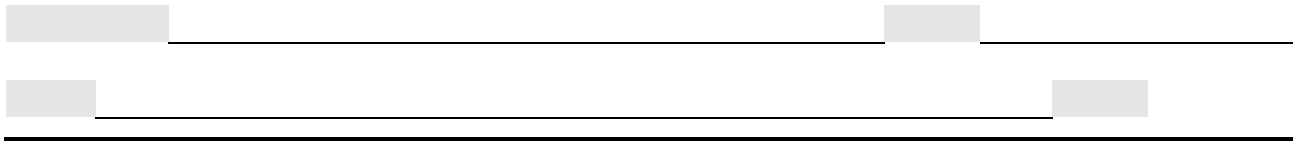
Dr. Hossein Sadeghi-Nejad, an expert in urology and sexual medicine, opines that Defendants have no reliable source to support the Prolongz ejaculation control claims. SUF 704-05. Dr. Sadeghi-Nejad says that to substantiate the Prolongz claims increased ejaculatory control and treatment or prevention of premature ejaculation, experts in his field would require randomized, double-blind, properly controlled human clinical testing of Prolongz or a substantially similar product using the same dosage and route of administration. SUF 664-671. Dr. Sadeghi-Nejad has found no relevant evidence in the scientific literature that meets these standards. SUF 683-703.

He also reviewed the purported substantiation material Defendants provided to the FTC—a pilot survey and a collection of journal articles on other products—and opines that Defendants' substantiation does not meet the standards of experts in the field. SUF 683-702. The pilot survey sponsored by Defendants did not have a randomized control group. SUF 686. The study lasted only one week and involved only 29 test subjects and was too short and too small to yield accurate and reliable results. SUF 687-89. The scientific literature compiled by Defendants on the purported active ingredients in Prolongz was not comparable either to the dosage or to the route of administration of Prolongz. SUF 694-702.

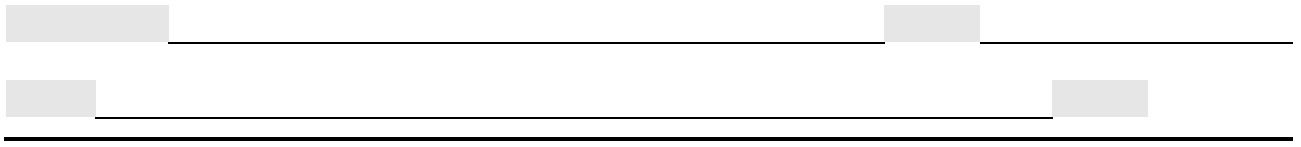
D. Consumer Contact, Shipping, and Billing Programs

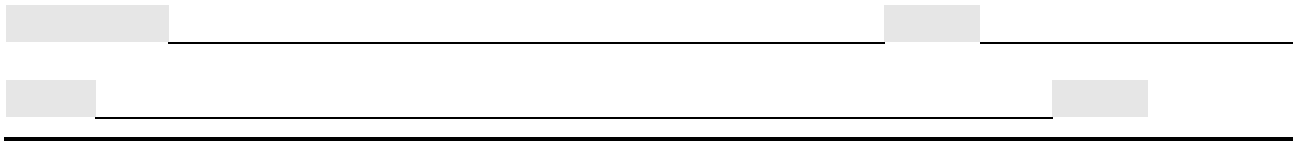
1. Money-back guarantee

Defendants advertised money-back guarantees for the Products. SUF 725-36. For example, Jason claimed in a TBX-FREE Facebook video, "We have a lifetime money-back









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IV.
DISCUSSION

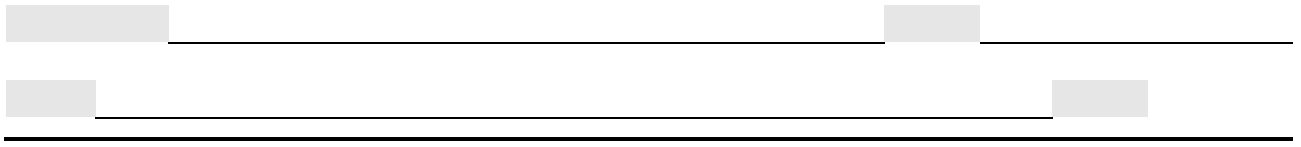
The FTC moves for summary judgment on each of its claims under the FTC Act, Restore Online Shoppers' Confidence Act ("ROSCA"), Electronic Fund Transfer Act ("EFTA"), and the Telemarketing Sales Rule ("TSR") and seeks permanent injunction prohibiting Jason and Eunjung Cardiff from engaging in deceptive or unfair business practices and ordering equitable monetary relief in the amount of \$18,213,899.

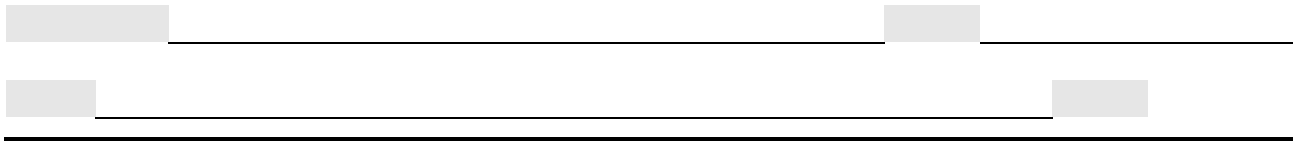
The Cardiffs move for summary judgment on each of the FTC's claims, arguing that: (1) the FTC treated Defendants unfairly by choosing litigation rather than issuing a warning letter; (2) Defendants discontinued sales and marketing prior to the FTC filing this action and had reasonable basis to believe in the efficacy of their products; (3) the FTC Act does not support the FTC's "common enterprise" theory; (4) Section 13(b) of the FTC Act does not provide for restitution; and (5) when calculating a restitution award, reliance may not be imputed to every consumer.

The Court first considers the Cardiffs' motion.

A. The Cardiffs' Motion for Summary Judgment

The Court already has disposed with one of the Cardiffs' arguments regarding its authority to order monetary equitable relief under Section 13(b) of the FTC Act, notwithstanding *Liu v. Securities and Exchange Commission*, 140 S. Ct. 1936 (2020) (March 10, 2020 Order at 5-7 [Doc. # 305]; July 7, 2020 Order at 6-9 [Doc. # 383]; September 9, 2020 Order at 6 [Doc. # 485]. Since the issuance of this Court's rulings in this regard, no new authority has abrogated *Federal Trade Commission v. H.N. Singer*, 1068 F.2d 1107 (9th Cir. 1982), which construed Section 13(b) to give courts the "authority to grant any ancillary relief necessary to accomplish complete justice," including the "power to order restitution." *Id.* at 1113. Indeed, binding Ninth Circuit decisions after *Singer* have confirmed that Section 13(b) permits equitable monetary relief. See, e.g., *F.T.C. v. AMG Capital Mgmt LLC*, 910 F.3d 417, 426 (9th Cir. 2018) (part. granted 2020 WL 3865250 (U.S. July 9, 2020)); *F.T.C. v. AT&T Mobility* 883 F.3d 848, 864 (9th Cir. 2018). After the Supreme Court decided *Liu*, this Court held that *Liu* did not displace well-established Ninth Circuit precedent because its holding was not based on a provision of the Securities and Exchange Act. July 7, 2020 Order at 8 [Doc. # 388]. In that same vein, the Ninth Circuit's recent decision in *Securities and Exchange Commission v. Yang*, No. 19-55289, (9th Cir. Aug. 6, 2020), does not affect the Court's ability to grant restitutionary relief under the FTC Act.





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future. *United States v. Or. State Med. Soc.*, 343 U.S. 326, 333 (1952); *see also F.T.C. v. Accusearch Inc.*, 570 F.3d 1187, 1202 (10th Cir. 2009); *S.E.C. v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980). Moreover, the Cardiffs’ demonstrated eagerness to launch new business ventures without any assurances—sincere or otherwise—that consumer protection violations will not recur heightens the likelihood that they will engage in similar deceptive practices in the absence of court intervention.

3. Common enterprise

Defendants cite no legal authority for their argument that there is no common enterprise liability in an FTC enforcement action. Rather, courts routinely apply the elements for determining common enterprise in FTC cases at the summary judgment stage. *See, e.g., F.T.C. v. Elegant Sols., Inc.*, No. SA CV 19-1333-JVS (KESx), 2020 WL 4390381, at *11 (C.D. Cal. July 6, 2020) (granting summary judgment and finding that defendants operated as a common enterprise); *F.T.C. v. Consumer Def., LLC*, No. CV 18-00030-JCM (BNWx), 2019 U.S. Dist. LEXIS 225283, at *5-6 (D. Nev. Dec. 5, 2019) (same); *FTC v. AMG Servs.*, No. CV 12-00536-GMN (VCFx), 2017 U.S. Dist. LEXIS 66689, at *26-28 (D. Nev. May 1, 2017) (same). The Ninth Circuit has held that “[w]here corporate entities operate together as a common enterprise, each may be held liable for the deceptive acts and practices of the others.” *F.T.C. v. Grant Connect, LLC*, 763 F.3d 1094, 1105 (9th Cir. 2014). A common enterprise may be demonstrated by “strongly interdependent economic interests or the pooling of assets and revenues.” *F.T.C. v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir. 2010). Here, the undisputed facts indicate that the Cardiffs and the Entity Defendants are all involved in the sale of the Products and that money, products, and employees flowed freely between them. The FTC has amply shown that the Cardiffs are beneficiaries and masterminds of a common enterprise to sell the Products through the Entity Defendants, which constitute various iterations and shells of one another.¹¹

Furthermore, individuals are liable for corporate violations of the FTC Act if they (1) “participated directly in the deceptive acts or had the authority to control them and (2) [] had knowledge of the misrepresentations, [were] recklessly indifferent to the truth or falsity of the misrepresentation, or [were] aware of a high probability of fraud along with an intentional avoidance of the truth.” *F.T.C. v. John Beck Amazing Profits, LLC*, 865 F. Supp. 2d 1052, 1082 (C.D. Cal. 2012) (quoting *F.T.C. v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2009)). The Cardiffs

¹¹ Although the uncontroverted

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Prolongz is clinically proven to work for thousands of men. These guarantees of success, testimonials, clinical studies, and endorsements by prominent academic institutions are certainly material to a consumer purchasing the Products.

Accordingly, the Court **GRANTS** summary judgment on Counts 1 through 6 for violations of Sections 5(a) and 12 of the FTC Act.

b. False “Made in the United States” advertising (Count 7)

The FTC has authority under Section 5 to regulate claims of U.S. origin in advertising. *See “Made in USA” and Other U.S. Origin Claims*, 62 Fed. Reg. 63756, 1997 WL 737641 (Dec. 2, 1997). The FTC recognizes two types of U.S. origin statements: unqualified and qualified. *Id.* An unqualified statement claims only that the product is of U.S. origin, while a qualified statement goes on to explain the source of the ingredients. *Id.* The FTC distinguishes between statement types because consumers expect that products labeled with unqualified statements of U.S. origin contain a high amount of U.S. content. *Id.* at *63763. Accordingly, the FTC permits unqualified statements of U.S. origin only when “all or virtually all” of the ingredients are domestic; that is, the product must contain no more than a *de minimis* amount of foreign content and have “been last substantially transformed in the United States.” *Id.* at *63756.

It is undisputed that Euepsia Thin strips are made in India and China. Defendants’ employees attest that the product packaging was also made in China. Walker Decl. at ¶ 48 [Doc. # 424-1]; Wu Decl. at ¶¶ 8, 12-13 [Doc. # 428-5]. Jason admits that “the products were received from China and India in bags containing 500 strips per bag. The products were removed, ETC.” Jason Decl. at ¶ 83 [Doc. # 491-3]. The Cardiffs cite no evidence about what transformation the strips underwent once they arrived in the United States. Their Opposition provides inadmissible argument regarding the cost of “organizing the strips, inserting them into plastic cartridges with labeling, [and] sealing them in plastic bags with labeling.” Defs.’ Opp. at 23. Even if the Court could take those assertions into consideration, the Court finds as a matter of law that “all or virtually all” of the Euepsia Thin strips were not made of domestic ingredients or substantially transformed in the United States, thus rendering an unqualified “Made in USA” statement false.

The Court **GRANTS** summary judgment on Count 7 for violation of Section 5(a) of the FTC Act for a false unqualified U.S. origin claim.

UNITED STATES DISTRICT COURT

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The Court defers ruling and judgment on the proper remedy pending the Supreme Court's decision in the Consolidated Appeals. The parties shall file a joint status report within 15 days of the Supreme Court's ruling, proposing a new briefing schedule as to the remedies phase, if appropriate.

Unless and until the Court orders otherwise, the Preliminary Injunctions [Doc. ## 59, 389] remain in effect.

IT IS SO ORDERED.