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 2 County of Orange, State of California
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11 (For list of additional plaintiff's counsel,
 12 see attached Exhibit 1)

13 Attorneys for Plaintiff

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 15 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

16 THE PEOPLE OF THE STATE OF)
 17 CALIFORNIA,)
 18 Plaintiff,)
 19 vs.)
 20)
 21 KLEE M. IRWIN, IRWIN NATURALS, a)
 22 Nevada corporation and dba APPLIED)
 23 NUTRITION, dba DUAL ACTION)
 24 CLEANSE and dba CELLUAR RESEARCH,)
 25 Defendants.)

26 Case No. **30-2011**
 27 Assigned for All Purposes to: **00445453**
 28 **COMPLAINT FOR CIVIL**
PENALTIES, INJUNCTION, AND
OTHER EQUITABLE RELIEF

JUDGE DAVID T. MCEACHEN
DEPT. C21

29 Plaintiff, the People of the State of California (the "People"), by and through Tony
 30 Rackauckas, District Attorney of Orange County, Nancy E. O'Malley, District Attorney of
 31 Alameda County, Edward S. Berberian, District Attorney of Marin County, Dean Flippo,
 32 District Attorney of Monterey County, Gary Lieberstein, District Attorney of Napa County,
 33 Jeffrey F. Rosen, District Attorney of Santa Clara County, Bob Lee, District Attorney of
 34 Santa Cruz County, Stephen S. Carlton, District Attorney of Shasta County, Donald A. du
 35 Bain, District Attorney of Solano County, and Jill R. Ravitch, District Attorney of Sonoma
 36 County, allege on information and belief the following:

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
 JAN 31 2011
 ALAN GARLSON, Clerk of the Court
 BY: AL. BEREMAN DEPUTY

1 **JURISDICTION AND VENUE**

2 1. The authority of the District Attorneys to bring this action is derived from that
3 statutory law of the State of California, specifically Business & Professions Code §§17200,
4 17203, 17204, 17206, 17500, 17535 and 17536, and Health & Safety Code §25249.6.

5 2. Defendants advertise, market, solicit sales, sell, distribute and ship products,
6 and do business within the counties of Orange, Alameda, Marin, Monterey, Napa, Santa
7 Clara, Santa Cruz, Shasta, Solano and Sonoma, and elsewhere in the State of California. The
8 violations of law herein alleged have been carried out within these counties and elsewhere in
9 the State of California.

10 **DEFENDANTS**

11 3. Defendant, Irwin Naturals, is a Nevada corporation, with its principal place of
12 business at 5310 Beethoven Street, Los Angeles, California, and which at all times herein
13 mentioned, caused and/or engaged in the violations of law hereinafter alleged.

14 4. Defendant, Klee M. Irwin (hereinafter "Irwin"), is an officer, director,
15 manager, employee, agent, or representative of Irwin Naturals who, at all times herein
16 mentioned, caused and/or engaged in the violations of law hereinafter alleged.

17 5. Whenever reference is made in this Complaint to any act of Defendants, such
18 allegation shall be deemed to mean that defendants, and their employers, agents, and
19 representatives (hereinafter called "Defendants") did or authorized such acts while actively
20 engaged in the management, direction, or control of the affairs of said Defendants and while
21 acting within the scope and course of their duties.

22 6. Whenever reference is made in this Complaint to any act of Defendants, such
23 allegation shall be deemed to mean the act of each Defendant acting individually and jointly.

24 **GENERAL ALLEGATIONS**

25 7. Defendants engage in the business of advertising, marketing, selling and
26 shipping dietary supplements, including but not limited to, products called *System Six*, *Green*
27 *Tea Fat Metabolizer*, *Green Tea Fat Burner*, *Green Tea Fat Meltdown*, *Natural Fat Burner*,
28 *10 Day Hoodia Diet*, *Triple Action Weight Control*, *Fast Action Hoodia Diet* and *Dual*

1 *Action Cleanse* (hereinafter, "the Products"). Under the Federal Dietary Supplement, Health
2 and Education Act (hereafter "ACT"), 21 U.S.C. §321(ff)(3), dietary supplements are
3 deemed a food within the meaning of the ACT and are regulated by that ACT.

4 8. Defendants marketed, sold and shipped or caused to be shipped the Products to
5 the general public in the counties of Orange, Alameda, Marin, Monterey, Napa, Santa Clara,
6 Santa Cruz, Shasta, Solano and Sonoma, and elsewhere in the State of California.

7 9. Defendants made and/or disseminated misrepresentations about the effects,
8 efficacy, or attributes of the products, including but not limited to the following:

9 A. That the Products caused, assisted, or contributed to weight loss, fat
10 loss, suppression of appetite, or an increase in metabolism and/or fat burning;

11 B. That the Products alleviate, solve, lessen, improve, treat, mitigate, cure,
12 make better and/or heal a condition or set of conditions inside the human body that
13 adversely affect the body's health;

14 C. That the Products contained ingredients which in fact they did not
15 contain.

16 D. That the Products will affect a condition(s) or disease(s) as prohibited in
17 Health and Safety Code §110403.

18 **FIRST CAUSE OF ACTION**
19 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE**
20 **SECTION 17200 (UNFAIR COMPETITION)**

21 10. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 9 of
22 this Complaint as though fully set forth herein.

23 11. Beginning at an exact date which is unknown to the People, but within four
24 years prior to the filing of this complaint, Defendants, and each of them, engaged in a course
25 of conduct constituting acts of unfair competition, as defined by Business & Professions
26 Code §17200, including but not limited to the following:

27 A. All of the activity and violations described in Paragraphs 2 through 9,
28 above;

- 1 B. Violating Health and Safety Code §110403, by advertising a drug or
2 device represented to have an effect on a condition, disorder, or disease.
- 3 C. Violating Health and Safety Code §110760, by manufacturing,
4 selling, delivering, holding, or offering for sale any food that is misbranded;
- 5 D. Violating Health and Safety Code §110765, by misbranding any food;
- 6 E. Violating Health and Safety Code § 110770, by delivering or
7 proffering for delivery any food that is misbranded.
- 8 F. Violating Health & Safety Code §111550, by selling, delivering
9 and/or giving away unapproved new drugs
- 10 G. Violating Civil Code §1584.5, by offering for sale goods where the
11 offer includes unsolicited sending of goods, and for failing to refund consumer
12 monies for returns of product within 30 days;
- 13 H. Violating Civil Code §1770(a)(5), by using deceptive representations
14 or representing that goods or services have sponsorship, approval, characteristics,
15 ingredients, uses, or benefits which they do not have.
- 16 I. Continuing to ship products to customers after customers requested to
17 be taken off defendant's mailing list.
- 18 J. Failing to accurately post customer product order payments, product
19 order returns, or product order refusals.
- 20 K. Failing to institute a product complaint review and follow-up program.
- 21 L. Violating Health & Safety Code §25249.6, by exposing individuals in
22 the State of California to lead, in their products *System Six* (2.64-5.60 mcg/day),
23 *Green Tea Fat Metabolizer*, *Green Tea Fat Burner* (1.24-7.04 mcg/day), *10 Day*
24 *Hoodia Diet*, *Natural Fat Burner* and *Green Tea Fat Meltdown*, a chemical known
25 to the state to cause reproductive toxicity, without having first given a clear and
26 reasonable warning to such individuals.
- 27 12. Defendants are subject to civil penalties, pursuant to Business & Professions
28 Code §17206, and to injunctive relief, pursuant to Business & Professions Code §§17203 and

1 17204.

2 **SECOND CAUSE OF ACTION**
3 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE**
4 **SECTION 17500 (FALSE AND MISLEADING ADVERTISING)**

5 13. The People re-allege and incorporate by reference Paragraphs 1 through 13 of
6 this Complaint as though fully set forth herein.

7 14. Beginning at an exact date which is unknown to the People, but within three
8 years prior to the filing of this complaint, Defendants, with the intent directly or indirectly to
9 dispose of property or to perform services, or anything of any nature whatsoever, or to
10 induce members of the public to enter into obligations relating thereto, made or disseminated
11 or caused to be made or disseminated before the public in any state, by any manner or means
12 whatsoever, statements concerning such property, services, or any circumstance or matter of
13 fact connected with the proposed performance or disposition thereof, which were untrue or
14 misleading, and which Defendants knew or reasonably should have known were untrue or
15 misleading, in violation of Business & Professions Code §17500. These statements include
16 but are not limited to those set forth in paragraphs 9, above.

17 15. Pursuant to Business & Professions Code §§17535 and 17536, the People are
18 entitled to injunctive relief and civil penalties.

19 **THIRD CAUSE OF ACTION**
20 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE**
21 **SECTION 17207 (VIOLATION OF INJUNCTION)**

22 16. Plaintiff realleges and incorporates by reference Paragraphs 1 through 16,
23 inclusive, as though fully set forth herein.

24 17. On or about 1/15/98, a Final Judgment Pursuant to Stipulation was entered
25 against Defendants Irwin and Irwin Naturals in the case of *People of the State of California*
26 *v. Irwin Naturals, et. al.*, Napa County Superior Court No. 26-00156 (hereinafter, "the 1998
27 Judgment").

28 18. Paragraph 3(C) of the 1998 Judgment prohibited defendants Irwin and Irwin

1 Naturals from making or disseminating any claim or representation that the effectiveness or
2 efficacy of any of defendants' of the specific combination of ingredients in a weight loss
3 products has been proven or tested or established by testing unless, at the time of making
4 such claim or representation, defendants possess and rely upon competent and reliable
5 scientific evidence that substantiates such claim or representation.

6 19. Defendants Irwin and Irwin Naturals violated the terms of the 1998 Judgment
7 by intentionally making or disseminating any claim or representation that the effectiveness or
8 efficacy of combinations of ingredients in particular weight loss products had been proven or
9 tested or established by testing without, at the time of making such claim or representation,
10 possessing and relying upon competent and reliable scientific evidence that substantiated
11 such claim or representation.

12 20. Business and Professions Code §17207 provides that any person who
13 intentionally violates any injunction prohibiting unfair competition shall be liable for a civil
14 penalty of an amount not to exceed Six Thousand Dollars (\$6,000.00) for each violation.

15
16 **WHEREFORE**, the People pray as follows:

17 1. For a preliminary and permanent injunction, pursuant to Business &
18 Professions Code §§17203, 17204 and 17535, restraining and enjoining Defendants and all
19 those acting under, by, through, or on behalf of them, from making or disseminating any
20 false or misleading statements as set forth in the First Cause of Action, above, or from
21 engaging in or performing, directly or indirectly, any acts of unfair competition as set forth in
22 the Third Cause of Action, above.

23 2. For a preliminary and permanent injunction, pursuant to Health & Safety Code
24 §25249.7, restraining and enjoining Defendants and all those acting under, by, through, or on
25 behalf of them, from violating the provisions of Proposition 65, as set forth in the Second
26 Cause of Action, above.

27 3. That Defendants and each of them be ordered to pay a civil penalty of up to
28 \$2,500.00 for each act of unfair competition, pursuant to Business and Professions Code

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§17206.

4. That Defendants and each of them be ordered to pay a civil penalty of up to \$2,500.00 for each false or misleading statement made or disseminated by defendants to the public, pursuant to Business & Professions Code §17536.

5. That Defendants and each of them be ordered to pay a civil penalty of up to \$6,000.00 for each violation of the 1998 Judgment, pursuant to Business & Professions Code §17207.

6. That Defendants and each of them be ordered to pay restitution to each person who is a victim of Defendants' false or misleading statements and/or acts of unfair competition.

7. That the People recover its costs of suit herein.

8. That the People be given such other and further relief as the nature of this case may require and this Court deems proper to fully and successfully dissipate the effects of the unlawful and unfair acts complained of in this Complaint.

TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

DATED: 1/31/11

BY: Tracy Hughes
TRACY HUGHES

EXHIBIT 1

1		
2	NANCY E. O'MALLEY	EDWARD S. BERBERIAN
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13	1200 Aguajito Road, Room 301	931 Parkway Mall
14	Monterey CA 93940	Napa CA 94559
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