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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

FEB -1 2011

ALAN CARLSON, Clerk of the Court
K Peraza
BY K. PERAZA

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

KLEE M. IRWIN; IRWIN NATURALS, a corporation and dba APPLIED NUTRITION, dba DUAL ACTION CLEANSE and dba CELLULAR RESEARCH;

Defendants.

Case No.
Assigned for All Purposes to:

**FINAL JUDGEMENT AND
PERMANENT INJUNCTION
PURSUANT TO STIPULATION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA ("Plaintiff"), have filed its complaint and appear through its attorneys Tony Rackauckas, District Attorney of Orange County, by Tracy E. Hughes, Deputy District Attorney; Gary Lieberstein, District Attorney of Napa County, by Daryl A. Roberts, Deputy District Attorney; Nancy E. O'Malley, District Attorney of Alameda County, by Scott D. Patton, Deputy District Attorney; Edward S. Berberian, District Attorney of Marin County, by Robert E. Nichols, Deputy District Attorney;

1 Dean Flippo, District Attorney of Monterey County, by John F. Hubanks, Deputy District
2 Attorney; Jeffrey F. Rosen, District Attorney of Santa Clara County, by Yen B. Dang, Deputy
3 District Attorney; Bob Lee, District Attorney of Santa Cruz County, by Kelly J. Walker,
4 Assistant District Attorney; Stephen S. Carlton, District Attorney of Shasta County, by Erin M.
5 Dervin, Deputy District Attorney; Donald A. du Bain, District Attorney of Solano County, by
6 Diane Taira, Deputy District Attorney; and Jill R. Ravitch, District Attorney of Sonoma
7 County, by Matthew T. Cheever, Deputy District Attorney.

8 Defendants, Klee M. Irwin (hereinafter "Irwin"), Irwin Naturals, a Nevada corporation,
9 and doing business as Applied Nutrition, as Dual Action Cleanse, and as Cellular Research
10 (hereinafter "Irwin Naturals"), are appearing through attorneys William I. Rothbard and Carl R.
11 Stevens.

12 Plaintiff and Defendants (the "parties") have stipulated that this Final Judgment and
13 Permanent Injunction ("Final Judgment") may be entered without trial or adjudication of any
14 issue of fact or law. The parties enter this Final Judgment pursuant to a settlement of certain
15 disputed claims between the parties as alleged in the Complaint for the purpose of avoiding
16 prolonged and costly litigation. Nothing in this Final Judgment shall be construed as an
17 admission by Defendants of any fact, issue of law or violation of law. Except as expressly set
18 forth herein, nothing in this Final Judgment shall prejudice, waive, or impair any right, remedy
19 or defense Defendant may have in any other or in any future legal proceedings.

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

21 **JURISDICTION**

- 22 1. This Court has jurisdiction of the subject matter and the parties thereto.

23 **APPLICABILITY**

- 24 2. This Final Judgment is applicable as follows:

25 A. The injunctive provisions of this Final Judgment are applicable to
26 Defendants Irwin and Irwin Naturals, and to each of them (hereinafter referred to as
27 "Defendants"), and to all of their agents, servants, employees, representatives, officers, directors,
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1 managers, successors and assigns, and to any and all persons, employees, corporations, and other
2 entities who are acting in concert or participating with Defendants, or any of them, with actual or
3 constructive notice of this Final Judgment.

4 B. With regard to the provisions of Paragraph 4(A), below, this Final
5 Judgment shall have no application or effect on Defendants for NUTRITIONAL
6 SUPPLEMENTS distributed or sold by or on behalf of Defendants to consumers who reside
7 outside the State of California.

8 **DEFINITIONS**

9 3. The following phrases in this Final Judgment have the meaning set forth below:

10 A. "COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE" means
11 tests, analyses, research, studies, or other evidence based upon the expertise of
12 professionals in the relevant area, that have been conducted and evaluated in an objective
13 manner by persons qualified to do so, using procedures generally accepted in the
14 scientific community to yield accurate and reliable results.

15 B. "NUTRITIONAL SUPPLEMENT" means a dietary supplement (as
16 defined in 21 USC §321 (ff)) sold, offered for sale or distributed to consumers by
17 Defendants.

18 C. "HOODIA PRODUCT" shall include any and all of Defendants'
19 NUTRITIONAL SUPPLEMENTS having *Hoodia* or *Hoodia gordonii* as part of the
20 name or alleged on the label as an ingredient.

21 D. "IRWIN PRODUCT" means the following products that were sold by
22 Defendants: System Six, Green Tea Fat Metabolizer, 10 Day Hoodia Diet; Green Tea Fat
23 Burner, Green Tea Fat Meltdown; Natural Fat Burner, Triple Action Weight Control,
24 Fast Action Hoodia Diet, and Dual Action Cleanse.

25 E. "ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL
26 STUDY" means a human clinical study that is randomized, double-blind, placebo-
27 controlled, and conducted by persons qualified by training and experience to conduct
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1 such study.

2 **INJUNCTION**

3 4. Effective upon entry of this Final Judgment, unless otherwise specified below,
4 Defendants, in connection with the manufacturing, labeling, advertising, offering for sale, sale,
5 or distribution of any NUTRITIONAL SUPPLEMENT, are hereby permanently enjoined and
6 restrained, pursuant to Business and Professions Code § 17203, from engaging in, directly or
7 indirectly, any of the following acts or practices:

8 A. As of the date Ninety (90) days after the date of entry of this Final
9 Judgment, selling, distributing or offering for sale to consumers in the state of California
10 any NUTRITIONAL SUPPLEMENT that contains lead in an amount that will, at any
11 recommended daily dose, expose the user of the NUTRITIONAL SUPPLEMENT to
12 more than 0.5 micrograms of lead per day, unless Defendants first provide a clear and
13 reasonable warning that consumption of the NUTRITIONAL SUPPLEMENT will
14 expose persons to lead, a chemical known to the State of California to cause birth defects
15 and other reproductive harm. Such clear and reasonable warning shall be of a sufficient
16 size and readability to be seen by customers under normal conditions of purchase and sale
17 and shall be provided in accordance with and contain the appropriate language as
18 specified in Cal. Health & Safety Code §25249.6 and 22 Cal. Code Regs.
19 §12601(b)(4)(B), and may consist of either of the following, which are found by the
20 Parties to be consistent with said Health and Safety Code and California Code
21 Regulations:

22 WARNING: This product contains a chemical known to the State of
23 California to cause birth defects or other reproductive harm, or

24 WARNING: (State of Cal. Prop 65): This product contains a chemical
25 known to the State of California to cause birth defects or other
26 reproductive harm.

27 Nothing in this Final Judgment shall prohibit Defendants from providing a warning that
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1 is in compliance with future regulations, statutes, or industry agreements with the
2 California Attorney General that may further define what constitutes an appropriate
3 warning. Defendants shall not reduce the recommended dose (by size, number of tablets,
4 volume, weight, or frequency) of a NUTRITIONAL SUPPLEMENT in order to bring it
5 into compliance with this Final Judgment.

6 B. Violating any of the provisions of Health and Safety Code §§ 110760,
7 110675, and/or 110770, which provisions relate to the manufacturing, selling, delivering,
8 holding, advertising or offering for sale any NUTRITIONAL SUPPLEMENT that is
9 misbranded or delivering any such NUTRITIONAL SUPPLEMENT that is misbranded;

10 C. Enrolling any customer in any automatic shipment program without first
11 providing the customer with a clear disclosure of the customer's obligation under the
12 program, and obtaining the customer's expressed clear and informed consent to enroll the
13 customer in the program and assume the obligations of the program at the time the
14 automatic shipment program is ordered by the customer.

15 D. Violating Civil Code §1584.5, by offering for sale goods where the offer
16 includes the unsolicited sending of goods and thereafter demanding return or payment
17 therefore. This prohibition does not apply to free samples sent by Defendants or
18 contained in the same box as products ordered or purchased by customers as long as the
19 customer is never charged for same nor a demand made for its return.

20 E. Continuing to ship direct sale products to a customer after a customer's
21 request has been made, consistent with law and the instructions on Defendants' website
22 or with the ordered products, to be taken off Defendants' shipping list or to cancel the
23 customer's continuity order

24 F. Continuing to mail advertisements to a direct sale customer after
25 customer's request to be taken off Defendants' mailing list.

26 G. Advertising any refund or return policy unless Defendants also clearly and
27 conspicuously discloses any and all exclusions to the policy. A clear and conspicuous
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1 copy of the refund policy shall be included in the packaging with all shipments of direct
2 sale products to customers by Defendants or shall be readily available on Defendants'
3 Websites.

4 H. Failing to respond promptly to direct sales consumer requests made
5 pursuant to the terms contained in Defendant's refund policy for refunds or information
6 within 30 days. The consumer's right to a refund may be conditioned only on such
7 limitations as are lawful and subject to Defendant's refund policy as clearly and
8 conspicuously disclosed to customers before sale and in any written material
9 accompanying shipments of products to customers.

10 I. Violating Health and Safety Code §110403, unless the advertisement is
11 not unlawful under the provisions of Health and Safety Code §110405.

12 J. Selling, delivering or giving away any new drug, in violation of the
13 provisions of Health & Safety Code §111550.

14 5. Effective upon entry of this Final Judgment, Defendants, in connection with the
15 manufacturing, labeling, advertising, offering for sale, sale, or distribution of any
16 NUTRITIONAL SUPPLEMENT, are hereby permanently enjoined and restrained, pursuant to
17 Business and Professions Code §17535, from engaging in, directly or indirectly, any of the
18 following acts or practices:

19 A. Except as set forth in Subparagraph H, below, making and/or
20 disseminating any representations about the effects, efficacy, or safety of any
21 NUTRITIONAL SUPPLEMENT unless at the time of making and/or disseminating such
22 representation, it is true, not misleading, and Defendants already have in their possession
23 and rely upon COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE that
24 substantiates such representation.

25 B. Except as set forth in Subparagraph H, below, making and/or
26 disseminating any representation, either directly or indirectly, that any NUTRITIONAL
27 SUPPLEMENT: (1) causes, assists, or contributes to weight loss and/or fat loss; (2)
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1 causes, assists, or contributes to a reduction, control of or suppression of appetite; (3)
2 causes, assists, or contributes to an increase in metabolism and/or fat burning; and/or (4)
3 causes, assists, or contributes to an inhibition of lipogenesis; unless, at the time of making
4 and/or dissemination of such representation, it is true, not misleading, and Defendants
5 already have in their possession and rely upon COMPETENT AND RELIABLE
6 SCIENTIFIC EVIDENCE that substantiates such representation.

7 C. Making and/or disseminating any representation, either directly or
8 indirectly, that misrepresents the existence, contents, validity, results, conclusions, or
9 interpretations of any test, study or research relied upon for substantiation.

10 D. Making and/or disseminating any representation in the form of a
11 testimonial in violation of any of the provisions of 16 C.F.R. §255.2(a); 16 C.F.R.
12 §255.0(b); 16 C.F.R. §255.1(A); 16 C.F.R. §255.1(C).

13 E. Making and/or disseminating any representation that there exists in
14 humans a condition or set of conditions inside the human body that adversely affects the
15 body's health and/or well being, unless, at the time of making and/or dissemination of
16 such claim or representation, it is true, not misleading, and Defendants already have in
17 their possession and rely upon COMPETENT AND RELIABLE SCIENTIFIC
18 EVIDENCE that substantiates such representation.

19 F. Making and/or disseminating any representation that any NUTRITIONAL
20 SUPPLEMENT will alleviate, solve, lessen, improve, treat, mitigate, cure, make better
21 and/or heal a condition or set of conditions inside the human body that adversely affects
22 the body's health, unless, at the time of making and/or dissemination of such claim or
23 representation, it is true, not misleading, and Defendants already have in their possession
24 and rely upon COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE that
25 substantiates such representation.

26 G. Making and/or disseminating any representation for a NUTRITIONAL
27 SUPPLEMENT based upon historical or traditional use unless such representation and its
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1 making and/or dissemination is in full compliance with all of the provisions regarding
2 "Claims Based on Traditional Use" as set forth in the FTC's *Dietary Supplements: An*
3 *Advertising Guide for Industry* (available at
4 <http://ftc.gov/bcp/edu/pubs/business/adv/bus09.shtm>)

5 H. Making and/or disseminating any representation, either directly or
6 indirectly, that the health benefits, performance, efficacy or any aspect of any
7 NUTRITIONAL SUPPLEMENT has been clinically proven, clinically tested, established
8 by clinical testing, scientifically proven, scientifically tested, established by scientific
9 testing, and/or established in scientific studies, research and/or literature unless, at the
10 time of making and/or dissemination of such representation, it is true and not misleading,
11 and Defendants already have in their possession and rely on COMPETENT AND
12 RELIABLE SCIENTIFIC EVIDENCE that includes at least one ADEQUATE AND
13 WELL-CONTROLLED HUMAN CLINICAL STUDY.

14 6. Defendants shall be and are hereby permanently enjoined and restrained, pursuant
15 to Business and Professions Code §17203, from selling or delivering any HOODIA PRODUCT
16 unless Defendants have first determined that in fact the HOODIA PRODUCT contains *Hoodia*
17 *gordonii* as set forth on the label or in the proprietary blend described on the label.

18 7. The provisions of Paragraphs 4(B) and 5 shall not apply to Irwin NUTRITIONAL
19 SUPPLEMENTS that, as of the date of the filing of this Final Judgment, are in the possession,
20 custody or control of retailers. To this end, Defendant Irwin shall provide the People within
21 thirty (30) days of the date of the filing of this Final Judgment, to the address set forth in
22 Paragraph 14, below, a declaration under penalty of perjury setting forth the names and lots
23 numbers of all Irwin NUTRITIONAL SUPPLEMENTS that are in the possession, custody or
24 control of retailers as of the date of the filing of this Final Judgment.

25 8. The provisions of Paragraphs 4(B) and 5 shall not apply to Irwin NUTRITIONAL
26 SUPPLEMENTS that, between the date of the filing of this Final Judgment and the date six (6)
27 months after the date of the filing of this Final Judgment, are distributed by Defendants to
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1 retailers with labeling that would not be economically feasible to change. To this end, Defendant
2 Irwin shall provide the People within six (6) months and thirty (30) days of the date of the filing
3 of this Final Judgment, to the address set forth in Paragraph 14, below, a declaration under
4 penalty of perjury setting forth the names and lots numbers of all Irwin NUTRITIONAL
5 SUPPLEMENTS that were distributed by Defendants to retailers between the date of the filing of
6 this Final Judgment and the date six (6) months after the date of the filing of this Final Judgment.

7 9. Any amended statute or regulation, successor statute or regulation or renumbered
8 statute or regulation will have the same force and effect as the statutes and regulation cited in this
9 Final Judgment.

10 **RESTITUTION**

11 10. Defendants shall allocate One Hundred Thousand Dollars (\$100,000) to pay
12 restitution to consumers as outlined in Paragraph 11, below. Such fund shall be set up via a
13 cashier's check creating a Trust Account, no later than the date of entry of this Final Judgment.
14 At the end of 365 days following the date of entry of this Final Judgment, any funds not
15 distributed as described below from this fund shall be converted to the California Consumer
16 Protection Prosecution Trust Fund, as outlined in section 13(B), below. Thereafter, Defendants
17 shall have no further obligations to return the purchase price of any of its products or provide
18 further restitution or refunds under this Final Judgment except as required by law or Defendants'
19 return/refund policy. Restitution as described herein is limited to One Hundred Thousand Dollars
20 (\$100,000).

21 11. Restitution shall be payable to eligible consumers as outlined in this Final
22 Judgment, payable from the Trust Account outlined in Paragraph 10, above, according to the
23 specified groups outlined in subparagraphs A and B, below. Defendants shall have One Hundred
24 and Eighty (180) days from the date of the entry of this Final Judgment to determine the total
25 pool of consumers eligible for restitution under the terms of this Final Judgment and the
26 appropriate restitution amount, including any amounts to be paid on a pro rata basis. Defendants
27 shall determine this liability based upon a total review of Defendants' records of restitution
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1 already paid to complainants as described in subparagraph A, below, and the receipt of eligible
2 receipts and proof of purchase documentation as described in subparagraph B, below. Should
3 the total restitution owed exceed the One Hundred Thousand Dollars (\$100,000) in the allocated
4 Trust Fund, Defendants will send pro rata restitution amounts (100,000 divided by eligible
5 claims) to all eligible consumers as outlined in subparagraphs A and B below. After the
6 determination of total amounts owed to eligible consumers, Defendants shall issue and mail
7 refund checks to all identified eligible consumers within 60 days of determining the amounts.
8 Defendant shall bear the administrative costs of determining eligibility and mailing restitution
9 checks separate and apart from the allocated funds and such costs shall not be deducted from the
10 allocated Trust Fund described in Paragraph 10 of this Final Judgment.

11 A. Previous Complaints Not Previously Refunded:

12 Defendants shall make restitution to all California residents who purchased an IRWIN
13 PRODUCT from July 1, 2006 to the date of entry of this Final Judgment and thereafter
14 complained to any Defendant, the Better Business Bureau, the California Attorney
15 General's Office, or any District Attorneys' Office in California (to the Defendants'
16 knowledge) and did not get a full refund (excluding shipping and handling) under any of
17 the following circumstances:

18 (1) An IRWIN PRODUCT was billed to a customer, if any, where no
19 order for that product was placed with the Defendant from that direct sale
20 customer; or

21 (2) The customer returned the IRWIN PRODUCT to Defendants or
22 requested a refund, if any there be, in compliance with the Defendant's
23 return/refund policy then in effect for a refund and the refund was not provided,
24 or

25 (3) The customer was placed on an automatic shipment program
26 ("continuity") for an IRWIN PRODUCT by Defendants without the customer's
27 authorization, if any, and the customer has requested that their order cancel and
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1 that request was not honored; or

2 (4) The customer was billed for the IRWIN PRODUCT after the
3 product was advertised as “free”, if any;

4 B. Recent Customers:

5 Defendants shall make restitution of the full purchase price to direct sales customers
6 residing in California at the time of purchase of any IRWIN PRODUCT sold between six
7 months before the entry of this Final Judgment and the date of this Final Judgment, from
8 the Cy Pres Restitution Fund/Trust described in Paragraph 10. In order to be eligible for
9 this portion of Restitution the direct sales customer must:

10 (1) Make a claim for a refund or Restitution within 120 days after the
11 date of entry of this Final Judgment;

12 (2) Have and present to Defendants, at the time restitution or a refund
13 is requested, proof of purchase of the product within the last six (6) months before
14 the date of entry of this Final Judgment.

15 a. Acceptable Proof of Purchase shall include only the
16 following: (i) a receipt, (ii) a credit card bill, or (iii) original packaging
17 including dated packing slip, and

18 (3) The customer must have followed the Restitution procedures as
19 outlined in this Final Judgment.

20 **COMPLIANCE**

21 12. For the purpose of securing compliance with the terms of this Final Judgment,
22 Defendants shall:

23 A. Maintain and upon request produce to representatives of the prosecuting
24 offices representing the People in this action, within thirty (30) days of any written
25 request, copies of any documents required to be maintained by the terms of this Final
26 Judgment. Such written request shall be sent by first-class, registered or certified mail,
27 return receipt requested, by overnight carrier, or by personal delivery to Carl R. Stevens,
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1 Vice President of Legal Affairs, Irwin Naturals, 5310 Beethoven Street, Los Angeles, CA
2 90066, or to any other person or address that Defendants may designate in writing and
3 serve, either by first-class, registered or certified mail, return receipt requested, by
4 overnight carrier, or by personal delivery to the person and address noted in Paragraph
5 14, below.

6 B. Serve each of Defendant's present and future officers, directors, and
7 executive managers with a copy of this Final Judgment and maintain a file that such
8 service has occurred.

9 C. Maintain a file that contains COMPETENT AND RELIABLE
10 SCIENTIFIC EVIDENCE for the types of claims described in Paragraph 5, above.

11 D. Institute and follow a customer service/complaint review program with a
12 thirty (30) day maximum timeline for processing, tracking and resolving customer
13 complaints and refund requests.

14 E. Maintain records establishing that Defendants have instituted and followed
15 a customer service/complaint review program. Records of refunds issued shall be retained
16 for at least four years from the date of their creation.

17 F. Maintain records relating to the automatic shipment program requirements
18 set forth in paragraph 4(C) of this Final Judgment. Such records shall be maintained for
19 at least four years following their creation.

20 G. Maintain a working customer service contact telephone line for timely
21 processing of consumer complaints and refund requests.

22 H. Remove customer names from mailing lists where customers request it
23 within thirty (30) days of the request.

24 I. Submit to the Orange County District Attorney's Office eighteen (18)
25 months after entry of this Final Judgment a declaration, under oath by an officer or
26 person in charge, containing the following: that he/she has complied with the terms of the
27 Final Judgment; a list of the names and addresses of those persons who received
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1 restitution and the amount paid or action taken; the names of those persons who have
2 moved and/or have changed address and for whom Defendants did not receive a
3 forwarding address. The declaration shall be delivered by mail to the address contained in
4 paragraph 14, below.

5 **PENALTIES AND COSTS**

6 13. Upon execution of this Final Judgment, Defendants shall pay the sum of Two
7 Million Six Hundred and Fifty Thousand Dollars (\$2,650,000) pursuant to the following terms
8 and pursuant to Business and Professions Code sections 17203, 17206 and 17536, as follows:

9 A. Six Hundred Thousand Dollars (\$600,000) shall be designated as the
10 reasonable costs of The Peoples' investigation and prosecution by the Counties. Payment
11 shall be in the form of separate cashier's check made payable to The County of Orange,
12 and delivered to the Orange County District Attorney's Office. Payment of this amount
13 shall be made upon entry of the Final Judgment. The Orange County District Attorney's
14 Office shall distribute this amount to the Prosecuting Offices in this action pursuant to a
15 written agreement of these offices.

16 B. One Hundred Thousand Dollars (\$100,000) of the total amount of the two
17 million six hundred fifty thousand dollars (\$2,650,000) shall be allocated to pay
18 Restitution, as more fully described above in Paragraph 10. Defendant shall set up a
19 separate Trust Account of One Hundred Thousand Dollars (\$100,000) simultaneous with
20 entry of this Final Judgment. Defendant shall pay all restitution as described in the
21 Restitution Section of this Final Judgment, paragraphs 10 through 11, from this Trust
22 Account. Any funds not paid directly to consumers from this account 365 days after the
23 date of entry of this judgment shall convert to Cy Pres Restitution and Defendants shall
24 pay such remaining funds in a single cashier's check, to the California Consumer
25 Protection Prosecution Trust Fund, previously created by the Judgment and Permanent
26 Injunction, filed on September 21, 1989, in the case of *People v. ITT Consumer Financial*
27 *Corporation* (Alameda County Superior Court case number 656038-0) for the purpose of
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1 enhancing the investigation, prosecution, and enforcement of consumer protection actions
2 brought pursuant to the unfair competition statutes of the State of California. Payment
3 shall be delivered to the Orange County District Attorney's Office. Payment shall be
4 made one year and one month following the date of the entry of this Final Judgment. Any
5 monies paid directly to consumers as Restitution or refunds described under this
6 judgment, from the date of this Final Judgment for one year thereafter, shall be deducted
7 from the One Hundred Thousand Dollars (\$100,000). The remainder of the One Hundred
8 Thousand Dollars (\$100,000) after payment of Restitution and/or refund shall be remitted
9 as described above.

10 C. The remaining One Million Nine Hundred Fifty Thousand Dollars
11 (\$1,950,000) of Civil Penalties shall be paid as follows. A payment of Five Hundred
12 Fifty Thousand Dollars (\$550,000) in the form of a cashier's check shall be made payable
13 to The County of Orange, and delivered to the Orange County District Attorney's Office,
14 simultaneous with the signing of this Final Judgment. The Orange County District
15 Attorney's Office shall distribute this amount to the prosecuting offices in this action
16 pursuant to a written agreement of these offices. Payment of the balance of Civil
17 Penalties in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000)
18 shall be made in five (5) payments of Two Hundred and Fifty Thousand Dollars
19 (\$250,000), once every three months, on the 5th of the 3rd, 6th, 9th, 12th, and 15th
20 months following the entry of the Final Judgment herein, and with the final payment of
21 One Hundred Fifty Thousand Dollars (\$150,000) on the 5th of the month that is eighteen
22 (18) months following the date of entry of this Final Judgment. The Orange County
23 District Attorney's Office shall distribute these amounts to the prosecuting offices in this
24 action pursuant to a written agreement of these offices.

25 D. In the event that any such payment owed by Defendants is not paid by the
26 tenth (10th) day after the applicable due date, Plaintiff shall have the right, in its sole
27 discretion, without further notice, to declare the entire balance outstanding to be due and
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1 payable. If Defendants default on any payment, the unpaid portion of the Judgment shall
2 bear interest at the rate of ten per cent (10%) per annum from the date of default, e.g., the
3 due dates as specified in paragraph 13(C), above.

4 14. Payments pursuant to this Final Judgment shall be delivered to the following
5 address:

6 Orange County District Attorney's Office
7 Consumer Protection Unit
8 900 North Broadway, Ste 900
9 Santa Ana, California 92701
10 Attention: Tracy Hughes

11 15. The parties waive the right to appeal this Final Judgment both as to form and
12 content.

13 **JURISDICTION RETAINED**

14 16. Jurisdiction is retained for the purpose of enabling any party to this Final
15 Judgment to apply to the Court, pursuant to a duly noticed motion, for such further order and
16 directions as may be necessary and appropriate for the construction of or the carrying out of this
17 Final Judgment, for the enforcement of compliance therewith, and for punishment of violations
18 thereof.

19 17. If the California Attorney General subsequently agrees in a settlement, judicially
20 entered injunction or final judgment that any of Defendants' NUTRITIONAL SUPPLEMENTS
21 does not require a warning pursuant to the provisions of Proposition 65, that a modified warning
22 for any of Defendants' NUTRITIONAL SUPPLEMENTS is appropriate that differs from that
23 imposed in this Final Judgment, or that an allowance for naturally occurring lead is appropriate
24 for any of Defendants' NUTRITIONAL SUPPLEMENTS, or if a court of competent jurisdiction
25 renders a final judgment in a case brought by the California Attorney General that eliminates or
26 modifies the warning requirement for any of Defendants' NUTRITIONAL SUPPLEMENTS or
27 establishes an allowance for naturally occurring lead for any of Defendants' NUTRITIONAL
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1 SUPPLEMENTS, then Defendants shall be entitled to seek to modify the terms of this Final
2 Judgment to make it consistent with such California Attorney General settlement, judicially
3 entered injunction or final judgment or court judgment as described herein.

4 18. This Final Judgment is a full, final, and binding resolution between the
5 prosecutors representing the People in this action and Defendants of any violations of any acts of
6 unfair competition, as defined in Business and Professions Code §17200, including Proposition
7 65 or its implementing regulations, of Health & Safety Code §§110403, 110760, 110765, 110770
8 or 111550, of Civil Code §1584.5, and of any representations made or disseminated in violation
9 of Business & Professions Code §17500, as alleged in the Complaint on file in this action.

10 Defendant waives any claims against the People based on the filing or prosecution of the action.

11 However, this Final Judgment shall not release any claims or causes of action against
12 Defendants, or any of them, as alleged in the case of *The People of the State of California v. 21st*
13 *Century Healthcare, Inc.*, Alameda County Superior Court Case No. RG08426937.

14 **EFFECT AND ENTRY**

15 19. The Clerk is order to enter this Final Judgment.

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17
18 DATED: FEB - 1 2011

DAVID T. McEACHEN

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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NANCY E. O'MALLEY
District Attorney, County of Alameda
Scott D. Patton, SBN 148468
Deputy District Attorney
7677 Oakport Street, Suite 650
Oakland, CA 94621
(510) 569-9281

DEAN FLIPPO
District Attorney, County of Monterey
John Hubanks, SBN 170635
Deputy District Attorney
1200 Aguajito Road, Room 301
Monterey, CA 03050
(831) 647-7770

JILL R. RAVITCH
District Attorney, County of Sonoma
Matthew T. Cheever, SBN 191783
Deputy District Attorney
600 Administration Dr., Rm 212-J
Santa Rosa, CA 95403
(707) 565-2311

JEFFREY F. ROSEN
District Attorney, County of Santa Clara
Yen B. dang, SBN 169388
Deputy District Attorney
70 W. Hedding St., West Wing
San Jose, CA 95110
(408) 792-2818

STEPHEN S. CARLTON
District Attorney, County of Shasta
Erin M. Dervin, SBN 188426
Deputy District Attorney
1525 Court St., 3rd Floor
Redding, CA 96001
(530) 245-6300

EDWARD S. BERBERIAN
District Attorney, county of Marin
Robert Nichols, SBN 100028
Deputy District Attorney
3501 Civic Center Drive, Room 130
San Rafael, CA 94903
(415) 499-6450

GARY LIEBERSTEIN
District Attorney, County of Napa
Daryl A. Roberts, SBN 111981
Deputy District Attorney
931 Parkway Mall
Napa, CA 94559
(707) 253-4493

DONALD A. DU BAIN
District Attorney, County of Solano
Diane M. Taira, SBN 179926
Deputy District Attorney
600 Union Avenue
Fairfield, CA 94533
(707) 421-6800

BOB LEE
District Attorney, County of Santa Cruz
Kelly Walker, SBN 95538
Assistant District Attorney
701 Ocean St., Suite 200
Santa Cruz, CA 95060
(831) 454-2559