

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
CASE NO.: **7:10-CV-102-D**

Antonio A. RODRIGUEZ, for himself)
and all others similarly situated,)
Plaintiffs)

v.)

AMENDED COMPLAINT

Klee IRWIN;)
James CHAPPELL;)
Carl Randall STEVENS, Esq.;)
IRWIN NATURALS;)
ULTIMATE NUTRACEUTICALS, LLC;)
TELEZONE, LLC; and)
SELL AT HOME, LLC,)
Defendants)

JURY TRIAL DEMANDED

COME NOW Plaintiffs by and through the undersigned and seek relief as follows:

1. This is an action for monetary and equitable relief for more than 200,000 Americans who have (1) purchased Defendants' product(s) known as Dual Action Cleanse, Total Body Purifier, and/or Colon Cleanse Formula, or (2) whose credit or debit cards Defendants unauthorizedly charged or debited for unordered merchandise of any kind, or both, especially by means of the Infomercial in the **Video Exhibits** and transcribed in **Exhs. 1 and 2**.
2. Plaintiffs have notified NCAG Roy Cooper in writing per NCGS § 75D-8(c).
3. To comply with the ECF Policy Manual Section I ban on hyperlinks, which the ScanSoft PDF Create software package insists on inserting if it recognizes a web address when converting a Word document to PDF, all referenced URLs are underlined, the initial h, t, t, p, slashes, and three ws are omitted, and an underscore replaces the dot between com or other extension, e.g., this Court's site would be nced_uscourts_gov.
4. Websites in the Exhibits were printed from HTML to PDF with ScanSoft/Nuance PDF

Create software, which generally reproduces text exactly but does not always preserve images, backgrounds, and formatting, and cuts off images that exceed its right-hand margin; therefore, the Exhibits may look different than they do online, but convey materially correct information.

JURISDICTION AND VENUE

- 5.** This Court has original jurisdiction over claims arising under U.S. law per 28 U.S.C. § 1331.
- 6.** Named Plaintiff is a citizen of a different state than any Defendant, is seeking the maximum punitive damages under federal and state law, and can prove fraud and willful conduct for purposes of NCGS § 1D-15(a)(1) and (5), as well as all of the aggravating factors in § 1D-35(2), justifying the maximum § 1D-25(b) award of \$250,000 and conferring subject matter jurisdiction upon this Court per 28 U.S.C. § 1332(a)(1).
- 7.** The Class is larger than 200,000 persons, at least 100,000 of whom lost more than \$200 each to Defendants' unauthorized "Auto-Ship" charges, trebled under RICO and state racketeering and consumer protection statutes, putting at least \$60 million in controversy exclusive of costs and attorney fees, and fewer than one-third of the Class Members are North Carolina citizens for purposes of 28 U.S.C. § 1332(d)(3), conferring subject matter jurisdiction upon this Court per 28 U.S.C. § 1332(d)(2)(A).
- 8.** This Court has pendent jurisdiction per 28 U.S.C. § 1367 over Plaintiffs' claims arising under state law, none of which substantially predominates over RICO and none of which raises novel or complex issues of state law for purposes of § 1367(c)(1) and (2).
- 9.** A substantial part of the events and omissions giving rise to the claim occurred, and Named Plaintiff resides, in the Eastern District of North Carolina, laying proper venue here per 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b)(2) and (3).

10. The Class numbers at least 200,000 persons in the United States, and since Defendants advertise and sell their products nationwide, and North Carolina has about 3% of the population, Defendants have recently sold products to at least 6,000 persons in North Carolina and at least 2,000 persons in the Eastern District thereof, and are continuing to do so with no end in sight, constituting substantial activity within this State; at or about the time that Named Plaintiff suffered injury from Defendants' acts in foreign states (including but not limited to production and broadcast of factually false infomercials that Defendants intended and reasonably expected to defraud and damage North Carolinians), Defendants delivered products to hundreds if not thousands of people in North Carolina; at or about the time of Named Plaintiff's injury, thousands of North Carolinians used or consumed Defendants' products in the ordinary course of trade; Named Plaintiff gave his credit card number, a thing of value, to Defendants over the interstate wires upon Defendants' request, by which means they damaged him with unauthorized charges; and, this action relates to goods that Named Plaintiff actually received in this State from Defendants through the U.S. Postal service, conferring personal jurisdiction over Defendants per NCGS § 1-75.4(1)d, (4)a and b, and (5)d and e.

11. Regardless of the presence or absence of minimum contacts with North Carolina, this Court is a proper venue, and has nationwide jurisdiction over Defendants' persons, per 18 U.S.C. § 1965(b) and the general personal jurisdiction over anyone in the United States of any United States court sitting in federal question jurisdiction.

PARTIES

Plaintiffs

12. Named Plaintiff Antonio Abad Rodriguez is an adult with the capacity to sue and be sued for his own account or in a representative capacity on behalf of others.

13. The Class consists of all persons in the United States who have either (1) purchased Defendants' product(s) known as Dual Action Cleanse, Total Body Purifier, and/or Colon Cleanse Formula, or (2) whose credit or debit cards Defendants unauthorizedly charged or debited for unordered merchandise of any kind, or both.

Defendants in General

14. All Defendants have the capacity to sue and be sued for their own accounts or in a representative capacity on behalf of others.

15. All Defendants have used instrumentalities of interstate commerce, including but not limited to the U.S. Postal Service, private delivery services, interstate wires, federally chartered and insured national banking associations, federally insured credit unions, interstate highways, and common carriers to transmit information in furtherance of their scheme to defraud Plaintiffs, and to transfer Plaintiffs' money and other property among themselves and to third parties in interstate commerce and across state lines.

16. In addition or in the alternative, any Defendants without actual knowledge were willfully blind to the utterly fraudulent and highly profitable nature of "colon cleanse" products and access device fraud, and avoided learning the truth about other Defendants.

17. Individual Defendants used Entity Defendants not as shields from liability for unintentional damages in the course of lawful and legitimate business, but as swords to commit and profit from systematic illegal activity and intentionally tortious conduct in violation of the declared public policy of the United States and of the several States, and also Individual Defendants used Entity Defendants to carry out their scheme and inequitably prevent Plaintiffs from recovering their own property, and Defendants further failed to observe corporate formalities (such as not putting "Inc." or "Corp." after "Irwin Naturals") and excessively fragmented their enterprises not for any

legitimate business need but for the purpose of evading responsibility for their wrongful acts, rendering Individual Defendants personally liable for all acts of Entity Defendants and rendering Entity Defendants liable for all acts of Individual Defendants.

18. Defendants agreed and conspired among themselves beforehand to commit, and each conspirator did commit in furtherance of said conspiracy, tortious and unlawful acts upon Plaintiffs, injuring Plaintiffs by perpetuating and expanding fraudulent racketeering enterprises, violating consumer protection statutes, obtaining Plaintiffs' property by fraud, transporting and receiving such property, and laundering the proceeds and profits therefrom, and converting said proceeds and profits to Defendants' own use, though they rightfully belonged to Plaintiffs, rendering each Defendant liable for all acts of each and every other Defendant as to all substantive counts, regardless of when any Defendant joined or left the conspiracy.

19. Entity Defendants' officers, directors, managers, employees, and agents were acting on behalf of Entity Defendants in the course of their employment, and therefore acting ultimately on behalf of Individual Defendants for their personal benefit and profit, rendering Entity Defendants and Individual Defendants liable or vicariously liable for all torts and wrongs that their employees and agents committed against Plaintiffs.

Individual Defendants

20. Defendant Klee Irwin (**Exh. 3** is a sampling of his personal websites) has record addresses in California and Nevada and bills himself as some kind of "master herbalist" with special expertise in the properties and applications of healing herbs and other "complementary and alternative medicine" ("CAM") remedies, and claims to be a staunch philanthropist, but in fact misrepresents the nature and effectiveness of his "natural" products, including fabrication of nonexistent ailments such as "5 to 22 pounds of impacted fecal matter stuck in their digestive

system,” by means of the U.S. Mail and interstate wires in order to sell useless or downright harmful merchandise at incredible prices, and then sends more unordered and unwanted merchandise and charges customers’ credit or debit cards without authorization for these products, from which scheme he has made many millions of dollars by defrauding and damaging consumers and the federally insured banks who issue the cards he unauthorizedly charges.

21. Defendant James Chappell is a California resident, holds a Doctor of Chiropractic degree (and shall therefore be known herein as “Dr. Chappell”), claims (**Exh. 4** is a sampling of his sales websites) not to “treat ‘disease,’ but rather teaches people how to heal themselves using classical, aboriginal, advanced quantum energy and natural healing protocols from around the world,” claims to be a board certified chiropractor but his California chiropractic license was cancelled 31 December 1998, still calls himself a “Naturopathic (N.D.) Physician” in some ads and on one of his LinkedIn profiles (even though his *other* LinkedIn profile admits that it is illegal for him to do so), claims to be a “Medical Herbalist (M.H.)” but anyone can call himself an “M.H.” because there are no generally recognized standards for such designation, and claims to be a Ph.D. clinical nutritionist but advertises, and handsomely profits from, absurd nutritional theories and useless or harmful products that no competent nutritionist would have anything to do with, e.g., “coral calcium” that contains excessive and almost toxic amounts of calcium per serving, and *A Promise Made, A Promise Kept*, a book that claims to reveal “The seven all-natural ‘miracle’ elements that when taken in combination have been SCIENTIFICALLY PROVEN TO STOP—REVERSE—AND CURE DIABETES!” (allcaps in original)

22. Defendant Carl Randall Stevens, Esq. is member number 82979 of the California State Bar, first admitted 29 November 1978, is currently Vice President of Legal Affairs for Irwin Naturals, and by virtue of the information acquired in the course of his normal duties as Irwin Naturals’

chief legal officer knows or is willfully blind to the fraudulent and illegal nature of Entity Defendants' business, including the useless and dangerous nature of Dual Action Cleanse, the refusal to allow discounts and issue refunds specifically promised in Defendants' advertising, involuntary Auto-Ship enrollments and unauthorized charges, and the people sickened and hospitalized by use of DAC; but instead of advising other Defendants to stop violating the law and return money to its rightful owners, either ratifies Defendants' lawbreaking by doing nothing about it, or affirmatively helps them break the law and try to get away with it.

23. By agreement with Mr. Irwin, whose orders he must obey as a condition of his employment at Irwin Naturals, Mr. Stevens in spite of his 31 years of legal experience regularly breaks the law himself and operates Irwin Naturals by means of a pattern of racketeering activities, because one of his primary tasks is to commit mail and wire fraud by writing and sending letters or emails to customers who sue Mr. Irwin for his misdeeds, which communications falsely deny wrongdoing and falsely claim or imply that the customer or the customer's lawyer will have to pay Mr. Irwin's attorney fees (when in fact most consumer protection laws will require *Mr. Irwin* to pay *the customer's* attorney fees) to intimidate them into not seeking the justice to which they are plainly entitled, and also he knows that most or all of Irwin Naturals' revenue is the proceeds of mail, wire, bank, and access device fraud, but accepts far more than \$10,000 of it for himself in the form of salary, bonuses, benefits, and dividends instead of returning the money to its rightful owners.

24. With proceeds from DAC sales, access device fraud, and transportation and receipt of money taken by fraud, Mr. Irwin acquires and maintains interests in enterprises engaged in interstate commerce, including but not limited to Irwin Naturals and Ultimate Nutraceuticals.

25. With his pay for making the fraudulent DAC Infomercial, royalties from fraudulent books claiming among other falsehoods to reveal the “natural” cure for diabetes, profits from ineffective or dangerous and overpriced “natural” products, Dr. Chappell acquires and maintains interests in enterprises engaged in interstate commerce, including but not limited to James Chappell Health and Longevity Center LLC.

26. Dr. Chappell is very well-informed as to Mr. Irwin’s business model and knows that Mr. Irwin makes millions by charging customers without permission for unordered merchandise.

27. Mr. Irwin and Dr. Chappell agreed beforehand to commit wire fraud, 18 U.S.C. § 1343, by means of the numerous misrepresentations in their Dual Action Cleanse Infomercial (hereinafter “DAC Infomercial” or “the Infomercial”) detailed *infra*, which they made with the knowledge and intent that it would be broadcast for years to come by free signal TV, cable TV, satellite TV, and online outlets such as YouTube and Defendants’ own websites to a nationwide audience of more than 50 million viewers, many of whom would immediately call the given toll-free number or order online, and thus lose money to Irwin Naturals and Ultimate Nutraceuticals by ordering useless or harmful products and also by numerous unauthorized debit or credit card charges.

28. Exh. 1 is a complete transcript of the Infomercial as posted on YouTube in three parts, and **Exh. 2** is Defendants’ own transcript found at dualactioncleanse.net.

29. Mr. Irwin and Dr. Chappell later made an infomercial for 12-in-One, another Irwin Naturals product described *infra* and often co-sold with DAC, in which both of them made many misrepresentations as to the efficacy of and need for 12-in-One in order to convince people to pay an exorbitant price for it and to obtain credit and debit card numbers for unauthorized charges and debits, completing a count of wire fraud, 18 U.S.C. § 1343.

30. On each occasion, Mr. Irwin or one of his controlled businesses paid Dr. Chappell an appearance fee in excess of \$10,000, which Dr. Chappell knew to be proceeds of Mr. Irwin's mail, wire, bank, and access device fraud scheme, or was willfully blind regarding same.

31. Dr. Chappell thus conspired to launder money, 18 U.S.C. § 1956(h), and completed at least two counts each of promotion money laundering, 18 U.S.C. § 1956(a)(1)(A)(i); transaction money laundering, § 1957(a); and receiving property taken by fraud, § 2315.

Entity Defendants

32. Defendant Irwin Naturals is a corporation organized under Nevada law, entity number C1785-2002, principal business address 123 West Nye Lane Suite 129, Carson City NV 89706, registered agent American Corporate Enterprises, Inc., is the distributor of Dual Action Cleanse which is marketed under the Cellular Research brand name, is primarily in the business of defrauding Plaintiffs by willfully misrepresenting the benefits of its herbal products and unauthorizedly charging Plaintiffs' credit or debit cards for unordered and unwanted merchandise, and is a racketeering enterprise per 18 U.S.C. § 1961(4), which Mr. Irwin founded in about 1995 (in 1998 it merged with 4Health Inc. to form Omni Nutraceuticals, Inc., a Utah corporation that ceased to exist in about 2001, after which Mr. Irwin organized the present Nevada corporation named Irwin Naturals on 23 January 2002) and has operated ever since by a pattern of mail, wire, bank, and access device fraud, and then laundering the proceeds thereof.

33. Ultimate Nutraceuticals, LLC is a limited liability company organized under California law, entity number 200536510142, record address 5310 Beethoven Street, Los Angeles CA 90066, is owned or controlled by Mr. Irwin, has the same phone number, 800 941 0163, as the "Customer Care Center" mentioned on Named Plaintiff's invoice, is primarily in the business of defrauding Plaintiffs by willfully misrepresenting the benefits of its herbal products and unauthorizedly

charging Plaintiffs' credit or debit cards for unordered and unwanted merchandise, and is a racketeering enterprise per 18 U.S.C. § 1961(4).

34. Defendant Telezone, LLC (Telezone) is a limited liability company organized under California law, entity number 200533510103, primary business address 5340 Alla Road Suite 220, Los Angeles CA 90066, registered agent Corporation Service Company C1562199, is made to look like an independent contractor but is entirely under the control of Klee Irwin, is primarily in the business of defrauding Plaintiffs by running one or more call centers staffed by phone reps who are under heavy pressure from management, including Mr. Irwin himself, to refuse most refund requests by any means necessary and to refuse to take customers off of any Auto-Ship program unless the customer buys something even more expensive to replace it, and is a racketeering enterprise per 18 U.S.C. § 1961(4).

35. Defendant Sell At Home, LLC (SAH) is a limited liability company organized under California law, entity number 200915510106, primary business address 1901 First Ave Ste 156, San Diego CA 92101, registered agent Manuel Gonzalez at the same address, is made to look like an independent contractor but is entirely under the control of Klee Irwin, is primarily in the business of defrauding Plaintiffs by recruiting phone reps who work out of their own homes but are still under heavy pressure from management, including Mr. Irwin himself, to decline most refund requests by any means necessary and to refuse to take customers off of any Auto-Ship program unless the customer buys something even more expensive to replace it, and is a racketeering enterprise per 18 U.S.C. § 1961(4).

36. Mr. Irwin has displayed a pattern of forming corporations and then dissolving them or letting their status be revoked, to be replaced by new corporations, including but not limited to Klee Naturals, Vitasave.com, Omni Nutraceuticals, Inc. (formerly a publicly traded company of which

Mr. Irwin was president and CEO and 41.5% owner), Omni Smartbasics, Inc., Crazy Deal Wholesale, Inc., Longevity & Health, Cellular Research, and American Brand Labs, Inc., to all of which Irwin Naturals and Ultimate Nutraceuticals appear to be the successors in interest.

37. Mr. Irwin has used all of these entities, as well as aliases or unincorporated associations-in-fact such as “Dual-Action Cleanse, PO Box 10451, Van Nuys CA 91410” (that is also DAC’s record name and address with the Better Business Bureau of Los Angeles and the former record address of Cellular Research), and “Klee Irwin Health Program,” whose abbreviated name appears on Plaintiffs’ credit card statements, or different names that other Class Members may report seeing on their statements, as racketeering enterprises per 18 U.S.C. § 1961(4), and operates all of them through a pattern of racketeering activity, to wit, his entities’ regular way of doing business is to misrepresent products and convince Plaintiffs to pay money for them, and preferably to give up their credit or debit card numbers, which his entities, agents, employees, and contractors use without authorization to charge Plaintiffs for unordered and unwanted merchandise (sent through the U.S. Mail, accompanied by brochures and invoices containing still more factually false information) at exorbitant prices, sometimes for months or years on end, damaging Plaintiffs and defrauding the federally insured banks who issue said credit or debit cards, and then Mr. Irwin receives across state lines far more than \$5,000 of money taken by fraud, and uses it to promote the carrying on of further mail, wire, bank, and access device fraud, and also engages in monetary transactions of far more than \$10,000 with said proceeds.

38. All Defendants make most of their living by means of a pattern of racketeering activity that has damaged over 200,000 Plaintiffs in their property and business with no end in sight, to wit, Defendants deliberately communicate countless knowingly false and misleading statements every day through the U.S. Mail and over the interstate wires to deceive Plaintiffs into paying

hard-earned money for overpriced, useless, and/or harmful “natural health” products and publications that few people would ever buy if such items were truthfully represented; and furthermore commit constant access device fraud and bank fraud by charging Plaintiffs’ credit and debit cards for unwanted and unordered merchandise; and then Defendants conspire to, and do, receive across state lines and launder millions of dollars of proceeds from their mail, wire, bank, and access device fraud in order to promote and carry on further such unlawful activity, and also engage in monetary transactions of more than \$10,000 that they know to be the proceeds of specified unlawful activity.

39. Hereinafter, “Defendants” refers to all named Defendants as well as any agent, employee, officer, director, stakeholder, or other person(s) whose acts or omissions furthered Defendants’ conspiracy, because each and every Defendant is jointly and severally liable for all damages resulting from any act in furtherance of the objects (extreme profit by way of mail, wire, bank, and access device fraud and money laundering) of the conspiracy, unless Plaintiffs specifically plead otherwise.

40. Defendants were and are on notice that similar racketeering operations are thoroughly illegal, by the contemporaneous and well-publicized prosecution of Steven Warshak, now sitting in prison for 25 years with scant hope of successful appeal, and other key personnel, including his mother and his lawyer, of Berkeley Premium Nutraceuticals, purveyors of the “natural male enhancement” supplement Enzyte, for the same pattern of lawbreaking as here: useless or harmful products, false claims of a medically impossible result in a memorable TV and online campaign (i.e., the ubiquitous “Smiling Bob,” perpetually accompanied by envious admirers, ribald double entendres, a jaunty whistled jingle, “and a very happy missus at home”), steady streams of unwanted merchandise from a surprise “continuity” program, unauthorized credit and

debit card charges, elusive customer service reps, nonsensical conditions for refunds, and almost never any money back. *See United States v. Warshak*, 562 F.Supp.2d 986 (S.D.Oh. 2008).

**Named Plaintiff's Dealings with Defendants, Part One:
Dual Action Cleanse Proves to be Ineffective and Overpriced**

41. On or about 16 February 2009, Named Plaintiff Antonio Rodriguez was at his home in Clarkton, North Carolina watching the Women's Entertainment channel on television.

42. Named Plaintiff viewed the Infomercial for Dual Action Cleanse, available in full at dualactioncleanse_net/pages/DAC_show_html and transcribed in **Exhs. 1 and 2**.

43. In this Infomercial, Mr. Irwin, in response to questions from Dr. Chappell specifically meant to bring forth such answers, personally states many times in the Infomercial that use of Dual Action Cleanse as directed will result in bowel movements at least once or twice per day and thus get rid of "toxins" and "accumulated waste," e.g., this passage, which begins at about 15:50 of the Infomercial (or about 6:00 of Part 2):

It's a combination of 21 different herbs and digestive aids that literally eat away at the clogged matter and toxins in your colon that have built up over the years. It helps with the peristaltic movement of your colon to get your bowel movements working correctly on their own, with increased girth and length, and now [6:10-6:28 title "First 300 Callers Receive a Deep Discount & 2 FREE GIFTS"] what you see in the toilet is the first sign that you're getting the toxins and gunk out of your body, that you're getting cleansed and renewed. Now again, I'm sorry to be so graphic, but it's the only way that I know how to communicate how this product will actually have you properly eliminating the garbage and clogged matter that you've been holding onto for years.

44. Named Plaintiff was having occasional constipation and, based on Mr. Irwin and Dr. Chappell's representations, reasonably believed that Dual Action Cleanse would help.

45. The word "discount" appeared 20 times in the Infomercial, sometimes in conjunction with "NEW TV Discount Offer" or "low deep discount," reasonably leading Named Plaintiff to believe that he would pay a very low price for at least the first order.

46. In fact, Defendants planned to charge Named Plaintiff full price and then some.

- 47.** Defendants thus completed at least one count of wire fraud, 18 U.S.C. § 1343.
- 48.** In direct response to the Infomercial, Named Plaintiff called the given number 800 825 4341 on or about 16 February 2009 from North Carolina, which call was routed to one of Irwin Naturals' third party call centers in another state, and which Defendants claim they recorded, but have not provided this recording or a transcript of it to Mr. Rodriguez, so the following is based on his recollection of this call, subject to correction if Defendants' recording shows otherwise.
- 49.** By accepting this call in furtherance of their scheme to cheat and defraud Named Plaintiff, Defendants completed another count of wire fraud, 18 U.S.C. § 1343.
- 50.** During that call, Mr. Rodriguez gave his credit card number for a purchase of Dual Action Cleanse, order number 04941252, but specified that he was only buying one time and did not want additional orders.
- 51.** At all relevant times, the issuer of Named Plaintiff's credit card was Citibank, N.A., a federally chartered bank whose deposits the Federal Deposit Insurance Corporation insures, FDIC certificate number 7213.
- 52.** Irwin Naturals in the name of "KLEE IRWIN HLTH PROG-V 800-9714054" charged Named Plaintiff's credit card \$77.35 on 17 February 2009 (**Exh. 5**).
- 53.** Irwin Naturals in the name of "KLEE IRWIN HLTH PROG-V 800-9714054" charged Named Plaintiff's credit card \$39.90 on 18 February 2009 (**Exh. 5**).
- 54.** These prices contradicted the 20 claims of "discount" in the Infomercial.
- 55.** Irwin Naturals, knowing that the payment from Named Plaintiff's credit card was proceeds of the specified unlawful activities of wire fraud, deposited the money in a bank account, some of which ultimately went to Mr. Irwin and Mr. Stevens, and some of which promoted the carrying

on of further mail and wire fraud by paying the expenses of Defendants' business such as advertising, salaries, benefits, and utilities, all by prior agreement.

56. Defendants thus completed a count of promotion money laundering and conspiracy to launder money, 18 U.S.C. § 1956(a)(1)(A)(i) and (h).

57. On or about 26 February 2009, Named Plaintiff received through his U.S. Post Office box from "Dual-Action Cleanse, P.O. Box 10451, Van Nuys, CA 91410" one bottle each of Colon Clear Formula, Total Body Purifier, Green Tea Natural Energy, and 12-in-One Men.

58. Accompanying the shipment was a document (**Exh. 6**), titled "STATEMENT" with "Cellular Research Formulas/The Science of Wellbeing" and the "Dual-Action Cleanse" logo at the top, listing "12N1 MEN 1 MONTH SUPPLY" at a "regular price" of \$59.90, but after a "deep discount" of \$29.95 the "total" was \$29.95.

59. This was false and deceptive because the product is, at best, a nutritional supplement equivalent to \$5 of generic multivitamins, and is not worth anywhere near \$29.95, let alone \$59.90, and Defendants' "Cellular Research Formulas" are completely unscientific and do not contribute to wellbeing.

60. Under the subtotal of \$29.95 was "shipping & handling" of \$9.95, totaling \$39.90 actual price for just one bottle of 12-in-One.

61. This amount was false and deceptive because one pill bottle requires no real handling, and \$9.95 is a grossly unreasonable and excessive shipping charge, especially since this bottle arrived in the same box as other products.

62. The line item "Rush & Priority (if requested)" was .00.

- 63.** The next page (**Exh. 6**) invoiced “D.A.C. 2 MONTH AUTO SHIP,” the first mention of Auto Ship that Named Plaintiff had encountered so far (the Infomercial says nothing about it), at a regular price of \$79.90 but a “Deep Discount” of \$20.00 reduced it to \$59.90.
- 64.** A note under the “Deep Discount” heading stated: “As a Deep Discount customer, you just saved \$20.00 on your shipment. And you’ll continue to save every month until you reach the ultimate low price of \$39.90!”
- 65.** Seeing as how DAC is available at GNC for at most \$34.99, and online from Walmart for as little as \$22.88 plus a *small* shipping charge, \$59.90 or even \$39.90 are not discount prices.
- 66.** “Shipping & Handling” was \$9.95, which together with the already excessive \$9.95 S&H for the 12-in-One bottle totaled an even more excessive \$19.90
- 67.** Though the 12-in-One invoice did not charge for this, the DAC invoice listed \$7.50 for “Rush & Priority (if requested).”
- 68.** The time from order to arrival was at least 8 days, not a “rush” by any standard.
- 69.** The \$27.40 total for “shipping & handling” exceeded DAC’s entire retail price at Walmart.
- 70.** Industry expert A.J. Khubani, founder and president of infomercial empire Telebrands Corp., freely (if a bit sheepishly) admitted in answer to a reporter’s question on the CNBC news special “As Seen On TV” that direct response marketers will charge “as much as they think they can get away with” for “shipping and handling,” implying that “shipping and handling” charges bear no relation to either shipping or handling and are just a way to dishonestly increase the real price of a product after getting the customer’s attention with a seemingly low advertised price, but the highest number that even Mr. Khubani threw out was \$6.99.
- 71.** The grand total for Named Plaintiff’s order was **\$117.25**, hardly a “Low Deep Discount.”

72. Also on this document was the claim: “Your purchase has a Money-Back Guarantee! See reverse side for details.”

73. In turn, the reverse side “Cancellation/Return Policy” read:

There may come a time during your use of Dual-Action Cleanse when you feel you’re not getting the benefits you had planned. Usually, this means you just need to stay on the program a little longer. Hundreds of thousands of customers have slightly different response times to the amazing benefits of Dual-Action Cleanse, and so we encourage you to stay on the program.

However, if you feel that this product is not working (or not working fast enough) for you, there is a Dual-Action Cleanse specialist who is available during regular business hours to help you get what you need out of the program.

Of course, we provide our customers with a Money-Back Guarantee on their first product purchase. If you are not completely satisfied with Dual-Action Cleanse, or any other products in the program, all you need to do is follow these 2 steps.

Step 1: Call our Customer Care Center within 30 days from the date your order was received.

Step 2: Obtain a Return Authorization Number and instructions for returning your shipment.

Customer Care Center: 1-800-941-0163

Regular Business Hours (Pacific time): Monday-Friday 6:00 am to 7:00 pm, Saturdays 7:00 am to 3:00 pm

74. This was false and deceptive in at least the following ways: lack of perceived benefit from DAC is not an indication of needing to stay on the program for any length of time, but rather is direct evidence that DAC is worthless or harmful; continuing to ingest DAC has made some people sick enough to require medical attention or hospitalization; whoever answers the phone at Defendants’ “Customer Care Center” will not be a “specialist” trying to help people, but only a salesperson with no medical training whose goal is to prevent the customer from obtaining a refund of any kind; Defendants honor no money-back guarantee on the first or any purchase; and, even those who obtain a RAN and shipping instructions will not receive a refund.

75. In the package was a brochure for DAC (**Exh. 7**) promising on page 6 among many other things “Bowel movements normalize to about two to three a day” and “Abdomen begins to flatten, even when sitting down” by day 8-14, and “Increased feelings of energy and vitality. Body feels light and youthful” by day 15-30, none of which occurred.

76. In the package was a brochure for 12-in-One (**Exh. 8**), beginning with a letter under the photograph and over the signature of “Klee Irwin, Your Personal Health Coach,” and making the following false claims:

77. On page 4 is a “Nutrient Starvation Quiz” that asks whether the reader has any of the following signs or symptoms: anxiety, blood sugar problems such as insulin resistance, breathing problems (including asthma), chronic infections, diarrhea, difficulty in wound healing, dry skin or hair, feeling “blue” or moody, hair loss and/or brittle nails, headaches, hypertension, inability to concentrate, insomnia, irritability, low endurance, low energy, muscle aches/cramps, numbness, tingling or pain in the extremities, poor hearing, poor taste and/or smell, skin problems (eczema and/or acne), skin rashes, or weakness, and then, depending on how many “yes” answers the reader indicated, to what degree the reader must therefore be “undernourished,” followed by the statement: “12-in-One Soft-Gel Multi is not intended to cure or prevent any disease, including the conditions listed above.”

78. This is false and misleading because the above conditions can have many causes, and some of them have nothing whatsoever to do with nutrition.

79. On page 7 is a claim that humans need to take supplemental digestive enzymes, such as 12-in-One supposedly has, which is false because the body normally makes the right quantities of all the enzymes it needs, and stomach acid will destroy any digestive enzymes in food.

80. On page 8 is a claim that 12-in-One has a fruit and vegetable blend that counts toward the USDA-recommended 5 to 8 servings of fruit and vegetables per day, which is false because the minuscule amount of fruit or vegetable concentrate in a 12-in-One geltab is not anywhere near even one-tenth of a serving of fruits or vegetables.

81. On page 8 is a claim that 12-in-One has “targeted nutraceuticals” that “[o]ffer an additional dimension by providing support, including Glucosamine for joint flexibility, Flaxseed for breast health, Lutein for the eyes, Lycopene for prostate health (Men’s Formula) and Milk Thistle for liver maintenance,” which is false because none of those substances does any of the things claimed, except possibly glucosamine, but scientific studies are inconclusive about its benefits, and there is no way to know how much of it is actually in 12-in-One.

82. On page 8 is a claim that 12-in-One has “Zinc, Echinacea and Olive Leaf” to “help support your immune system,” which is partly true in that men need 11mg and women need 8mg zinc daily for proper immune system function, but mostly false because taking more zinc than necessary will not “help support” or improve immune function and an intake of 150-450mg daily can result in chronic zinc toxicity with many ill effects including affirmative *harm* to the immune system, and the immune system benefits of echinacea and olive leaf, if any, are scientifically uncertain and probably none, plus there is no disclosure of each substance’s quantity.

83. On page 8 is a claim that the “Memory and Concentration Complex” of 12-in-One “[h]elps you recall information faster, plus enhances concentration and helps reduce mental fatigue. Acetyl L-Carnitine, for instance, encourages the production of key neurotransmitters involved in memory,” which is false because any number of scientific studies show that no supplements have even a placebo effect on memory or concentration except preliminary research showing that acetyl l-carnitine might in time be developed for use in treating Alzheimer’s disease.

84. Page 10 has a diagram showing alleged “Increased Savings” and unexpectedly announcing: “As a Deep Discount Customer, you automatically receive your next shipment of 12-in-One, so you’ll never worry about running out,” and claiming that “every shipment of 12-in-One will cost you less than the previous one,” which is misleading because Named Plaintiff did not ask for or want to be put on any kind of auto-ship program and indeed did not want any more of Defendants’ products at all, and each shipment is overpriced at any price above the equivalent amount of generic vitamins.

85. Pages 12 and 13 are an advertisement for Dual Action Cleanse, with the usual false claims promoting it, e.g.: “Encourages healthy peristaltic action of the colon muscles,” which the colon muscles already do automatically; “Helps you feel refreshed, light and clean” when DAC has no such effect and often makes people sick; “Aids digestion and makes you feel trimmer” even though the digestive system works automatically and DAC will not make anybody feel trimmer; “Internal cleansing unlocks your body’s natural ability to release built-up toxins and pounds of unwanted material” when the body has no such toxins or unwanted material to start with; and now the claimed number of “key nutrients” in DAC is up to “more than 100.”

86. Pages 14 and 15 are an advertisement for Mr. Irwin’s “Glucotrin System,” another random concoction of ineffective “natural” products, with the banner headline “Pre-Diabetes: Are You the Next Victim?” and claiming that half of all people between the ages of 40 and 74 are “diabetic or pre-diabetic and don’t even know it,” but advises: “Try The Glucotrin System now and give yourself another tool in the fight against pre-diabetes,” which is false because there is no evidence that that many people have “pre-diabetes,” and if they do, then nothing Mr. Irwin comes up with could help; plus, Mr. Irwin claims in advertising at glucotrin.com that “[e]ach part of the Glucotrin System has been carefully assembled by the Blood Sugar Institute to

support multiple dimensions of healthy blood sugar,” when in fact there is no such thing as “the Blood Sugar Institute,” although Glucotrin phone reps have been known to claim that they are working for “the Blood Sugar Institute” when really they are at an ordinary call center.

87. Named Plaintiff could not even swallow the 12-in-One geltabs because they were so large.

88. Named Plaintiff still has the remainder of 12-in-One geltabs in their original container.

89. Named Plaintiff took the entire bottles of Dual Action Cleanse as directed.

90. Dual Action Cleanse did not help Named Plaintiff’s condition at all.

91. Named Plaintiff had to go to a real doctor, who competently diagnosed his condition and prescribed pharmaceutical medication that actually worked.

**Named Plaintiff’s Dealings with Defendants, Part Two:
Unwanted “Auto-Ship,” Months of Unauthorized Charges, and No Refunds**

92. Even though Named Plaintiff had specifically ordered one time only in February 2009, Defendants sent him unordered and unwanted products and charged him for them.

93. Irwin Naturals in the name of “KLEE IRWIN HLTH PROG-V 800-9714054” charged Named Plaintiff’s credit card \$64.85 on 20 April 2009, without authorization (**Exh. 5**).

94. The Infomercial, in a voiceover beginning about 9:55 (0:00 of Part 2), available at youtube.com/watch?v=vE-trPUt50o, promised:

More than two million Americans have already experienced the renewal of Dual Action Cleanse. Now you can too [0:07 flashing title “Deep Discount for 1st Time Buyers”] through this special deep discount TV offer for first-time buyers only. For years, your body has suffered from clogged buildup from a low-fiber diet full of chemicals, growth hormones, alcohol, and caffeine, not to mention prescription drugs and toxins in your air and water. Well, it’s time to stop—stop feeling weighed down, bloated, gassy, sluggish, tired, and foggy-headed. And beware of imitations—Dual Action Cleanse is a one-of-a-kind formula because its powerful natural herbs gently purify from the inside out, leaving you feeling clean and light inside.

ALLEGED CUSTOMER: It’s a product you realize starts to work within the first couple of days. You feel it throughout your body.

VOICEOVER: So call now to get your first-time buyer discount. You’ll feel renewed, energized, lighter, as the bulge in your abdomen flattens out and you get your health back on track. And our no questions asked [1:02 title “No Questions Asked”] guarantee [1:04 animation

of suit-sleeved hand stamping “QUALITY GUARANTEE” in red ink on a blank background, accompanied by “bonk” sound effect] means there’s no risk. If you don’t feel amazing, you don’t pay. [1:07 title “You Don’t Pay”]

95. Named Plaintiff telephoned the given toll-free number at least three times, one of them on or about 30 April 2009 (handwritten note visible in **Exh. 9**), explaining that he could not even swallow 12-in-One and wanted no more products from Defendants, whereupon a woman told him that he had to write to the company and explain why, and disregarded Named Plaintiff’s protest that he is not a native speaker of English and could not easily write such a letter.

96. Irwin Naturals in the name of “KLEE IRWIN HLTH PROG-V 800-9714054” charged Named Plaintiff’s credit card \$59.85 on 21 June 2009, without authorization (**Exh. 5**).

97. Irwin Naturals in the name of “KLEE IRWIN HLTH PROG-V 800-9714054” charged Named Plaintiff’s credit card \$54.85 on 23 August 2009, without authorization (**Exh. 5**).

98. Each and every charge of Named Plaintiff’s card completed an offense of obtaining property by false pretenses, a Class H felony per NCGS § 14-100.

99. Counting the charge for the initial order, Named Plaintiff lost at least **\$296.80**.

100. Since this was part of a pattern of charging hundreds of thousands of people without authorization and obtaining more than \$1,000 per year thereby, Defendants committed at least one count of access device fraud, 18 U.S.C. § 1029(a)(2), (3), and (5).

101. Since Citibank is federally insured and Defendants damaged it by obtaining unauthorized benefits, Defendants completed at least three counts of bank fraud, 18 U.S.C. § 1344.

102. Since these charges were part of Defendants’ scheme to transport, transmit, or transfer in interstate commerce (through the interstate wires from a federally insured bank, among other means) money of the value of \$5,000 or more, knowing the same to have been converted or

taken by fraud, Defendants completed at least one count of 18 U.S.C. § 2314 transportation of stolen moneys.

103. Since these charges were part of Defendants' scheme to receive or possess money of the value of \$5,000 or more which crossed a state line after being unlawfully converted or taken by fraud, knowing the same to have been unlawfully converted or taken by fraud, Defendants completed at least one count of 18 U.S.C. § 2315 receipt of stolen moneys.

104. Since these charges were part of what Defendants knew to be criminally derived property of a value greater than \$10,000, Defendants completed at least one count of 18 U.S.C. § 1957(a) engaging in monetary transactions derived from the specified unlawful activities prohibited in 18 U.S.C. §§ 1029, 1341, 1343, 1344, 2314, and 2315.

105. Named Plaintiff had to pay interest on Defendants' unauthorized charges.

106. Named Plaintiff called Citibank at least four times to direct it to stop accepting charges from Defendants, but Citibank never did.

107. Eventually, Named Plaintiff's account was sent to a collection agency, damaging his credit and resulting in collection calls and dunning letters.

108. As late as December 2009, Defendants kept sending unwanted and unordered products through the U.S. Mail, misrepresenting that Named Plaintiff ordered them.

109. Defendants did this in the hope that Named Plaintiff would pay for more product.

110. Each such mailing completed another count of mail fraud, 18 U.S.C. § 1341.

111. Named Plaintiff is 81 years old, cannot work, and lives on a fixed income.

As To the Nationwide Class of Plaintiffs

112. officialdualactioncleanse.com/ (**Exh. 10**) and dualactioncleanseonline.com/ (**Exh. 11**)

claim: “The natural herbal formula of Dual-Action Cleanse has changed hundreds of thousands of people’s lives by cleansing the digestive tract of harmful toxins.”

113. [dualactioncleanse_com/](#) (**Exh. 12**) claims: “This natural herbal formula has changed hundreds of thousands of people’s lives through gentle and effective whole body internal cleansing.”

114. [dualactioncleanse_org/](#) (**Exh. 13**) urges: “Join the *millions* of satisfied customers using Klee Irwin’s products.” (emphasis in original)

115. The DAC Infomercial claims at about 8:50 (beginning of Part 2): “More than two million Americans have already experienced the renewal of Dual Action Cleanse.”

116. Although these statements are largely false, because there are no “harmful toxins” in the digestive tract to start with, and DAC cannot possibly “renew” anything or achieve “whole body internal cleansing,” without doubt hundreds of thousands of people have bought DAC.

117. Defendants do the same things to them as to Named Plaintiff, violating the same federal laws and any similar state laws in the other 49 states.

118. The Class is therefore numerous, and Named Plaintiff’s claim is typical of theirs, such that common questions dominate over individual issues.

119. Defendants advertise DAC through at least the following websites:

[dualactioncleansenow_com/](#) (official site) (**Exh. 14**)

[officialdualactioncleanse_com/](#)

[dualactioncleanse_com/](#)

[dualactioncleanse_net/](#) (infomercial and transcript available here) (**Exh. 2**)

[dualactioncleanse_org/](#)

[dualactioncleanseonline_com/](#)

[dualcleanseonline_com/](#)

[asseenontv_com/prod-pages/dual_action_cleanse_html](#) (**Exh. 15**)

120. With each website, Defendants commit constant wire fraud, 18 U.S.C. § 1343, because each contains many falsehoods designed to further Defendants’ scheme or artifice to cheat and

defraud Class Members of money in exchange for worthless or harmful products that do not live up to Defendants' specific claims.

121. Defendants deliver DAC through the U.S. Postal Service or interstate couriers whether Class Members ordered it or not, committing constant mail fraud, 18 U.S.C. § 1341.

122. Some of the many retailers who sell DAC online and/or in retail stores are:

amazon.com/Applied-Nutrition-Action-Cleanse-Burner/dp/B002WN343S
gnc.com/product/index.jsp?productId=2969563
drugstore.com/qxp226381_333181_sespider_1_1/applied_nutrition/dual_action_cleanse_htm
healthbuy.com/product/overview/dual_action_cleanse/ (autoship option)
walmart.com/ip/Cellular-Research-Formula-Dual-Action-Cleanse/10452000
walgreens.com/store/catalog/Stomach-Remedies/Dual-Action-Cleanse-w/-Green-Tea/ID=prod3824216&navCount=1&navAction=push-product

123. Even people who buy DAC from retailers other than Defendants, and thereby do not give Defendants a way to charge their credit or debit cards, suffer damage in the amount of the purchase price plus tax for DAC, and some people require medical attention after ingesting it.

124. As with Named Plaintiff, Defendants refuse refunds to Class Members as a matter of course, even for those who follow all of Defendants' requested procedures.

125. The only exception to this policy appears to be for customers who also complain to the Better Business Bureau of Los Angeles (**Exh. 16**), which as of 21 May 2010 listed 508 complaints against Dual Action Cleanse, resulting in 399 full refunds, 16 partial refunds, 78 agreements "to perform according to their contract," 10 refusals to make an adjustment, 4 refusals to adjust, "relying on terms of agreement," one "unassigned," and zero "unanswered," inexplicably resulting in a "BBB Accredited Business" label and BBB Rating of A; but since more than 200,000 customers have bought DAC and those who gave Defendants their credit or debit card numbers have each lost hundreds of dollars to unauthorized charges, the successful BBB complainants amount to less than 0.5% of Defendants' victims, and even those refunds are

only to maintain the façade of BBB approval and thereby defraud people who reasonably rely on BBB ratings, resulting in far more profit to Defendants, and far more damage to the public, than if Defendants did not give up the tiny fraction of their profit that comes from BBB complainants.

126. Class Members who buy other products besides DAC from Defendants, even such products as are reasonably priced and beneficial and not harmful, are entitled to damages for any unauthorized charges or unordered merchandise.

Dual Action Cleanse Is Poorly Designed, Ineffective, and Often Harmful

127. Defendants' claims of DAC's effectiveness depend on the theory that human colons get contaminated over time with "toxins" and residue that hinders regular bowel movements and causes many health problems, so colons need "cleansing" with "natural" remedies (which, as it happens, "toxic colon" proponents always seem to have on sale).

128. In fact, the notions of "toxins" and "cleansing" are obsolete pseudoscience long known to be utterly without basis in fact, as evidenced by proponents' inability to specify which "toxins" are supposed to be causing each ailment.

129. Frequently, this theory is accompanied by the belief that the typical American has several pounds of undigested red meat rotting away in the colon, which is nothing more than a persistent urban legend easily disproved by colonoscopy or autopsy.

130. None of this stops Mr. Irwin and Dr. Chappell on behalf of all Defendants from attributing any number of ailments to "toxins" and claiming that DAC is the antidote that not only treats and cures them all, but also brings about the American holy grail of instant and painless weight loss; e.g., beginning at about 13:50 of the Infomercial [4:03 of Part 2]:

[4:03-4:11 title "If you have infrequent bowel movements, you may need Dual-Action Cleanse."] We have fewer bowel movements, and sometimes the undigested fecal matter actually seeps back into our body. This is part of the reason people sometimes see strange symptoms like skin rashes or dry skin or allergies. The body is desperately trying to get

rid of the toxins through the skin. Now it also explains why some people have excess weight. They're literally loaded with extra weight from the undigested matter and bloated with gases from the rotting food that gets clogged up inside of them. It's really disgusting, but, I mean, we have to be frank. It's sad. In fact, it's not unheard-of for people [4:42 title "First 300 Callers Receive a Deep Discount & 2 FREE GIFTS"] to have several pounds of compacted impacted fecal matter clogging their digestive system at any given time. Plus, a lovely side effect of getting internally clean is that you might drop a few pounds of backed-up fecal matter overnight, quite literally. And it's not fat weight, but it's real weight off of your scale.

131. The foregoing is complete fiction with no basis in fact whatsoever, but Defendants promulgate it anyway to sell DAC and other useless products.

132. Some customers report satisfaction or at least no harm from taking DAC.

133. Many people, however, report no "cleansing" effects, no feelings of "well-being" or "more energy," or any other benefit that DAC's advertising claims to provide.

134. Many others report serious adverse effects, including headache, dizziness, confusion, nausea, abdominal pain, bloating, diarrhea, and (ironically enough) constipation or insufficient bowel movements, sometimes requiring medical intervention.

135. whnt.com/news/takingaction/whnt-colon-cleansing-problem,0,6498924.story is just one example: John Edwards of Fayetteville TN bought DAC at a retail store, took it as directed for five days, and the next night, woke up at 3:00am deathly ill with sharp pains, vomiting, and diarrhea, unable to even stand up, requiring his wife to take him to the emergency room, where a real doctor (noting that Mr. Edwards was the third person he had seen made sick by DAC) diagnosed him with colon blockage—exactly the condition that DAC is supposed to treat and prevent—and Mr. Edwards stayed four days in the hospital, costing him nearly \$4,000.

136. At about 15:00 of the DAC Infomercial (5:11-5:18 of Part 2), this title appears: "While not a laxative, Dual Action Cleanse has similar benefits and effects of a laxative."

137. While the title is still on the screen, Mr. Irwin is saying: “Well, laxatives weaken your ability to keep things moving. They can make you dependent on them.”

138. But if DAC works at all, it has to be a laxative virtually by definition, and many of its components have known laxative properties, including exactly the side effect Mr. Irwin mentioned—laxative dependency.

DAC Ingredients and Their Benefits—or lack of benefits

139. DAC consists of two products that each come in a separate bottle, Colon Clear Formula (CCF) and Total Body Purifier (TBP), neither of which lives up to its name.

140. dualactioncleanse.com describes CCF thus:

Slow infrequent bowel movements may cause fatigue, bloating and overall sluggish feeling. Colon Clear contains a proprietary blend of 22 fibers and herbs to enhance peristaltic action and support your digestive function (promoting 2-3 bowel movements per day). This natural action tones and cleanses the colon while eliminating unnecessary toxic build-up. Colon Clear delivers such ingredients as Psyllium, Alfalfa, Pau D’Arco, Oat Bran, and Lactobacillus Acidophilus in a proprietary blend to enhance elimination of built up toxins and waste matter. Colon Clear should be taken every 30-days, followed by a 30-day “break,” and is not intended to be taken on a constant basis.

141. Oncology expert Denis R. Miller, MD (**Exhs. 17-22**), whose c.v. shows decades of research on “complementary medicine” as well as conventional treatment of cancer, noted:

Most text books define constipation as ‘infrequent bowel movements, typically <3 times per week, difficulty during defecations, or the sensation of incomplete bowel evacuation.’ ... In my review of a variety of colon cleansing products currently on the market, I found that most of the purveyors of colon cleansing products offer a new, self-serving definition of constipation: ... ‘Ideally, you should have a bowel movement after every meal. Any less than two or three bowel movements a day, and you’re probably constipated.’ ... If this new definition of constipation were accepted, virtually every American would now be classified as ‘constipated’ and thus would be a candidate for a proprietary colon cleanser.

142. dualactioncleanse.com/skins/Skin_37/images/colonclearflat.gif is CCF’s product label, but does not print completely enough to be a fairly depicted Exhibit.

143. DAC's box label is reproduced in **Exh. 23** and its CCF ingredient information first lists 98mg calcium, which its advertising does not prominently mention, if at all.

144. Most of the rest is a 554mg "Proprietary Blend" of the following ingredients.

145. Cascara sagrada bark (*Rhamnus purshiana*) seems to be the main ingredient in CCF. Pacific Northwest Native tribes have long known of its laxative properties. In 2002, the Food and Drug Administration banned its incorporation in over-the-counter drug products as "not generally recognized as safe and effective." Cascara sagrada (Spanish, "sacred bark") is a stimulant laxative containing anthroquinones, which trigger colon peristalsis and thereby bowel movements. However, even cascara sagrada's proponents warn against using it for more than 7 days straight or it can cause bloody diarrhea, abdominal pain, and laxative dependency.

146. CCF's product label warns (allcaps, bold, and underscores in original):

NOTICE: This product contains Cascara Sagrada. Read and follow directions carefully. **Do not use if you have or develop diarrhea, loose stools, or abdominal pain because Cascara Sagrada may worsen these conditions and may be harmful to your health.** Do not take this product before consulting a physician if you have frequent diarrhea or if you are pregnant, nursing, taking medication, or have a medical condition.

147. This tends to contradict the Infomercial, which does not mention side effects, contraindications, or possible harm from taking DAC.

148. Fennel seed (*Foeniculum vulgare dulce*): Mostly a cooking spice, but can be a laxative in sufficient doses.

149. Psyllium seed (*Plantago ovata*, *Plantago isphagula*): "Bulk-forming" laxative and common ingredient in OTC laxatives such as Metamucil; absorbs water and expands in volume. It can cause gas or stomach cramping, and DAC's directions for use do not mention that psyllium seed needs to be taken with a lot of water or it will swell in the throat and cause choking, or that it can possibly expand in the GI tract and block it.

150. Ginger root (*Zingiber officinale*): Evidence indicates that ginger is more effective than placebo for relieving nausea stemming from pregnancy, chemotherapy, and motion sickness. Pharmaceuticals are more effective but have more side effects. Ginger seems to reduce inflammation, possibly as well as ibuprofen does.

151. Acacia gum (*Acacia senegal*): Also called gum arabic, may have some cholesterol-lowering properties, but evidence is thin for this, and it may cause gas and bloating, exactly the conditions that DAC claims to prevent or treat.

152. Alfalfa leaf (*Medicago sativa*): Mostly this is forage for domestic animals, very high feed value. Its medical benefits and uses, if any, are dubious. May be a diuretic. Some believe that it can treat diabetes, but there is no scientific evidence for this.

153. Pau d'arco (*Tabebuia avellanedae*, *T. heptaphylla*, *T. impetiginosa*): Absolutely no medical use. Many CAM enthusiasts claim it to be a cure for cancer, but at least one scientific study showed no such clinical effect. Pau d'arco does have two naphthaquinone compounds that exhibit anti-inflammatory and antibiotic properties in lab tests, but the dose necessary to achieve these effects in humans, or to kill cancer cells, would also be severely toxic. Reported adverse effects include interference with blood thinners and “nausea, vomiting, dizziness, anemia, bleeding, and discoloration of urine” according to the Memorial Sloan-Kettering Cancer Center. It may, then, be just as well that CCF’s ingredient list specifies “Pau d’arco (root),” which is the wrong part of the plant—the identifiable compounds are in the bark.

154. Apple pectin and apple powder (*Malus domestica*): Pectin by itself may be a mild laxative or at least add bulk, but the tiny amount in a CCF geltab, even if it is actually there, cannot possibly have any of the beneficial effects of eating actual apples.

- 155.** Watercress (*Nasturtium officinale*): This, too, is really a food item, popular in salads, with many traditional medical uses in Iran to treat many illnesses. Some scientific study indicates that watercress in some form may have measurable benefit, but much more work needs to be done to know what real medical use it has, if any.
- 156.** Barley rice (fiber) (*Hordeum vulgare*): Also a food item, and CCF has such a small amount that its normal dietary benefit cannot possibly be there.
- 157.** Beet (root) (*Beta vulgaris*): Yet another a food item with no benefit other than nutrition, and CCF has an insufficient quantity to do even that.
- 158.** Gum karaya (*Sterculia urens*): This exudate has many uses in industry, and in dental and skin adhesives, and may function as a bulk laxative.
- 159.** Garlic extract (*Allium sativum*): Many traditional uses, some scientific evidence that it may reduce blood pressure a tiny bit, and has few side effects, but is at its best as a cooking herb, and the small amount in CCF is unlikely to have any benefit at all.
- 160.** Lemon peel (*Citrus limon*): No known medical benefit whatsoever.
- 161.** Peppermint leaf (*Mentha piperita*): Long history of traditional use in Europe. Studies have found peppermint oil to relieve pain of irritable bowel syndrome better than placebo, but only in oil form in specified doses, not leaf form as CCF claims to have.
- 162.** Turnip (*Brassica rapa*): Food item, and not enough in CCF for even that.
- 163.** Oat bran (seed kernel) (many species of the genus *Avena*): Food item, and not enough in CCF for even that.
- 164.** Red raspberry leaf (*Rubus idaeus*): Traditionally supposed to “prepare the womb for birth” and relieve inflammation and diarrhea with its astringent properties, but no medical evidence supports these or any other medical uses.

- 165.** Slippery elm bark (*Ulmus rubra* Muhl., *Ulmus fulva* Muhl.): The inner “slippery” bark can be made into porridge that may soothe the digestive tract. Whether this is of any real benefit for “cleansing” is unproven and doubtful, and CCF has not nearly enough of it to make porridge.
- 166.** *Lactobacillus acidophilus*: A species of bacteria already present in the human digestive tract, and in the correct amount. There is no medical benefit to taking any more of it, and some people are allergic to it.
- 167.** Guar gum (*Cyamopsis tetragonoloba*): Fiber from the seed of this plant has some laxative properties and is a common thickening and stabilizing agent in food production.
- 168.** Besides the foregoing “Proprietary Blend,” CCF has “Other ingredients: Microcrystalline cellulose, stearic acid, croscarmellose sodium, silicon dioxide, hydroxypropyl cellulose, magnesium stearate, sodium starch glycolate, soy polysaccharides and natural anise flavor,” which do not sound “natural” at all.
- 169.** Dr. Miller listed the properties of ingredient herbs in Central Coast Nutraceuticals, Inc’s fraudulent “colon cleanser” known as Colotox or Colopure (**Exh. 22**), most of which are also in DAC, and opined that whoever mixed it up most have thought “that if one laxative is good, six are even better.” Cascara sagrada, the *seventh* laxative in Colopure, “is the most potent of them all as its primary pharmacologic role is to increase intestinal motility and contractions, effectively producing bowel evacuation.” Regardless of benefit: “Reported adverse reactions from cascara sagrada include vomiting, abdominal cramps, diarrhea, hypokalemia, and rarely, cholestatic hepatitis.”
- 170.** Dr. Miller noted that laxative dependency from long-term use of laxatives such as cascara sagrada can cause “loss of bowel function, with exacerbation of constipation, bowel obstruction, and even death.”

171. CCF's directions are: "(Adult) Everyone's digestive system is different, so people respond differently to the Colon Clear Formula. Start by taking one (1) tablet in the morning and one (1) in the evening with or without food. If you do not achieve two daily bowel movements within two days, take two (2) tablets in the morning and two (2) in the evening. If you still do not achieve two bowel movements per day then move up to three (3) tablets in the morning and three (3) in the evening. Do not exceed a total of six (6) tablets a day."

172. In fact, CCF should not be taken in any amount because colons do not need "clearing," and also, increasing the dose of the dangerous laxatives, especially cascara sagrada, in CCF in order to achieve two bowel movements per day (despite the prefatory statement "Everyone's digestive system is different") as if this is somehow a medically desirable result for everyone, is far more likely to cause harm than benefit.

173. Following this is a "Note: You should take both formulas until they are gone. Your supply of Total Body Purifier will last exactly 30 days. Since response is unique, the Colon Clear Formula will last from 15 to 45 days depending on how many tablets you require."

174. Due to the dangerous and toxic ingredients, especially cascara sagrada, no one should take either formula for any amount of time, much less automatically consume both bottles.

Total Body Purifier Ingredients and Their Benefits—or lack of benefits

175. The first ingredient is 56mg calcium, which has no "detoxifying" or "purifying" effect.

176. Next is 13mcg iodine "(as Kelp from Proprietary Blend)," which has no "detoxifying" or "purifying" effect.

177. Most of the rest is a 498mg "proprietary blend" of the following ingredients.

178. Ingredients common to TBP and CCF are alfalfa, ginger, fennel seed, mint leaf, red raspberry leaf, beet root, and slippery elm bark, which have been covered already.

- 179.** In addition, none of the aforementioned ingredients has any “detoxifying” or “purifying” effects, contrary to what “Total Body Purifier” is supposed to do.
- 180.** Fenugreek seed (*Trigonella foenum-graecum*): Mostly a cooking spice found in many curry powders, and also a base for imitation maple syrup. Some studies have shown promise for treatment of diabetes, at least where other medications are unavailable. It has no “detoxifying” or “purifying” effects.
- 181.** Dandelion root (*Taraxacum officinale*): Dandelion leaves are a food item popular in salads. The roots are supposed to “restore” liver function but no scientific evidence exists for this claim. It has no “detoxifying” or “purifying” effects.
- 182.** Rhubarb root (*Rheum palmatum*): In the correct dose, functions as a laxative, but should *not* be taken in the event of bowel obstruction—the exact condition that DAC claims to cure and prevent. It has no “detoxifying” or “purifying” effects.
- 183.** Yarrow flower (*Achillea millefolium*): Traditionally made into tea for treatment of colds or flu and healing wounds, but no scientific evidence exists for these uses or for any “detoxifying” or “purifying” effects.
- 184.** Eleuthero extract (misspelled “eleuthera” on one version of the TBP label) (*Eleutherococcus senticosus*): Also called Siberian ginseng, has many traditional uses in Russia, but there is no scientific evidence of any medical benefit or “detoxifying” or “purifying” effects, and those with high blood pressure should not take it, which the product label does not disclose.
- 185.** Cape aloe gel (*Aloe ferox*): Another laxative, and this effect has considerable scientific support, but it has no “detoxifying” or “purifying” effects.
- 186.** Green tea extract (*Camellia sinensis*): Some evidence exists that one or more cups of green tea per day may help prevent cancer or lose a little weight, and might even soothe irritable

bowel syndrome, but those effects, if they actually happen, result from drinking the actual tea every day, not from a pill with an infinitesimal pinch of extract mixed in with dozens of other substances. It has no “detoxifying” or “purifying” effects.

187. Hawthorn berries (*Crataegus oxyacantha*): May have value in treating mild to moderate heart failure and angina, but self-medication of heart ailments is by no means recommended because it is unlikely to work without medical supervision, and can interact badly with other heart meds. Hawthorn berries have no “detoxifying” or “purifying” effects.

188. Horsetail herb (*Equisetum arvense*): Known diuretic properties. High silica content might theoretically benefit bones and treat osteoporosis, but no experimental evidence exists for this. It has no “detoxifying” or “purifying” effects.

189. Turmeric (*Curcuma longa*): Traditionally supposed to be anti-inflammatory and anti-toxic, and has proven in lab tests (but not clinical studies) to kill at least one species of bacteria, but otherwise has no “detoxifying” or “purifying” effects.

190. Blue green algae (cyanobacteria, aka pond scum): Far from having “detoxifying” or “purifying” effects, U.S. Army chemical warfare tests have shown that it produces anatoxin-A and microcystin, deadly poisons that can destroy the liver in sufficient doses.

191. Licorice root (*Glycyrrhiza glabra*): Many traditional uses, but scientific evidence is thin or inconclusive as to any benefit. Studies have, in fact, found that taking licorice for more than six weeks can cause hypertension and other serious side effects, and it interacts badly with digoxin. It has no “detoxifying” or “purifying” effects.

192. Marshmallow root (*Althaea officinalis*): Long history of traditional use in Europe, and evidence indicates that it suppresses coughs better than placebo but not as well as narcotics. It has no “detoxifying” or “purifying” effects.

- 193.** Mullein leaf (*Verbascum thapsus*): Supposed to treat respiratory ailments and suppress cough by mucus absorption or expectoration. It has no “detoxifying” or “purifying” effects.
- 194.** Red clover (*Trifolium pretense*): Edible plant with many folk medicine applications, but no scientific evidence of any medical benefit. It has no “detoxifying” or “purifying” effects.
- 195.** Tropical almond fruit (*Terminalia catappa*): May have antioxidant properties, but scientific evidence for this is thin. It has no “detoxifying” or “purifying” effects.
- 196.** Safflower oil seed (*Carthamus tinctorius*): Laxative properties in large doses, also a folk remedy for tumors, sprains, and rheumatism, but the tiny pinch in TBP is unlikely to do anything at all. It has no “detoxifying” or “purifying” effects.
- 197.** Skullcap herb (*Scutellaria lateriflora* (American skullcap), *S. baicalensis* (Chinese skullcap)): No known benefits and many serious side effects, including severe drowsiness, confusion, irregular pulse, stupor, and seizures. Sometimes contaminated with similar-looking germander (*Teucrium chamaedrys*), which can cause hepatitis. It has no “detoxifying” or “purifying” effects.
- 198.** Burdock (*Arctium lappa*, *Arctium minus*): Has diuretic properties, especially in oil of lappa form. Traditionally taken in many cultures for many ailments but little scientific evidence is available as to any real value. It has no “detoxifying” or “purifying” effects.
- 199.** Cranberry extract (*Vaccinium macrocarpon*): Cranberry juice, drunk regularly, has known benefits of preventing and treating urinary tract infections, and thus might be said to have “detoxifying” or “purifying” effects, but that results only from drinking plenty of cranberry juice, not from swallowing a microscopic dot of extract in a pill.

- 200.** Lecithin: A major component of cell membranes in every living thing, available in almost any food, but advertised widely as a weight-loss supplement, with no scientific evidence that it does so. It has no “detoxifying” or “purifying” effects.
- 201.** Chickweed herb (*Stellaria media*): Edible and nutritious, but no known scientific evidence of any medical benefit at all. It has no “detoxifying” or “purifying” effects.
- 202.** Papaya leaf (*Carica papaya*): Used worldwide in traditional medicine to treat just about everything, without much evidence that it in fact treats anything. Quality and composition of extracts varies greatly among individual plants. One compound in papaya is papain, which can cause infertility or even spontaneous abortion soon after conception if taken in large doses. It has no “detoxifying” or “purifying” effects.
- 203.** Milk thistle herb (*Silybum marianu*):. Supposed to treat liver ailments, without scientific evidence that it actually does so. It has no “detoxifying” or “purifying” effects.
- 204.** Black cohosh root (*Cimicifuga racemosa*): Native Americans used it to treat rheumatism and female problems, and it is believed to ease symptoms of menopause, but very little scientific study has been done. It has no “detoxifying” or “purifying” effects.
- 205.** Irish moss (*Chondrus crispus*): Actually a seaweed that grows along the coasts of Brittany and Ireland. It served as emergency food during the potato famine. It has no “detoxifying” or “purifying” effects.
- 206.** Club moss (*Huperzia serrata*): Contains a chemical known as Huperzine-A that is supposed to improve memory and behavior in people with Alzheimer’s disease, but neither this use nor its long term safety has been proven yet. It has no “detoxifying” or “purifying” effects.

- 207.** Plantain herb (*Plantago major*): Supposed to treat many ailments, and evidence shows that plantain salve can relieve poison ivy itching and perhaps insect bite itching. It has no “detoxifying” or “purifying” effects.
- 208.** Yellow dock root (*Rumex crispus*): General health tonic, may work as a mild laxative, but should not be taken for more than a week, as overdoses can cause diarrhea or even life-threatening calcium deficiency, especially in conjunction with diuretics or other meds that reduce calcium. It has no “detoxifying” or “purifying” effects.
- 209.** 160mg of the rest is an “Anti-Gas / Anti-Bloat Digestive Enzyme Blend” of amylase, cellulose, lactase, lipase, and protease, but the stomach digests them right along with any other food, meaning that any enzymes in TBP will just become a tiny amount of amino acid with only a trivial food value that does not “help” the digestive system, and the few people who really do have an enzyme deficiency disease cannot correct their condition by eating more enzymes.
- 210.** Last are “Other ingredients: Microcrystalline cellulose, stearic acid, sodium starch glycolate, silicon dioxide, croscarmellose sodium, hydroxypropyl cellulose, magnesium stearate, soy polysaccharides and natural peppermint flavor,” which do not sound very “natural.”
- 211.** Though DAC is supposed to give an energetic feeling, energy only comes from calories, and DAC’s ingredients have no caloric value as far as can be told.
- 212.** In addition to the ineffectiveness, contraindications, side effects, toxicity, and adverse interaction of DAC ingredients considered individually, Defendants do not specify the amounts of each ingredient, or whether the amounts remain constant from batch to batch, leaving health care practitioners unable to determine what DAC may be doing to their patients, and rendering independent lab testing very difficult if not meaningless.

213. TBP’s directions are: “(Adult) Take one (1) tablet in the morning or at lunch with food and one (1) in the evening with food.”

Specific Time-Stamped DAC Infomercial Claims and How They Are False

214. The Infomercial that induced Named Plaintiff to order the product is at

dualactioncleanse.net/pages/DAC_show.html

in its entirety, and in three parts, posted by username “DualActionCleanse,” at

youtube.com/watch?v=Yg4hQbPvva0 (part 1 through about 9:54)

youtube.com/watch?v=vE-trPUt50o (part 2 through about 19:19)

youtube.com/watch?v=PSfJ3fr9h_Q (part 3 through about 28:14)

and possibly at other sites as well.

215. Defendants themselves posted a transcript of the Infomercial in three parts, although

without the interjections of the other speaker or notes of titles and illustrations:

dualactioncleanse.net/pages/transcript_1.html

dualactioncleanse.net/pages/transcript_2.html

dualactioncleanse.net/pages/transcript_3.html

216. The following are direct quotes written down while viewing the Infomercial, followed by explanations of how they are misleading or just plain false.

217. 0:13 CHAPPELL: Welcome to the broadcast, everyone. I’m Dr. James Chappell [title: “Dr. James Chappell/Clinical Nutritionist & Master Herbalist] and for the next few minutes I’ll be your guide through a journey where you will rediscover great health.

Misleading: The term “master herbalist” is undefined, and Dr. Chappell’s chiropractic license expired in 1998. *False:* Far from resulting in “great health,” rediscovered or otherwise, DAC is instead known to cause serious health problems and cannot possibly improve health.

218. CHAPPELL: Now as a doctor and as a natural healing health specialist, I’ve always told my patients that the secret to great health starts in the colon.

Misleading: Dr. Chappell holds a DC degree but his chiropractic license expired in 1998. *False:* “Colonic health” is obsolete and thoroughly disproven junk science. Even if it were valid, DAC does not lead to “great health” of the colon or any other body part.

219. [0:48-1:03 title “Toxic build-up in the body can have many negative results, including stomach bloating, stiff joints, weight gain, mood swings, headaches and poor circulation.”]

False: There is no such thing as “toxic build-up in the body” and all the conditions listed have other causes that DAC does not treat.

220. 1:40 IRWIN: Well, according to the stats, as best we can tell, Dual Action Cleanse is the number one selling cleansing product in America, knock on wood, [1:50-1:59 title “Klee Irwin/Researcher, Author & Natural Product Formulator”] so people talk to their friends and their family when they use this formula that we developed, because they experience this renewed feeling of energy, ahm, not only in their body but in their mind, their ability to focus and concentrate, so, ah, we have a pretty powerful word of mouth movement happening all around the country. There’s celebrities using it, politicians, doctors, but for as many people who have taken advantage of the life-changing benefits of my formula, there are still millions of people carrying around [2:21-2:38 title “Many Americans have between 5 and 22 pounds of compacted fecal matter stuck in their digestive system.”] 15 or even 20 pounds of undigested toxic waste in their bodies that’s weighing them down.

Misleading: No evidence supports the claim that “celebrities, politicians, doctors” use DAC or that it changes their lives (for the better, anyway). *False:* Other than those suffering from acute intestinal obstruction, which has many medically recognized signs and symptoms and requires immediate medical attention (and DAC has been known to cause it), no American or any other human has any “compacted fecal matter stuck in their digestive system.”

221. 2:29 CHAPPELL: You know, Klee, this gunk you’re really talking about can accumulate in our body, especially our digestive system (IRWIN: “That’s right”) that can cause serious health problems. The human body was created to live off of a diet similar to how Americans ate fifty years ago. (2:42 IRWIN: “Absolutely.”) They would come home to a meal of fresh home-cooked vegetables and natural food containing all the necessary fiber to keep you cleaned out (2:49 IRWIN: “That’s right, yeah.”) on the inside. But today, we’re eating dangerously low levels of fiber, plus we’re consuming foods with carcinogens (2:57 IRWIN: “Yep.”), pesticides, livestock growth hormones (3:00 IRWIN: “Yep.”), and chemical preservatives. It’s simply more than our bodies can handle. We’re not built for all this abuse.

3:06 IRWIN: That's right. Our bodies [3:09-3:16 title "NEW TV Discount Offer/ Details coming ...] are simply not made to handle this onslaught of chemicals and carcinogens coming at us from the air, the water, and the food that we eat.

Misleading: Fifty years before this Infomercial, i.e., 1957, Americans may or may not have been eating as described, since by then, canned and processed foods were common and most people lived in cities and suburbs, not on farms. Also, American life expectancy at birth fifty years ago was 71.1 for women and 65.6 for men, while now it is 81 for women and 74 for men, which tends to disprove the claim that modern life is "more than our bodies can handle." *False:* No gunk accumulates in the body, or at least DAC cannot "cleanse" whatever gunk does accumulate.

222. 3:15 CHAPPELL: You know, I wanna put on the screen for a moment the picture I show my patients. This is a picture [3:20-3:27 title "Colon Build Up"] that I show my patients of what pollution buildup looks like in your colon.

False: This is a photograph of an elongated, lumpy, slimy mass in various shades of green and black, which cannot possibly occur in the human intestine, or if it did, DAC could not "cleanse" it, and it is a complete fake designed to scare people into buying DAC.

223. 3:52 IRWIN: What most people don't think about is parasites, which are a big reason to cleanse every few months. (3:58 CHAPPELL: "Absolutely.")

False: Even if this were true, DAC has no antiparasitic properties.

224. 4:16 CHAPPELL: What are some of the telltale signs of needing to cleanse?

4:19 IRWIN: The most obvious sign of needing to cleanse is if your bowel movements are short or thin or infrequent, and by infrequent I mean less than two times a day, because believe it or not, many people have a bowel movement only once every other day and they think that that's normal. Now if you want to know what normal is, look at people who have the cleanest insides: young children. The first time I saw my four-year-old daughter's bowel movement in the toilet [4:47-4:57 title "Klee Irwin/Researcher, Author & Natural Product Formulator"], it seemed so large to me compared to her size that I thought there was something wrong with her, but actually it was me that needed to cleanse. You see, just like the pipes in a brand new house, when your colon is clean, like my daughter's was, the food and toxins that we consume move right through you, okay [5:08-5:17 title "NEW TV Discount Offer/Details coming ..."], and come out in full, long bowel movements, so you don't get weighted down, you don't feel bloated and heavy and tired, and you don't keep those toxins in your body, where they can slow you down and make you sick.

False: Adult humans and children are different in many ways, and just because a four-year-old has bowel movements with certain characteristics does not mean that adults should do likewise. Also, adult “pipes” need no more “cleansing” than a child’s because they do not age like the inanimate pipes in a house, and there are no such thing as “toxins in your body” that “slow you down and make you sick,” or at least DAC cannot “cleanse” whatever “toxins” are present.

225. 5:21 CHAPPELL: I can tell you firsthand, there are various other outward signs that might indicate that you need to cleanse internally. (5:26 IRWIN: “Right.”) Some of them include fatigue, lowered energy, gas (5:30 IRWIN: “Right.”), bloating, excess of weight. You can also add to that list bad breath, unusual foul-smelling bowel movements, irritability, mood swings, frequent colds and flu, reoccurring headaches, protruding belly, unusual food cravings, rashes and yeast infections. Now Klee, we should clarify to our audience [5:49-6:01 title “Dual-Action Cleanse was developed in a nutritional clinic and has been used for over 15 years.”] that we’re not saying that internal cleansing is a cure-all for these ailments, but yet many people who use it (5:56 IRWIN: “That’s right.”) see their health take a dramatic transformation, see various health problems clear up. Klee, the problem that I see is that there are so many choices when it comes to colon cleansing (6:06 IRWIN: “Right.”) and I think that people get confused. (6:08 IRWIN: “Sure.”) For example, I’ve seen clients try the wrong product, have a bad experience, then give up on the colon cleansing forever. (6:15 IRWIN: “Right. Right.”) [6:16 title “Dr. James Chappell/Clinical Nutritionist & Master Herbalist”] So it’s important for me to make sure our viewers try the right product so they get the guaranteed results.

False: The caveat that “we’re not saying that internal cleansing is a cure-all for these ailments” does not redeem the rest of this passage, because “fatigue, lowered energy, gas, bloating, excess of weight, bad breath, unusual foul-smelling bowel movements, irritability, mood swings, frequent colds and flu, reoccurring headaches, protruding belly, unusual food cravings, rashes and yeast infections” are supposed to be signs that “cleansing” is needed with (what else) DAC, and this “cleansing” will *ipso facto* treat or cure all of the foregoing, according to Defendants. Also, DAC is no better, and possibly worse, than other “colon cleanse” products, and DAC is never the “right product,” nor does it produce the “guaranteed results” that Defendants claim.

226. 8:31 IRWIN: Well sure. It’s pretty simple. You’re supposed to eat a meal and then release a meal, not eat three times a day but only have one bowel movement a day. (8:38 CHAPPELL: “Yeah.”) Some people are only having a bowel movement every other day, or even less often, okay. Toxins are getting trapped in your body for too long. They’re making you

feel terrible, or worse, they're draining you of energy and making you bloated and achy, making your skin look bad, and your body prematurely age. Dual Action Cleanse cleanses you out on the inside and puts your body in a position where it can become healthy again. So if you're having a bowel movement less than twice a day, or they're thin or they're small, basically anything less than the size of a young child's bowel movement compared to their body size, then you need to cleanse [9:20-9:25 title "Klee Irwin/Researcher, Author & Natural Product Formulator"], get your pipes clean, because you're probably carrying around five pounds or more of toxic gunk from years of eating improperly (9:28 CHAPPELL: "Yeah. That totally makes sense.") and living in this modern world that's filled with all these toxins we've been talking about, and it's weighing you down and making you feel tired and sick. You might be blaming those feelings on just getting older, but those of us in the health profession like yourself, I think, can confirm without a doubt that you can feel as good and energetic as you did in your twenties. (9:48 CHAPPELL: "Mm-hmm." [affirmative])

False: There is absolutely no scientific basis for the claim that humans are supposed to "eat a meal and then release a meal;" as seen above, adult bowel movements do not have to be the exact same or bigger than a young child's; no one's "pipes" need "cleaning;" no one is "carrying around five pounds or more of toxic gunk," regardless of eating habits; if people have bad-looking skin and feel bloated, achy, terrible, or prematurely aged, it is not due to "toxins," and DAC cannot "cleanse" anybody or fix these conditions; and DAC cannot cause anyone to "feel as good and energetic as you did in your twenties."

227. The foregoing only covers Part One, about the first ten minutes, of the DAC infomercial and should be far more than sufficient to show the misleading, deceptive, and utterly fraudulent nature of DAC's health claims.

228. At about 10:37 is the following voiceover by an unidentified actor:

VOICEOVER: So call now to get your first time buyer discount. You'll feel renewed, energized, and lighter as the bulge in your abdomen flattens out and you get your health back on track. And our no questions asked quality guarantee means there's no risk. If you don't feel amazing, you don't pay. And that's not all: If you order in the next 20 minutes, you qualify for a free bottle of Green Tea Natural Energy. Each soft gel contains the eight nutrients of over four cups of green tea. And that's still not all: If you call in the next 20 minutes, you'll receive another free gift—the acclaimed self-evaluation CD "12 Signs of A Toxic Body and What You Can Do About It." And that's still not all: If you call now and cleanse with a friend or family member, you'll both receive 25% off today's already low

deep discount for first-time buyers. There's no risk. If it doesn't work, you don't pay. So call now.

229. This is false and fraudulent in that DAC does not cause anyone to feel “renewed, energized, and lighter” because it has either no effect or downright harmful effects; neither can it possibly “flatten the bulge in your abdomen” or “get your health back on track,” for the same reason; there is no “first time buyer discount” because Defendants charge prices far in excess of DAC’s price in retail stores for first-time purchases and then charge Plaintiffs’ credit or debit cards full price for months or years on end, often inflated with bogus \$9.95 “shipping and handling” fees far in excess of actual shipping and handling costs and a \$7.50 “Rush & Priority” charge imposed whether or not the customer requests it and does not result in faster delivery; there is a huge risk in “trying” DAC, because whether or not (usually not) it works, Defendants “Auto-Ship” it anyway (contrary to the 7-day maximum use for cascara sagrada) and charge Plaintiffs from \$49.95 to \$79.95 and then refuse to give refunds; and Plaintiffs pay exorbitant amounts whether or not DAC works, wherefore no one should “call now” or ever to order DAC.

230. Though the Infomercial and other marketing materials claim at several points to cause rapid weight loss by ridding the body of “5 to 22 pounds of impacted fecal matter,” weight management expert Robert F. Kushner, MD (**Exhs. 24-25**) examined “AcaiPure,” which has the same ingredients as “Colotox” or “Colopure” described *supra* and is likely just the same product relabeled, which in turn has the same major ingredients as DAC, and like DAC claims to cause rapid weight loss by “cleansing toxins,” and stated that “it is my opinion that none of the ingredients listed on the AcaiPure label or website, separately or together, could cause rapid, substantial weight loss, including as much as ten to twenty-five pounds in one month.”

231. Pursuant to their conspiracy, Defendants have been broadcasting the Infomercial since at least 2007, and are still selling DAC every day by means of wire and mail fraud, and still

committing bank and access device fraud every day by unauthorizedly charging credit and debit cards, and still laundering the proceeds for promoting the carrying on of further fraud and transacting more than \$10,000 of proceeds of these specified unlawful activities, with no known regulatory action in progress, no interference from law enforcement, and no end in sight.

232. Further proof of a pattern of wire fraud is in **Exh. 26**, the transcript of Mr. Irwin and Dr. Chappell's infomercial for 12-in-One, in which they claim that USRDAs of key nutrients are inadequate, even though neither Defendant has any applicable knowledge of nutrition (one title even misspells it "nutrician"), and diagnosing Americans in general with "malnourishment," and selling 12-in-One, which is nothing more than vitamins and minerals together with another random assemblage of dubious substances, as a solution to everybody's "malnutrition" that will cause perceptible "physical and mental changes in your body within days," such as improved concentration and memory, treating or curing depression, and speeded-up metabolism that will cause (what else) effortless weight loss, none of which is true in the slightest, together with a "Buy Direct and Save!" (even though it is seen that the store prices of Defendants' products are dramatically lower than what Defendants themselves charge) pitch designed to snare credit card numbers for present and future overcharges and unauthorized charges.

PRAYER FOR RELIEF

233. COUNT I: RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT—
The facts as pleaded above show that Individual Defendants conspired to conduct, and did conduct (by means including agreeing to produce and broadcast the fraudulent DAC Infomercial, and then actually doing so), the affairs of the RICO Enterprises through a pattern of racketeering activity that began no later than early 2007 and continues every day to this day with no end in sight and no interference from law enforcement, including but not limited to use of the RICO

Enterprises to complete at least 100 counts each of 18 U.S.C. §§ 1029(a)(2), (3), and (5), 1341, 1343, 1344, 1956(a)(1)(A)(i), 1957(a), 2314 and 2315, and at least one continuing count of § 1956(h), and used the RICO Enterprises to keep Plaintiffs' property away from Plaintiffs and perpetuate Defendants' pattern of racketeering activity, and Individual Defendants use Plaintiffs' laundered money to maintain control and ownership in enterprises engaged in interstate commerce (including but not limited to Irwin Naturals, Ultimate Nutraceuticals, and James Chappell Health and Longevity Center LLC), and thereby actually and proximately caused actual economic loss to Plaintiffs in the amount of at least \$20.00 each for those who bought DAC from resellers other than Defendants or at least \$200.00 each for those who gave Defendants their credit or debit card numbers (Named Plaintiff lost at least \$296.80), and Individual Defendants use Plaintiffs' laundered money to maintain control and ownership in enterprises engaged in interstate commerce (including but not limited to Irwin Naturals and James Chappell Health and Longevity Center LLC), all in violation of 18 U.S.C. § 1962(a), (c), and (d) and entitling Plaintiffs to triple damages, a reasonable attorney's fee, and the costs of the action, cumulative to all other damages under all other causes of action, from Defendants per 18 U.S.C. § 1964(c).

234. COUNT II: NEVADA RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT—The facts as pleaded above show that Individual Defendants conspired to use and did use (by means including agreeing to produce and broadcast the fraudulent DAC Infomercial, and then actually doing so) the RICO Enterprises that operated from Nevada, or used Nevada entities (including but not limited to Irwin Naturals, Longevity & Health, Cellular Research, and Crazy Deal Wholesale, Inc.) and addresses, as criminal syndicates per NRS 207.370, and damaged at least 200,000 Plaintiffs including 1,000 Nevada residents, and thereby unlawfully conducted the affairs of the RICO Enterprises through racketeering activity

with the same or similar pattern, intents, results, accomplices, victims, and methods of commission per NRS 207.390 that began no later than early 2007 and continues every day to this day with no end in sight and no interference from law enforcement, to wit, use of the RICO Enterprises to complete at least 100 counts each of 18 U.S.C. §§ 1029(a)(2), (3), and (5), 1341, 1343, 1344, 1956(a)(1)(A)(i), 1957(a), 2314 and 2315, and at least one continuing count of § 1956(h), and at least 1,000 counts of obtaining possession of money or property valued at \$250 or more per NRS 207.360.26, and used the RICO Enterprises to keep Plaintiffs' property away from Plaintiffs and perpetuate Defendants' pattern of racketeering activity, and thereby actually and proximately caused actual economic loss to Plaintiffs in the amount of at least \$100.00 each (Named Plaintiff lost \$296.80), all in violation of NRS 207.400.1(a), (b), (c), (d), (h), (i), and (j), and entitling Plaintiffs to recovery of three times the actual damages sustained, together with attorney's fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred, from Defendants per NRS 207.470.1.

235. COUNT III: NORTH CAROLINA RACKETEER AND CORRUPT ORGANIZATIONS ACT—The facts as pleaded above show that Individual Defendants conspired to conduct, and did conduct (by means including agreeing to produce and broadcast the fraudulent DAC Infomercial, and then actually doing so), the affairs of the RICO Enterprises as to North Carolina resident Named Plaintiff through an unlawful pattern of racketeering activity per NCGS § 75D-3(c)(1)b, (c)(1)c, and (c)(2) that began no later than early 2007 and continues to this day with no end in sight and no interference from law enforcement, to wit, at least three counts of 18 U.S.C. § 1029(a)(2), (3), and (5), at least two counts of 18 U.S.C. § 1341, at least two counts of 18 U.S.C. § 1343, at least four counts of 18 U.S.C. § 1344, at least three counts of 18 U.S.C. §§ 2314 and 2315, at least four counts of NCGS § 14-100, at least four counts of NCGS § 75D-

3(c)(1)c and 18 U.S.C. §§ 1956(a)(1)(A)(i) as to Named Plaintiff, and at least 6,000 counts of each of the foregoing offenses and at least one count of 18 U.S.C. §§ 1956(h) and 1957(a) as to Class Members in North Carolina, and Individual Defendants used the RICO Enterprises to keep Plaintiffs' property away from Plaintiffs and to perpetuate Defendants' pattern of racketeering activity, and then Individual Defendants use Plaintiffs' laundered money to maintain control and ownership in enterprises engaged in interstate commerce (including but not limited to Irwin Naturals, Ultimate Nutraceuticals, and James Chappell Health and Longevity Center LLC), and thereby actually and proximately caused actual economic loss to Named Plaintiff in the amount of at least \$296.80 and at least \$1 million to Class Members in North Carolina, thus violating NCGS § 75D-4(a)(1)-(3) and entitling all North Carolina resident Plaintiffs to triple damages, cumulatively per NCGS § 75D-10 with any other theory of relief including additional triple damages under federal RICO, together with a reasonable attorney's fee and the costs of the action, from all Defendants per NCGS § 75D-8(c).

236. COUNT IV: CONVERSION—The facts as pleaded above show that Defendants wrongfully deprived Plaintiffs of their property by means of mail, wire, bank, and access device fraud and false pretenses, or by receiving it from other Defendants who so obtained it from Plaintiffs, and then willfully continued to wrongfully deprive Plaintiffs of their property by means including but not limited to willfully keeping Plaintiffs' property for their own use instead of giving it back to Plaintiffs, entitling Plaintiffs to actual damages from all Defendants plus the maximum punitive damages allowed by law.

237. COUNT V: UNJUST ENRICHMENT—The facts as pleaded above show that Defendants systematically defraud Plaintiffs of property by selling worthless or harmful products at exorbitant prices, and then by charging or debiting Plaintiffs' credit or debit cards without

authorization, thus unjustly enriching Defendants and entitling Plaintiffs to damages in that amount from all Defendants.

238. COUNT VI: CONSTRUCTIVE TRUST—The facts as pleaded above show that Defendants received Plaintiffs’ money or other property by defrauding it from Plaintiffs, or received it from other Defendants and did not return it to Plaintiffs, unjustly enriching Defendants and entitling Plaintiffs to an order appointing Defendants constructive trustees of all property received from Plaintiffs, together with an order for Defendants to transfer said property to Plaintiffs, the beneficiaries of said trusts.

239. COUNT VII: UNFAIR AND DECEPTIVE TRADE PRACTICES—The facts as pleaded above show that Defendants (including those of a learned profession, because no professional Defendant was providing lawful and legitimate services to clients), who all maintain residences or businesses in California from which they damage Plaintiffs, misused Mr. Irwin’s and Dr. Chappell’s supposed “health professional” credentials to gain trust, and that Defendants flagrantly misrepresented their products and defrauded Plaintiffs of money which they then laundered, and are therefore liable to Plaintiffs, including at least 10,000 California residents, for three times actual damages, together with a reasonable attorney’s fee and costs of bringing the action, per Cal. Civ. Code § 1770(a)(5), (9), (13), and (16) and § 1780(a) for all Plaintiffs and § 1780(b) for all senior Plaintiffs including Named Plaintiff, and NCGS §§ 75-1.1(a), -16, -16.1, -27, and -41 for all North Carolina resident Plaintiffs.

240. COUNT VIII: NEGLIGENCE—The facts as pleaded above show that Defendants had a duty of reasonable care to Plaintiffs to formulate, produce, sell, and deliver only safe and effective products that worked at least as well as advertised, and to recruit, hire, train, supervise, and discipline their employees and agents to obey all relevant laws and deal fairly with Plaintiffs,

but negligently did not do so, and that Defendants had a duty to exercise reasonable care in hiring and supervision of his employees, agents, and contractors so that they would obey all applicable laws and respect the rights and property of others, but failed to do so, and ultimately benefited from this course of conduct, proximately causing damage to Plaintiffs and entitling all Plaintiffs to actual damages, together with punitive damages to the extent that Defendants' negligence was willful or wanton.

241. COUNT IX: FRAUD—The facts as specifically pleaded above show that Defendants materially misrepresented relevant facts to Named Plaintiff, intending for Named Plaintiff to rely on same, and Named Plaintiff did reasonably rely on same, actually and proximately causing him damage, entitling Named Plaintiff to actual damages, including but not limited to the money paid over, plus punitive damages sufficient to punish Defendants' wrongdoing and to deter others from similar conduct.

242. COUNT X: BREACH OF CONTRACT—The facts as pleaded above show that Defendants contracted with Plaintiffs to supply safe and effective products that performed at least as well as promised in return for a reasonable price, but did not do so, thus breaching Plaintiffs' contracts and entitling Plaintiffs to full refunds of all monies paid to Defendants.

243. COUNT XI: INJUNCTIVE RELIEF—The facts as pleaded above show that Plaintiffs are entitled to: preliminary and permanent injunctions per Fed.R.Civ.P. 65 forbidding any further violation of federal law against Plaintiffs, including access device fraud and transporting or receiving property taken by fraud; such injunctions and asset freezes as are reasonably necessary to protect the res of the aforementioned constructive trusts; and per Cal. Civ. Code § 1780(a)(2), injunctive relief forbidding Defendants to use the deceptive methods, acts, and practices pleaded

herein that they have used and are using to defraud over 200,000 Americans, including at least 10,000 California residents, in violation of Cal. Civ. Code § 1770(a)(5), (9), (13), and (16).

WHEREFORE, Plaintiffs pray judgment against Defendants for damages and equitable relief as pleaded above, plus such maximum punitive damages as are consistent with statute, common law, and constitutional due process, together with the costs of the action and a reasonable attorney fee, plus other and further relief as this Court finds lawful and just, including appointment of operating or liquidation receivers for all Defendants.

TRIAL BY JURY IS HEREBY DEMANDED OF ALL ISSUES SO TRIABLE.

CAL. CIV. CODE § 1780(d) AFFIDAVIT OF PROPER VENUE

Per 28 U.S.C. § 1746, I declare under penalty of perjury this 28 May 2010 that the transaction or a substantial part of the transaction affecting Named Plaintiff occurred in Bladen County, North Carolina, within the U.S. Eastern District of North Carolina, as evidenced by the invoices and shipments from Defendants and Named Plaintiff's credit card statements all addressed to him in Clarkton NC, and also Named Plaintiff was at home when he first saw the DAC Infomercial that induced him to buy the product.

/s/ Christopher W. Livingston

Respectfully submitted this **24 August 2010**,

/s/Christopher W. Livingston
Christopher W. Livingston
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NC State Bar No. 27282
LR 83.1 Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **24 August 2010** I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notice of such filing to

Pressly Millen, Esq.
Womble Carlyle
150 Fayetteville Street Suite 2100
Raleigh NC 27601
Counsel for Defendants Klee Irwin, Irwin Naturals, Ultimate Nutraceuticals

And that per published judicial references, hardcopy will be dispatched no later than **25 August 2010** to the Clerk's office and opposing counsel.

Submitted this **24 August 2010** by:

/s/Christopher W. Livingston
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