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3 Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for
4 its complaint alleges as follows:

5 1. The FTC brings this action under Sections 13(b) and 19 of the
6 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the
7 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003
8 (“CAN-SPAM”), 15 U.S.C. § 7706(a), to obtain preliminary and permanent
9 injunctive relief, rescission of contracts, restitution, redress, disgorgement and
10 other equitable relief for Defendants’ deceptive and unfair acts or practices and the
11 making of false advertisements in violation of Sections 5 and 12 of the FTC Act,
12 15 U.S.C. §§ 45 and 52, and for violations of CAN-SPAM, 15 U.S.C. § 7701 *et*
13 *seq.*

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C.
16 §§ 45(a), 52, 53(b), 57b, and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

17 3. Venue in the United States District Court for the Central District of
18 California is proper under 15 U.S.C. § 53(b) and 28 U.S.
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1 IE Marketing set forth in this Complaint. Lei Lu resides in the Central District of
2 California.

3 4 COMMERCE

5 11. At all times material to this Complaint, Defendants have maintained a
6 substantial course of trade in or affecting commerce, as “commerce” is defined in
7 Section 4 of the FTC Act, 15 U.S.C. § 44.

8 DEFINITIONS

9 CAN-SPAM defines the following terms as follows:

10 12. **“Electronic mail message”** (or “email”) means a message sent to a
11 unique electronic mail address. 15 U.S.C. § 7702(6).

12 13. **“Header information”** means the source, destination, and routing
13 information attached to an electronic mail message, including the originating
14 domain name and originating electronic mail address, and any other information
15 that appears in the line identifying, or purporting to identify, a person initiating the
16 message. 15 U.S.C. § 7702(8).

17 14. **“Initiate,”** when used with respect to a commercial email message,
18 means to originate or transmit such message or to procure the origination or
19 transmission of such message. 15 U.S.C. § 7702(9).

20 15. **“Procure,”** when used with respect to a commercial email message,
21 means intentionally to pay or provide other consideration to, or induce, another
22 person to initiate such a message on one’s behalf. 15 U.S.C. § 7702(12).

23 16. **“Protected computer”** means a computer used in interstate or foreign
24 commerce or communication, including a computer located outside the United
25 States that is used in a manner that affects interstate or foreign commerce or
26 communication of the United States. 15 U.S.C. § 7702(13) and 18 U.S.C.
27 § 1030(e)(2)(B).

1 17. **“Sender”** means a person who initiates a commercial email message
2 and whose product, service, or Internet Web site is advertised or promoted by the
3 message. 15 U.S.C. § 7702(16).

4 **DEFENDANTS’ BUSINESS ACTIVITIES**

5 18. Since at least May 2003, and continuing to the present, Defendants
6 have marketed and sold dietary supplement products over the Internet, including
7 oral sprays purporting to contain human growth hormone (“HGH”), to cause the
8 body to produce HGH, and/oteormo, Td Mayrs, hum18.

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1 of ingredients identical to those listed for HGH Revolution. These sites identify
2 the sellers or producers of the oral spray marketed and sold at these sites as IE
3 Marketing, Inc., and Pacific Herbal Sciences, Inc. Pacific Herbal responds by
4 email to orders placed at these sites, and the product received from these sites is
5 bottled and packaged identically

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b. Under the heading, “What Can HGH Revolution Do For You?,” the site states:

Prescription HGH treatm

1 Yes, millions of Americans are using homeopathic Growth Hormone
2 to slow, and in some cases, reverse the effects of aging. Numerous
3 studies have been conducted on the incredible properties of these
4 products.

5 22. To induce consumers to purchase oral spray products purporting to
6 contain, or cause the body to produce, HGH, Web sites operated by or on behalf of
7 Pacific Herbal, Lei Lu doing business as IE Marketing, Inc., NHP, and New Star,
8 make the following statements on the Internet Web sites listed in paragraphs 20.b-
9 20.c and on other sites not listed:

10 a. The sites' home pages typically state:

11 **LOSE WEIGHT WHILE YOU SLEEP without DIETING**
12 **or EXERCISE. 100% SATISFACTION GUARANTEED.**

13 Experience up to an 82% IMPROVEMENT in body fat loss
14 while erasing 10 YEARS in 10 WEEKS!

15 b. The sites typically explain how the oral spray works as follows,
16 stating that "Until recently, growth hormone therapy has only been available in the
17 form of injections that are prohibitively expensive and difficult to use." The sites
18 state that users can obtain the benefits of HGH from Defendants' oral spray
19 product without injections, claiming that:

20 an oral delivery system has been developed. It takes advantage of the short
21 distance between the brain and the mouth so that HGH can pass through the
22 mucous membrane under the tongue into the blood vessels within seconds,
23 then it goes directly into the brain. It is quickly absorbed and works to
24 stimulate and reactivate the functions of the pituitary gland to secrete HGH
25 and other rejuvenating hormones.

26 The sites also represent that the oral sprays contain:

27 natural substances (secretagogues) which have been documented to increase
28 growth hormone naturally and may exceed the effectiveness of injection

1 therapy. These natural secretagogues provide nutritional support for the
2 release of growth hormone from its sequestered state in the pituitary gland.

3 c. Under the heading, “Why We Need HGH,” the sites typically
4 list various conditions and claim that HGH will prevent, treat, or cure them. For
5 example, under “Osteoporosis,” the sites discuss the risks of lower bone density
6 and fractures associated with osteoporosis, then state, “The solution is to increase
7 the intake of HGH.” Under “Cardiovascular Disease,” the sites observe that the
8 occurrence of cardiovascular diseases greatly increases after menopause because
9 “bad (low density) cholesterol will grow while the good (high density) cholesterol
10 will diminish.” The sites claim that if one takes 3will 3Tj3.0Dd w

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1 iv. Under the heading, “Fitness and Bodybuilding,” the sites
2 state that “Hgh has been found to significantly increase the effects of exercise and
3 muscle building, including energy, muscle strength and endurance.”

4 v. Under the heading, “Memory Improvement,” the sites
5 state that HGH “can help to stimulate the rejuvenation and repair of your brain
6 cells” and that it “affects the proteins produced in the brain for storing your

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1 A recent outcome based high human growth hormone research study
2 of the oral spray we recommend, revealed that 75% of subjects
3 experienced a 41% average increase in IGF-1 levels (an indicator of
4 growth hormone levels). In addition, there was lowered cholesterol in
5 an average of 11% in 90% of the cases, and 80% of the subjects
6 experienced an average 29% reduction in tryglicerides (fat), reflecting
7 better overall health.

8 Additional purported findings of the study were that users experienced “loss of
9 body fat . . . without dieting or exercise,” “increase in lean muscle mass . . .
10 without exercise,” “Superior Immune Function,” “Stronger Bones,” “More Rapid
11 Healing,” and “Increased Memory Retention.” One doctor whose “study” is
12 referenced reportedly “guarantees a loss of 10 to 12 percent of body fat every six
13 months if they are overweight, and a gain of 8 to 10 percent in muscle mass every
14 six months, continuing every six months until body composition has reverted to
15 that of a twenty year old.”

16 23. To induce recipients to visit the Web sites and purchase Defendants’
17 oral spray products, unsolicited electronic mail messages promoting Web sites
18 operated by Defendants or their agents make various claims, including claims that
19 the products:

- 20 a. Stimulate the production of HGH;
- 21 b. Enable the user to burn fat without dieting or exercise;
- 22 c. Slow and reverse the aging process;
- 23 d. Increase muscle strength and size;
- 24 e. Increase energy and cardiac output;
- 25 f. Strengthen the heart muscle;
- 26 g. Improve vision;

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1 i. Strengthen the immune system, increase resistance to common
2 illness, and prevent disease;
3 j. Increase bone density;
4 k. Lower blood pressure;
5 l. Control cholesterol;
6 m. Quicken healing of wounds;
7 n. Have been proven by “studies,” “clinical evidence,” or
8 “[c]linical results based on trials” to produce such effects as an 84% increase in
9 energy level, an 88% improvement in muscle strength, an 81% increase in muscle
10 mass, expanded exercise tolerance/endurance of 81-83%, a 72% decrease in body
11 fat without diet or exercise, improved immune function of 73%, a 67%
12 improvement in mental stability, and a 62% improvement in memory.

13 24. Defendants or their agents take orders for their oral sprays over the
14 Internet. To order, consumers enter personal information called for by
15 Defendants’ order form, including their names, addresses, and credit card
16 numbers. The order form has appeared under this statement: “NOTE: To ensure
17 your personal privacy, all of the information that you submit to us after this point
18 will be secured using SSL encryption technology.” In numerous instances, these
19 Web sites’ home pages have also promised that “Online ordering is Secure.”

20 25. Defendants are “initiators” with respect to an email message when
21 they have either originated or transmitted a message themselves or have procured
22 the origination or transmission of a message through payments or other
23 consideration, or inducements.

24 26. Defendants are “senders” with respect to an email message when they
25 have initiated a message and it is Defendants’ products, services, or Web sites that
26 are being advertised or promoted by such message.

27 27. In numerous instances, Defendants have initiated commercial email
28 messages that contain materially false or misleading header information. In many

1 instances, the email contains an originating email address that was not assigned by
2 the email service provider or was used without the authorization of the subscriber
3 who obtained the email address from the email service operator. In other
4 instances, the email message fails to identify accurately the protected computer
5 used to initiate the message because the email message was relayed or
6 retransmitted through another protected computer for purposes of disguising its
7 origin.

8 28. In numerous instances, in order to induce consumers to open and read
9 their commercial emails, Defendants have initiated commercial email messages
10 that contain subject headings that misrepresent the content or subject matter of the
11 message.

12 29. In numerous instances, Defendants have initiated commercial email
13 messages that fail to include a clear and conspicuous identification that the
14 message is an advertisement or solicitation.

15 30. In numerous instances, Defendants' commercial email messages fail
16 to include any notification to recipients of their ability to decline receiving future
17 email messages from Defendants. These email messages further fail to include a
18 reply email address or other Internet-based mechanism that recipients can use to
19 decline receiving future email messages from Defendants. In other instances,
20 Defendants' commercial email messages include only vague indications of
21 recipients' rights to decline receiving future email messages from Defendants.

22 31. In numerous instances, Defendants have initiated commercial email
23 messages that fail to include a valid physical postal address of the sender.

24 **VIOLATIONS OF SECTIONS 5 AND 12 OF THE FTC ACT**

25 32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
26 deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC
27 Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or
28 affecting commerce for the purpose of inducing, or which is likely to induce, the

1 purchase of food, drugs, devices, or cosmetics. For purposes of Section 12 of the
2 FTC Act, the oral sprays sold by Defendants are either “food,” “drugs” or
3 “devices” as defined in Sections 15(b), (c) and (d) of the FTC Act, 15 U.S.C.
4 §§ 55(b), (c) and (d). As set forth below, Defendants have engaged in and are
5 continuing to engage in such unlawful practices in connection with the marketing
6 and sale of HGH Revolution, Natural Rejuvenator, and oral sprays marketed under
7 other names. Defendants represent that these products contain HGH, cause an
8 increase in the body’s growth hormone level, or cause effects purportedly similar
9 to those caused in n

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1 occurrence of cardiovascular diseases; (ix) improve vision; (x) stabilize mood
2 swings and act as an antidepressant; (xi) help heal wounds; and (xii) eliminate
3 sleep disorders.

4 34. In truth and in fact, Defendants' oral spray products:

5 a. Do not contain human growth hormone or cause a statistically
6 significant or clinically meaningful increase in a consumer's growth hormone
7 levels;

8 b. Do not enable the consumer to lose weight, or replace fat with
9 muscle, without diet or exercise;

10 c. Do not turn back or reverse the aging process, and do not
11 (i) increase energy levels, stamina, and muscle strength; (ii) restore the size of
12 bodily organs that shrink with age (*e.g.*, liver, pancreas and heart); or (iii) improve
13 memory; and

14 d. Do not prevent, treat or cure diseases or medical conditions,
15 and do not (i) strengthen or elevate the immune system; (ii) reduce the risk of
16 having Alzheimer's disease; (iii) increase bone density; (iv) prevent or act as a
17 solution to osteoporosis; (v) eliminate joint pains; (vi) lower cholesterol;
18 (vii) lower or normalize blood pressure; (viii) improve cardiovascular and
19 respiratory functions and reduce the occurrence of cardiovascular diseases;
20 (ix) improve vision; (x) stabilize mood swings and act as an antidepressant;
21 (xi) help heal wounds; and (xii) eliminate sleep disorders.

22 35. Therefore, Defendants' representations as set forth in Paragraph 33
23 above are false or misleading and constitute a deceptive practice, and the making
24 of false advertisements, in or affecting commerce, in violation of Sections 5(a) and
25 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

36. Through the means described in Paragraphs 18-23, Defendants have represented, expressly or by implication, directly

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1 or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act,
2 15 U.S.C. §§ 45(a) and 52.

3 **COUNT III**

4 39. Through the means described in Paragraphs 21.d, 22.f, and 23.n,
5 Defendants have represented that scientd/T1_1 1 T4c tha vi,haf3ae the

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1 secured using SSL encryption technology and that credit card numbers and other
2 personal information entered by consumers on the order pages and submitted to
3 Defendants cannot be seen by others when transmitted.

4 43. In truth and in fact, in numerous instances the order pages on the Web
5 sites marketing Defendants' products do not support encryption, and information
6 transmitted via these order forms is not secure and is at risk of being seen by
7 others during transmission.

8 44. Therefore, the making of the representations set forth in Paragraph 42
9 above constitutes a deceptive practice in or affecting commerce in violation of
10 Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a).

11 **VIOLATIONS OF THE CONTROLLING THE ASSAULT OF**
12 **NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003**

13 45. The Controlling the Assault of Non-solicited Pornography and
14 Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. § 7701, *et seq.*, became
15 effective on January 1, 2004, and has since remained in full force and effect.

16 46. Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1), states:
17 It is unlawful for any person to initiate the transmission, to a
18 protected computer, of a commercial electronic mail message . . . that
19 contains, or is accompanied by, header information that is materially
20 false or materially misleading.

21 47. Section 5(a)(6) of CAN-SPAM, 15 U.S.C. § 7704(a)(6), states:
22 For purposes of paragraph (1) [15 U.S.C. § 7704(a)(1)], the term
23 "materially," when used with respect to false or misleading header
24 information, includes the alteration or concealment of header
25 information in a manner that would impair the ability of an Internet
26 access service processing the message on behalf of a recipient, a
27 person alleging a violation of this section, or a law enforcement
28 agency to identify, locate, or respond to a person who initiated the

1 electronic mail message or to investigate the alleged violation, or the
2 ability of a recipient of the message to respond to a person who
3 initiated the electronic message.

4 48. Section 5(a)(2) of CAN-SPAM, 15 U.S.C. § 7704(a)(2), states:

5 It is unlawful for any person to initiate the transmission to a protected
6 computer of a commercial electronic mail message if such person has
7 actual knowledge, or knowledge fairly implied on the basis of
8 objective circumstances, that a subject heading of the message would
9 be likely to mislead a recipient, acting reasonably under the
10 circumstances, about a material fact regarding the contents or subject
11 matter of the message (consistent with the criteria used in
12 enforcement of section 5 of the Federal Trade Commission Act (15
13 U.S.C. § 45)).

14 49. Section 7(e) of CAN-SPAM, 15 U.S.C. § 7706(e), states that in any
15 action to enforce compliance, through an injunction, with Sections 5(a)(1)(c),
16 5(a)(2), and other specified sections of CAN-SPAM, the FTC need not allege or
17 prove the state of mind required by such sections.

18 50. Section 5(a)(3)(A) of CAN-SPAM, 15 U.S.C. § 7704(a)(3)(A), states:

19 It is unlawful for any person to initiate the transmission to a protected
20 computer of a commercial electronic mail message that does not
21 contain a functioning return electronic mail address or other Internet-
22 based mechanism, clearly and conspicuously displayed, that--

23 (i) a recipient may use to submit, in a manner specified in
24 the message, a reply electronic mail message or other form of
25 Internet-based communication requesting not to receive future
26 commercial electronic mail messages from that sender at the
27 electronic mail address where the message was received; and

28 (ii) remains capable of receiving such messages or

1 communications for no less than 30 days after the transmission
2 of the original message.

3 51. Section 5(a)(5)(A) of CAN-SPAM, 15 U.S.C. § 7704(a)(5)(A), states:

4 It is unlawful for any person to initiate the transmission of any
5 commercial electronic mail message to a protected computer unless
6 the message provides--

7 (i) clear and conspicuous identification that the message
8 is an advertisement or solicitation;

9 (ii) clear and conspicuous notice of the opportunity
10 under [section 5(a)(3), 15 U.S.C. § 7704(a)(3)] to decline to
11 receive further commercial electronic mail messages from the
12 sender; and

13 (iii) a valid physical postal address of the sender.

14 52. Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), states:

15 [T]his chapter shall be enforced by the Commission as if the violation
16 of this chapter were an unfair or deceptive act or practice proscribed
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