



1 Kevin J. McInerney, Esq., SBN 46941
 2 Kelly McInerney, Esq., SBN 200017
 3 Charles A. Jones, Esq., SBN 224915
 4 **McINERNEY & JONES**
 5 18124 Wedge Parkway #503
 6 Reno, NV 89511
 7 Telephone: (775) 849-3811
 8 Facsimile: (775) 849-3866

9 *Attorneys for Plaintiff*

**ENDORSED
 FILED
 ALAMEDA COUNTY**

SEP 21 2007

~~CLERK OF THE SUPERIOR COURT~~
 By S. Halcombe Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BY FAX

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 12 **TONY L. HOANG and CHARLES C.**
 13 **STRONG**, individually and on behalf of all
 14 others similarly situated,

15 Plaintiffs,

16 v.

17 **AXIOM WORLDWIDE, LLC**, a Florida
 18 corporation; **AXIOM WORLDWIDE, INC.**, a
 19 Florida corporation; **JAMES GIBSON**; **NICK**
 20 **EXHAROS**; and **DOES 1-50**,

21 Defendants.

Case No.

RG 07347405

CLASS ACTION COMPLAINT FOR

- 1.) Violation of Business & Professions Code Section 17200 et seq.
- 2.) Negligent Misrepresentation
- 3.) Fraudulent Misrepresentation
- 4.) Negligent Supervision

JURY TRIAL REQUESTED

THIS IS A CLASS ACTION

22 1. This is a class action brought on behalf of all medical providers who have leased
 23 or purchased any of the "spinal decompression" machines manufactured by Axiom Worldwide,
 24 LLC. These medical providers include, but are not limited to, chiropractors (DCs), medical
 25 doctors (MDs), and doctors of osteopathy (DOs). These individuals are similarly situated under
 26 California Code of Civil Procedure §382. Plaintiffs seek to recover the purchase price of the
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 28

1 machine, interest paid on lease payments, penalties, interest, punitive damages, and attorney's
2 fees and costs for themselves and all other present and former purchasers similarly situated. The
3 Plaintiffs allege that they and other class members were fraudulently induced to purchase
4 Axiom's "spinal decompression" machines based upon the negligent and fraudulent
5 misrepresentations made by Axiom and its agents, including but not limited to such
6 misrepresentations that the machines were FDA approved, were patented, had an 86% success
7 rate, were based on NASA "space-age" technology, and that the treatments were covered and/or
8 reimbursable by most insurance companies and Medicare.
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11 2. The Plaintiff Dr. Tony L. Hoang is a citizen and resident of the State of
12 California. At all times relevant Dr. Hoang has resided in the County of Monterey. Dr. Hoang
13 purchased one of Axiom's DRX 9000 machines in 2005. The Plaintiff Charles C. Strong is a
14 citizen and resident of the State of California. At all times relevant Dr. Strong has resided in the
15 County of Monterey but has his office in Santa Cruz County. Dr. Strong purchased one of
16 Axiom's DRX 9000 machines in 2005.
17

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19 3. The Plaintiffs are but two of hundreds of medical providers who, over the past
20 seven years, have purchased or leased spinal decompression machines from Axiom. The
21 Superior Court has jurisdiction because this is a class action which involves hundreds of
22 individuals who were fraudulently induced to purchase these spinal decompression machines
23 based upon Axiom's fraudulent and negligent misrepresentations and the monetary damages
24 sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be
25 established according to proof at trial. Venue is proper in Alameda because the Defendants,
26 Axiom Worldwide, LLC. and Axiom Worldwide, Inc., are not licensed with the California
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1 Secretary of State to do business in California and thus may be sued in any county in the State of
2 California (*Harmon Easton v. Superior Court of San Diego* (1970) 12 Cal.App.3d 243, 246-
3 247). There is no federal question at issue because the causes of action and remedies relating
4 thereto are based solely on California law and statutes, including the California Business &
5 Professions Code.
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7
8 4. The Defendants Axiom Worldwide, LLC and Axiom Worldwide, Inc.
9 (hereinafter Axiom) are foreign corporation headquartered in Florida. Neither Axiom
10 Worldwide, LLC nor Axiom Worldwide, Inc. is licensed by the California Secretary of State to
11 do business in California, although Axiom markets its products throughout California and to
12 California medical providers.
13

14
15 5. The Defendant James Gibson is the President and CEO of Axiom. He has
16 personally made many of the representations about the DRX machines, including that they are
17 patented, FDA approved, were developed using space-age technology by NASA, that there is an
18 86% success rate, and that the treatment is reimbursable by most insurance companies and
19 Medicare. Due to his position at Axiom, Jim Gibson is personally liable for the circulation of
20 the misrepresentations that induced the class members to purchase the DRX machines.
21

22
23 6. The Defendant Nick Exharos is the co-founder and the Executive Vice President
24 of Axiom Worldwide. He has personally made many of the representations about the DRX
25 machines, including that they are patented, FDA approved, were developed using space-age
26 technology by NASA, that there is an 86% success rate, and that the treatment is reimbursable
27 by most insurance companies and Medicare. Due to his position at Axiom, Nick Exharos is
28

1 personally liable for the circulation of the misrepresentations that induced the class members to
2 purchase the DRX machines.

3
4 7. The true names and capacities of Defendants named herein as DOES 1 through
5 50 inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs
6 who therefore sue such Defendants under fictitious names pursuant to California Code of Civil
7 Procedure §474. Plaintiffs are informed and believe, and thereon allege, that these Defendants,
8 DOES 1 through 50, are in some manner or capacity, and to some degree, legally responsible
9 and liable for the wrongs of which Plaintiffs complain. Plaintiffs will amend their complaint to
10 allege the true names and capacities of these DOE Defendants once they are ascertained. On
11 information and belief, Plaintiffs make all allegations contained in this complaint against all
12 Defendants, including DOES 1 through 50, inclusive.
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16 8. At all times herein mentioned, each defendant was an agent, servant, employee
17 and/or joint venturer of each of the remaining Defendants, and was at all times acting within the
18 course and scope of such agency, service, employment, and/or joint venture, and each Defendant
19 has ratified, approved, and authorized the acts of each of the remaining Defendants with full
20 knowledge of said acts.
21

22
23 9. Axiom has marketed its machines throughout the United States and worldwide
24 and has alleged that these “spinal decompression” machines (including but not limited to the
25 DRX9000, the DRX9000C, and the DRX9500) provide a non-surgical alternative to reducing or
26 eliminating back pain. These machines cost, on average, \$95,000 to \$125,000 each. The
27 Defendants and their agents have conducted seminars to induce medical providers to purchase
28

1 their machines. In these communications, Defendants have regularly represented to interested
2 individuals that the machines are FDA approved, are patented, have an 86% success rate, were
3 developed by NASA engineers using space age technology, are able to target specific lumbar
4 and/or cervical discs, and are covered by and/or reimbursable by most insurance companies and
5 Medicare. Along with the seminars, the Defendants and their agents have also distributed video
6 presentations, power point presentations, written materials, and other forms of communications
7 containing the same and similar representations in order to induce medical providers to purchase
8 their machines. For example, Exhibit A contains materials contained in Axiom's 2004
9 "Marketing & Public Relations Manual" which allege an 86% success rate. Exhibit B, from the
10 same manual, contains materials that allege that the DRX9000 can be used to treat muscle
11 strains, arthritis, fatigue, stress-related conditions, poor circulation, muscle spasms,
12 musculoskeletal disorders, fibromyalgia, sports injuries, chronic pain, and even cellulite, along
13 with herniated or bulging discs, degenerative discs, spinal stenosis, sciatica, acute and chronic
14 low back pain, neck pain, and whiplash! Exhibit C, from the same manual, contains materials
15 that state that treatment is covered by most insurance and that most auto and on-the-job injuries
16 are covered. Exhibit D, from the same manual, contains materials that allege that this is space-
17 age technology discovered by NASA engineers. Exhibit E is a suggested radio script distributed
18 by Axiom to its customers in its "Marketing & Public Relations Manual" that alleges that the
19 DRX9000 is patented and FDA approved.¹ Exhibit F, copyrighted by Axiom in 2005, further
20 leads the reader to believe that the DRX9000 is based on space-age technology with its picture
21 of a rocket ship and the statement, "Our expert team consists of engineers who designed for the
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27 1 Several of the exhibits contain numerous representations such as the 86% success rate, the
28 range of ailments that can be treated, that the treatment is covered by insurance, that the machine
is based on space-age technology designed by NASA engineers, and that the machine is patented
and FDA approved.

1 National Aeronautics and Space Administration (NASA) and the U.S. Department of Defense.”²
2 Exhibit G, the Axiom Worldwide DRX9000 Users Manual dated January, 2003, alleges that the
3 provider can target specific discs for treatment and that the machine is patented, as well as
4 success rates. Exhibit H, a brochure copyrighted by Axiom in 2001, also includes the alleged
5 success rates.
6

7
8 10. Once an individual purchased one of Axiom’s “spinal decompression” machines,
9 either outright or via one of Axiom’s financing options, Axiom and its agents provided training
10 on how to use the machine as well as extensive marketing materials. In fact, one of Axiom’s
11 key selling points has been that they would provide these extensive marketing materials so that
12 purchasers could quickly recoup the cost of the machine. These marketing materials included
13 sample newspaper ads, sample infomercials, sample TV commercials, sample direct mail
14 marketing, sample radio ads, and other similar mediums. Many of these marketing materials
15 were provided by Axiom’s agents, such as Ben Altadonna of Altadonna Communications, Inc.
16 and Back in Action. Many of these marketing materials included the same or similar
17 representations about the machines, including but not limited to that they were FDA approved,
18 had an 86% success rate, were patented, and were designed by NASA engineers using space-age
19 technology. Exhibit I is one such example of a marketing manual provided by Altadonna
20 Communications, Inc., one of Axiom’s agents.
21
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24 11. The Plaintiffs have recently learned that many of the representations made by
25 Axiom and its agents were patently false and unsupported by scientific evidence. In
26
27

28 ² In fact, Axiom had a replica of an astronaut in a space suit prominently displayed in its headquarters in Florida. Its trademark symbol is astronautically designed.

1 approximately March of 2007, Axiom ceased making many of the misrepresentations about the
2 machines but has now substituted new misleading representations in their place. For example,
3 Axiom's website now declares that it has "space certified technology" in an attempt to convince
4 people that its products are worth buying. See Exhibit J. However, upon closer examination,
5 the only "space certified technology" is a lubricant produced by another company which is used
6 in one part of Axiom's machine. Moreover, one of the articles relied upon by Axiom as its
7 scientific evidence is an article published by NASA for students in grades five through eight
8 titled, "My How You've Grown!" Exhibit K.
9

10
11 12. The Plaintiffs' experience in this case is typical of that of hundreds of individuals
12 in this State who have been fraudulently induced to buy Axiom's machines based upon the
13 negligent and fraudulent misrepresentations made by Axiom and its agents. As a result, the
14 class members have been injured by not only by purchasing the machines for, on average
15 \$95,000 to \$125,000 apiece, but also by leasing interest and finance charges, money spent on
16 marketing that turned out to be deceptive, treatment charges not being reimbursed by insurance
17 or Medicare, and similar expenditures.
18

19
20 13. This action is well suited for class action treatment because the
21 misrepresentations made by Defendants and their agents are and have been written and/or
22 uniform during the class period. It is alleged that the number of class members is in excess of
23 two hundred, making it impracticable to resolve their claims in any manner other than a class
24 action. The class is defined as all persons in California who have purchased or leased, either
25 individually or through their business, any of the spinal decompression machines manufactured
26 by Axiom.
27
28

1 14. Common issues of fact and law predominate with respect to the claims of the
2 Plaintiffs and the class. Such issues include the relevant period of statute of limitations, whether
3 they were fraudulently induced to purchase Axiom’s machines, and whether the Defendants or
4 their agents made negligent and/or fraudulent misrepresentations.
5

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7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200 and 17203**

9 15. Plaintiffs hereby re-allege and incorporate by reference all paragraphs
10 above as though fully set forth in detail herein.
11

12 16. Defendants have engaged and continue to engage in unfair, fraudulent, and/or
13 unlawful business practices in violation of California Business & Professions Code §§17200
14 and 17203. These acts and practices constitute a continuing and ongoing unfair, fraudulent,
15 and/or unlawful business activity defined by Business & Professions Code §17200 and justify
16 the issuance of an injunction, restitution, and other equitable relief pursuant to Business and
17 Professions Code §17203.
18

19
20 17. The Defendants’ conduct is unfair, fraudulent, and/or unlawful in that it induces
21 individuals to purchase Defendants’ machines based on negligent and/or fraudulent
22 misrepresentations and has allowed its agents to distribute similarly negligent and/or fraudulent
23 misrepresentations.
24

25
26 18. As such, Defendants’ business practices and acts have been immoral, unethical,
27 oppressive and unscrupulous. Defendants’ business practices and acts have been against
28

1 established public policy and have been pursued to attain an unjustified monetary advantage for
2 Defendants .

3
4 19. By and through their unfair, fraudulent, and/or unlawful business practices
5 described herein, Defendants have obtained unjustified money from Plaintiffs and all persons
6 similarly situated and have deprived Plaintiffs and all persons similarly situated of valuable
7 rights and benefits guaranteed by law, all to their detriment.
8

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10 **SECOND CAUSE OF ACTION**
11 **NEGLIGENT MISREPRESENTATION**

12 20. Plaintiffs hereby re-allege the above paragraphs of this complaint and incorporate
13 them by reference as if fully set forth in detail herein.
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16 21. At all times relevant Defendants were under a duty to observe California's laws
17 and to make true and correct representations to their clients and the California public.
18

19 22. Defendants have had no reason to believe their varied representations including
20 but not limited to that their machines were patented, FDA approved, had an 86% success rate,
21 were NASA engineered using space age technology, were able to cure the range of ailments
22 alleged, that treatments were covered by and/or reimbursable by most insurance and Medicare,
23 or that the machines were capable of targeting specific discs. These representations are untrue.
24 Nonetheless, Defendants have negligently and continually misrepresented that they were true
25 until recently. This was done by James Gibson, Nick Exharos, and was distributed to Axiom
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1 clients and the California public in written and recorded statements issued by Defendants and
2 Axiom's agents.

3
4 23. Plaintiffs and the class, unaware of the falsity of these representations, reasonably
5 relied on Defendants' representations, purchased Axiom's machines and used the marketing
6 materials provided by Defendants and their agents. Plaintiffs did not learn of the inaccuracy of
7 these misrepresentations until recently. Plaintiffs and the class were justified in relying upon
8 Defendants' representations.
9

10
11 24. As a result of the reliance, Plaintiffs and the class were deprived of the purchase
12 price of the machines as well as finance and leasing charges associated with purchasing the
13 machines and now are entitled to compensatory damages, prejudgment interest, statutory
14 penalties, costs and attorney's fees.
15

16
17 25. Plaintiffs allege that a constructive trust must be established to prevent a
18 miscarriage of justice and to prevent Defendants' wrongful retention of Plaintiffs' and class
19 members' monies. The Plaintiffs and the class accordingly ask for an order establishing such a
20 constructive trust on the assets of the Defendants in an amount of at least the monies paid to
21 Defendants or the companies that financed the purchase of Axiom's machines and that this trust
22 be enforced for their benefit.
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1 **THIRD CAUSE OF ACTION**

2 **FRAUDULENT MISREPRESENTATION**

3 26. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
4 though fully set forth in detail herein.
5

6
7 27. At all times relevant, Defendants were in a position of superior knowledge and
8 authority. At all times they had expert legal and scientific advice available to them regarding the
9 claims they made regarding Axiom's spinal decompression machines. Defendants had a duty
10 imposed by law to make true and accurate statements regarding their machines. Instead, the true
11 and correct nature of Axiom's spinal decompression machines were concealed by these
12 Defendants and inaccurate misrepresentations were made by Defendants instead. Plaintiffs
13 learned about the misrepresentations made by Defendants regarding Axiom's spinal
14 decompression machines only recently.
15

16
17 28. At all times relevant, Defendants had a duty imposed by law to properly advise
18 their clients and the California public about Axiom's machines. At all times relevant
19 Defendants and their officers and directors had a duty of candor and full disclosure to
20 prospective and current clients and the California public.
21

22
23 29. Defendants and each of them at all times relevant knew that Plaintiffs and the
24 class members were not aware of the misrepresentations. However, Axiom and its officers and
25 regularly represented, by means of recorded and written statements, as well as via their website,
26 that their machines were, for example, patented, FDA approved, had an 86% success rate, were
27 NASA engineered using space age technology, were able to cure the range of ailments alleged,
28

1 that treatments were covered by and/or reimbursable by most insurance and Medicare, and that
2 the machines were capable of targeting specific discs. These standardized written and recorded
3 statements and other documents distributed by Defendants and their agents falsely categorized
4 the true nature of Axiom's machines.
5

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7 30. At all times relevant, Defendants and some of the DOE Defendants represented to
8 Plaintiffs and to the members of the class the representations previously set forth. These
9 representations were made in written, consistent forms to all members of the class. These
10 representations were false but continued throughout the class period, or at least until March of
11 2007. Such representations were made at times, among others, of recruitment, purchase, and
12 training.
13

14
15 31. The Defendants knowingly and intentionally concealed from Plaintiffs and
16 members of the class the material facts including but not limited to that the machines were not
17 patented, were not FDA approved, did not have an 86% success rate, were not NASA
18 engineered using space age technology, were not able to cure the range of ailments alleged, that
19 treatments were not covered by and/or reimbursable by most insurance and Medicare, and that
20 the machines were not capable of targeting specific discs. Defendants knowingly and
21 intentionally made these misrepresentations to the Plaintiffs and the members of the class to
22 induce them to buy Axiom's spinal decompression machines.
23

24
25 32. Plaintiffs and the class justifiably and reasonably relied upon the false
26 representations of the Defendants and Defendants' agents. As a result, they did not seek
27 compensation until they learned the truth about Axiom's misrepresentations recently.
28

1 33. As a result, Plaintiffs and the class were deprived of the purchase price, leasing
2 and financing charges, and advertising costs and are now entitled to compensatory damages,
3 prejudgment interest, statutory penalties, punitive damages, and attorney’s fees and costs.
4

5 34. Plaintiffs allege that a constructive trust must be established to prevent a
6 miscarriage of justice and to prevent Defendants’ wrongful retention of Plaintiff’s and class
7 members’ monies. The Plaintiffs and the class accordingly ask for an order establishing such a
8 constructive trust on the assets of the Defendants in an amount of at least the monies paid to
9 Defendants or the companies that financed the purchase of Axiom’s machines and that this trust
10 be enforced for their benefit.
11

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13 **FOURTH CAUSE OF ACTION**

14 **NEGLIGENT SUPERVISION**

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16 35. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
17 though fully set forth in detail herein.
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19 36. At all times relevant the Defendants had a duty to exercise care in the hiring and
20 supervision of their employees and agents, who Defendants knew would be directly or indirectly
21 responsible for making representations about Axiom’s DRX machines. That duty of care was
22 owed to the Plaintiffs and to other members of the class. Throughout the class period
23 Defendants failed to exercise such care and hired employees and agents who were not properly
24 qualified, trained or educated. Finally, the Defendants failed to supervise their employees and
25 agents. The result of such failures was that these employees and agents made the same or
26 similar misrepresentations to the Plaintiffs and members of the class.
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