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12 **ANDRE VAILLANCOURT**

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OF ORIGINAL FILED
Los Angeles Superior Court
DEC 0 9 2008

Jana A. Clarke, executive officer/Clerk
By J. Donham, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANDRE VAILLANCOURT,

Plaintiff,

vs.

ALIREZA PANAHPOUR, D.D.S.;
CAVITAT MEDICAL
TECHNOLOGIES, INC.; ROBERT
JONES and DOES 1 through 50,
inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGE

1. Dental Malpractice
2. Lack of Informed Consent
3. Medical Battery
4. Battery
5. Intentional Misrepresentation
6. Negligent Misrepresentation
7. Intentional Misrepresentation

INITIAL CASE MANAGEMENT REVIEW
AND CONFERENCE

DEPT X
MAR 2 9 2009
LISA HART COLE
8:30 AM

SC100818

COMES NOW Plaintiff ANDRE VAILLANCOURT and alleges as follows:

PARTIES

1. Defendant ALIREZA PANAHPOUR, D.D.S. (hereinafter referred to as "PANA") is, and at all times herein mentioned was, a dentist licensed to practice dentistry by the State of California, holding license #41661, with his principal place of business at 11500 West Olympic Boulevard, Suite 320, Los Angeles, California 90064, and, at all times herein mentioned, was practicing biological dentistry and advertising himself as a "holistic healer". During the time of Plaintiff's dental treatment, and unbeknownst to him, Defendant PANA was on probation with the DENTAL BOARD OF CALIFORNIA pursuant to a Stipulated Settlement and Disciplinary Order, the content

1 of which is described herein and a copy of which is attached hereto as Exhibit "1" and
2 incorporated herein by reference.

3 2. Defendant CAVITAT MEDICAL TECHNOLOGIES, INC. (hereinafter referred
4 to as "CAVITAT") is, and at all times herein mentioned was, a Colorado corporation
5 with its current principal place of business located at 150 CR 1558, Suite C, Alba,
6 Texas, and the manufacturer of the Cavitat device which, at all times herein
7 mentioned, is advertised and sold to dental practitioners in the State of California for
8 use within the State of California, including but not limited to Defendant PANA, thereby
9 manifesting sufficient contact with the State of California to establish personal
10 jurisdiction over said Defendant.

11 3. Defendant ROBERT JONES (hereinafter referred as to "JONES") is now a
12 resident of the State of Texas, but at all times herein mentioned was, a resident of the
13 State of Colorado who was the president and chief executive officer of Defendant
14 CAVITAT. All actions taken by CAVITAT relevant to this action, including the
15 advertisement and sale of the Cavitat device to dental practitioners in the State of
16 California for use in treating dental patients in the State of California, were at the
17 authorization and/or ratification of Defendant JONES, thereby manifesting sufficient
18 contact with the State of California to establish personal jurisdiction over said
19 Defendant.

20 4. Plaintiff is informed and believes and thereon alleges that, at various times
21 herein mentioned, each of the defendants was the agent, servant, representative or
22 employee of each of the remaining defendants and, in engaging in certain acts
23 hereinafter alleged, was acting within the course and scope of said agency, service,
24 representation, or employment and materially assisted the other defendants. Plaintiff
25 is further informed and believes and thereon alleges that each of the defendants
26 ratified the acts of the remaining defendants.

27 5. Plaintiff is ignorant of the true names and capacities, whether individual,
28 corporate, associate or otherwise, of defendants sued herein as DOES 1 through 50,

1 inclusive, and therefore sues said defendants by such fictitious names. Plaintiff is
2 informed and believes, and upon such information and belief, alleges that each of the
3 defendants designated herein as a DOE is legally responsible in some manner for the
4 events and happenings referred to herein and caused the damages proximately
5 thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend
6 this Complaint to show the true names and capacities of the defendants designated
7 herein as DOES when the same have been ascertained.

8 **STATEMENT OF FACTS**

9 6. On or about December 19, 2006, Defendant PANA entered into a Stipulated
10 Settlement and Disciplinary Order with the Dental Board of California, wherein PANA
11 agreed that the Dental Board could establish a basis for the allegations made in its
12 Accusation No. DBC 2004-72 against PANA of incompetence, gross negligence,
13 repeated acts of negligence, false, fraudulent or misleading statements, and
14 unprofessional conduct.

15 7. The initial Accusation upon which the Stipulated Settlement to which PANA
16 agreed was based was filed on March 18, 2005, prior to the commencement of
17 Plaintiff's dental treatment with PANA.

18 8. During the term of PANA's probation, which coincided with Plaintiff's
19 treatment, PANA explained to Plaintiff that the Dental Board of California was against
20 holistic dentists and that his "trouble" with the Board only occurred as a result of an
21 alias which he had used in practicing dentistry. PANA did not advise Plaintiff that he
22 had agreed that charges of gross negligence and unprofessional conduct could have
23 been proven against him had he not opted for probation.

24 9. At some time prior to February 8, 2006, Defendants CAVITAT and JONES
25 sold a Cavitat diagnostic device to Defendant PANA.

26 10. The Cavitat device is an ultrasonic bone densitometer which does not
27 render visual images of bone itself and is cleared by the Federal Drug Administration
28 only as a Class II prescriptive device authorized under Section 510(k) of the FDA

1 regulations with limited utility. The device is authorized to be used only as an adjunct
2 to conventional radiographs and has not been found to be effective by the FDA for use
3 in the diagnosis or treatment of any condition or disease, however, the device was
4 used by Defendant PANA as a diagnostic tool to diagnose infection in Plaintiff's bone,
5 tissue and teeth.

6 11. At such time as the Cavitat device was used on Plaintiff by Defendant,
7 PANA had not complied with investigational device exemption (IDE) and Institutional
8 Review Board (IRB) requirements such that his use of the Cavitat device was beyond
9 the labeling imposed by the FDA and thus, violated FDA regulations regarding human
10 experimentation and constituted misbranding.

11 12. On or about February 8, 2006, Plaintiff sought a dental consultation with
12 PANA, at which time, Plaintiff complained that one of his teeth was loose and another
13 which had been treated with an amalgam filling was painful and tender to the touch.

14 13. On or about April 17, 2006, PANA performed a dental examination, took a
15 complete series of intraoral x-rays, and conducted ART (autonomic response testing)
16 utilizing the "O ring technique" as a method by which to diagnose Plaintiff's dental
17 complaints and determine a treatment plan.

18 14. Autonomic response testing ("ART") is an unconventional, non-standard
19 form of diagnostic testing to determine dental problems which is accomplished by
20 placing the dental practitioner's hand on some part of the patient's body and palpating
21 over that body part. ART is not a generally accepted therapeutic modality and has no
22 scientific basis.

23 15. Further on or about April 17, 2006, as a result of the findings of ART, PANA
24 advised Plaintiff to discontinue his diabetes medication glucophage, also known as
25 metformin, and instead sold Plaintiff biological supplements, including Chlorella
26 Pyrenoidose, PC Noni, Liver Life, BioRay, Rentone and Organic Freeze Dried Garlic,
27 for the treatment of his Type II diabetes which constituted the practice of medicine for
28 which PANA was not licensed.

1 16. On or about April 20, 2006, PANA again conducted ART (autonomic
2 response testing), took another set of intraoral x-rays, made diagnostic casts for an
3 upper denture and a lower partial, and sold Plaintiff the biological supplement Goag
4 Whey for continuing treatment of Plaintiff's Type II Diabetes.

5 17. On or about April 27, 2006, PANA made further diagnostic casts, performed
6 occlusion analysis and adjustment, fitted Plaintiff with a mandibular partial and a
7 maxillary denture, and performed perio scaling and root planing, as well as selling
8 Plaintiff additional biological supplements.

9 18. On or about May 4 and May 30, 2006, Plaintiff purchased the biological
10 supplements PC Noni, Liver Life, BioRay, Rentone, and Goat Whey as recommended
11 by PANA for continuing treatment of his Type II diabetes.

12 19. On or about June 19, 2006, PANA performed another session of ART and
13 sold Plaintiff additional biological supplements.

14 20. On or about July 6, 2006, PANA, representing to Plaintiff that he had studied
15 neural therapy techniques in Europe which would alleviate a patient's mouth and jaw
16 complaints through treatment to other parts of the body, performed neural therapy on
17 Plaintiff, administering injections of procaine to the front, back and sides of Plaintiff's
18 neck to alleviate muscular and neural pains surrounding the jaw and lymphatic glands
19 in the neck, the center of his forehead and in his chest in the area of his heart to
20 "revive his energy". PANA further performed an equilibration procedure and an
21 occlusion analysis.

22 21. On or about July 10, 2006, PANA performed neural therapy on Plaintiff,
23 administering an injection of procaine into Plaintiff's neck, as well as selling Plaintiff
24 Goat Whey 720g, Rentone and HLC High Potency Capsules.

25 22. On two occasions between April 17th and July 20, 2006, PANA performed
26 a Cavitat examination of Plaintiff, the results of which PANA explained to Plaintiff
27 demonstrated that Plaintiff's mouth and jawbone were in an advanced state of infection
28 and required surgical intervention to eliminate the imbedded infection. At the time

1 PANA performed a Cavitat examination on Plaintiff, the Cavitat device and Cavitat
2 technology had not been approved by the Federal Drug Administration for diagnosis
3 of infection and its clinical effectiveness had not been sufficiently demonstrated in the
4 evidence-based medical/dental community or supported with appropriately controlled
5 studies published in peer-reviewed medical and dental journals.

6 23. On or about July 20, 2006, PANA performed neural therapy on Plaintiff,
7 administering injections of procaine to the front, back and sides of Plaintiff's neck
8 behind his ears.

9 24. Further on or about July 20, 2006, at PANA's recommendation and
10 advisement that Plaintiff suffered from an imbedded infection which was causing
11 damage to his mouth and jaw and inhibiting his treatment for diabetes, Plaintiff
12 underwent dental surgery resulting in the extraction of teeth #21 and #27, the removal
13 of significant bone surrounding the two extracted teeth and the removal of a lesion
14 from the allegedly infected area. During the surgical procedure, PANA further
15 performed bone replacement grafts and repair of hard/soft tissue.

16 25. On or about July 25, 2006, PANA performed neural therapy on Plaintiff,
17 administering an injection of procaine into Plaintiff's neck, as well as selling Plaintiff
18 additional biological supplements for treatment of his diabetes.

19 26. On or about August 7, 2006, PANA performed a localized occlusal
20 adjustment of the denture he had previously fitted for Plaintiff and sold Plaintiff yet
21 more biological supplements, namely Goat Whey 720g, Live Life, BioRay, Rentone
22 and HLC High Potency Capsules.

23 27. On or about August 21, 2006, PANA conducted ART (autonomic response
24 testing), performed an equilibration procedure and localized occlusal adjustment.

25 28. On or about September 6, 2006, PANA performed neural therapy on
26 Plaintiff, administering an injection of procaine into Plaintiff's neck, adjusted his denture
27 and sold Plaintiff more biological supplements, namely Rentone, Bio Gymnema and
28 Organic Freeze Dried Garlic.

1 29. On or about September 28, 2006, PANA performed neural therapy on
2 Plaintiff, administering injections of procaine into the front, back and sides of Plaintiff's
3 neck behind his ears.

4 30. Further on or about September 28, 2006, at PANA's inducement and
5 recommendation to treat Plaintiff's purported imbedded jawbone infection, PANA
6 performed jawbone curettage surgeries, wherein he removed lesions from the lower
7 right side of Plaintiff's mouth at the sites of teeth #'s 28, 29, 30 and 32, as well as
8 administering a therapeutic drug injection into the lower right side of Plaintiff's mouth,
9 the result of which was immediate numbness which has not abated.

10 31. On or about October 25, 2006, PANA performed neural therapy on Plaintiff,
11 administering an injection of procaine into Plaintiff's neck, made diagnostic casts and
12 prescribed additional biological supplements to Plaintiff.

13 32. On or about December 20, 2006, PANA performed neural therapy on
14 Plaintiff, administering an injection of procaine into Plaintiff's neck and performed an
15 occlusal guard adjustment.

16 33. On or about January 18, 2007, PANA made diagnostic casts and sold
17 Plaintiff biological supplements for PANA's continuing treatment of Plaintiff's diabetes.

18 34. On or about April 12, 2008, a Saturday, at Plaintiff's final appointment,
19 PANA drilled out an existing filling, replacing it with an amalgam filling which fell out
20 while Plaintiff was brushing his teeth the following Tuesday.

21 35. As of December 2008, Plaintiff's residual complaints as a result of the
22 treatment, including dental surgeries, performed by Defendant PANA have not
23 resolved and Plaintiff continues to suffer from numbness on the right side of his mouth,
24 lower lip, chin and right cheek, improper fit of the prosthetics designed and fitted by
25 PANA which will require total replacement and the potential loss of his remaining teeth
26 through additional dental surgeries and reconstructive work.

27 36. On or about August 1, 2008, and pursuant to *California Code of Civil*
28 *Procedure*, Section 364, Plaintiff caused Notice of Intent to Sue letters to be mailed by

1 certified mail to Defendant PANA at his current place of business located at 11500
2 West Olympic Boulevard, Suite 320, Los Angeles, California 90064. A true and correct
3 copy of said letter is attached hereto as Exhibit "2" and incorporated herein by
4 reference.

5 **FIRST CAUSE OF ACTION**
6 **(For Dental Malpractice Against Defendants**
7 **PANA and Does 1 through 5, inclusive)**

8 37. Plaintiff realleges and incorporates herein by reference all of the allegations
9 set forth in paragraphs 1 through 36 as though fully set forth.

10 38. Pursuant to Plaintiff's retention of Defendant PANA to diagnose and treat
11 his dental complaints, said Defendant rendered professional dental services in the
12 diagnosis, treatment and care of Plaintiff.

13 39 On or about February 8, 2006, at the time that Plaintiff sought the
14 professional services of Defendant PANA, said Defendant maintained his dental office
15 and held himself out to the general public as a competent and skilled dentist and
16 dental surgeon licensed by the DENTAL BOARD OF CALIFORNIA, and Plaintiff relied
17 upon said representations of skill and competency when retaining PANA to examine
18 and treat him.

19 40. On or about February 8, 2006, at the time that Plaintiff sought the
20 professional services of PANA, PANA did not inform Plaintiff of the true circumstances
21 of his probationary status with the DENTAL BOARD OF CALIFORNIA.

22 41. On or about February 8, 2006, and continuing thereafter through in or about
23 April, 2008, Defendant PANA negligently failed to exercise the proper degree of
24 knowledge, skill and competence in examining, diagnosing, treating and caring for
25 Plaintiff by incompetently and negligently diagnosing Plaintiff by the use of bogus
26 diagnostic tools, such as ART, neural therapy and the Cavitat device and by
27 performing unnecessary and invasive dental treatment and surgical services, all of
28 which resulted in persistent numbness to the lower right side of Plaintiff's face, lip, chin

1 and right cheek, the unnecessary excision of healthy teeth and bone based on a non-
2 existent infection, the improper fitting and placement of prosthesis requiring total
3 replacement and the potential for future reconstructive surgeries, caused by and solely
4 the result of Defendants' negligence.

5 42. As a proximate result of the negligence of Defendants, and each of them,
6 Plaintiff suffered injury to his facial nerves by the excision of a nerve for scraping, the
7 unnecessary loss of healthy fixed teeth, the degradation of healthy supporting bone,
8 and the improper design and placement of dentures, necessitating total replacement
9 of prosthetic appliances and other reconstructive and restorative treatment.

10 43. As a further proximate result of the negligence of Defendants, and each of
11 them, Plaintiff has sustained injury to his health, strength and activity, all of which
12 injuries have caused, and continue to cause, Plaintiff great mental, physical and
13 nervous pain and suffering. Plaintiff will seek leave of Court to amend this Complaint
14 to set forth the full amount of damage sustained as a result thereof when ascertained.

15 44. As a further proximate result of the negligence of Defendants, and each of
16 them, Plaintiff has sustained, and will continue to sustain, disabling, serious and
17 permanent physical injuries, all to Plaintiff's general damage in an amount presently
18 unascertainable. Plaintiff will seek leave of Court to amend this Complaint to set forth
19 the full amount of damage when ascertained.

20 45. As a further proximate result of the negligence of Defendants, and each of
21 them, Plaintiff has incurred medical, hospital and related expenses in a sum presently
22 unascertainable. Plaintiff will seek leave of Court to amend this Complaint to set forth
23 the full amount of damage when ascertained.

24 46. As a further proximate result of the negligence of Defendants, and each of
25 them, Plaintiff will in the future incur medical, hospital and related expenses, the exact
26 nature and extent of which are currently unknown to Plaintiff. Plaintiff will seek leave
27 of Court to amend this Complaint to set forth the full amount of damage when
28 ascertained.

1 47. As a further proximate result of the negligence of Defendants, and each of
2 them, Plaintiff has sustained loss of earnings and loss of earning capacity, the exact
3 nature and extent of which are currently unknown to Plaintiff. Plaintiff will seek leave
4 of Court to amend this Complaint to set forth the full amount of damage when
5 ascertained.

6 48. As a further proximate result of the negligence of Defendants, and each of
7 them, Plaintiff will in the future sustain loss of earnings and loss of earning capacity,
8 the exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will
9 seek leave of Court to amend this Complaint to set forth the full amount of damage
10 when ascertained.

11 **SECOND CAUSE OF ACTION**

12 **(For Lack of Informed Consent Against Defendants**

13 **PANA and Does 1 through 5, inclusive)**

14 49. Plaintiff realleges and incorporates herein by reference all of the allegations
15 set forth in paragraphs 1 through 36 as though fully set forth herein.

16 50. Pursuant to Plaintiff's retention of Defendant PANA to diagnose and treat
17 his dental complaints, PANA rendered professional dental services in the diagnosis,
18 treatment and care of Plaintiff.

19 51. On or about February 8, 2006, and continuing thereafter through April 2008,
20 in purported treatment of Plaintiff's ongoing complaints, including but not limited to,
21 surgery to remove lesions on the lower right side of Plaintiff's mouth at the sites of
22 teeth #'s 28, 29, 30 and 32, PANA negligently failed to disclose to Plaintiff the inherent
23 risks involved in performing a surgical procedure involving facial nerves and negligently
24 failed to obtain Plaintiff's informed consent for the removal of lesions on the lower right
25 side of Plaintiff's mouth in light of the undisclosed risks.

26 52. If Plaintiff had been adequately informed of the inherent risks associated
27 with the removal of lesions on the lower right side of Plaintiff's mouth, including but not
28 limited to, permanent numbness in Plaintiff's mouth, chin, lower lip and right cheek,

1 Plaintiff would not have consented to said treatment.

2 53. As a proximate result of the wrongful conduct of Defendants, and each of
3 them, in improperly and unnecessarily performing surgeries involving removal of
4 purported lesions without Plaintiff's consent and without advising Plaintiff of the
5 inherent risks involved in such a surgery, Plaintiff suffered, and continues to suffer,
6 permanent numbness in his mouth, chin, lower lip and right cheek.

7 54. As a further proximate result of the wrongful conduct of Defendants, and
8 each of them, Plaintiff has sustained injury to his health, strength and activity, all of
9 which injuries have caused, and continue to cause, Plaintiff great mental, physical and
10 nervous pain and suffering. Plaintiff will seek leave of Court to amend this Complaint
11 to set forth the full amount of damage sustained as a result thereof when ascertained.

12 55. As a further proximate result of the wrongful conduct of Defendants, and
13 each of them, Plaintiff has sustained, and will continue to sustain, disabling, serious
14 and permanent physical injuries, all to Plaintiff's general damage in an amount
15 presently unascertainable. Plaintiff will seek leave of Court to amend this Complaint
16 to set forth the full amount of damage when ascertained.

17 56. As a further proximate result of the wrongful conduct of Defendants, and
18 each of them, Plaintiff has incurred medical, hospital and related expenses in a sum
19 presently unascertainable. Plaintiff will seek leave of Court to amend this Complaint
20 to set forth the full amount of damage when ascertained.

21 57. As a further proximate result of the wrongful conduct of Defendants, and
22 each of them, Plaintiff will in the future incur medical, hospital and related expenses,
23 the exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will
24 seek leave of Court to amend this Complaint to set forth the full amount of damage
25 when ascertained.

26 58. As a further proximate result of the wrongful conduct of Defendants, and
27 each of them, Plaintiff has sustained loss of earnings and loss of earning capacity, the
28 exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will seek

1 leave of Court to amend this Complaint to set forth the full amount of damage when
2 ascertained.

3 59. As a further proximate result of the wrongful conduct of Defendants, and
4 each of them, Plaintiff will in the future sustain loss of earnings and loss of earning
5 capacity, the exact nature and extent of which are currently unknown to Plaintiff.
6 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of
7 damage when ascertained.

8 **THIRD CAUSE OF ACTION**
9 **(For Medical Battery Against Defendants**
10 **PANA and Does 6 through 10, Inclusive)**

11 60. Plaintiff realleges and incorporates herein by reference all of the allegations
12 set forth in paragraphs 1 through 36 as though fully set forth herein.

13 61. In the course of the dental surgery and treatment performed by Defendant
14 PANA to purportedly treat Plaintiff's dental complaints, PANA obtained Plaintiff's
15 consent to extract teeth #21 and #27 because of alleged imbedded infection, but
16 Plaintiff did not consent to an unnecessary surgical procedure wherein substantial
17 portions of healthy bone and tissue were removed.

18 62. In addition to the extraction of teeth #21 and #27, PANA performed a
19 substantially different procedure, wherein he removed significant portions of healthy
20 bone and tissue surrounding teeth #21 and #27, limiting Plaintiff in his reconstructive
21 options, including the potential inability for implant placement.

22 63. The conduct of Defendant PANA was a substantial factor in causing
23 Plaintiff's harm.

24 64. As a proximate result of the wrongful conduct of Defendants, and each of
25 them, Plaintiff has sustained injury to his health, strength and activity, all of which
26 injuries have caused, and continue to cause, Plaintiff great mental, physical and
27 nervous pain and suffering. Plaintiff will seek leave of Court to amend this Complaint
28 to set forth the full amount of damage sustained as a result thereof when ascertained.

1 65. As a further proximate result of the wrongful conduct of Defendants, and
2 each of them, Plaintiff has sustained, and will continue to sustain, disabling, serious
3 and permanent physical injuries, all to Plaintiff's general damage in an amount
4 presently unascertainable. Plaintiff will seek leave of Court to amend this Complaint
5 to set forth the full amount of damage sustained as a result thereof when ascertained.

6 66. As a further proximate result of the wrongful conduct of Defendants, and
7 each of them, Plaintiff has incurred medical, hospital and related expenses in a sum
8 presently unascertainable. Plaintiff will seek leave of Court to amend this Complaint
9 to set forth the full amount of damage sustained as a result thereof when ascertained.

10 67. As a further proximate result of the wrongful conduct of Defendants, and
11 each of them, Plaintiff will in the future incur medical, hospital and related expenses,
12 the exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will
13 seek leave of Court to amend this Complaint to set forth the full amount of damage
14 sustained as a result thereof when ascertained.

15 68. As a further proximate result of the wrongful conduct of Defendants, and
16 each of them, Plaintiff has sustained loss of earnings and loss of earning capacity, the
17 exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will seek
18 leave of Court to amend this Complaint to set forth the full amount of damage when
19 ascertained.

20 69. As a further proximate result of the wrongful conduct of Defendants, and
21 each of them, Plaintiff will in the future sustain loss of earnings and loss of earning
22 capacity, the exact nature and extent of which are currently unknown to Plaintiff.
23 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of
24 damage when ascertained.

25 **FOURTH CAUSE OF ACTION**

26 **(For Battery Against Defendants PANA and Does 11-15, inclusive)**

27 70. Plaintiff realleges and incorporates herein by reference all of the allegations
28 set forth in paragraphs 1 through 36 as though fully set forth herein.

1 71. Pursuant to Plaintiff's retention of Defendant PANA to diagnose and treat
2 his dental complaints, said Defendants rendered professional dental services in the
3 diagnosis, treatment and care of Plaintiff.

4 72. On or about July 6, 2006, and in purported treatment of Plaintiff's ongoing
5 dental complaints, Defendant PANA performed neural therapy on Plaintiff, intentionally
6 administering a procaine injection into his chest in the area of his heart to "revive his
7 energy", treatment to which Plaintiff did not consent.

8 73. The neural therapy treatment performed by Defendant PANA on Plaintiff's
9 body below his neck was offensive and beyond the scope of Defendant's knowledge,
10 skill and experience and outside the scope of dental practices and procedures in the
11 community and constituted the practice of medicine for which PANA was not licensed.

12 74. As a proximate result of the wrongful conduct of Defendants, and each of
13 them, Plaintiff has sustained injury to his health, strength and activity, all of which
14 injuries have caused, and continue to cause, Plaintiff great mental, physical and
15 nervous pain and suffering. Plaintiff will seek leave of Court to amend this Complaint
16 to set forth the full amount of damage sustained as a result thereof when ascertained.

17 75. As a further proximate result of the wrongful conduct of Defendants, and
18 each of them, Plaintiff has sustained, and will continue to sustain, disabling, serious
19 and permanent physical injuries, all to Plaintiff's general damage in an amount
20 presently unascertainable. Plaintiff will seek leave of Court to amend this Complaint
21 to set forth the full amount of damage when ascertained.

22 76. As a further proximate result of the wrongful conduct of Defendants, and
23 each of them, Plaintiff has incurred medical, hospital and related expenses in a sum
24 presently unascertainable. Plaintiff will seek leave of Court to amend this Complaint
25 to set forth the full amount of damage when ascertained.

26 77. As a further proximate result of the wrongful conduct of Defendants, and
27 each of them, Plaintiff will in the future incur medical, hospital and related expenses,
28 the exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will

1 seek leave of Court to amend this Complaint to set forth the full amount of damage
2 when ascertained.

3 78. As a further proximate result of the wrongful conduct of Defendants, and
4 each of them, Plaintiff has sustained loss of earnings and loss of earning capacity, the
5 exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will seek
6 leave of Court to amend this Complaint to set forth the full amount of damage when
7 ascertained.

8 79. As a further proximate result of the wrongful conduct of Defendants, and
9 each of them, Plaintiff will in the future sustain loss of earnings and loss of earning
10 capacity, the exact nature and extent of which are currently unknown to Plaintiff.
11 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of
12 damage when ascertained.

13 **FIFTH CAUSE OF ACTION**

14 **(For Intentional Misrepresentation Against Defendants**

15 **PANA and Does 16 through 20, Inclusive)**

16 80. Plaintiff realleges and incorporates herein by reference all of the allegations
17 set forth in paragraphs 1 through 36 as though fully set forth herein.

18 81. On or about April 17th, April 20th, April 27th, May 4th, May 30th, June 19th, July
19 10th, July 20th, July 25th, August 7th, September 6th, September 28th, October 25, 2006
20 and January 18, 2007, during Plaintiff's dental treatment, Defendant PANA falsely and
21 fraudulently represented to Plaintiff that:

- 22 a. ART (autonomic response testing) could determine treatment for diabetes
23 Type II;
- 24 b. Biological supplements could effectively treat diabetes Type II;
- 25 c. Plaintiff's medical condition would not be harmed by discontinuing his
26 diabetes medication, glucophage;
- 27 d. Extraction of teeth and removal of jawbone would abate and/or cure diabetes
28 Type II; and

1 e. Defendant PANA possessed the requisite knowledge, expertise, experience
2 and license to treat diabetes Type II, a medical condition.

3 82. The above representations made by Defendant PANA were false. The true
4 facts were that:

5 a. ART (autonomic response testing) was not a scientifically accepted and
6 approved diagnostic test to determine treatment for diabetes Type II;

7 b. Biological supplements could not effectively treat diabetes Type II;

8 c. Plaintiff's medical condition would be harmed by the discontinuation of his
9 diabetes medication, glucophage;

10 d. Extraction of teeth and removal of jawbone would not abate and/or cure
11 diabetes Type II; and

12 e. Defendant PANA did not possess the requisite knowledge, expertise,
13 experience and license to treat diabetes Type II, a medical condition.

14 83. Plaintiff, at the time Defendant PANA made these representations, was
15 ignorant of the falsity of Defendant's representations and believed them to be true. In
16 justifiable reliance on Defendant's representation, Plaintiff was induced to suspend use
17 of his diabetes medication, glucophage, to purchase and use biological supplements
18 with no medical benefit and to undergo unnecessary and invasive dental surgeries, all
19 of which Plaintiff would not have agreed to had he known the actual facts.

20 84. As a proximate result of the misrepresentations made by Defendant, Plaintiff
21 was induced to forego medical treatment for a serious medical condition and to
22 undergo unwarranted and invasive dental treatment with no health benefit.

23 85. As a further proximate result of the misrepresentations made by Defendant,
24 Plaintiff has sustained injury to his health, strength and activity, all of which injuries
25 have caused, and continue to cause, Plaintiff great mental, physical and nervous pain
26 and suffering. Plaintiff will seek leave of Court to amend this Complaint to set forth the
27 full amount of damage sustained as a result thereof when ascertained.

28 86. As a further proximate result of the misrepresentations made by Defendant,

1 Plaintiff has sustained, and will continue to sustain, disabling, serious and permanent
2 physical injuries, all to Plaintiff's general damage in an amount presently
3 unascertainable. Plaintiff will seek leave of Court to amend this Complaint to set forth
4 the full amount of damage sustained as a result thereof when ascertained.

5 87. As a further proximate result of the misrepresentations made by Defendant,
6 Plaintiff has incurred medical, hospital and related expenses in a sum presently
7 unascertainable. Plaintiff will seek leave of Court to amend this Complaint to set forth
8 the full amount of damage sustained as a result thereof when ascertained.

9 88. As a further proximate result of the misrepresentations made by Defendant,
10 Plaintiff will in the future incur medical, hospital and related expenses, the exact nature
11 and extent of which are currently unknown to Plaintiff. Plaintiff will seek leave of Court
12 to amend this Complaint to set forth the full amount of damage sustained as a result
13 thereof when ascertained.

14 89. As a further proximate result of the misrepresentations made by Defendant,
15 and each of them, Plaintiff has sustained loss of earnings and loss of earning capacity,
16 the exact nature and extent of which are currently unknown to Plaintiff. Plaintiff will
17 seek leave of Court to amend this Complaint to set forth the full amount of damage
18 when ascertained.

19 90. As a further proximate result of the misrepresentations made by Defendant,
20 and each of them, Plaintiff will in the future sustain loss of earnings and loss of earning
21 capacity, the exact nature and extent of which are currently unknown to Plaintiff.
22 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of
23 damage when ascertained.

24 **SIXTH CAUSE OF ACTION**

25 **(For Negligent Misrepresentation Against Defendants**

26 **PANA and Does 16 through 20, Inclusive)**

27 91. Plaintiff realleges and incorporates herein by reference all of the allegations
28 set forth in paragraphs 1 through 36 as though fully set forth herein.

1 92. On or about April 17th, April 20th, April 27th, May 4th, May 30th, June 19th, July
2 10th, July 20th, July 25th, August 7th, September 6th, September 28th, October 25, 2006
3 and January 18, 2007, during Plaintiff's dental treatment, Defendant PANA negligently
4 represented to Plaintiff that:

5 a. ART (autonomic response testing) could determine treatment for diabetes
6 Type II;

7 b. Biological supplements could effectively treat diabetes Type II;

8 c. Plaintiff's medical condition would not be harmed by discontinuing his
9 diabetes medication, glucophage;

10 d. Extraction of teeth and removal of jawbone would abate and/or cure diabetes
11 Type II; and

12 e. Defendant PANA possessed the requisite knowledge, expertise, experience
13 and license to treat diabetes Type II, a medical condition.

14 93. The above representations made by Defendant PANA were false. The true
15 facts were that:

16 a. ART (autonomic response testing) was not a scientifically accepted and
17 approved diagnostic test to determine treatment for diabetes Type II;

18 b. Biological supplements could not effectively treat diabetes Type II;

19 c. Plaintiff's medical condition would be harmed by the discontinuation of his
20 diabetes medication, glucophage;

21 d. Extraction of teeth and removal of jawbone would not abate and/or cure
22 diabetes Type II; and

23 e. Defendant PANA did not possess the requisite knowledge, expertise,
24 experience and license to treat diabetes Type II, a medical condition.

25 94. When Defendant PANA made these representations, he had no reasonable
26 ground for believing them to be true.

27 95. Defendant PANA made such material misrepresentations with the intention
28 of inducing Plaintiff to undergo unnecessary dental surgeries and other radical and

1 invasive dental treatment, all to Plaintiff's detriment.

2 96. Plaintiff, at the time Defendant PANA made these representations, was
3 ignorant of the falsity of Defendant's representations and believed them to be true. In
4 justifiable reliance on these representations, Plaintiff was induced to suspend use of
5 his diabetes medication, glucophage, to purchase and use biological supplements with
6 no medical benefit and to undergo unnecessary and invasive dental surgeries, all of
7 which Plaintiff would not have agreed to had he known the actual facts.

8 97. As a proximate result of the misrepresentations made by Defendant PANA,
9 Plaintiff was induced to forego scientifically accepted treatment for a serious medical
10 condition and to undergo unwarranted and invasive dental treatment.

11 98. As a further proximate result of the misrepresentations made by Defendant,
12 Plaintiff has sustained injury to his health, strength and activity, all of which injuries
13 have caused, and continue to cause, Plaintiff great mental, physical and nervous pain
14 and suffering. Plaintiff will seek leave of Court to amend this complaint to set forth the
15 full amount of damage sustained as a result thereof when ascertained.

16 99. As a further proximate result of the misrepresentations made by Defendant,
17 Plaintiff has sustained, and will continue to sustain, disabling, serious and permanent
18 physical and emotional injuries, all to Plaintiff's general damage in an amount presently
19 unascertainable. Plaintiff will seek leave of Court to amend this complaint to set forth
20 the full amount of damage sustained as a result thereof when ascertained.

21 100. As a further proximate result of the misrepresentations made by Defendant,
22 Plaintiff has incurred medical, hospital, psychological and related expenses in a sum
23 presently unascertainable. Plaintiff will seek leave of Court to amend this complaint
24 to set forth the full amount of damage sustained as a result thereof when ascertained.

25 101. As a further proximate result of the misrepresentations made by
26 Defendants, Plaintiff will in the future incur medical, hospital, psychological and related
27 expenses, the exact nature and extent of which are currently unknown to Plaintiff.
28 Plaintiff will seek leave of Court to amend this complaint to set forth the full amount of

1 damage sustained as a result thereof when ascertained.

2 102. As a further proximate result of the misrepresentations made by
3 Defendant, and each of them, Plaintiff has sustained loss of earnings and loss of
4 earning capacity, the exact nature and extent of which are currently unknown to
5 Plaintiff. Plaintiff will seek leave of Court to amend this Complaint to set forth the full
6 amount of damage when ascertained.

7 103. As a further proximate result of the misrepresentations made by Defendant,
8 and each of them, Plaintiff will in the future sustain loss of earnings and loss of earning
9 capacity, the exact nature and extent of which are currently unknown to Plaintiff.
10 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of
11 damage when ascertained.

12 **SEVENTH CAUSE OF ACTION**

13 **(For Intentional Misrepresentation Against Defendants**

14 **CAVITAT, JONES and Does 21 through 25, Inclusive)**

15 104. Plaintiff realleges and incorporates herein by reference all of the
16 allegations set forth in paragraphs 1 through 36 as though fully set forth herein.

17 105. On or about August 23-24, 2002, January 16-18, 2003, August 8-9, 2003,
18 at Cavitat Educational Conferences; on October 22, 2002 through July 1, 2005,
19 through Cavitat reports by its President and CEO, Bob Jones, on the www.altcorp.com
20 website; and as marketed through Innovation Management, LLC on March 2, 2004,
21 and continuing, Defendants CAVITAT, JONES, and Does 21 through 25, inclusive,
22 falsely and fraudulently represented to the general public, including Plaintiff, that:

- 23 a. That the Cavitat device imaged diseases of the alveolar bones,
24 including NICO, and was capable of assessing vascular flow;
- 25 b. That the clinical effectiveness of the Cavitat device had been sufficiently
26 demonstrated in the evidence-based dental community;
- 27 c. That the Cavitat device was a reliable and effective diagnostic tool;
- 28 d. That the findings of a Cavitat examination would be consistent with and

1 used in conjunction with conventional radiographs;

2 e. That the Cavitat device was the subject of Institutional Review Board
3 supervised studies, the results of which were published in peer-reviewed journals;

4 f. That the Cavitat device was used for clinical experiments on human
5 subjects with their consent;

6 g. That the Cavitat device was promoted and utilized by dental health
7 practitioners for the benefit of their patients;

8 h. That the FDA had approved Cavitat as effective in the diagnosis of
9 dental bone pathology;

10 i. That the Cavitat device had received full approval from the FDA to
11 market the device for its promoted uses, including as a stand-alone diagnostic tool;

12 j. That Cavitat complied with FDA regulations and standard practices.

13 106. The above representations made by Defendants CAVITAT, JONES, and
14 Does 21 through 25, inclusive, were false. The true facts were:

15 a. The Cavitat device tested only bone density;

16 b. The clinical effectiveness of the Cavitat device had not been sufficiently
17 demonstrated in the evidence-based dental community;

18 c. The Cavitat device was not a reliable or effective diagnostic tool;

19 d. The Cavitat device routinely detected alleged defects and cavitations
20 which were normal on a conventional radiograph;

21 e. The Cavitat device had not been the subject of appropriately controlled
22 studies with IRB approval nor had any such studies been published in peer-reviewed
23 journals;

24 f. The Cavitat device had been used in conjunction with clinical
25 experiments on human subjects without their properly obtained written required
26 informed consent;

27 g. The Cavitat device was promoted and utilized by dental practitioners
28 for their own self-benefit and self-enrichment;

1 h. The FDA had expressly rejected the request to label and market the
2 Cavitat device as capable of diagnosing NICO or identifying any specific bone
3 pathology;

4 i. The FDA had given only limited marketing clearance to the Cavitat
5 device and had rejected attempts to have the Cavitat device marketed as a stand-
6 alone diagnostic tool;

7 j. Cavitat had introduced a device into interstate commerce that was
8 adulterated and/or misbranded and promoted it for FDA unapproved or uncleared
9 uses.

10 107. When Defendants CAVITAT and JONES made these representations, they
11 knew them to be false. Defendants made such material misrepresentations with an
12 intent to deceive the general public, including Plaintiff, as to the effectiveness and
13 validity of the Cavitat device and with the intent to deceive members of the general
14 public, including Plaintiff, to rely upon these representations all to Plaintiff's detriment.

15 108. Plaintiff, at the time these representations were made by Defendants
16 CAVITAT and JONES, and at the time Plaintiff took the actions herein alleged, was
17 ignorant of the falsity of Defendants' representations and believed them to be true. In
18 justifiable reliance on these representations and the claimed efficacy of the results of
19 the Cavitat device in identifying disease in Plaintiff's jaw and mouth, Plaintiff underwent
20 unnecessary, harmful and invasive dental surgeries.

21 109. As a proximate result of the misrepresentations made by Defendants,
22 Plaintiff has sustained injury to his health, strength and activity, all of which injuries
23 have caused, and continue to cause, Plaintiff great mental, physical and nervous pain
24 and suffering. Plaintiff will seek leave of Court to amend this complaint to set forth the
25 full amount of damage sustained as a result thereof when ascertained.

26 110 As a further proximate result of the misrepresentations made by
27 Defendants, Plaintiff has sustained, and will continue to sustain, disabling, serious and
28 permanent physical and emotional injuries, all to Plaintiff's general damage in an

1 amount presently unascertainable. Plaintiff will seek leave of Court to amend this
2 complaint to set forth the full amount of damage sustained as a result thereof when
3 ascertained.

4 111. As a further proximate result of the misrepresentations made by
5 Defendants, Plaintiff has incurred medical, hospital, psychological and related
6 expenses in a sum presently unascertainable. Plaintiff will seek leave of Court to
7 amend this complaint to set forth the full amount of damage sustained as a result
8 thereof when ascertained.

9 112. As a further proximate result of the misrepresentations made by
10 Defendants, Plaintiff will in the future incur medical, hospital, psychological and related
11 expenses, the exact nature and extent of which are currently unknown to Plaintiff.
12 Plaintiff will seek leave of Court to amend this complaint to set forth the full amount of
13 damage sustained as a result thereof when ascertained.

14 113. As a further proximate result of the misrepresentations made by
15 Defendant, and each of them, Plaintiff has sustained loss of earnings and loss of
16 earning capacity, the exact nature and extent of which are currently unknown to
17 Plaintiff. Plaintiff will seek leave of Court to amend this Complaint to set forth the full
18 amount of damage when ascertained.

19 114. As a further proximate result of the misrepresentations made by
20 Defendants, and each of them, Plaintiff will in the future sustain loss of earnings and
21 loss of earning capacity, the exact nature and extent of which are currently unknown
22 to Plaintiff. Plaintiff will seek leave of Court to amend this Complaint to set forth the full
23 amount of damage when ascertained.

24 WHEREFORE, Plaintiff ANDRE VAILLANCOURT prays for judgment against
25 Defendants, and each of them, as follows:

26 FOR THE FIRST THROUGH SIXTH CAUSES OF ACTION AGAINST
27 DEFENDANT PANA:

28 1. For general damages according to proof;

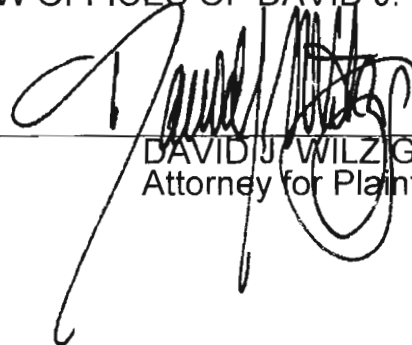
- 1 2. For medical and related expenses according to proof;
- 2 3. For future medical and related expenses according to proof;
- 3 4. For loss of earnings and loss of earning capacity according to proof;
- 4 5. For future loss of earnings and loss of earning capacity according to proof;
- 5 6. For interest thereon at the legal rate;
- 6 7. For costs of suit incurred herein; and
- 7 8. For such other and further relief as the Court deems just and proper.

8 FOR THE SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS CAVITAT
9 AND JONES:

- 10 1. For general damages according to proof;
- 11 2. For medical and related expenses according to proof;
- 12 3. For future medical and related expenses according to proof;
- 13 4. For loss of earnings and loss of earning capacity according to proof;
- 14 5. For future loss of earnings and loss of earning capacity according to proof;
- 15 6. For interest thereon at the legal rate;
- 16 7. For costs of suit incurred herein; and
- 17 8. For such other and further relief as the Court deems just and proper.

18
19 Dated: 12/1/08

LAW OFFICES OF DAVID J. WILZIG



DAVID J. WILZIG
Attorney for Plaintiff