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District Attorney, County of Monterey
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FILED

MAY 04 2006

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
— G. WILLIAMS DEPUTY

6 Attorneys for Plaintiff
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF MONTEREY**
10

11 **PEOPLE OF THE STATE OF CALIFORNIA,**)
12 **Plaintiff,**)
13 **vs.**)
14 **TONY L. HOANG CHIROPRACTIC, Inc., a**)
California Corporation.)
15 **Defendant.**)
16
17
18

Case No.: **M79192**

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES AND OTHER
EQUITABLE RELIEF**

19 **People of the State of California through its attorney Dean D. Flipppo, District Attorney**
20 **for the County of Monterey, by John F. Hubanks, Deputy District Attorney, acting on**
21 **information and belief allege:**

22 **VENUE AND JURISDICTION**

23 1. **Dean D. Flipppo, District Attorney of the County of Monterey, by JOHN F.**
24 **HUBANKS, Deputy District Attorney, acting to protect the public from unfair business**
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1 practices bring this suit in the public interest and in the name of the People of the State of
2 California. Plaintiff, by this action and pursuant to Business and Professions Code sections
3 17500, 17535, and 17536 seeks to enjoin Defendant from engaging in unfair, misleading, and
4 unlawful business practices alleged herein and seeks to obtain civil penalties for the Defendant's
5 violations of the above-mentioned statutes.

6 2. Defendant Tony L. Hoang Chiropractic, Inc. (Defendant), at all times mentioned
7 herein, has transacted business within and from the County of Monterey, State of California.
8 Defendant, as alleged below, has violated, are continuing to violate, or threaten to violate the
9 laws and public policies of the State of California and the County of Monterey so as to be
10 contrary to the rights and interests of the public as consumers. The violations of law hereinafter
11 described have been and are now being committed, wholly or in part, within said County of
12 Monterey, and elsewhere in the State of California.

13 **DEFENDANT**

14 3. Defendant is a California corporation doing business as Allied Chiropractic Clinic
15 which is located at 700 Cass St., Suite 110, Monterey, California, 93940 (Allied Chiropractic
16 Clinic), in the City of Monterey, County of Monterey at all relevant times. At all relevant times,
17 Defendant has been and continues to be engaged in the business of advertising, marketing,
18 offering for sale, selling and providing chiropractic care.

19 4. Whenever reference is made to any representation, act, omission, or transaction
20 of the Defendant, such allegation shall be deemed to mean that the principals, officers, directors,
21 managers, employees, agents, representatives, successors and assigns, of said defendant, while
22 acting within the actual or ostensible scope of their employment, did or authorized such
23 representation, act, omission or transaction on behalf of said Defendant. Furthermore, whenever
24 in this Complaint reference is made to any act of Defendant, such allegations shall be deemed to
25 mean the act of each Defendant acting individually, jointly and severally. At all relevant times,

1 each Defendant has acted as an agent, representative, or principal of each of the other Defendant
2 and has acted within the course and scope of said agency or representation with respect to the
3 acts herein alleged.

4 **NATURE OF CONDUCT & ADVERTISING ALLEGED**

5 5. Plaintiff is informed and believes that the DRX9000 is a spinal traction device
6 manufactured, offered for sale, distributed and marketed to health care professionals, including
7 physicians and chiropractors, as well as to the general public by Axiom Worldwide, Inc., a
8 Florida corporation whose exact business form is unknown (Axiom), and various employees
9 and/or agents of Axiom Worldwide, Inc, including Ben Altadonna, individually, and Altadonna
10 Communications, Inc., a California corporation (Altadonna). Axiom Worldwide, Inc. and
11 Altadonna, and their employees and agents, prepare and disseminate advertising and marketing
12 materials to health care professionals, like Defendant, and the Defendant and other health care
13 professionals in turn disseminate this same advertising and marketing material to the general
14 public. Such advertising and marketing materials contain false and deceptive representations
15 regarding the treatment efficacy, technology and science of the DRX 9000. Axiom Worldwide,
16 Inc. and Atladonna, and their employees and agents, and as part of general and deceptive
17 business practice, incorporate the aforementioned false and deceptive statements into media kits,
18 websites and brochures which are also provided to health care professionals, like Defendant, for
19 the purpose of public dissemination through newspapers, direct mailers and electronic media.
20 The representations contained within this written, visual and/or electronic media contain
21 numerous unsubstantiated, false and/or deceptive representations or omissions of fact having the
22 capacity to deceive consumers regarding the scientific reliability, safety, treatment efficacy and
23 nature of the DRX9000, including but not limited to the following:
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25

DRX Claims

1 A. The DRX9000 uses state-of-the-art technology to gradually relieve neuro-
2 compression often associated with lower back pain. The process has been proven to relieve pain
3 by enlarging disc space, reducing herniation, strengthening outer ligaments to help move
4 herniated areas back into place, and reversing high pressure intra-disc pressures through
5 application of negative pressure;

6 B. The DRX9000 represents a major advancement in medical technology through the
7 concerted efforts of a team of top physicians and medical engineers for the purpose of treating
8 low back pain resulting from herniated or deteriorating discs;

9 C. The DRX9000 significantly reduces back pain in 86% of patients;

10 D. The DRX 9000 has a 86% treatment success rate with persons suffering from
11 herniated or bulging lumbar discs, degenerative disc disease, post-surgical relapses, or facet
12 syndromes;

13 E. Pre- and Post-treatment MRIs demonstrate a greater than 50% reduction in the
14 size and extent of herniation after four weeks of treatments with the DRX9000 and, during the
15 initial clinical study, more than 86% of patients report relief of back pain with the DRX9000;
16 and,
17

18 F. The DRX 9000 device and technology are based upon a NASA study of the
19 effects of space travel on astronauts.
20

21 6. Axiom and Altadonna, and their employees and agents, also disseminate
22 marketing and advertising strategies and tactics to health care professionals, like Defendant, and
23 these strategies and tactics promote, encourage or advise such health care professionals to utilize
24 false and deceptive advertising materials and tactics with respect to the DRX9000, including but
25 not limited to the following:

1 A. Placing anonymous advertisements in newspapers advising consumers suffering
2 from health conditions affecting the spine of a recent "free report" regarding an FDA approved
3 medical technology that has an "86% success rate for treating debilitating back pain without
4 surgery. Even with multiple herniated discs." These anonymous advertisements advise the
5 consumer that "an accidental NASA discovery has lead to the most promising sciatica and
6 herniated discs treatment today." The advertisement then provides the consumer with a toll-free
7 telephone number to call to request a copy of the free report. The anonymous advertisement
8 does not identify the sponsor's name, address or practice;

9
10 B. For those consumers responding to the anonymous advertisement and providing
11 their information, Axiom and Altadonna provide health care professionals like Defendant with
12 pre-printed brochures and cover letters to mail to consumers further marketing false and
13 deceptive information regarding the "DRX9000". This brochure is called a "Free Report". These
14 mailings contain those false and deceptive representations identified in paragraph 6 above and
15 incorporate herein by reference; and,

16 C. Statements which contain misstatements, falsehoods, misrepresentations,
17 distortions, sensational and fabulous statements and all of which were intended to or had a
18 tendency to deceive the public or to otherwise impose upon credulous or ignorant persons or
19 vulnerable members of the consuming public in violations of Business & Professions Code
20 section 651.

21
22 7. Within four (4) years prior to the filing of this complaint, on an exact date
23 unknown to Plaintiff, Defendant acquired the advertising and marketing materials alleged in
24 paragraphs 5 & 6 above from Axiom and Altadonna. On and after January 1, 2006, Defendant
25 began disseminating this marketing and advertising material to the public through a series of

1 daily, anonymous advertisements in newspapers like *The Herald, Monterey County* as well as
2 through Defendant's websites, direct mailings to interested consumers and similar literature and
3 visual media shown to consumers at Allied Chiropractic Clinic.

4 **FIRST CAUSE OF ACTION**
5 **False and Misleading Statements**
6 **Business and Professions Code Section 17500 et seq.**

7 8. Plaintiff re-alleges and incorporates by reference as though set forth in full herein
8 paragraphs 1-7, inclusive, of this Complaint.

9 9. Business and Professions Code 17500 states, in part: "It is unlawful for any
10 person, firm, corporation or association, or any employee thereof with intent... to perform
11 services...to disseminate... any advertising which is untrue or misleading...with the intent not to
12 sell...those services...at the price stated therein, or as so advertised."

13 10. Beginning on a date unknown to Plaintiff, but within four (4) years prior to the
14 initiation of this action, Defendant made or caused to be made untrue or misleading statements,
15 which they knew or should have known were in violation of Business and Professions Code
16 section 17500, with the intent to induce members of the public to purchase chiropractic services
17 and treatments provided by Defendant, his employees and/or agents. Those untrue or misleading
18 statements, which are unlawful under Business and Professions Code section 17500, were
19 disseminated on and after January 1, 2006 through daily advertisements in *The Herald, Monterey*
20 *Co* as well as through direct mailings to consumers and through electronic media, including
21 websites, include, but are not limited to:

22 A. Statements regarding the treatment efficacy or probability of success regarding
23 the DRX9000 as to medical conditions of the spine, including herniation, sciatica, stenosis and/or
24 degenerative spinal conditions;
25

1 B. Statements that "space travel cures back pain" and/or the existence of a NASA
2 study or discovery regarding how space travel solves "86%" of back pain;

3 C. Statements regarding the DRX9000 being a surgical alternative to back pain;

4 D. Statements which implied that Defendant's treatment on the DRX9000 would
5 result in a positive effect on certain diseases of the body, without advising consumers that such
6 claims are based upon unsubstantiated claims and/or research which is still ongoing, thereby
7 misleading consumers into thinking that Defendant could cure the disease.
8

9 11. Such untrue or misleading statements include, but are not limited to, those
10 representations set forth in paragraphs 5 through 6, inclusive. These representations and
11 inadequate disclosures were known, or by the exercise of reasonable care should have been
12 known, to Defendant to be untrue or misleading when made.

13 **SECOND CAUSE OF ACTION**
14 **Business and Professions Code Section 17200**

15 12. Plaintiff incorporates by reference paragraphs 1 through 7, 9 - 12 above as though
16 fully set forth herein.

17 13. Beginning on an exact date unknown to Plaintiff, but at least within four years of
18 the discovery by Plaintiff of the facts upon which this cause of action is based, the above-named
19 Defendant, and each of them, have engaged in unfair competition, in violation of section 17200
20 of the Business and Professions Code, by engaging in unlawful, unfair, and deceptive business
21 practices that include, but are not limited to, the following:

22 A. Defendant made untrue or misleading statements in violation of Business and
23 Professions Code section 17500, as more specifically set forth in the First Cause of Action above
24 and incorporated by reference;
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1 B. Advertising, marketing, selling or offering for sale chiropractic treatments on the
2 DRX9000 with the intent to defraud and mislead the public. Said conduct constituted unfair
3 competition which, in part, is defined in Business and Profession Code section 17200 as any
4 unlawful business practice;

5 C. Defendant failed to substantiate the aforementioned advertising in violation of
6 Business & Professions Code section 17508, as specifically set forth above and incorporated
7 herein by reference;

8 D. Defendant utilized blind and/or anonymous advertising in the local newspapers
9 such as *The Herald, Monterey County* which, by virtue of either false representations or
10 omissions of information, had the capacity to deceive consumers; and,

11 E. Defendant engaged in false and deceptive advertising in violation of Business &
12 Professions Code section 651.

13
14 **PRAYER**

15 WHEREFORE, plaintiff prays for judgment as follows:

16 1. That, pursuant to Business and Professions Code sections 17203 and 17535, and
17 the Court's inherent equity powers, Defendant, and each of them, and their directors, officers,
18 employees, agents, successors, assignees and representatives and all persons, corporations or
19 other entities acting under, by, through, or on behalf of Defendant, or acting in concert or
20 participation with or for them with actual or constructive notice of this injunction, be
21 permanently enjoined and restrained from directly or indirectly engaging in any of the following
22 acts and practices:

23 A. Making any misrepresentations as defined in Business and Professions Code
24 section 17500, including, but not limited to, those misrepresentations in the First Cause of
25

1 Action as set forth above.

2 B. Engaging in unfair competition as defined in Business and Professions Code
3 section 17200, including, but not limited to, those acts in the Second Cause of Action as set forth
4 above.

5 That this Court order, according to proof at trial, such other equitable and other relief as
6 is appropriate, and pursuant to sections 17535 and 17203 of the Business and Professions Code.

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8 3. That, pursuant to Business and Professions Code section 17206, this Court order a
9 civil penalty of \$2,500.00 for each of Defendant' violations of Section 17200 of the Business and
10 Professions Code as proved at trial.

11 4. That, pursuant to Business and Professions Code section 17536, this Court order a
12 civil penalty of \$2,500.00 for each of Defendant' violations of Section 17500 of the Business and
13 Professions Code as proved at trial.

14 5. That Defendant be required to take such further action as the Court may deem
15 necessary to terminate and dissipate the effects of the unlawful activities hereinabove alleged,
16 pursuant to sections 17535 and 17203 of the Business and Professions Code.

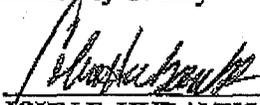
17 6. For such other, further and different relief as the Court may deem just and proper

18 7. That Plaintiff recover its costs of suit, including, but not limited to, its costs of
19 investigation.

20 Dated: May 3, 2006

21
22 DEAN D. FLIPPO
23 District Attorney
24 Monterey County

25 By:


JOHN F. HUBANKS
Deputy District Attorney

FILED

MAY 05 2006

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
~~G. WILLIAMS~~ DEPUTY

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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **IN AND FOR THE COUNTY OF MONTEREY**

8 **M79192**

9 **PEOPLE OF THE STATE OF CALIFORNIA,) Case No.:**

10 **Plaintiff,**

11 **vs.**

12 **TONY L. HOANG, CHIROPRACTIC, Inc., a**
California Corporation.

13 **Defendant**

**STIPULATED FINAL JUDGMENT AND
PERMENANT INJUNCTION**

14
15 **Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, appeared through its**
16 **attorney, Dean D. Flippo, Monterey County District Attorney, by John F. Hubanks, Deputy**
17 **District Attorney. Defendant Tony L. Hoang Chiropractic, Inc., appeared through Tony L.**
18 **Hoang, in propria persona ("Defendant") As to the Defendants, having consented to the entry of**
19 **this Final Judgment without the taking of evidence, and without trial or adjudication of any facts**
20 **herein, and without this Final Judgment constituting any evidence or admission by said**
21 **Defendants regarding any issue or fact alleged in said Complaint, and good cause appearing:**

22 **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that:**
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- 1 F. Reliable, scientific studies or fact-based evidence regarding the
2 representation that DRX9000 treatment is an alternative to surgery or
3 drugs and has no "documented side effects"; and,
4 G. Reliable, scientific studies or fact-based evidence regarding the
5 representation that DRX9000 is either a "new" or a "space-age
6 technology".

7 **PERMANENT INJUNCTION**

8 4. Pursuant to Business and professions Code section 17535, Defendant, and its
9 agents, representatives, employees, and successor corporations in which he has a majority
10 ownership interest is hereby permanently enjoined and restrained from directly or indirectly
11 doing any of the following:

- 12 a.) Cause the dissemination of any anonymous advertisement to the public of
13 their business identity or nature of their practice in any newspaper;
14 b.) Cause the dissemination of any false or unsubstantiated advertising regarding
15 the DRX 9000 through any source, including newspapers, electronic or visual
16 media, or direct mailings;
17 c.) Cause the dissemination of any advertisement creating the perception that
18 Defendants are engaged in the practice of medicine;
19 d.) Cause the dissemination of any false, fraudulent, misleading or deceptive
20 advertisement or statement in violation of Business & Professions Code
21 section 651; and,
22 e.) The Defendant may not represent to the public that he has received the same
23 training and/or education as a physician. The Defendant may accurately
24 describe his actual training and/or education.
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