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individual, et. al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 18 2010

John A. Blake, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

BC433963

Case No.

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) FRAUDULENT INDUCEMENT;
- (3) RESCISSION;
- (4) VIOLATION OF CAL. BUSINESS AND PROFESSIONS CODE § 17200;
- (5) COMMON LAW UNFAIR COMPETITION;
- (6) DECLARATORY RELIEF RE: LEASES;
- (7) DECLARATORY RELIEF RE: ADVERTISING AGREEMENTS;
- (8) CONSTRUCTIVE TRUST;
- (9) CONVERSION; AND
- (10) CIVIL CONSPIRACY

RAFIK YANNI, DDS, an individual;
MEDHAT NASHED, DDD, MS, an
individual; WADID FATTOUCH, DDS,
an individual; JAIME A. NGUYEN, DDS,
an individual; EMAD BASSALI, DDS, an
individual; LUKE MALEK, DDS, an
individual; SAMIR BATNIJI, DDS, an
individual; NADIA SALEED, DDS, an
individual; SAM MORCOS, DDS, an
individual; JOHN B. WARNER, an
individual; NAWAL ROFAEL, DDS, an
individual; SAMIR KHAYAL, DDS, an
individual; RICHARD HAMATY, DDS,
an individual; MAHER ALBOUZ, DDS,
an individual; DAVID W. KELLINY,
DDS; an individual; JOHN YUN, DDS, an
individual; WILLIAM CONTENTE, III,
DDS, an individual; MOHAMED
KAYALI, DDS, an individual; MAGDY
TADROS, DDS; an individual; SALEH
KHOLAKI, DDS, an individual;
MARLENE QUINTO, DDS, an individual;
MAHFOUZ GEREIS, DDS, an individual;
RAEDA KAASAR, DDS, an individual;
EMAD AMMAR, DDS, an individual;
MEDHAT ROFAEL, DDS, an individual;
ARKADY TSIBEL, DDS, an individual;
DMITRY TUBIS, DDS, an individual;
PETER BISHAY, DDS, an individual;
VIVIANE HABER, DDS, an individual,

Plaintiffs,

99910-00000/1723766.3

COMPLAINT

1
2 v.

3 BRICAN AMERICA, INC., a Florida
4 corporation; BRICAN AMERICA, LLC, a
5 Florida Limited Liability Corporation;
6 NCMIC FINANCE CORPORATION d/b/a
7 PROFESSIONAL SOLUTIONS
8 FINANCIAL SERVICES, an Iowa
9 corporation; VISO LASIK MEDSPAS,
10 LLC, a Florida Limited Liability
11 Corporation; JEAN FRANCOIS
12 VINCENS, an individual; JACQUES
13 LEMACON, an individual; and DOES 1 to
14 50, inclusive,

15 Defendants.

16 Plaintiffs Rafik Yanni, DDS, Medhat Nashed, DDS, MS, Wadid Fattouch, DDS, Jaime A.
17 Nguyen, DDS, Emad Bassali, DDS, Luke Malek, DDS, Samir Batniji, DDS, Nadia Saleeb, DDS,
18 Sam Morcos, DDS, John B. Warner, DDS, Nawal Rofael, DDS, Samir Khayal, DDS, Richard
19 Hamaty, DDS, Maher Albouz, DDS, David W. Kelliny, DDS, John Yun, DDS, William
20 Contente, III, DDS, Magdy Tadros, DDS, Mohamed Kayali, DDS, Saleh Kholaki, DDS, Marlene
21 Quinto, DDS, Mahfouz Gereis, DDS, Raeda Kaasar, DDS, Emad Ammar, DDS, Medhat Rofael,
22 DDS, Arkady Tsibel, DDS, Dmitry Tubis, DDS, Peter Bishay, DDS, and Viviane Haber, DDS
23 (together, "Plaintiffs") file this complaint against Brican America, Inc., Brican America LLC,
24 NCMIC Finance Corporation d/b/a Professional Solutions Financial Services, Viso Lasik
25 Medspas, LLC, Jean Francois Vincens, Jacques Lemacon and DOES 1 to 50, and each of them
26 (together, "Defendants") and allege as follows:

27 INTRODUCTION

28 1. This case arises out of a deceptive and calculated "bait and switch" fraudulent
scheme designed to defraud a group of unsuspecting and trusting medical and dental providers
out of hundreds of thousands of dollars. Plaintiffs are licensed dentists, all of whom are
California residents and who practice in California, primarily in the Los Angeles area.
Defendants Brican America, Inc. and Brican America LLC (collectively, "Brican") are in the

1 business of leasing to medical and dental providers combined flat screen television/computer
2 systems which display medical and dental information and advertisements to the providers'
3 patients, typically located in the providers' waiting rooms.

4 2. In 2008, Brican solicited Plaintiffs and persuaded them to lease Brican advertising
5 systems for display in their waiting rooms. Brican's scheme operated as follows: To induce an
6 individual Plaintiff to enter into a lease, Brican agreed that it would purchase advertising space on
7 the leased system for its affiliate, defendant Viso Lasik Medspas, Inc. ("Viso"), so that Viso could
8 display advertisements on the system. Brican represented that Viso sought to advertise to each
9 Plaintiff's "captive" patients. Brican's payments for the purchase of the advertising space were to
10 cover the vast majority of the cost of the lease, making the lease virtually free to each Plaintiff —
11 each Plaintiff would be required to pay only a few hundred dollars each year. Brican promised
12 that if it stopped making payments for the advertising space, each Plaintiff could cancel all related
13 agreements and Brican would buy back the lease. Based on what Plaintiffs have now learned,
14 Brican made similar promises to thousands of other professionals across the country, thereby
15 promising in the aggregate to buy approximately \$40,000,000 of advertising, and if it did not do
16 so, to buy back \$40,000,000 of leases.

17 3. Based on Brican's representations and agreement to purchase advertising space or
18 buy back the lease if the advertising space was not purchased, and because nearly the entire cost
19 of the lease would purportedly be covered by payments from Brican, Plaintiffs entered into the
20 leases. Brican arranged for the leases to be handled by its cohort and co-conspirator, defendant
21 NCMIC Finance Corporation d/b/a Professional Solutions Financial Services ("PSFS"), with
22 whom Brican had an agreement to handle the leases.

23 4. Shortly after Plaintiffs entered the leases, Brican reneged on its contractual
24 obligations and informed Plaintiffs that it would no longer purchase the advertising space, and
25 also refused to buy back the leases. Brican claimed that Plaintiffs, nonetheless, would remain
26 responsible for the full amount of the leases, totaling nearly \$30,000 each.

27 5. As a result of Defendants' wrongful conduct and fraudulent scheme, Plaintiffs
28 have lost thousands of dollars and are being threatened by PSFS and its collection agencies and

attorneys for nonpayment on the leases. By this action, Plaintiffs seek to put an end to Defendants' fraudulent scheme, to recover compensatory damages for Defendants' breach of contract and fraud, and to rescind the leases and recover all payments made to Defendants thereunder. Finally, Plaintiffs seek an award of punitive damages in an amount sufficient to punish Defendants and deter them from acting in a similar manner to anyone else in the future.

THE PARTIES

6. Plaintiff Rafik Yanni, DDS ("Yanni") is, and at all times mentioned herein was, a California resident. Yanni is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

7. Plaintiff Medhat Nashed, DDD, MS ("Nashed") is, and at all times mentioned herein was, a California resident. Nashed is a licensed and practicing orthodontist who operates two orthodontic practices in Los Angeles County, California.

8. Plaintiff Waddid Fattouch, DDS ("Fattouch") is, and at all times mentioned herein was, a California resident. Fattouch is a licensed and practicing dentist who operates a dental practice in Orange County, California.

9. Plaintiff Jaime A. Nguyen, DDS ("Nguyen") is, and at all times mentioned herein was, a California resident. Nguyen is a licensed and practicing dentist who operates a dental practice in Orange County, California.

10. Plaintiff Emad Bassali, DDS ("Bassali") is, and at all times mentioned herein was, a California resident. Bassali is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

11. Plaintiff Luke Malek, DDS ("Malek") is, and at all times mentioned herein was, a California resident. Malek is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

12. Plaintiff Samir Batniji, DDS ("Batniji") is, and at all times mentioned herein was, a California resident. Batniji is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

1 13. Plaintiff Nadia Saleeb, DDS ("Saleeb") is, and at all times mentioned herein was, a
2 California resident. Saleeb is a licensed and practicing dentist who operates a dental practice in
3 Los Angeles County, California.

4 14. Plaintiff Sam Morcos, DDS ("Morcos") is, and at all times mentioned herein was,
5 a California resident. Morcos is a licensed and practicing dentist who operates a dental practice
6 in Orange County, California.

7 15. Plaintiff John B. Warner, DDS ("Warner") is, and at all times mentioned herein
8 was, a California resident. Warner is a licensed and practicing dentist who operates a dental
9 practice in Orange County, California.

10 16. Plaintiff Nawal Rofael, DDS ("Rofael") is, and at all times mentioned herein was,
11 a California resident. Rofael is a licensed and practicing dentist who operates a dental practice in
12 Los Angeles County, California.

13 17. Plaintiff Samir Khayal, DDS ("Khayal") is, and at all times mentioned herein was,
14 a California resident. Khayal is a licensed and practicing dentist who operates a dental practice in
15 Los Angeles County, California.

16 18. Plaintiff Richard Hamaty, DDS ("Hamaty") is, and at all times mentioned herein
17 was, a California resident. Hamaty is a licensed and practicing dentist who operates a dental
18 practice in Orange County, California.

19 19. Plaintiff Maher Albouz, DDS ("Albouz") is, and at all times mentioned herein
20 was, a California resident. Albouz is a licensed and practicing dentist who operates a dental
21 practice in Los Angeles County, California.

22 20. Plaintiff David W. Kelliny, DDS ("Kelliny") is, and at all times mentioned herein
23 was, a California resident. Kelliny is a licensed and practicing dentist who operates a dental
24 practice in Los Angeles County, California.

25 21. Plaintiff John Yun, DDS ("Yun") is, and at all times mentioned herein was, a
26 California resident. Yun is a licensed and practicing dentist who operates a dental practice in
27 Orange County, California.

28

22. Plaintiff William Contente, III, DDS ("Contente") is, and at all times mentioned herein was, a California resident. Contente is a licensed and practicing dentist who operates a dental practice in Fresno County, California.

23. Plaintiff Magdy Tadros, DDS ("Tadros") is, and at all times mentioned herein was, a California resident. Tadros is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

24. Plaintiff Mohamed Kayali, DDS ("Kayali") is, and at all times mentioned herein was, a California resident. Kayali is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

25. Plaintiff Saleh Kholaki, DDS ("Kholaki") is, and at all times mentioned herein was, a California resident. Kholaki is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

26. Plaintiff Marlene Quinto, DDS ("Quinto") is, and at all times mentioned herein was, a California resident. Quinto is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

27. Plaintiff Mahfouz Gereis, DDS ("Gereis") is, and at all times mentioned herein was, a California resident. Gereis is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

28. Plaintiff Raeda Kaasar, DDS ("Kaasar") is, and at all times mentioned herein was, a California resident. Kaasar is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

29. Plaintiff Emad Ammar, DDS ("Ammar") is, and at all times mentioned herein was, a California resident. Ammar is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

30. Plaintiff Medhat Rofael, DDS ("M. Rofael") is, and at all times mentioned herein was, a California resident. M. Rofael is a licensed and practicing dentist who operates a dental practice in Los Angeles County, California.

1 31. Plaintiff Arkady Tsibel, DDS ("Tsibel") is, and at all times mentioned herein was,
2 a California resident. Tsibel is a licensed and practicing dentist who operates a dental practice in
3 Los Angeles County, California.

4 32. Plaintiff Dmitry Tubis, DDS ("Tubis") is, and at all times mentioned herein was, a
5 California resident. Tubis is a licensed and practicing dentist who operates a dental practice in
6 Los Angeles County, California.

7 33. Plaintiff Peter Bishay, DDS ("Bishay") is, and at all times mentioned herein was, a
8 California resident. Bishay is a licensed and practicing dentist who operates a dental practice in
9 Los Angeles County, California.

10 34. Plaintiff Viviane Haber, DDS ("Haber") is, and at all times mentioned herein was,
11 a California resident. Haber is a licensed and practicing dentist who operates a dental practice in
12 Los Angeles County, California.

13 35. Plaintiffs are informed and believe that additional medical and dental providers in
14 the Los Angeles area are also the victims of Defendants' fraudulent scheme, and such additional
15 plaintiffs may be added to this action.

16 36. Plaintiffs are informed and believe, and based thereon allege, that defendant
17 Brican America, Inc. is, and at all times mentioned herein was, a corporation organized and
18 existing under the laws of the State of Florida, which regularly does business in Los Angeles
19 County, California.

20 37. Plaintiffs are informed and believe, and based thereon allege, that defendant
21 Brican America LLC is, and at all times mentioned herein was, a limited liability company
22 organized and existing under the laws of the State of Florida, which regularly does business in
23 Los Angeles County, California. Plaintiffs are further informed and believe, and based thereon
24 allege, that Brican America, LLC is a successor entity to Brican America, Inc. Plaintiffs are
25 further informed and believe, and based thereon allege, that at all times mentioned herein, Brican
26 America LLC was an entity that is wholly-owned and controlled by defendant Brican America,
27 Inc. Plaintiffs are further informed and believe, and based thereon allege, that Brican America,
28 LLC is, and at all times mentioned herein was, a mere shell, instrumentality, and conduit through

1 which Brican America, Inc. carries on its business, exercising complete control and dominance of
2 such business and to such an extent that any individuality or separateness of Brican America,
3 LLC and Brican America, Inc. does not, and at all times herein did not, exist, and/or that Brican
4 America, Inc. and Brican America LLC are the alter egos of each other. Brican America, Inc. and
5 Brican America, LLC are collectively referred to herein as "Brican."

6 38. Plaintiffs are further informed and believe, and based thereon allege, that Brican is,
7 and at all times mentioned herein was, an entity that is wholly-owned and controlled by
8 defendants Jean Francois Vincens ("Vincens") and Jacques Lemacon ("Lemacon"). Plaintiffs are
9 further informed and believe, and based thereon allege, that Brican is, and at all times mentioned
10 herein was, a mere shell, instrumentality, and conduit through which Vincens and Lemacon carry
11 on their business, exercising complete control and dominance of such business and to such an
12 extent that any individuality or separateness of Brican, on the one hand, and Vincens and
13 Lemacon, on the other, does not, and at all times herein did not, exist.

14 39. Plaintiffs are informed and believe, and based thereon allege, that defendant
15 Vincens is, and at all times mentioned herein was, an individual who resides in Miami, Florida
16 and who regularly does business in Los Angeles County, California, including through his alter
17 egos, Brican and Viso.

18 40. Plaintiffs are informed and believe, and based thereon allege, that defendant
19 Lemacon is, and at all times mentioned herein was, an individual who resides in Miami, Florida
20 and who regularly does business in Los Angeles County, California, including through his alter
21 egos, Brican and Viso.

22 41. Plaintiffs are informed and believe, and based thereon allege, that defendant Viso
23 is, and at all times mentioned herein was, a limited liability company organized and existing
24 under the laws of the State of Florida, which regularly does business in Los Angeles County,
25 California. Plaintiffs are further informed and believe, and based thereon allege, that Viso is, and
26 at all times mentioned herein was, an entity that is wholly-owned and controlled by defendants
27 Vincens, Lemacon and/or Brican. Plaintiffs are further informed and believe, and based thereon
28 allege, that Viso is, and at all times mentioned herein was, a mere shell, instrumentality, and

1 conduit through which Vincens, Lemacon and/or Brican carry on their business, exercising
2 complete control and dominance of such business and to such an extent that any individuality or
3 separateness of Viso, on the one hand, and Vincens, Lemacon and/or Brican, on the other, does
4 not, and at all times herein did not, exist.

5 42. Plaintiffs are informed and believe, and based thereon allege, that defendant
6 NCMIC Finance Corporation d/b/a Professional Solutions Financial Services ("PSFS") is, and at
7 all times mentioned herein was, a corporation organized and existing under the laws of the State
8 of Iowa, which regularly does business in Los Angeles County, California. Plaintiffs are further
9 informed and believe, and based thereon allege, that defendant PSFS also conducts business in
10 California, including through its affiliate, NCMIC Finance Corporation of California.

11 43. The true names and capacities of the defendants named herein as DOES 1 to 50,
12 inclusive, whether individual, corporate, associate or otherwise, are presently unknown to
13 Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will seek leave
14 to amend their complaint to allege the true names and capacities when the same have been
15 ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of the
16 fictitiously named defendants was responsible in some manner for the acts and omissions alleged
17 herein and is liable to Plaintiffs therefor.

18 44. Plaintiffs are informed and believe, and based thereon allege, that in doing the acts
19 and omissions alleged herein, each defendant acted individually for himself and itself, and as the
20 agent, employee, and/or representative of each of the other defendants and, in doing the acts and
21 omissions alleged herein, each was at all times acting within the course and scope of said agency,
22 representation or employment relationship with the advance knowledge, acquiescence or
23 subsequent ratification of each and every other defendant.

24
25 **FACTS COMMON TO ALL ALLEGATIONS**

26 45. Beginning in or about mid-2008, Brican approached each Plaintiff with what it
27 claimed was an exciting opportunity to purchase in-office advertising systems at very low cost.
28 Brican explained that it was in the business of leasing to medical and dental providers combined

1 flat screen television/computer systems which display medical and dental information and
2 advertisements to the providers' patients, typically located in the providers' waiting rooms.
3 Brican further explained that its affiliate, defendant Viso, was interested in advertising its services
4 to each Plaintiff's "captive" patients via the Brican in-office advertising systems.

5 46. Brican offered to lease its in-office advertising systems to each Plaintiff at a cost
6 of approximately \$6,100 per year for a five year term. As a material inducement to enter into the
7 leases, Brican's offer included Brican's promise that it would purchase advertising space on the
8 systems it leased to each Plaintiff, which would allow Brican to display advertisements for the
9 services of its affiliate, defendant Viso. Brican offered to pay each Plaintiff \$5,800 per year to
10 purchase the advertising space, for the same five year term as the lease, thus leaving each Plaintiff
11 responsible for only a few hundred dollars per year. Brican further explained that each Plaintiff
12 would only be obligated to run advertisements for Brican's affiliate on up to 10% of the
13 advertising space; each Plaintiff was free to advertise his or her own services and information on
14 the remaining 90% of advertising space. Further, Brican promised that if it stopped buying the
15 advertising, each Plaintiff could cancel the entire arrangement, thereby removing all risk to
16 Plaintiffs.

17 47. Brican touted the arrangement as a "win-win" — each Plaintiff would receive an
18 in-office advertising system on which he or she could advertise their services or disseminate
19 information to their patients 90% of the time, at a cost of only a few hundred dollars per year. In
20 exchange, Viso, Brican's affiliate, would have the opportunity to advertise directly to each
21 Plaintiff's patients, a guaranteed captive audience. The above-described fraudulent
22 representations and leasing scheme are herein referred to as the "Fraudulent Scheme."

23 48. Based on Brican's representations and Brican's agreement to pay each Plaintiff
24 \$5,800 per year for advertising space and to buy back the leases if it or its affiliate stopped
25 purchasing advertising space, Plaintiffs agreed to lease the Brican in-office advertising systems.
26 As part of its Fraudulent Scheme, Brican arranged for defendant PSFS to handle the lease
27 agreements and to act as the financing agent. In some instances, Brican entered into the lease
28 directly with the medical or dental provider and then assigned the lease to PSFS. In others,

1 Brican arranged for the medical or dental provider to enter into the lease directly with PSFS.
2 Plaintiffs are informed and believe, and on that basis allege, that as part of the Fraudulent
3 Scheme, PSFS and Brican entered into a contractual agreement whereby PSFS agreed to purchase
4 the advertising systems from Brican, for the purpose of leasing those same advertising systems to
5 Brican's customers, pursuant to Brican's agreement with its customers. Brican would receive the
6 agreed-upon purchase price between PSFS and Brican, and PSFS would receive the "premium"
7 generated from the difference between the price paid by PSFS to Brican and the price Brican's
8 customers paid for the systems.

9 49. Accordingly, in our about mid-2008 and in accordance with Plaintiffs' agreements
10 with Brican and to effectuate Defendants' Fraudulent Scheme, Plaintiffs each simultaneously
11 entered into three documents as part of the transaction, an Equipment Lease Application and
12 Agreement (the "Lease" or "Leases"), an "advertising agreement" or "marketing agreement" for
13 the purchase of the advertising space by Brican (the "Advertising Agreement" or "Advertising
14 Agreements")), and a purchase order. Under applicable law, the Lease, Advertising Agreement
15 and purchase order, which were entered into at the same time as part of the same transaction,
16 make up one agreement and are referred to herein as the "Contract" or "Contracts."

17 50. As part of the Contracts, Brican arranged for Plaintiffs to enter into the Leases
18 with PSFS (or, in some instances, with Brican and then Brican assigned the Lease to PSFS),
19 wherein Plaintiffs agreed to pay \$508 per month (\$6,096 per year) for a five year term for the
20 lease of the Brican advertising systems. Curiously, although many of the Leases purport to be
21 between Plaintiffs, on the one hand, and PSFS, on the other, Brican's logo appears on top of the
22 Leases. The conspicuous placement of the Brican logo confirmed Brican's prior representations
23 to Plaintiffs, clearly giving the impression that Plaintiffs were entering into an agreement with
24 Brican and/or its affiliate PSFS. True and correct copies of exemplars of the Leases are attached
25 as Exhibit "A."

26 51. Concurrently with the Leases and as part of the same Contracts, and consistent
27 with their agreement with Brican, Plaintiffs also entered into the Advertising Agreements with
28 Brican, wherein Brican agreed to pay to each Plaintiff \$5,800 per year for the full five year term

1 of the Lease, which it agreed to pay in quarterly installments, in exchange for the right to run its
2 affiliate's advertisements on 10% of the advertising space of the leased systems. The Advertising
3 Agreements further provide that if Brican ceased making payments for the advertising space
4 under the Advertising Agreements, then, at Plaintiffs' request, "all related agreements can be
5 cancelled and Brican will buy back the related lease agreements." True and correct copies of
6 exemplars of the Advertising Agreements are attached as Exhibit "B."

7 52. Plaintiffs are informed and believe, and on that basis allege, that PSFS conspired
8 with Brican and profited from the Fraudulent Scheme. Plaintiffs are further informed and
9 believe, and on that basis allege, that PSFS knew or should have known that (a) Brican had
10 concurrently entered into Advertising Agreements with the medical or dental providers as part of
11 the Contracts and had offered to purchase advertising space from the lessees to cover the cost of
12 the Leases, (b) Brican customers were entering into the Leases as part of a single Contract in
13 reliance on Brican's agreement to purchase advertising space for \$5,800 per year to cover the
14 costs of the Leases and Brican's agreement to cancel and/or buy back the related agreements,
15 including the Leases, (c) Brican was either incapable of or likely to be incapable of purchasing all
16 the advertising Brican promised to buy across the country, and if it failed to purchase the
17 advertising as promised, to buy back the Leases, and (d) the Fraudulent Scheme was an illegal
18 pyramid scheme dependent on inducing other professionals to buy into the Fraudulent Scheme.

19 53. Unbeknownst to Plaintiffs, on information and belief, Brican never intended to
20 honor its obligation to pay Plaintiffs \$5,800 per year pursuant to the Advertising Agreements. In
21 or about the end of 2009, after making only some of the quarterly payments due under the
22 Advertising Agreements, Brican informed Plaintiffs that Viso would no longer advertise on the
23 leased systems. Brican stopped making the payments due to Plaintiffs pursuant to the Advertising
24 Agreements and refused to buy back the Leases as it had promised. Brican and PSFS, however,
25 claimed that Plaintiffs remained obligated to make payments due on the Leases, claiming that
26 Plaintiffs' obligations under the Leases were independent from the Advertising Agreements.

27 54. As part of the Fraudulent Scheme and Brican's continuing fraud, Brican further
28 defrauded many of the Plaintiffs out of receiving their advertising payment for the fourth quarter

1 of 2009. In or about September 2009, Brican approached some of the Plaintiffs and offered them
2 the option of receiving their quarterly payments in advance one annual sum, which sum was to be
3 paid annually beginning January 2010. Several of the Plaintiffs agreed to accept the annual
4 payment option. After doing so, however, Plaintiffs did not receive their fourth quarter payment
5 for 2009. When they asked Brican why they had not received their fourth quarter payment for
6 2009, Brican claimed that they were now on the annual payment plan and, thus, they would not
7 receive a payment until January 2010. By agreeing to the annual payment option, Plaintiffs at no
8 time agreed to forego sums already due for the fourth quarter of 2009. Brican has failed and
9 refused, and continues to fail and refuse, to make the fourth quarter advertising payments to
10 Plaintiffs. Plaintiffs are informed and believe, and based thereon allege, that at the time Brican
11 induced several of the Plaintiffs to accept the annual payment option, it never intended to make
12 any of the payments due for the remainder of 2009 or any annual payments due for 2010 or
13 thereafter.

14 55. To date, Plaintiffs have received no payments for sums due pursuant to the
15 Advertising Agreements for 2010 or for the fourth quarter of 2009, and many did not receive the
16 payment due for the third quarter of 2009 as well. In addition, despite Plaintiffs' requests that
17 Brican cancel the "related agreements" and buy back the Leases, Brican has failed and refused,
18 and continues to fail and refuse, to cancel the "related agreements" and buy back the Leases from
19 Plaintiffs, as required by the Advertising Agreements.

20 56. Notwithstanding its contractual agreement with PSFS and, on information and
21 belief, knowing full well that Plaintiffs entered into the Lease Agreements based on Brican's
22 promise to make payments under the Advertising Agreements to cover the cost of the Leases and
23 to buy back the Leases and other related agreements if it did not, and with the understanding that
24 the Leases were part of a single Contract with the Advertising Agreements, PSFS seeks to hold
25 Plaintiffs responsible for the full amount of the Leases. Plaintiffs are now being threatened by
26 collection agencies and attorneys for nonpayment on the Leases, and PSFS has threatened to
27 damage Plaintiffs' credit rating by reporting their alleged nonpayment on the Leases to the credit
28 bureaus.

(Breach of Contract Against All Defendants)

14 58. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
15 contained in paragraph 1 through 57, above, as though fully set forth herein.

16 59. As set forth in detail above, pursuant to the terms of the Contracts, Plaintiffs
17 agreed to enter into the Contracts, including the Leases which comprise the Contracts, in
18 exchange for, and based on Brican's agreement that: (a) Brican would pay each Plaintiff \$5,800
19 per year for the full five year term of the Lease to purchase advertising space on the leased
20 systems; and (b) if Brican stopped making the payments due Plaintiffs, at Plaintiffs' election,
21 Brican would buy back the Leases from Plaintiffs.

22 60. Further, there was at all time relevant herein an implied covenant in the Contracts
23 that Defendants would act in good faith and deal fairly with Plaintiffs in all aspects of their
24 contractual relationship, and would refrain from conduct that would result in destroying,
25 frustrating, or injuring Plaintiffs' rights under the Contracts.

26 61. Plaintiffs have fully performed all conditions and covenants required to be
27 performed by them under the Contracts, except as such performance has been waived, prevented
28 or excused by the conduct or omissions of Defendants.

62. Defendants have materially repudiated and breached the Contracts and the implied covenant of good faith and faith and fair dealing by the conduct alleged herein, including by, among other things, failing to make the payments due to Plaintiffs pursuant to the Advertising Agreements, failing to buy back the Leases from Plaintiffs, and insisting that Plaintiffs remain responsible for the full cost of the Leases.

63. As a direct and proximate result of Defendants' acts of breach, Plaintiffs have been damaged in a sum yet unknown, but which Plaintiffs are informed and believe and, on that basis, allege substantially exceeds the sum of \$900,000, to be proved at trial. Plaintiffs will seek leave to amend this Complaint to set forth the full amount of such damages when the amount has been ascertained.

SECOND CAUSE OF ACTION

(Fraudulent Inducement Against All Defendants)

64. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations contained in paragraph 1 through 57, above, as though fully set forth herein.

65. As a material inducement for Plaintiffs to enter into the Leases and as part of Defendants' Fraudulent Scheme, Brican agreed to purchase advertising space from each Plaintiff on the leased systems to display advertisements for its affiliate Viso, who, as Brican represented, sought to advertise to each Plaintiff's "captive" patients. Pursuant to the terms of the Advertising Agreements, Brican agreed to pay each Plaintiff \$5,800 per year for the full five year term of the Leases. The payments Brican promised to make to each Plaintiff would cover the vast majority of the cost of the Lease, making the Leases virtually free to Plaintiffs and leaving each of them responsible to pay only a few hundred dollars each year. Moreover, Brican represented and agreed that if Brican stopped making payments to Plaintiffs pursuant the Advertising Agreements, at Plaintiffs' election, all "related agreements" could be cancelled and Brican would buy back the related Leases. But for the corresponding Advertising Agreements and Brican's promises, Plaintiffs never would have entered into the Leases.

66. Plaintiffs are informed and believe, and on that basis allege, that PSFS knew that as part of the Contracts Brican had concurrently offered to purchase advertising space from Plaintiffs to cover the costs of the Leases pursuant to the Advertising Agreements and was fully aware that Brican customers were entering into the Leases as part of a single Contract and in reliance on Brican's agreement to purchase advertising space for \$5,800 per year to cover the costs of the Leases and to buy back the Leases if it stopped doing so.

67. Plaintiffs are informed and believe, and based thereon allege, that unbeknownst to Plaintiffs, the true facts were that Brican and/or Viso never intended to and/or were reckless to promise to make the payments to Plaintiffs under the Advertising Agreements and never intended to buy back the Leases if and when Brican and/or Viso failed make the payments due to Plaintiffs under the Advertising Agreements. On information and belief, PSFS knew that Brican never intended to and/or was reckless to promise to make such payments to Plaintiffs. Rather, on information and belief, Defendants simply intended to induce Plaintiffs to enter into the Leases by promising to make payments pursuant to the Advertising Agreements and, thereafter, intended to cease making payments pursuant to the Advertising Agreements after using such agreements to induce Plaintiffs to sign the Leases, intending to contend that the Leases and Advertising Agreements were separate and would did not comprise a single Contract. On information and belief, Brican's Fraudulent Scheme is an illegal pyramid scheme, and PSFS was complicit in and furthered Brican's Fraudulent Scheme and was fully aware of Brican's nefarious activities. The true facts so concealed were not known to or reasonably discoverable by Plaintiffs, as proven by the fact that numerous others similarly situated individuals were similarly defrauded by Defendants' Fraudulent Scheme.

68. Defendants knew and intentionally concealed the true facts from Plaintiffs in order to induce Plaintiffs to enter into the Contracts and, specifically, to induce Plaintiffs to agree to make the purported payments allegedly due under the Leases, for the lease of equipment which, on information and belief, is worth less than \$5,000.

69. In justifiable reliance upon the Advertising Agreements and Brican's promise to pay each of the Plaintiffs \$5,800 per year for the full five year term of the Leases and buy back

1 the Leases if it did not do so, and in justifiable belief that no material facts were being concealed,
2 Plaintiffs entered into the Leases, the Advertising Agreements and purchase orders that comprised
3 the Contracts. Had Defendants properly disclosed their true intentions and the true facts,
4 Plaintiffs would not have entered into the Contracts.

5 70. As a direct and proximate result of Defendants' Fraudulent Scheme, Plaintiffs
6 have been damaged in a sum yet unknown to it, but which Plaintiffs are informed and believe,
7 and on that basis allege, substantially exceeds the sum of \$900,000, to be proved at trial.
8 Plaintiffs will seek leave to amend this Complaint to set forth the full amount of such damages
9 when the amount has been ascertained.

10 71. Plaintiffs are informed and believe, and based thereon allege, that the acts of
11 Defendants as alleged herein were intentional, malicious, fraudulent and/or oppressive, and were
12 done with a willful and conscious disregard of Plaintiffs' rights, and/or with the intent to injure
13 Plaintiffs, and were authorized, ratified or performed by officers, directors or managing agents of
14 the corporate defendants. Plaintiffs are therefore entitled to an award of punitive and exemplary
15 damages in an amount sufficient to punish Defendants and deter similar conduct in the future.
16

17 **THIRD CAUSE OF ACTION**

18 **(Rescission Against Defendants)**

19 72. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
20 contained in paragraph 1 through 71, and above, as though fully set forth herein.

21 73. As set forth in detail above, as a material inducement for Plaintiffs to enter into the
22 Contracts, Brican represented and agreed, *inter alia*, to purchase from each Plaintiff advertising
23 space on the leased systems at a price of \$5,800 per year for the full five year term of the Leases,
24 leaving each Plaintiff responsible for only a few hundred dollars each year, and, that Brican
25 would buy back the related Leases if Brican or Viso stopped making payment to Plaintiffs under
26 the Advertising Agreements.

27 74. Plaintiffs are informed and believe, and on that basis allege, that PSFS knew that
28 Brican had concurrently offered to purchase advertising space from Plaintiffs to cover the costs of

1 the Leases pursuant to the Advertising Agreements and was fully aware that Brican customers
2 were entering into the Leases as part of a single Contract and in reliance on Brican's agreement to
3 purchase advertising space from each Plaintiff for \$5,800 per year for five years to cover the costs
4 of the Leases and to buy back the Leases if it did not do so.

5 75. Plaintiffs are informed and believe, and based thereon allege, that at the time
6 Defendants made these representations and concealed these material facts from Plaintiffs, and at
7 the time Plaintiffs took the actions herein alleged, said representations were false, Defendants,
8 knew such representations to be false or were reckless about their falsity, and said representations
9 and/or concealments were made with the intent to deceive Plaintiffs and to induce Plaintiffs to
10 enter into the Contracts.

11 76. Plaintiffs are informed and believe, and based thereon allege, that unbeknownst to
12 Plaintiffs, the true facts were that Brican and/or Viso never intended to make the payments due
13 Plaintiffs pursuant to the Advertising Agreements, or were reckless about their ability to do so,
14 and never intended to buy back the Leases if it failed to make payments to Plaintiffs under the
15 Advertising Agreements. On information and belief, PSFS knew that Brican never intended to
16 make such payments to Plaintiff or to buy back the Leases if it did not and/or was incapable of
17 doing so without inducing others to buy into the Fraudulent Scheme, and that the promises
18 induced Plaintiffs to enter into the Fraudulent Scheme. Rather, on information and belief,
19 Defendants simply intended to induce Plaintiffs to enter into the Contracts by promising to make
20 payments pursuant to the Advertising Agreements and, thereafter, intended to cease making
21 payments pursuant to the Advertising Agreements after using such agreements to induce
22 Plaintiffs to sign the Leases, and intended to claim that the Leases and Advertising Agreements
23 were separate agreements. On information and belief, Brican's Fraudulent Scheme is an illegal
24 pyramid scheme and, on information and belief, PSFS was complicit in and furthered Brican's
25 Fraudulent Scheme and was fully aware of its nefarious activities. The true facts so concealed
26 were not known to or reasonably discoverable by Plaintiffs.

27 77. Defendants knew and intentionally concealed the true facts from Plaintiffs in order
28 to induce Plaintiffs to enter into the Contracts and, specifically, to induce Plaintiffs to agree to

1 make the purported payments allegedly due under the Leases, for the lease of equipment which,
2 on information and belief, Plaintiffs believe to be worth less than \$5,000.

3 78. An essential part of the consideration for Plaintiffs entering into the Contracts was
4 the above representations made by Defendants concerning the Advertising Agreements. The
5 consideration has failed and/or become void through the fault of Defendants as alleged above.
6 Plaintiffs have performed all conditions and obligations required on their part to be performed
7 under the Contracts, except insofar as excused, waived or prevented by Defendants.

8 79. In justifiable reliance upon the Advertising Agreements and Brican's promise to
9 pay each of the Plaintiffs \$5,800 per year for the full five year term and to buy back the Leases if
10 it failed to do so, and in justifiable belief that no such material facts were being concealed,
11 Plaintiffs entered into the Contracts. Had Defendants properly disclosed their true intentions and
12 their inability to comply with the promises, Plaintiffs would not have entered into the Contracts,
13 including the Leases.

14 80. Plaintiffs, by this complaint, give notice to Defendants that the Contracts,
15 including the Leases, are rescinded. Plaintiffs' hereby rescind the Contracts on the grounds that,
16 *inter alia*, Plaintiffs' assent to the Contracts and, specifically, the Leases, was induced by fraud
17 and/or fraudulent concealment, consideration for the Contracts has failed and/or become void,
18 and/or the Leases are unlawful and unconscionable. Plaintiffs hereby offer, to the extent
19 practical, to restore everything of value they have received from Defendants pursuant to the
20 Contracts, on the condition that Defendants do the same.

21 81. As a direct and proximate result of Defendants' acts, Plaintiffs have been damaged
22 in a sum yet unknown to it, but which Plaintiffs are informed and believe, and on that basis
23 allege, substantially exceeds the sum of \$900,000, to be proved at trial. Plaintiffs will seek leave
24 to amend this Complaint to set forth the full amount of such damages when the amount has been
25 ascertained.

26 82. Plaintiffs are informed and believe, and based thereon allege, that the acts of
27 Defendants as alleged herein were intentional, malicious, fraudulent and/or oppressive, and were
28 done with a willful and conscious disregard of Plaintiffs' rights, and/or with the intent to injure

1 Plaintiffs, and were authorized, ratified or performed by officers, directors or managing agents of
2 the corporate defendants. Plaintiffs are therefore entitled to an award of punitive and exemplary
3 damages in an amount sufficient to punish Defendants and deter similar conduct in the future.
4

5 **FOURTH CAUSE OF ACTION**

6 **(Violation of Cal. Bus. & Prof. Code § 17200 Against All Defendants)**

7 83. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
8 contained in paragraph 1 through 82, above, as though fully set forth herein.

9 84. By its wrongful conduct described above, Defendants have intentionally and
10 willfully engaged in unlawful, unfair and fraudulent methods of competition, and unfair or
11 deceptive acts or practices in violation of § 17200 et. seq. of the California Business &
12 Professions Code. Without limitation, Defendants have fraudulently induced Plaintiffs to enter
13 into the Contracts as alleged above. Defendant PSFS has also threatened to damage Plaintiffs'
14 credit rating by reporting their alleged nonpayment on the Leases to the credit bureaus.

15 85. Defendants' conduct has caused and will cause irreparable harm to Plaintiffs
16 which cannot be fully compensated by money. Plaintiffs have no adequate remedy at law.
17 Therefore, Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining
18 Defendants from engaging in further unlawful, unfair and deceptive trade practices.

19 86. Plaintiffs are further entitled to an order pursuant to § 17203 of the California
20 Business & Professions Code restoring to Plaintiffs all of its interest in monies that were acquired
21 by Defendants by means of any unlawful acts or practices hereunder.

22 87. Plaintiffs are informed and believe, and based thereon allege, that the acts of
23 Defendants as alleged herein were intentional, malicious, fraudulent and/or oppressive, and were
24 done with a willful and conscious disregard of Plaintiffs' rights, and/or with the intent to injure
25 Plaintiffs, and were authorized, ratified or performed by officers, directors or managing agents of
26 the corporate defendants. Plaintiffs are therefore entitled to an award of punitive and exemplary
27 damages in an amount sufficient to punish Defendants and deter similar conduct in the future.
28

FIFTH CAUSE OF ACTION

(Common Law Unfair Competition Against All Defendants)

88. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations contained in paragraph 1 through 87, above, as though fully set forth herein.

89. By its wrongful conduct as alleged above, Defendants have violated and infringed Plaintiffs' common law rights and has otherwise completed unfairly with Plaintiffs in violation of the common law of the State of California. Without limitation, Defendants have fraudulently induced Plaintiffs to enter into the Contracts as alleged above. Defendant PSFS has also threatened to damage Plaintiffs' credit rating by reporting their alleged nonpayment on the Leases to the credit bureaus.

90. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered and are entitled to monetary damages in an amount to be proved at trial.

91. Defendants' unlawful conduct has caused and will cause irreparable harm to Plaintiffs which cannot fully be compensated by money. Plaintiffs have no adequate remedy at law. Therefore, Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Defendants from engaging in further acts of unfair competition.

92. Plaintiffs are informed and believe, and based thereon allege, that the acts of Defendants as alleged herein were intentional, malicious, fraudulent and/or oppressive, and were done with a willful and conscious disregard of Plaintiffs' rights, and/or with the intent to injure Plaintiffs, and were authorized, ratified or performed by officers, directors or managing agents of the corporate defendants. Plaintiffs are therefore entitled to an award of punitive and exemplary damages in an amount sufficient to punish Defendants and deter similar conduct in the future.

SIXTH CAUSE OF ACTION

(Declaratory Relief Against All Defendants Re: Leases)

93. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations contained in paragraph 1 through 92, above, as though fully set forth herein.

1 94. An actual controversy has arisen and now exists between Plaintiffs and PSFS
2 concerning the rights and obligations of the parties pursuant to the Contracts, and more
3 specifically, the Leases which comprise the Contracts, in that Plaintiffs contend, and PSFS
4 disputes, that the Leases were obtained by fraud and are, in any event, unconscionable and
5 unenforceable contracts of adhesion. Plaintiffs contend, and PSFS disputes, that they are entitled
6 to rescind and/or cancel or terminate the Leases, and recover any and all sums paid to PSFS
7 pursuant to the Leases.

8 95. Plaintiffs request a declaration from this Court that they have the right rescind
9 and/or cancel and terminate the Leases, including any and all purported obligations contained
10 therein, and that they are entitled to restitution to recover any and all sums paid to PSFS pursuant
11 to the Leases. This declaration is necessary so that the parties may know their respective rights
12 and obligations under the Leases.

13
14 **SEVENTH CAUSE OF ACTION**

15 **(Declaratory Relief Against All Defendants Re: Advertising Agreements)**

16 96. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
17 contained in paragraph 1 through 93, above, as though fully set forth herein.

18 97. An actual controversy has arisen and now exists between Plaintiffs and Brican
19 concerning the rights and obligations of the parties pursuant to the Contracts and, more, the
20 Advertising Agreements which comprise the Contracts, in that Plaintiffs contend, and Brican
21 disputes, that it is obligated to purchase advertising space from each of the Plaintiffs for \$5,800
22 per year for the entire five year term of the Leases, irrespective of whether its affiliate, defendant
23 Viso, chooses to run advertisements on the in-office advertising systems leased by Plaintiffs.
24 Furthermore, Plaintiffs contend, and Brican disputes, that since it or its affiliate Viso have failed
25 to make the payments due to Plaintiffs pursuant to the Advertising Agreements, Brican is now
26 obligated to buy back the Leases from Plaintiffs.

27 98. Plaintiffs request a declaration from this Court that (a) Brican is obligated to
28 purchase advertising space from each of the Plaintiffs for \$5,800 per year for the entire five year

term of the Leases, irrespective of whether its affiliate Viso chooses to run advertisements on the in-office advertising systems leased by Plaintiffs, (b) Brican is required to buy back the Leases from Plaintiffs, and/or (c) the Leases are unenforceable. This declaration is necessary so that the parties may know their respective rights and obligations under the Advertising Agreements.

EIGHTH CAUSE OF ACTION

(Constructive Trust Against All Defendants)

99. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations contained in paragraph 1 through 98 above, as though fully set forth herein.

100. By virtue of their wrongful conduct and self-dealing described above, Defendants have improperly diverted and retained sums paid to them by Plaintiffs pursuant to the Contracts, and, on information and belief, will continue to retain such sums. By diverting these payments to themselves at the expense of Plaintiffs, Defendants have been unjustly enriched.

101. As a result of Defendants' wrongful conduct and retention of monies wrongfully paid to them by Plaintiffs pursuant to the Contracts, Defendants are involuntary trustees, holding this money in constructive trust for the benefit of Plaintiffs. Plaintiffs are entitled to recover any profits or other benefits received by Defendants from any of the monies or property held in constructive trust.

NINTH CAUSE OF ACTION

(Conversion Against All Defendants)

102. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations contained in paragraph 1 through 101, above, as though fully set forth herein.

103. By virtue of Defendants' Fraudulent Scheme as alleged herein, Defendants have improperly diverted and retained sums paid to them by Plaintiffs pursuant to the Contracts for their own use and enjoyment, at the expense of Plaintiffs.

104. As a direct and proximate result of Defendants' wrongful acts as alleged herein, Plaintiffs have been damaged in a sum yet unknown, but which Plaintiffs are informed and

1 believe and, on that basis, alleged exceeds the sum of \$900,000, to be proved at trial. Plaintiffs
2 will seek leave to amend this Complaint to set forth the full amount of such damages when the
3 amount has been ascertained.

4 105. Plaintiffs are informed and believe, and based thereon allege, that the acts of
5 Defendants as alleged herein were intentional, malicious, fraudulent and/or oppressive, and were
6 done with a willful and conscious disregard of Plaintiffs' rights, and/or with the intent to injure
7 Plaintiffs, and were authorized, ratified or performed by officers, directors or managing agents of
8 the corporate defendants. Plaintiffs are therefore entitled to an award of punitive and exemplary
9 damages in an amount sufficient to punish Defendants and deter similar conduct in the future.

10
11 **TENTH CAUSE OF ACTION**

12 **(Civil Conspiracy Against All Defendants)**

13 106. Plaintiffs repeat and reallege, and incorporate herein by reference, the allegations
14 contained in paragraph 1 through 105, above, as though fully set forth herein.

15 107. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knowingly and willfully conspired and agreed among themselves to implement the Fraudulent
17 Scheme as alleged above, including without limitation inducing Plaintiffs to enter into the
18 Contracts to lease the advertising systems based on Brican's promises that it would make the
19 payments due to Plaintiffs under the Advertising Agreements and would buy back the Leases if it
20 failed to do so, and knowing that the equipment Defendants leased to Plaintiffs for nearly \$30,000
21 was worth less than \$5,000.

22 108. As alleged above, on information and belief, the true facts were that Brican and/or
23 Viso never intended to make the payments due to Plaintiffs under the Advertising Agreements
24 and never intended to buy back the Leases if it failed to make payments due to Plaintiffs and/or
25 were incapable of doing so. On information and belief, PSFS knew that Brican never intended to
26 make such payments to Plaintiffs or to buy back the Leases if it did not and/or were incapable of
27 doing so, and that the promises induced Plaintiffs to enter into the Fraudulent Scheme. On
28 information and belief, as part of and in furtherance of the conspiracy and Fraudulent Scheme,

Defendants intended to induce Plaintiffs to enter into the Contracts by promising to make payments to Plaintiffs under the Advertising Agreements and, thereafter, intended to cease making payments pursuant to the Advertising Agreements after using such agreements to induce Plaintiffs to sign the Leases, or knew or should have known they were incapable of doing so. On information and belief, Brican's Fraudulent Scheme is an illegal pyramid scheme and, on information and belief, PSFS was complicit in, knew or should have known of, and furthered Brican's Fraudulent Scheme and was fully involved in its nefarious activities. The true facts so concealed were not known to or reasonably discoverable by Plaintiffs.

109. Plaintiffs did the acts and things alleged herein pursuant to, and in furtherance of, the conspiracy and Fraudulent Scheme and to induce Plaintiffs to enter into the Contracts. On information and belief, PSFS furthered the conspiracy by entering into the Leases with Plaintiffs with actual or constructive knowledge of Brican's promises to Plaintiffs under the Advertising Agreements and the likelihood, if not certainty, that Brican would be incapable of fulfilling those promises. On information and belief, in furtherance of the conspiracy and Fraudulent Scheme, PSFS now seeks to hold Plaintiffs liable for the full amount of the Leases. Plaintiffs are now being threatened by collection agencies and attorneys for nonpayment on the Leases, and PSFS has threatened to damage Plaintiffs' credit rating by reporting their alleged nonpayment on the Leases to the credit bureaus.

110. As a direct and proximate result of Defendants' conspiracy, Plaintiffs have been damaged in a sum yet unknown, but which Plaintiffs are informed and believe and, on that basis, allege substantially exceeds the sum of \$900,000, to be proved at trial. Plaintiffs will seek leave to amend this Complaint to set forth the full amount of such damages when the amount has been ascertained.

111. Plaintiffs are informed and believe, and based thereon allege, that the acts of Defendants as alleged herein were intentional, malicious, fraudulent and/or oppressive, and were done with a willful and conscious disregard of Plaintiffs' rights, and/or with the intent to injure Plaintiffs, and were authorized, ratified or performed by officers, directors or managing agents of

1 the corporate defendants. Plaintiffs are therefore entitled to an award of punitive and exemplary
2 damages in an amount sufficient to punish Defendants and deter similar conduct in the future.

3
4 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- 5 1. For compensatory damages in excess of \$900,000, according to proof at trial;
- 6 2. For punitive damages in an amount sufficient to punish and deter Defendants, to
7 set an example and to deter such wrongful behavior;
- 8 3. For a declaration that Plaintiffs are entitled to cancel and/or terminate the Leases;
- 9 4. In the event that the Leases are not cancelled and/or terminated, for a declaration
10 that the Brican Defendants are required to buy back the Leases from Plaintiffs;
- 11 5. For imposition of a constructive trust over all monies received by Defendants
12 pursuant to the Leases, and any benefits and income derived therefrom by Defendants;
- 13 6. For interest at the maximum legal rate;
- 14 7. For costs of suit including, if available under contract or statute, attorneys' fees,
15 and such other and further relief as the Court may deem just and proper.
- 16

17 DATED: March 17, 2010

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

18
19
20 By: 

LEE A. DRESIE

Attorneys for Plaintiffs Rafik Yanni, DDS,
an individual, et. al.

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Equipment Lease Application and Agreement

Lessor Professional Solutions Financial Services	Address 14001 University Ave.	City Clive	State Iowa	Zip Code 50325	Phone (877) 770-7244
Legal Name of Lessee (Please Print) Erik Gianni DDS		Applicant Name (Please Print) See section 14 for Application terms and conditions			
PRACTICE Address 2913 S. Aruse	City West Columbia	State CA	Zip Code 91792	County	
HOME Address 3319 Red Pine Rd	City Corbally	State CA	Zip Code 92306	County	
PRACTICE Phone No. (660) 913-1421	PRACTICE Fax No. (660) 913-7812	HOME Phone No. (714) 945-0211	Professional License Number 330047	Year Licensed 1984	
Social Security No. 9345-7271		E Mail Address		Specialty Dentistry	

TERMS AND CONDITIONS - PLEASE READ CAREFULLY BEFORE SIGNING

To Our Customer: When we use the words "you" and "your" in this Agreement, we mean you, the customer, who is the Lessee indicated above. When we use the words "we," "us," and "our" in this Agreement, we mean the Lessor, Professional Solutions Financial Services. By signing this Agreement (i) You acknowledge that you have read and understand the terms and conditions on the front and back of this agreement, (ii) You agree that this Agreement is a fixed term financing agreement that you cannot terminate or cancel (however you may pre-pay your obligation in full at any time), you have an unconditional obligation to make all payments due under this agreement, and you cannot withhold, set off or reduce such payments for any reason, even for lack of performance or defects in the equipment.

Equipment Description:

Quantity	Description of Financed Equipment	Make & Model, Serial Number
1	Complete Surin Information System including 14" & 19" Monitors	

Payment Terms:

Term (Number of payments including Advance Payment) <input type="checkbox"/> 36 Months <input type="checkbox"/> 48 Months <input checked="" type="checkbox"/> 60 Months	Monthly Payment (plus tax) \$ 505	Advance Payment (plus tax) \$	90 Day deferral <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	End of Term Options. <input checked="" type="checkbox"/> \$1.00 <input type="checkbox"/>
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1. LEASE AGREEMENT AND FEES: You (the Lessee specified above) want to acquire the above Equipment from the Vendor. You want Us, Professional Solutions Financial Services, to buy the Equipment and then lease it to You. This Lease Agreement (this Lease) will begin on the date the Equipment is delivered to You (or any later date We designate). We may charge You a reasonable fee to cover documentation and investigation costs. This Lease is **NON-CANCELLABLE FOR THE ENTIRE LEASE TERM. YOU UNDERSTAND THAT WE ARE BUYING THE EQUIPMENT BASED ON YOUR UNCONDITIONAL ACCEPTANCE OF THE EQUIPMENT AND YOUR PROMISE TO PAY US UNDER THE TERMS OF THE LEASE, WITHOUT SET-OFFS, EVEN IF THE EQUIPMENT DOES NOT WORK PROPERLY OR IS DAMAGED FOR ANY REASON INCLUDING REASONS THAT ARE NOT YOUR FAULT.** If any amount payable to Us is not paid when due, You will pay Us a "late charge" equal to 1) the greater of ten (10) cents for each dollar overdue or twenty-six (\$26.00) dollars; or 2) the highest lawful charge, whichever is less. You authorize us to increase or decrease your payment by not more than fifteen percent (15%) to reflect changes in the final price of the equipment as reflected on the final invoice. We intend to comply with all applicable laws. If it is determined that your total payments result in an interest rate higher than allowed by applicable law, then any excess interest collected will be applied to the repayment of principle and interest will be charged at the highest rate allowed by law.

2. NO WARRANTY: We are leasing the Equipment to You **AS IS**. We do not manufacture the Equipment and are not related to the Vendor. You selected the Equipment and the Vendor, based on Your own judgment. You may contact the Vendor for a statement of the warranties, if any, that the Vendor or manufacturer is providing. We hereby assign to You the warranties given to Us, if any. **WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS LEASE.** You agree to settle any dispute You may have regarding performance of the Equipment directly with the manufacturer or Vendor.

3. EQUIPMENT USE AND REPAIR: You agree the Equipment will be used for business purposes only. You are responsible for keeping the Equipment in good working order. Except for normal wear and tear, You are responsible for any damage or losses to the Equipment. We are not responsible for, and You will indemnify Us against, any claims, losses or damages, including attorney fees, related to Your use or possession of Equipment. **IN NO EVENT SHALL WE BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES.**

4. END OF TERM: According to the selection in the End of Term Options section above, if this lease is a \$1.00 out, or there is a dollar amount listed in the "Other" section, You agree to pay that amount at Lease termination. If this lease is a Fair Market Value (FMV) lease, you must notify us of your intentions to either return

or purchase the equipment prior to lease termination. If You fail to: 1) return the Equipment to Us in Average Saleable Condition, to a location specified by Us at the end of the lease term (or any renewal term); or 2) timely pay the FMV purchase option; then, this Lease will automatically renew on the same terms on a monthly basis. "Average Saleable Condition" means the Equipment is immediately available for use by another lessee without the need of any repair. You also agree to reimburse Us for any repair costs. If You request a purchase option and provided You have not defaulted under the Lease, You may purchase the Equipment from Us "WHERE IS, AS IS."

5. OWNERSHIP, TITLE AND UCC'S: Except for any software covered by this Lease the "Software", We are the owner of the Equipment and have a title to it. You appoint Us as attorney-in-fact to execute and file on Your behalf, and at Your cost, Uniform Commercial Code (UCC) financing statement(s) to show our interest in the Equipment.

6. SOFTWARE: We do not have title to the Software. We are not responsible for the Software or the obligations owed by either You or the licensor under any License Agreement for the Software. If You properly exercise the purchase option if any, for the Equipment, You understand that we do not own the software and cannot transfer it to You. Except as provided in this paragraph, all references to the "Equipment" in this Lease includes the Software.

Initial

7. LOSS AND INSURANCE: You will keep the Equipment fully insured against loss and will obtain a general public liability insurance policy covering the Equipment and its use. You will name Us as loss payee and an additional insured and provide Us with evidence of insurance. If You do not, We may obtain insurance for You and add an insurance fee to the payment amounts due from You.

8. TAXES: You agree that You will pay when due all taxes relating to this Lease and the Equipment. If this Lease includes a \$1.00 purchase option, or there is an amount listed in the Other option of the End of Term Options section of this lease, You agree to file any required personal property tax returns.

9. DEFAULT: If You do not pay any sum by its due date, or You breach any other term of this Lease or any other agreement with Us, then You will be in default of this Lease. If You default, We may require that You pay 1) all past due amounts under this Lease, and 2) all future amounts owed for the unexpired term, discounted at the rate 6% per annum. If You default or make late payment We may require that payments under this Lease be made by preauthorized payment from Your checking account. You agree that You will complete any necessary documentation to implement the withdrawals. Upon default, We may choose to repossess the Equipment. If We do not choose to repossess the Equipment, You will also pay to Us our booked residual value for the Equipment. We can also use any and all remedies available to Us under the UCC or any other law. You agree to pay all the costs and expenses, including attorney's fees, We incur in any dispute related to this Lease or

the Equipment. You also agree to pay interest on all past due amounts, from the due date until paid, at the lower of one and one-half percent (1.5%) per month or the highest lawful rate.

10. ASSIGNMENT: You have no right to sell, transfer, assign or sublease the Equipment or this Lease. We may sell, assign or transfer this Lease and our rights in the Equipment. You agree that if We sell, assign or transfer this Lease, the new owner will not be subject to any claim, defense or set-off that You assert against Us or any other party.

11. WAIVER OF ARTICLE 2A RIGHTS: You agree that this Lease is a "finance lease" as the term is defined in Article 2A of the UCC. You hereby agree to waive any and all rights and remedies granted to You by Sections 2A-508 through 2A-522 of the UCC, including the right to reject or revoke acceptance of the Equipment.

12. MISCELLANEOUS: You agree that this Lease is the entire agreement between You and Us regarding the lease of the Equipment and supersedes any purchase order You issue. Any change must be in writing and signed by each party. You agree that a facsimile copy of this Lease bearing authorized signatures may be treated as an original for all purposes. You authorize us to insert or correct missing or incorrect information on the Lease.

13. GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION. This Lease and each Schedule shall be governed by the internal laws for the state in which Lessor's or Lessor's assignee's principal corporate offices are located. IF THIS IS ASSIGNED, YOU AGREE THAT ANY DISPUTE ARISING UNDER OR

RELATED TO THIS LEASE WILL BE ADJUDICATED IN THE FEDERAL OR STATE COURT WHERE THE ASSIGNEE'S CORPORATE HEADQUARTERS IS LOCATED AND WILL BE GOVERNED BY THE LAW OF THAT STATE. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN THAT COURT AND WAIVE ANY RIGHT TO TRANSFER VENUE. EACH PARTY WAIVES ANY RIGHT TO A TRIAL BY JURY.

14. CREDIT APPLICATION AND INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS, BANK AND TRADE REFERENCES, AND MAKE OTHER CREDIT INQUIRES THAT WE DETERMINE ARE APPROPRIATE ON THE PERSON(S) SIGNING BELOW. YOU HEREBY REPRESENT THAT ALL INFORMATION PROVIDED BY YOU IS TRUE, CORRECT AND COMPLETE, AND WE WILL USE THAT INFORMATION TO MAKE A CREDIT DECISION. YOU AGREE TO GIVE US FINANCIAL STATEMENTS AND COPIES OF TAX RETURNS UPON OUR REQUEST. A photo static and/or facsimile copy of this authorization shall be valid as the original. If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact: Credit Operations, Professional Solutions Financial Services, 14001 University Ave., Des Moines, IA 50325 within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

<p>This Lease is non-cancelable. Lessee: (as stated above)</p> <p>X _____ (Signature)</p> <p>Print Name, Title: _____</p>	<p>This lease is not binding until we sign below. Lessor: Professional Solutions Financial Services</p> <p>By: _____ Date: _____ (Signature)</p> <p>Its: _____</p>
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UNCONDITIONAL GUARANTY

The undersigned unconditionally guarantees that the Lessee will timely perform all obligations under this Agreement. The undersigned also waives any notification if the Lessee is in default and consents to any extensions or modifications granted to the Lessee. In the event of default, the undersigned will immediately pay all sums due under the terms of this Agreement without requiring Lessor to proceed against Lessee, any other party or the Equipment. The undersigned consents to personal jurisdiction, venue, choice of law, and jury trial waiver as stated in the "Governing Law, Consent to Jurisdiction and Venue of Litigation" paragraph above and agrees to pay all costs and expenses, including attorney's fees, incurred by Lessor related to this guaranty. This guaranty is joint and several.

<p>X _____, Individually</p> <p>Name: _____</p> <p>Address: _____</p>	<p>X _____, Individually</p> <p>Name: _____</p> <p>Address: _____</p>
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Equipment Lease Application and Agreement

Number:

Lessor	Address	City	State	Zip Code	Phone	E-mail
BRICAN	5301 Blue Lagoon Dr. Suite 520	Miami	FL	33126	(786)388-6995 Fax (786)388-1480	

BUSINESS INFORMATION		PERSONAL INFORMATION	
Lessee		Applicant Name:	
Legal Name of Business:	Medhat M. Lofael	Address:	17150 Euclid St # 311
Address:	17150 Euclid St # 311	City/State/Zip:	Fountain Valley, CA 92708
City/State/Zip:	Fountain Valley, CA 92708	Phone:	(714) 444-4224
Phone:	(714) 444-4224	Fax:	(714) 444-4480
E Mail:	gdc - @yahoo.com	Social Security:	13376-7385
Specialty:	REPAIRS	Do you have a checking account?	YES
Years Licensed:	1992	Do you have a savings account?	YES
License Number:	40714 CA	Do you own your home?	YES
Do you own your business?	YES	How long have you owned your business?	
Do you own your home?	YES	How long have you owned your home?	
Vendor: Brican America L.L.C.			

TERMS AND CONDITIONS - PLEASE READ CAREFULLY BEFORE SIGNING

To Our Customer: When we use the words "You" and "Your" in this Lease Agreement (Lease), we mean you, the customer, who is the Lessee indicated above. When we use the words "We," "Us," and "Our" in this Lease, we mean the Lessor, Brican America Inc. By signing this Lease: (i) You acknowledge that You have read and understand the terms and conditions in this Lease, (ii) You agree that this Lease is a fixed term financing Lease that You cannot terminate or cancel, You have an unconditional obligation to make all payments due under this Lease, and You cannot withhold, set-off or reduce such payments for any reason, even for defects or failures in the Equipment, (iii) You agree to use the Equipment only for business purposes and not for personal, family or household use, (iv) You warrant that the person signing the Lease for You has the authority to do so and to grant the Power of Attorney set forth on Section 5 of this Lease. (v) If You have any questions regarding this Equipment Lease, please contact Us at the address, telephone or e-mail information at the top of this Lease.

Equipment Description:

Quantity	Equipment Make, Model and Serial Number
Exhibeo System	

Payment Terms:

Term (Number of payments including Advance Payment)	Documentation/Filing Fee	Advance Payment	End of Term Options:
3 Monthly Payments of \$ 500, then	\$ 95.00	\$ 0	<input checked="" type="checkbox"/> \$1.00 <input type="checkbox"/> Other
Monthly Payments of \$ 500			<input type="checkbox"/> Rental <input type="checkbox"/> FMV

1. LEASE AGREEMENT AND FEES: You (the Lessee specified above) want to acquire the above Equipment from the Vendor. You want Us, Brican America Inc, to buy the Equipment and then lease it to You. This Lease will begin on the date the Equipment is delivered to You (or any later date We designate) or on the date You authorize Us to pay the Vendor, even if You have not received the Equipment. We may charge You a reasonable fee to cover documentation and investigation costs. This Lease is NON-CANCELLABLE FOR THE ENTIRE LEASE TERM. YOU UNDERSTAND THAT WE ARE BUYING THE EQUIPMENT BASED ON YOUR PROMISE TO PAY US UNDER THE TERMS OF THE LEASE, WITHOUT SET-OFFS, EVEN IF THE EQUIPMENT DOES NOT WORK PROPERLY OR IS DAMAGED FOR ANY REASON INCLUDING REASONS THAT ARE NOT YOUR FAULT. If any amount payable to Us is not paid when due, You will pay Us a "late charge" equal to 1) the greater of ten (10) cents for each dollar overdue or twenty-six (\$26.00) dollars; or 2) the highest lawful charge, whichever is less. You authorize Us to increase or decrease Your payment by not more than fifteen percent (15%) to reflect changes in the final price of the Equipment as reflected on the final invoice. We intend to comply with all applicable laws. If it is determined that Your total payments result in an interest rate higher than allowed by applicable law, then any excess interest collected will be applied to the repayment of principle, and interest will be charged at the highest rate allowed by law.

2. NO WARRANTY: We are leasing the Equipment to You AS IS and with ALL FAULTS. We do not manufacture the Equipment. You selected the equipment and the Vendor, based on Your own judgment. You may contact the Vendor for a statement of the warranties, if any, that the Vendor or manufacturer is providing. We hereby assign to You the warranties given to Us, if any. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS LEASE, OR THE EQUIPMENT. You agree to settle any dispute You may have regarding performance of the Equipment directly with the manufacturer or Vendor.

3. EQUIPMENT USE AND REPAIR: You agree the equipment will be used for business purposes only and not for personal, family or household use. You are responsible for keeping the equipment in good working order. Except for normal wear and tear, You are responsible for any damage or losses to the equipment. We are not responsible for, and You will indemnify Us against, any claims, losses or damages, including attorney fees, related to Your use or possession of Equipment. IN NO EVENT SHALL WE BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES.

4. END OF TERM: According to the selection in the End of Term Options section above, if this Lease is a \$1.00 out, or there is a dollar amount listed in the "Other" section, You agree to pay that amount at Lease termination. If this Lease is a Rental or Fair Market Value (FMV) Lease, You must notify Us of our intentions to either return, at Your expense, or purchase the Equipment prior to Lease termination. If You fail to: 1) return the Equipment to Us in Average Saleable Condition, to a location specified by Us at the end of the Lease term (or any renewal term); or 2) timely pay the FMV purchase option; then, this lease will automatically renew on the same terms on a monthly basis. "Average Saleable Condition" means the Equipment is immediately available for use by another lessee without the need of any repair. You also agree to reimburse Us for any repair costs. If You request a purchase option and provided You have not defaulted under the Lease, You may purchase the Equipment from us "WHERE IS, AS IS."

5. OWNERSHIP, TITLE AND UCC'S: Except for any software covered by this Lease (software), We are the owner of the Equipment and have a title in it. You appoint Us as attorney-in-fact to execute and file on Your behalf, and at Your cost, Uniform Commercial Code (UCC) financing statements(s) to show our interest in the Equipment.

6. SOFTWARE: We do not have title to the Software. We are not responsible for the Software or the obligations owed by either You or the licensor under any License Agreement for the Software. If You properly exercise the purchase option, if any, for the Equipment, You understand that We do not own the software and cannot transfer it to You. Except as provided in this paragraph, all references to the "Equipment" in this Lease includes the Software.

7. LOSS AND INSURANCE: You will keep the Equipment fully insured against loss and will obtain a general public liability insurance policy covering the Equipment and its use. You will name Us as loss payee and an additional insured and provide Us with evidence of insurance. If You do not, We may obtain

insurance for You and add an insurance fee to the payment amounts due from You. Lessee hereby assigns to Lessor, all right title and interest Lessee has to any insurance coverage and / or proceeds required to be purchased by the Lease. Lessee authorizes Lessor, at its option, to make all required claims to insurance carriers in the place of Lessee. Lessee agrees to notify any insurance carrier of this Lease provision and provide a copy of this notice to Lessor as part of the terms and condition of this Lease. In the event of denial of insurance coverage for any reason by any insurer, Lessee is still unconditionally obligated to make all lease payments.

8. **TAXES:** You agree that You will pay when due all taxes relating to this Lease and the Equipment. If this Lease includes a \$1.00 purchase option, or there is an amount listed in the "Other" option of the "End of Term Options" section of this Lease, You agree to file any required personal property tax returns.

9. **DEFAULT:** The events described in this paragraph shall constitute a default on the part of the Lessee, however, We reserve the absolute right to declare this Lease to be in default and the Lease is not in default until We declare that a default has occurred and gone uncured. We also reserve the absolute right to declare that a default has been cured. Notice of default and the cure of a default, if any, will be sent by Lessor to Lessee. If You do not pay any sum by its due date, or You breach any other term of this Lease or any other agreement with Us, then You will be in default of this Lease. If You default, We may require that You pay 1) all past due amounts under this Lease, and 2) all future amounts owed for the unexpired term, discounted at a rate equal to the discount rate of the Federal Reserve Bank of Kansas City as of the date of this lease. If You default or make late payment We may require that payments under this Lease be made by preauthorized payment from Your checking account. You agree that You will complete any necessary documentation to implement the withdrawals. Upon default, We may choose to repossess the Equipment. If We do not choose to repossess the Equipment You will also pay to Us Our booked residual value for the Equipment. We can also use any and all remedies available to Us under the UCC or any other law. You agree to pay all the costs and expenses, including attorney fees We incur in any dispute related to this lease or the Equipment. You also agree to pay interest on all past due amounts, from the due date until paid, at the lower of one and one-half percent (1.5%) per month or the highest lawful rate.

10. **ASSIGNMENT:** You have no right to sell, transfer, assign or sublease the Equipment or this Lease. We may sell, assign or transfer the Lease and Our rights in the Equipment without notice to You or consent by You. You agree that if We sell, assign or transfer this Lease, the new owner will not be subject to any claim, defense or set-off that You assert against Us or any other party.

11. **WAIVER OF ARTICLE 2A RIGHTS:** You agree that this Lease is a "finance lease" as the term is defined in Article 2A of the UCC. You hereby agree to waive any and all rights and remedies granted to You by Section 2A-401, Section 2A-402, Sections 2A-508 through 2A-522 of the UCC, including the right to reject or revoke acceptance of the Equipment. You agree that any delay or failure to enforce Our rights under this Lease does not prevent Us from enforcing any rights at a later time.

12. **MISCELLANEOUS:** You agree that this Lease is the entire agreement between You and Us regarding the lease of the Equipment and supersedes any purchase order or agreement You issue. Any change must be in writing and signed by each party. You agree that a facsimile copy of this Lease bearing authorized signatures may be treated as an original and will be admissible as evidence of the Lease between You and Us. You authorize Us to insert or correct missing or incorrect information on the Lease.

13. **GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION AND WAIVER OF JURY RIGHTS:** You agree this Lease is to be performed in Dade County, Florida and this Lease will be governed by the laws of the State of Florida. You consent to personal jurisdiction and venue in the State or Federal Court located in Miami, Dade County, Florida. You agree that You will not sue Us for any claim more than one year after the event on which You base Your claim. You and We expressly waive any rights to trial by jury on any and all claims related to this Lease. You agree that this jury waiver is knowing and voluntary and is an essential term to Lessor's willingness to enter into this Lease. You specifically agree to waive any right to transfer venue and that agreement is knowing and voluntary and is an essential term to Lessor's willingness to enter into this Lease. If this Lease is assigned by Lessor, You consent to personal jurisdiction and venue in the State or Federal Court located where the Assignee's Corporate Headquarters is located. This is known as a floating forum selection clause and You agree that this is done knowingly and voluntarily and is an essential term to Assignee's willingness to take an assignment of this Lease. You specifically agree to waive any right to transfer venue and that agreement is knowing and voluntary and is an essential term to Assignee's willingness to take an assignment of this Lease. All parties expressly waive any rights to trial by jury on any and all claims related to this Lease. You agree that this jury waiver is knowing and voluntary and is an essential term to Assignee's willingness to take an assignment of this Lease.

14. **CREDIT APPLICATION AND INFORMATION:** YOU AUTHORIZE US, ANY OF OUR AFFILIATES OR ASSIGNEES TO OBTAIN CREDIT BUREAU REPORTS, BANK AND TRADE REFERENCES, AND MAKE OTHER CREDIT INQUIRIES THAT WE DETERMINE ARE APPROPRIATE ON THE PERSON(S) SIGNING BELOW. WE RESERVE THE RIGHT TO SUBMIT THIS APPLICATION TO INCLUDE ALL INFORMATION OBTAINED FOR CREDIT APPROVAL, WITHOUT NOTICE TO ANY OTHER POTENTIAL LESSOR FOR CONSIDERATION OF APPROVAL OF CREDIT. YOU HEREBY REPRESENT THAT ALL INFORMATION PROVIDED BY YOU IS TRUE, CORRECT AND COMPLETE, AND WE WILL USE THAT INFORMATION TO MAKE A CREDIT DECISION. YOU AGREE TO GIVE US FINANCIAL STATEMENTS AND COPIES OF TAX RETURNS UPON OUR REQUEST. A photo static and/or facsimile copy of this authorization shall be valid as the original. If Your application for business credit is denied, You have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact: Credit Operations, Brican America Inc., 5301 Blue Lagoon Drive, Miami, Florida 33126 within 60 days from the date You are notified of Our decision. We will send You a written statement of reasons for the denial within 30 days of receiving Your request for the statement.

15. **NO AGENT:** YOU AGREE THAT THE VENDOR, MANUFACTURER, SALES PERSON, EMPLOYEE OR AGENT OF THE VENDOR OR MANUFACTURER IS NOT OUR AGENT AND HAS NO AUTHORITY TO SPEAK FOR US OR TO BIND US IN ANY MANNER. IT IS FURTHER UNDERSTOOD THAT WE ARE NOT THEIR AGENT.

By signing below You agree to all terms and conditions contained in this Lease.
Lessee: (as stated above)

This Lease is not binding until We sign below.
Lessor: Brican America Inc.

By: Nedvine Date 11/21/08
(Signature)
(Title) owner/wife

By: _____ Date _____
(Signature)

UNCONDITIONAL GUARANTY

The undersigned unconditionally guarantees that the Lessee will timely perform all obligations under this Lease. The undersigned also waives any notification if the Lessee is in default and consents to any extensions or modifications granted to the Lessee. The undersigned waives all suretyship defenses. In the event of default, the undersigned will immediately pay all sums due under the terms of this Lease without requiring Lessor to protect against Lessee, any other party or the Equipment. The undersigned consents to personal jurisdiction, venue, choice of law, and jury trial waiver as stated in the "Governing Law, Consent to Jurisdiction and Venue of Litigation" paragraph above and agrees to pay all costs and expenses, including reasonable attorney fees, incurred by Lessor related to this guaranty. This guaranty is joint and several.

x Nedvine , Individually x _____ , Individually

MARKETING AGREEMENT

This Marketing Agreement shall be made part of the Purchase Order # 75415

A) **Appointment/Complimentary cards:** VISO LASIK MEDSPAS will provide the Client, on demand, with unlimited "Complimentary MedSpa" gift cards (\$55 value), allowing the client to book an appointment and to reward patients for their faithfulness.

B) **Network:** The Client will automatically belong to the VISO network and will be listed as such on the local VISO LASIK MEDSPAS website. Every patient coming to the VISO LASIK MEDSPAS will be directed to a member of the network if he/she has the need for a specialist in the area.

C) **Preferred rates:** As part of this agreement, the Client and any employees of the Client will be eligible for a 50% discount on LASIK surgery. The Client, employees and relatives are also eligible for the Passport program. They will receive a 50% discount on all Medspa treatments up to the time they recoup the cost of LASIK procedure.

D) **Purchase of Advertising:** Brican America LLC (Brican), on behalf of VISO LASIK MEDSPAS LLC. Shall purchase advertising space from the Client in accordance with the terms of this Agreement for each year that this Agreement remains in effect. The purchase of the advertising space hereunder may be made by Brican or any other entity in which Brican is related by ownership.

E) **Advertising Space:** The Client agrees to allow Brican to insert advertising spots within the animations or messages chosen and displayed by the Client. Brican advertising space will not exceed 10% of the space occupied by the Client and will consist of 15 seconds animations after each sequence of 4 client's animations.

F) The Client agrees to allow Brican to insert a marketing URL into the home page of their website as well as a banner.

G) **Content of Advertising:**

Brican reserves the exclusive right, even if a local VISO LASIK MEDSPAS center is not open yet, to run any advertisements or placing of posters and printed materials regarding Laser Vision Correction and Refractive Surgery.

Brican reserves the exclusive right to advertise other products sold within the Client's practice. Any income derived from advertising sold by will be divided equally between the Client and Brican.

H) **Advertising Fees:** Brican agrees to pay Client a minimum of \$ 5000 per year for advertising space, for each year this Agreement remains in effect. Within thirty (30) days following the end of each year of the term of this Agreement, Brican will review the value of the advertising space provided by Client, taking into account potential customer volume at Client's facility and actual business generated from LASIK patients from such advertisements except for those receiving co-management fees from VISO LASIK MEDSPAS. Brican will adjust the annual advertising payment, on an annual basis, retroactive to the beginning of the then current year of the term, based upon Brican's determination of the fair market value of advertising space at Client's facility but the annual value will never be less than the minimum amount specified above.

I) **Timing of Payments:** Client will become eligible for the payment schedule described below 90 days after delivery of the Exhibeo Concept. This does not mean the quarterly payments begin after 90 days. All applicable payments issued by Brican to the Client, in accordance with Paragraph D, will be paid on a quarterly basis according to the following schedule: January 1st / April 1st / July 1st / October 1st. The first and last payments will be prorated.

J) **Term:** This Agreement shall be effective for a period of two years following delivery of the Exhibeo Concept, and shall automatically be renewed for three (3) additional, consecutive one year terms, unless terminated by the Client upon written notice to Brican. Brican may terminate this Agreement upon written notice to the Client if the Client is in default with respect to lease payments to the institution which is financing the Exhibeo Concept for the Client. Same termination may apply if the Client does not display advertising to his patients constantly during normal business hours.

K) **Cancellation:** If VISO LASIK MEDSPAS fails to honor its commitment relating to the advertising fees and if the Client requests it, Brican will repurchase the Client's lease agreement in regard to the Exhibeo Concept.



Client

Salvatore M De Lauro for

WHITE: To Company

YELLOW: To Client

(5) ADVERTISING AGREEMENT

The following agreement shall be made part of the Purchase Order # 20319 and be taken into consideration when and if clarification and/or interpretations are needed regarding the following:

- A) **Purchase of Advertising:** Brican America Inc. shall purchase from the Client \$ 5800 (minimum) worth of advertising space for each year that this agreement remains in effect. The purchase of Advertising space hereunder may be made by Brican or any other entity in which Brican owns shares of voting stock as long as the Client is current regarding payments to the leasing institution financing the Exhibeo Concept.
- B) **Term:** Client will become eligible for the payment schedule described in Paragraph C 90 days after delivery of the Exhibeo Concept. This does not mean the quarterly payments begin after 90 days. This Agreement shall automatically renew for four additional one year terms, unless terminated by the Client upon written notice to Brican.
- C) **Payments:** All applicable payments issued by Brican to the Client, in accordance with Paragraph A, will be paid on a quarterly basis according to the following schedule:

January 1st / April 1st / July 1st / October 1st X

PAYMENT EXAMPLE 1

Purchase Order signed May 23, 2006
Equipment delivered June 10, 2006
Client is eligible September 10, 2006
First payment is due October 1, 2006 for \$322.
Calculated as follows - (\$5800 per year div by 4 payments = \$1450 per payment div by 90 days = \$16.11 per day X 20 days = \$322.)
Next payment January 1, 2007 for \$1450 (\$5800 div by 4 = \$1450)
Last payment October 1, 2011 for \$1128 (\$1450 - \$322 = \$1128)

PAYMENT EXAMPLE 2

Purchase Order signed June 23, 2006
Equipment delivered July 10, 2006
Client is eligible October 10, 2006
First payment is due January 1, 2007 for \$1289. Calculated as follows - (\$5800 per year div by 4 payments = \$1450 per payment div by 90 days = \$16.11 per day X 80 days = \$1289.)
Next payment April 1, 2007 for \$1450 (\$5800 div by 4 = \$1450)
Last payment January 1, 2012 for \$161 (\$1450 - \$1289 = \$161)

- D) **Content of Advertising:** (Mark one option)
 - ☐ The Client reserves the right to refuse any advertisement from companies that produce or provide tobacco, alcohol, gambling or pornographic products or services. Brican reserves the right to run any advertisements including posters and printed materials regarding Laser Vision Correction, Refractive Surgery and LASIK Centers practicing these procedures.
 - ☐ The Client has the right to refuse any LASIK-related Advertising under the condition that Brican be allowed to advertise other products sold within the Client's practice. Any income derived from advertising sold by Brican will be retained by Brican.
- E) **Advertising Space:** The Client agrees to allow Brican to insert advertising spots within the animations or messages chosen and displayed by the Client. Brican advertising space will not exceed one tenth (1/10) of the space occupied by the Client and Brican together. The Client is not under any obligation to refer or direct his patients to the advertised VISO LASIK MEDSPAS.
- F) **Cancellation:** If the advertised VISO LASIK MEDSPAS fails to honor its financial commitment pursuant to this agreement, then all related agreements can be cancelled and Brican will buy back the related lease agreement.



Client

Signature M de la Cruz X M

WHITE: To Company

YELLOW: To Client