

ORIGINAL

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Executors of the Estate of Richard Nieto

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CLERK OF DISTRICT COURT
SANTA ANA

FILED

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DEBORAH PERCIBALLI, and
LOUIS NIETO, JR. Co-Executors of
the Estate of Richard Nieto

Plaintiffs,

v.

HENRY L. NG, an individual;
SAMIR CHACHOUA, an individual;
GILBERT BURCIAGA, an
individual; JEUNESSE
INSTITUTE/MRF Corporation, a
Guatemala corporation; JEUNESSE
COSMETICS COMPANY PTY.
LTD., an Australia proprietary
company limited by shares;
JEUNESSE TRUST, a Florida
corporation; JEUNESSE GLOBAL
HOLDINGS, a Florida limited
liability company; JEUNESSE
FOUNDATION, a California
corporation; THOMAS KABISCH,
an individual; NATHAN KABISCH,
an individual; MICHELE APRIL as
guardian for ALEXANDRA NIETO,
a minor; ELENA GIRONA, as
guardian for JORDAN NIETO, a
minor; and Does 2 through 50,
inclusive.

Defendants.

U.S.D.C. Case No. SACV 08-01168 JVS
(ANx)

[Assigned to the Hon. James V. Selna]

SECOND AMENDED COMPLAINT

Jurisdiction

1. Jurisdiction for this action exists based on diversity of citizenship under 28 USC §1332 and the amount in controversy exceeds \$50,000 exclusive of interest and costs.

Parties

2. Plaintiff Louis Nieto, Jr. is a Co-Executor of the Estate of Richard Nieto and is a resident of the State of New York.

3. Plaintiff Deborah Perciballi is a Co-Executor of the Estate of Richard Nieto and is a resident of the State of New York.

4. Plaintiffs are informed and believe and based thereon allege that Defendant Henry Ng ("Ng") is an individual residing in the State of California, County of Orange.

5. Plaintiffs are informed and believe and based thereon allege that Defendant Samir Chachoua ("Chachoua") is an individual residing in the Country of Mexico.

6. Plaintiffs are informed and believe and based thereon allege that Defendant Gilbert Burciaga ("Burciaga") is an individual residing in the State of California, County of Los Angeles.

7. Plaintiffs are informed and believe and based thereon allege that Defendant Jeunesse Institute/MRF Corporation is a corporation and is located in the country of Guatemala.

8. Plaintiffs are informed and believe and based thereon allege that Defendant Jeunesse Cosmetics Company Pty. Ltd. is a proprietary company limited by shares and is located in the country of Australia.

9. Plaintiffs are informed and believe and based thereon allege that Defendant Jeunesse Trust is a corporation and is located in the state of Florida.

10. Plaintiffs are informed and believe and based thereon allege that Defendant Jeunesse Global Holdings is a limited liability company and is located in the state of Florida.

11. Plaintiffs are informed and believe and based thereon allege that Defendant Jeunesse Foundation (collectively with Jeunesse Institute/MRF Corporation, Jeunesse

1 Cosmetics Company Pty. Ltd., Jeunesse Trust, and Jeunesse Global Holdings,
2 hereinafter "the Jeunesse companies") is a corporation whose status is suspended, and
3 is located in the state of California.

4 12. Plaintiffs are informed and believe and based thereon allege that Defendant
5 Thomas Kabisch ("Kabisch") is an individual residing in the State of Michigan.

6 13. Plaintiffs are informed and believe and based thereon allege that Defendant
7 Nathan Kabisch ("Nathan") is an individual residing in the State of Michigan.

8 14. Plaintiffs are informed and believe and based thereon allege that Defendant
9 Michele April was at all times herein mentioned a resident of New York, is currently a
10 resident of Florida and is the guardian of Alexandra Nieto, a minor, duly appointed by
11 the Honorable John M. Czygier, Jr., Surrogate at the New York State Surrogates Court
12 in Suffolk County. She is joined herein solely for purposes of providing complete relief
13 under Plaintiffs' personal claim for wrongful death.

14 15. Plaintiffs are informed and believe and based thereon allege that Defendant
15 Elena Girona is, and at all times herein mentioned was, a resident of New York and is
16 the guardian of Jordan Nieto, a minor, duly appointed by the Honorable John M.
17 Czygier, Jr., Surrogate at the New York State Surrogates Court in Suffolk County. She
18 is joined herein solely for purposes of providing complete relief under Plaintiffs'
19 personal claim for wrongful death.

20 16. The true names and capacities of the Defendants sued herein as DOES 2
21 through 50 are unknown to Plaintiffs, who therefore sue said Defendants by such
22 fictitious names. Plaintiffs are informed and believe and thereon allege that the
23 Defendants designated in this Complaint as DOES are individuals or entities who
24 participated in the commission of the acts or omissions complained of in this
25 Complaint, and, therefore, are liable for those acts and omissions as individuals and as
26 employees, agents, or representatives of the named Defendants. Plaintiffs will amend
27 this Complaint to include their true names and/or capacities when the same are
28 ascertained together with appropriate charging allegations.

Venue

17. Venue exists under 28 U.S.C. § 1391(a)(3).

Allegations common to all claims for relief

18. Plaintiffs are informed and believe and thereon allege that at all times mentioned in this Complaint, each of the Defendants was the alter ego, agent, employee, employer, co-conspirator and/or joint venturer of each of the remaining Defendants and in doing the things alleged in this Complaint were acting within the course and scope of such agency, employment or other relationship. Plaintiffs are further informed and believe and thereon allege that each of the Defendants has pursued a common course of conduct with, acted in concert with, and aided and abetted each other Defendant to accomplish the wrongs set forth in this Complaint, and is each, in whole or in part, legally responsible for Plaintiffs' damages as set forth in this Complaint

19. This lawsuit arises out of the defendants' fraudulent conduct in persuading the late Richard Nieto ("Richard"), a wealthy individual who was struggling to cope with lung cancer, to pay millions of dollars for a worthless and unapproved treatment for his disease. Defendants, and each of them, persuaded Mr. Nieto to pay them over \$7 million for mysterious and undefined cancer therapy that was worthless. Mr. Nieto died on October 17, 2006 and plaintiffs/co-executors of his estate bring this suit to recover the money received by defendants and other relief.

20. In or about April 14, 2006, Richard was diagnosed with lung cancer. At the time the lung cancer was diagnosed, it was already advanced and had spread to his lymph glands. Richard initially sought and obtained chemotherapy for the cancer. It failed to cure him and made him extremely sick, weak and mentally confused.

21. By the time of the events alleged herein, Richard was extremely ill from the cancer and confused as a result of pain and disability, his fear of death and from the effects of medication. Richard was desperate for treatment for what he then understood was a potentially fatal disease. As a result of his fragile and unbalanced mental state, he was extremely susceptible to charlatans.

22. Plaintiffs are informed and believe and based thereon allege that in or about May 2006, defendants Ng, Burciaga and Chachoua, on behalf of themselves and the Jeunesse companies, made oral telephonic representations to Richard, who was variously in New York and Texas at the time, that, if Richard underwent defendants' "Induced Remission Therapy" ("IRT") that it could and would cure his lung cancer at a "reasonable price".

23. The representations were false at the time defendants made them and defendants knew that they were false. The true facts were that IRT could not and would not cure Richard's lung cancer.

24. Based on defendants' representations, Richard entered into a purported contract to receive IRT at a cost of \$603,000, which he paid to Defendant Ng.

25. Plaintiffs are informed and believe, and based thereon allege that Richard reasonably and justifiably relied on these representations, given his poor physical and mental condition and susceptibility to claims of a cure for lung cancer.

26. In or about early June 2006, Richard flew to Detroit, Michigan, where the IRT was administered by defendant Kabisch, under the direction and with the knowledge of the co-defendants, and each of them. During Richard's "treatment" in Detroit, defendant Kabisch made additional representations to Richard regarding the miraculous healing power of Dr. Chachoua and his treatments.

27. The IRT made Richard very sick and failed to provide him with any improvement in his condition.

28. Plaintiffs are informed and believe, and base thereon, allege as follows: In or about July 2006, while Richard was in Michigan and defendant Ng was in California, Ng, on his own behalf and on behalf of his co-defendants, orally represented to Richard by telephone that Ng could obtain for Richard a special treatment for cancer called "Omega Therapy", developed by Defendants Chachoua and the Jeunesse companies. Ng further represented to Richard that Omega Therapy consisted of drugs manufactured specially for Richard in China and based on an alleged analysis of

1 Richard's genetic makeup. Ng represented to Richard that the Omega Therapy was,
2 since it was specially manufactured for him, extremely expensive, but that it would
3 cure Richard's cancer. Chachoua, in a telephone conversation with Richard, repeated
4 the same representations to Richard at or about the same time.

5 29. Plaintiffs are informed and believe, and based thereon, allege that based on Ng's
6 and Chachoua's representations, Richard signed a written contract dated August 3,
7 2006, under which Richard purportedly obligated himself to pay \$6.5 million for this
8 "custom" cancer treatment and an additional \$15 million for future and additional
9 treatments and to "fund" Omega Therapy "research".

10 30. At the time he signed the Omega Contract, Richard was under extremely strong
11 medication and was physically and cognitively impaired. He was extremely susceptible
12 to undue influence, and was desperate for treatment of his disease. Defendants knew of
13 Richard's condition and sought to and did take advantage of it.

14 31. Richard continued to receive the Induced Remission Therapy from Dr. Kabisch
15 in Michigan until late August 2006.

16 32. In early September 2006, Richard returned to New York. He received no
17 treatment of any kind in September 2006.

18 33. On or October 1, 2006, a dose of Omega Therapy was delivered to New York by
19 Nathan Kabisch, who, on information and belief, is the son of Dr. Kabisch. The
20 Omega Treatment delivered was not the Omega Therapy "specially" manufactured for
21 Richard. On information and belief, it was nevertheless, administered by Dr. Kabisch
22 to Richard.

23 34. On or about October 8, 2006, a "specially" manufactured dose of the Omega
24 Therapy was delivered to New York for the purpose of administering it to Richard and
25 Dr. Kabisch injected that dose of Omega Therapy into Richard.

26 35. By October 10, 2006, Richard paid Defendants \$6,500,000 for the Omega
27 Treatment.

28 ///

1 36. On or about October 16, 2008, Richard flew to Michigan for further treatment by
2 Dr. Kabisch of the Omega Therapy.

3 37. On October 17, 2008, Richard died in Michigan. On information and belief,
4 Richard's death was hastened or caused by the Omega Therapy.

5
6 **FIRST CLAIM FOR RELIEF**

7 **(Fraud Against All Defendants)**

8 38. Plaintiffs refer to and incorporate by this reference as though set forth in full
9 paragraphs 1 through 33 above.

10 39. Plaintiffs are informed and believe and based thereon allege that at the time that
11 Defendants, and each of them, made the representations to Richard regarding the
12 effectiveness of the IRT and Omega Therapy the representations were false.

13 40. Plaintiffs are informed and believe and based thereon allege that at the time said
14 representations were made to Richard regarding the effectiveness of the IRT and
15 Omega Therapy, Defendants, and each of them, knew them to be false or had no
16 reasonable ground to believe that they were true.

17 41. Plaintiffs are informed and believe and based thereon allege that the true facts
18 were that IRT and Omega Therapy were unproven and could not and would not cure
19 Richard or provide him with any improvement in his condition.

20 42. At the time that Defendants made the representations to Richard, Richard
21 believed the representations to be true and reasonably and justifiably relied on those
22 representations.

23 43. Plaintiffs are informed and believe and based thereon allege that as a direct and
24 proximate result of Defendants' conduct, Plaintiffs, as Richard's successors in interest,
25 have been damaged in a sum in excess of \$7 million, including but not limited to all
26 sums Richard paid for IRT and the Omega Therapy, the costs of Richard's travel,
27 lodging and other expenses pertaining thereto.

28 44. Plaintiffs are informed and believe that Defendants' conduct constituted

1 “oppression”, “malice”, and “fraud” as defined in California Civil Code §3294(c),
2 thereby entitling plaintiffs to punitive damages.

3
4 **SECOND CLAIM FOR RELIEF**

5 **(Common Count for Money Had and Received Against Defendants Ng, Chachoua,**
6 **and the Jeunesse companies)**

7 45. Plaintiffs refer to and incorporate by this reference as though set forth in full
8 paragraphs 1 through 33 above.

9 46. Within the last two years, Defendants Ng, Chachoua, and the Jeunesse
10 companies are indebted to Plaintiffs in the sum of no less than \$7,103,000, for money
11 had and received by said Defendants for the use and benefit of Richard.

12 47. Plaintiffs, as Richard’s successors-in-interest have made demand for payment by
13 Defendants.

14 48. No payment has been made by said Defendants, and there is now due, owing and
15 unpaid the sum of no less than \$7,103,000, with interest thereon at the statutory rate.

16 49. The contracts which Defendants sought to enforce and which are void, provided
17 for the payment of attorneys fees for the prevailing party, and Plaintiffs are entitled to
18 their reasonable attorneys fees in a sum to be determined by the Court.

19
20 **THIRD CLAIM FOR RELIEF**

21 **(Medical Malpractice Against Defendants Chachoua, Ng, Kabisch, and the**
22 **Jeunesse companies)**

23 50. Plaintiffs refer to and incorporate by this reference as though set forth in full
24 paragraphs 1 through 33 above.

25 51. Plaintiffs are informed and believe and based thereon allege as follows:
26 Defendants Chachoua Kabisch, and the Jeunesse companies are or purport to be health
27 care providers, and the other defendants purport to assist said Defendants in the
28 provision of health care. Defendant Kabisch is licensed to practice osteopathy in the

1 State of Michigan. None of the other defendants are licensed to practice health care in
2 any state of the United States.

3 52. As set forth above, Defendants, and each of them purported to treat Richard for
4 lung cancer in California, Texas, Michigan and New York. The alleged treatment
5 performed on Richard was painful, prolonged and was useless for treatment of lung
6 cancer.

7 53. Defendants, and each of them, failed to exercise the degree of knowledge and
8 skill proper in their profession and so negligently and unskillfully treated Richard that
9 he suffered great pain and distress from the treatment and from the disease.

10 54. As a proximate result of the negligence of Defendants and each of them, Richard
11 suffered damages in an amount to be proven at trial.

12
13 **FOURTH CLAIM FOR RELIEF**

14 **(Wrongful Death by Plaintiff Deborah Perciballi personally and Louis Nieto, Jr.**
15 **Personally Against All Defendants)**

16 55. Plaintiffs refer to and incorporate by this reference as though set forth in full
17 paragraphs 1 through 50 above.

18 56. Plaintiff Deborah Perciballi and Plaintiff Louis Nieto, Jr. are the sister and
19 brother respectively, of Richard.

20 57. Defendant Alexandra Nieto is the natural daughter of Richard and is joined as
21 Defendant solely to provide complete relief on Plaintiffs' individual and personal
22 claims for wrongful death.

23 58. Plaintiffs are informed and believe and based thereon allege that Richard's death
24 was proximately caused by the negligence of Defendants, and each of them.

25 59. As a proximate result of Defendants' negligence and wrongful conduct, Plaintiffs
26 have been damaged in an amount to be determined at trial.

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FIFTH CLAIM FOR RELIEF

(Declaratory Relief that Contracts are Void Against Ng, Burciaga, Chachoua and the Jeunesse companies)

60. Plaintiffs refer to and incorporate by this reference as though set forth in full paragraphs 1 through 33 above.

61. There exists at the present time an actual controversy between Plaintiffs and Defendants Ng, Chachoua, Burciaga, and the Jeunesse companies over Plaintiffs' and said Defendants' rights, duties and obligations, if any, under the purported contracts between Richard and Defendants dated May 8, 2006, August 3, 2006 and various addenda and amendments thereto.

62. On the one hand, Plaintiffs contend that the May 9, 2006 contract and the August 3, 2006 contract and other purported agreements or amendments to those alleged contracts are void.

63. Plaintiffs are informed and believe and based thereon allege as follows: one or more of defendants Ng, Chachoua, Burciaga and the Jeunesse companies contend that one or more of the May 9, 2006 contract, the August 3, 2006 contract or other purported agreements and amendments or addenda to those contracts are valid and enforceable.

64. Plaintiffs request that this Court declare that any and all agreements purportedly signed by Richard, on the one hand, and Ng, Chachoua, Burciaga and the Jeunesse companies, or any entity on behalf of which defendant Ng purportedly acted, on the other hand, are null and void and unenforceable and that Plaintiffs have no duties or obligations whatsoever under any one or more of the May 9, 2006 contract, the August 3, 2006 contract and amendments or addenda to those contracts.

65. The purported August 3, 2006 contract provides that Richard or his estate are liable for attorney fees in the event that suit is brought on the May 9, 2006 contract or the August 3, 2006 contract. Pursuant to California Civil Code §1717, plaintiffs are entitled to their attorneys fees.

SIXTH CLAIM FOR RELIEF

(Constructive Trust Over Funds Received as a result of Undue Influence Against Defendants Ng, Chachoua, Burciaga, Kabisch, Nathan and the Jeunesse companies)

66. Plaintiffs refer to and incorporate by this reference as though set forth in full paragraphs 1 through 61 above.

67. As a proximate result of the exercise of undue influence by Defendants Ng, Chachoua, Burciaga, Kabisch, Nathan and the Jeunesse companies, Richard paid no less than \$7,103,000 to said Defendants.

68. Plaintiffs seek a judgment against said Defendants imposing a constructive trust on all sums received by said from Richard.

SEVENTH CLAIM FOR RELIEF

(Conspiracy to Defraud Against All Defendants)

69. Plaintiffs refer to and incorporate by this reference as though set forth in full paragraphs 1 through 64 above.

70. Defendants' conduct as described hereinabove constitutes a conspiracy to defraud Richard.

71. As a proximate result of Defendants' conduct Plaintiffs have been damaged in excess of the sum of no less than \$7,103,000, plus consequential damages, including but not limited to Richard's travel, lodging and other expenses he incurred pertaining to the treatment he underwent at Defendants' direction.

72. Plaintiffs are informed and believe that Defendants' conduct constituted "oppression", "malice", and "fraud" as defined in California Civil Code §3294(c), thereby entitling plaintiffs to punitive damages.

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1 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of
2 them, as follows:

- 3 1. For compensatory damages according to proof at trial;
- 4 2. For punitive damages according to proof at trial;
- 5 3. For the imposition of a constructive trust or equitable lien;
- 6 4. For attorney's fees;
- 7 5. For costs of suit incurred in this action; and
- 8 6. For such other and further relief deemed just and proper by this court.

9
10 DATED: July 7, 2010

Law Offices of Steven L. Martin

11
12 BY: 

13 STEVEN L. MARTIN
14 Attorney for Plaintiffs
15 Deborah Perciballi and Louis Nieto, Jr., Co-
16 Executors of the Estate of Richard Nieto
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Name & Address:

Steven L. Martin, Esq. [CSB #077315]
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Los Angeles, CA 90064

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEBORAH PERCIBALLI and LOIS NIETO, JR.,
Co-Executors of the Estate of Richard Nieto

PLAINTIFF(S)

v.

CASE NUMBER

SACV 08-1168 JVS (ANx)

HENRY L. NG, an individual; SAMIR CHACHOUA,
an individual; GILBERT BURCIAGA, an individual;
Con't. -SEE ATTACHMENT.

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☐ complaint ☒ Second amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Law Offices of Steven L. Martin, whose address is 11400 West Olympic Boulevard, Suite 1150, Los Angeles, CA 90064. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUL 12 2010

Dated: _____

Clerk, U.S. District Court

By: _____

DODJIE LAGMAN

Deputy Clerk

(Seal of the Court)

SEAL

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

ATTACHMENT TO SUMMONS ON SECOND AMENDED COMPLAINT

PERCIBALLI V. NG, et. al.

U.S.D.C. Case No. SACV 08-01168 JVS (ANx)

Additional Defendants:

JEUNESSE INSTITUTE/MRF Corporation, a Guatemala Corporatiion;
JEUNESSE COSMETICS COMPANY PTY. LTD., an Australia proprietary
company limited by shares; JEUNESSE TRUST, a Florida corporation;
JEUNESSE GLOBAL HOLDINGS, a Florida Limited Liability Company;
JEUNESSE FOUNDATION, a California Corporation; THOMAS KABISCH, an
individual; NATHAN KABISCH, an individual; MICHELE APRIL, as guardian for
ALEXANDRA NIETO, a minor; ELENA GIRONA, as guardian for JORDAN NIETO, a minor;
and Does 2 through 50, inclusive.