

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ARP Wave, LLC, a Minnesota
Limited Liability Company, and
ARP Manufacturing, LLC, a
Minnesota Limited Liability
Company,

CASE TYPE: Patent Infringement

Court File No.

Plaintiffs,

COMPLAINT

v.

Garrett M. Salpeter, Neurological
Fitness Equipment and Education, LLC,
a Texas Limited Liability Company,
Neurological Fitness and Recovery
Facilities, LLC, a Texas Limited
Liability Company, ARPwave Austin, LLC
a Texas Limited Liability Company,
and John Does I-X,

Defendants.

Plaintiffs, ARP Wave, LLC and ARP Manufacturing, LLC, for their Complaint
against Defendants state:

THE PARTIES

1. Plaintiff, ARP Wave, LLC, is a Minnesota Limited Liability Company
having its principal place of business located at 7721 145th Street West, Apple Valley
("Plaintiff" or "ARPwave"). ARPwave is an industry leader in neurological soft tissue
rehabilitation and strength training.

2. Plaintiff, ARP Manufacturing, LLC, is a Minnesota Limited Liability Company having its principal place of business located at 7270 South Fraser Street, Centennial, Colorado (“Plaintiff” or “ARP Manufacturing”). ARP Manufacturing is a sister company of ARP Wave, and manufactures electronic muscle stimulation devices for exclusive purchase and distribution by ARPwave.

3. Defendant Garrett M. Salpeter (“Salpeter”) resides at 6636 West William Cannon, Apt. 322, Austin, TX 78733. Defendant Salpeter is a former licensee of Plaintiff ARPwave. Defendant Salpeter represents himself publicly as the founder of the “Neufit” brand and treatment system, which is a converted copy of ARPwave proprietary and patented Systems, previously leased and licensed to Salpeter by Plaintiff ARPwave.

4. Defendant Neurological Fitness and Recovery Facilities, LLC, a Texas Limited Liability Company, is controlled, owned and operated by Defendant Salpeter, and located at 912 S Cap of TX Hwy, Ste 170, Austin, Texas 78746. Defendant Salpeter is the current Chief Operating Officer, director and member of Defendant Neurological Fitness and Recovery Facilities, LLC.

5. Defendant Neurological Fitness Equipment and Education, LLC, a Texas Limited Liability Company, d/b/a NeuFit Distribution and Education, is controlled, owned and operated by Defendant Salpeter, and is located at 912 S. Cap of TX Hwy, Ste 170, Austin, Texas 78746. Defendant Salpeter is the Current Chief Operating Officer, director and member of Defendant Neurological Fitness Equipment and Education, LLC.

6. Defendant ARPwave Austin, LLC, a Texas Limited Liability Company, is controlled, owned and operated by Defendant Salpeter with a principal registered address of 3001 Bee Caves Rd., Ste 210, Austin, Texas 78746.

7. Plaintiffs believe that other entities owned and operated by Defendants are being used in the perpetration of the unlawful conduct set forth herein. Once those entities and any individual co-conspirators are identified during the course of this litigation, they will be added as additional defendants in this matter. Defendant Salpeter exercises full dominion, ownership and operational control over the Defendant entities.

JURISDICTION AND VENUE

8. This is a claim of patent infringement arising under the Acts of Congress relating to patents, 35 U.S.C. §§ 271; 282-285. This Court has exclusive jurisdiction over Plaintiff's patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332, because this matter involves citizens of different states and the amount in controversy exceeds \$75,000. The Court has pendent and supplemental jurisdiction over Plaintiff's state and common law claims under 28 U.S.C. §§ 1338(b) and 1367 in that such claims are joined with substantial and related claims under the Patent and Trademark Laws of the United States.

9. Personal jurisdiction over Defendants and venue are proper in this district under 28 U.S.C. § 1391. Likewise, Defendants executed agreements with Plaintiffs whereby they submitted themselves and any disputes between the parties to the exclusive

jurisdiction of this Court and the laws of the state of Minnesota. Defendants have also marketed and offered for sale their accused products in the State of Minnesota.

STATEMENT OF FACTS

A. Background On The ARPwave Device and Proprietary Systems

10. PhysioDynamics, Inc. (“PDI”), was incorporated in Colorado in 1987 for purposes of manufacturing the Therastim®, a transcutaneous electronic muscle stimulator. Gary Thomas invented and developed the device and received patent approval for his original electrotherapeutic apparatus on May 5, 1992, (United States Patent No. 5,109,848) and for a method of using such an apparatus on April 28, 1992 (United States Patent No. 5,107,835).

11. The United States Food and Drug Association (“FDA”) classified the Therastim® machine as a Class II medical device under 21 CFR 890.5850, which requires clearance for its use from the FDA by way of a filing of a 510K application by the manufacturer.

12. The FDA requires that all Class II medical device manufacturers are registered with the FDA and that they demonstrate good manufacturing practices and quality controls. Each manufacturer must list the product that it sells to the public and demonstrate clearance and premarket notification approval for same with the FDA. In 1989, PDI received premarket approval from the FDA for its 510K application related to the Therastim® device pictured below.



13. The standard indications approved by the FDA for use of the Therastim® under 21 CFR 890.5850 were: *Relaxation of muscle spasms; Prevention or retardation of disuse atrophy; Increasing local blood circulation; Muscle re-education; Immediate post-surgical stimulation of calf muscles to prevent venous thrombosis; and Maintaining or increasing range of motion.*

14. The FDA and federal law restricts the use of the Therastim® or any related device to sale or lease by or on the order of a practitioner (prescription) licensed by the law of the State in which he/she practices.

15. PDI initiated production in 1991 and the first Therastim® machines were placed for sale in commerce later that same year.

16. The Therastim® became an important new treatment modality for soft tissue injury. Its unique analog-developed wave form allowed a practitioner to achieve deep

tissue penetration at a low DC voltage, and thereby reduce the level of discomfort that the patient experienced-as opposed to AC machines that ran on much higher voltage.

17. The primary market for the Therastim® machine in the 1990's was geared toward medical practitioners who would use the Therastim® machine as a compliment to their traditional physical therapy methods. That market focus began to slowly change, however, after Gary Thomas was introduced to Denis Thompson ("Thompson") in 1990, founder of the Accelerated Recovery Performance System and Plaintiff "ARPwave." Thompson began to experiment with benefits of the Therastim® based on techniques employed by the former Soviet Union in training its athletes. As Thompson experimented with the Therastim®, various protocols were developed for use of the device to increase its effectiveness to individuals.

18. In 1998, Thompson met Frank Schroeder ("Schroeder"), who was involved in strength training and worked with elite athletes in Arizona. In 1999, the two of them began experimenting with and creating strengthening protocols for the Therastim® device for use on or by individuals either recovering from injuries or desiring to achieve peak levels of athletic performance.

B. The Development of the ARP Trainer

19. In 2001, "A.R.P Trainer" was introduced into commerce by Thompson.



20. “A.R.P” stood for “Accelerated Recovery Performance,” and both trademark names were filed for registration by Thompson with the USPTO in November of 2004 and approved in early 2006.

21. Thompson and Schroeder continued to experiment with and develop additional protocols using the A.R.P. Trainer with trainers and medical professionals employed by major sports leagues, including the NFL, MLB, NHL, NBA as well as amateur athletes.

22. In 2004, the first ARP Clinic was opened in Burnsville, Minnesota, and provided a place where professional athletes and the public at large could be placed in balance neurologically, recover from injury and increase strength and the ability to absorb force.

23. That same year, PDI started to aggressively private-label the ARP Trainer for Thompson and the ARP lease and license program was developed. As Thompson and Schroeder continued to experiment with and create new protocols, Thompson realized that

many of his protocols had value in not being generally known or readily available, other than through the ARP Clinic.

24. Thompson, under the ARP brand, began to lease the ARP Trainer and license certain protocols for secret use along with consultation and support time to professional athletes, chiropractic offices and physical therapy clinics, as well as for certain patients from the general public at large for varying Lease/License terms. The Lease/License obligated the recipients to strict confidentiality as to the protocols (including ongoing and newly developed protocols) and use compliance for the ARP Trainer device.

25. In 2007, PDI was acquired by ARP Manufacturing, LLC and begin to operate under said name.

26. Over the next several years, new protocols were developed by ARPwave for loosening, recovery protocols were expanded, custom protocols were added, and athletic performance protocols enhanced. ARPwave began to aggressively solicit relationships with professional sports teams, which resulted in over 1000 athletes licensing the ARPwave System and agreeing to confidentiality terms.

27. In 2009, ARPwave opened its corporate headquarters in Apple Valley, Minnesota.

C. New Machines And Protocols Developed by Plaintiffs

28. By about 2010, ARP Manufacturing developed two new machines in conjunction with and for exclusive use by ARPwave, realizing that signals generated with certain digital components could outperform and permit new treatment modalities as well

as additional new protocols. The first device is called the “ARP Rx 100” and is a prescription medical device much like the ARP Trainer for which it received FDA approval of its 510K application. The second device is called the “ARP Pov Sport” and has been approved by the FDA as an over-the-counter device used to relax and strengthen muscles without the need for a prescription. Both devices are pictured below.



The new protocols could be implemented with the use of the new machines and allowed the company to completely move away from chiropractic services. New and upgraded protocols continue to be developed and customized on a daily basis.

29. In 2009 and 2010, utility patents were filed on the new machines, as well as on certain protocols and methods of use that could be performed with the new machines. Many of the other protocols and methods of use that had been and were continuing to be developed by ARPWave remained trade secrets.

30. In 2013, ARP Manufacturing developed a new portable hand-held machine for ARPwave. The device is called the “ARP PRS” (Personal Recovery System) and has been approved by the FDA as an over-the-counter device used to relax and strengthen muscles without the need for a prescription. The device is pictured below.



31. ARPwave received approval for a first utility patent, US 8,768,474 issued on July 1, 2014, that specifically covers some of the ARPwave methods of electro-therapeutic diagnosis and treatment, which were new and non-obvious over the prior United States Patent Nos. 5,107,835 and 5,109,848..

32. ARP Manufacturing received approval for a second utility patent, US 9,302,102, issued on April 5, 2016, that specifically covers aspects of the new, digital electro-therapeutic diagnosis and treatment, which were new and non-obvious over the prior United States Patent Nos. 5,107,835 and 5,109,848.39.

33. ARPwave received approval for a third utility patent, US 9,526,892 issued on December 27, 2016, that specifically covers some of the ARPwave methods of electro-therapeutic diagnosis, treatment, training and adjustment, which were new and non-obvious over the prior United States Patent Nos. 5,107,835 and 5,109,848.

D. Defendant Salpeter Becomes a Licensee of ARPwave

34. Defendant Salpeter first contacted Plaintiffs while residing in Oak Brook, Illinois, and attending Middlebury College. Salpeter was playing hockey in college at the time and wanted to improve his performance level and recover from various injuries.

35. As a result, in August of 2006, Defendant Salpeter became a Licensee of the predecessor-in-interest of Plaintiff ARPwave. Pursuant to the lease and license agreement, Defendant Salpeter received an ARP Trainer electronic muscle stimulation device and ARP Protocols.

36. According to public statements made by Defendant Salpeter, he had a life-changing experience using the ARPwave system. He indicated to Plaintiff ARPwave that he was amazed at the ability of the ARPwave System to bring people back faster from all kinds of injuries and to reverse chronic pain, where many other therapy methods failed.

37. In 2008, ARPwave was offering opportunities to select individuals and companies for the creation and operation of ARPwave Clinics. The ARPwave Clinic is a state-of-the-art, low-overhead, for-profit facility that offers ARP soft tissue therapy and ARP strength training and physical conditioning services to the public.

38. On or about December 19, 2008, while attending the University of Texas in Austin, Defendant Salpeter decided to open his own ARP Clinic physical therapy clinic and proceeded to execute a ARPwave Clinic Master Lease and License Agreement with Plaintiff ARPwave (“ARPwave Master Agreement”). Please See Exhibit “A”, attached hereto.

39. In January of 2009, Defendant Salpeter registered an entity in Texas called ARPwave Austin, LLC, in order to “bring the amazing benefits of the ARPwave system to the people of Texas” and to operate his clinic under the terms of the ARPwave Master Agreement.

40. The Lease portion of the ARPwave Master Agreement provided in pertinent part that:

6. Ownership and Alterations of Equipment.

The equipment shall at all times be and remain, the sole and exclusive property of the Lessor and the Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease. Without the prior written consent of the Lessor, the Lessee shall not make any alterations, changes, additions or improvements to the equipment. All additions and improvements of whatsoever kind or nature made to the equipment shall belong to and become the property of Lessor upon the expiration or earlier termination of this lease.

10. Surrender

Upon the expiration or earlier termination of this Lease, with respect to any item of equipment, the Lessee shall return the same to the Lessor in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, in the following manner as may be specified by the Lessor:

- A. By delivering such item of equipment at the Lessee's cost and expense to such place as the Lessor shall specify within the county in which the

same was delivered to the Lessee or to which same was moved with the written consent of the Lessor; or,

- B. By loading such item of equipment at the Lessee's cost and expense on board such carrier as the Lessor shall specify and shipping the same, freight prepaid, to the destination, within the continental United States, designated by the Lessor.

13. Assignment.

Without the prior written consent of the Lessor, the Lessee shall not (a) assign, transfer, pledge or hypothecate this Lease, the equipment or any part thereof, or any interest therein or (b) sublet or lend the equipment or any part thereof, or permit the equipment or any part thereof to be used by anyone other than the Lessee or the Lessee's employees. Consent to any of the foregoing prohibited acts applies only in the given instance, and is not a consent to any subsequent like act by the Lessee or any other person. Subject always to the foregoing, this Lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

- 48. The License portion of the ARPwave Master Agreement provided in pertinent part that:

"System(s)" shall mean the Licensor's proprietary training protocols and programs, copyrights, trade marks, service marks, trade secrets and all other intellectual property associated with Accelerated Recovery Program Protocols, Ultra Fit Athletic Mastery Protocols and In Balance Muscle Testing Protocols, related programs, and related intellectual property. The System(s), and any and all rights thereto, shall at all times remain the exclusive intellectual and material property of Licensor.

"ARP Wave Clinic" shall mean a facility operating for the purpose of providing rehabilitative and physical training services to the public by use of the Systems described herein and pursuant to the terms and covenants of this Lease/License Agreement.

"ARP Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by ARP Wave, LLC in connection with its products and services. In performing its obligations hereunder, Licensee may refer to the Systems by the associated ARP Trademarks, provided that such reference is not misleading and complies with any guidelines issued by ARP Wave. Licensee is granted no right, title or license to, or interest in, any ARP Trademarks. Licensee acknowledges and agrees that any use of the ARP Trademarks by Licensee will inure to the sole benefit of ARP Wave...

SECTION 4 – LICENSEE’S RESPONSIBILITY/CONFIDENTIALITY

Without limitation, the trademarks and service marks which are part of the System(s), are owned exclusively by the Licensor. Licensee acknowledges and agrees that the System(s) herein licensed are proprietary to Licensor and constitute trade marks, service marks, copyrights and trade secrets of Licensor, and title thereto is not conveyed to Licensee and that Licensee’s sole right and interest in and to the System(s) is the License herein granted. Licensee shall keep all System(s) licensed hereunder strictly confidential and shall not disclose, display, sell, transfer, publish, or otherwise make available the System(s) to any other party without the written consent of Licensor. The provisions of this paragraph shall not be deemed to derogate or lessen responsibilities set forth in any other provision hereof or available at law.

SECTION 5 – TERM AND TERMINATION

3. This license shall be deemed automatically terminated or revoked: ...
(ii) any Licensee attempt to disclose, display, pledge, sell and transfer the System(s) or sublicense, assign or convey, whether voluntary or involuntary, this license right.

41. Both the Lease and License portions of the ARPwave Master Agreement provide that the agreements:

...shall be governed exclusively by the laws of the State of Minnesota, without reference to its conflicts of laws provisions. Venue for the enforcement of this Agreement shall be limited to the Hennepin County, Minnesota, Federal or State District Court to the exclusion of all other courts, but subject to appeal as provided for under Minnesota law and applicable rules of civil and appellate procedure. Licensee expressly waives any claim that this forum is inconvenient and stipulates to the Minnesota Court’s jurisdiction over its person.

42. A total of five ARP Trainers were shipped to Salpeter by Plaintiffs in accordance with the ARPwave Master Agreement.

43. Defendant Salpeter, along with his colleague, were subsequently trained in Minneapolis by ARPwave on the use of the equipment and protocols on virtually every part of the body. Defendant Salpeter was also provided access to the loosing protocols, recovery and therapy protocols, strengthening protocols, and specialized protocols for sleep, neurological balance, concussions and the like. None of the proprietary protocols, which comprised the ARPwave Systems, were made available by Plaintiffs to the public, and access has at all times been granted exclusively under a license agreement with strict confidentiality and ownership terms.

44. Defendant Salpeter was specifically taught by ARPwave that learning to administer ARPwave *Neuro-Therapy* is not just learning to use a piece of equipment. Defendant learned that the equipment is a tool utilized to communicate information to the nervous system. The most important objective of the training course for the Defendant was to learn to understand confidential, trade-secret interpretation information about what was being communicated by the nervous system. Defendant learned from the ARPwave training and ongoing support confidential, trade-secret methods to interpret and apply ARPwave protocols as intended and required for working within and succeeding in a commercial environment with patients.

45. After becoming comfortable in the use and application of the ARPwave Systems, Defendant Salpeter, as part of his clinic operations, represented to the public that:

ARPwave Austin was on the frontier of injury rehabilitation and athletic performance training: that the ARPwave Systems worked by increasing the ability of muscles to absorb force, and that in turn trained the muscles to create much more force; and that the ARPwave System could also be adapted to train healthy athletes looking to improve performance.

46. Defendant Salpeter, as part of his clinic operations, further represented that ARPwave Austin, using the proprietary systems licensed to it, helped accelerate recovery from all injuries and surgery, prevented joint replacement, spinal fusion, and other surgeries, and improved performance. Defendant Salpeter represented that ARPwave Austin was able to dramatically accelerate recovery from all injuries because the ARPwave System treated the origin of the injury and not just the symptoms, and that this origin is in the nervous system, and in many cases, it is far from where you'd expect it to be.

47. Defendant Salpeter marketed the basic ARPwave System premise that the reason injury happens in the first place is that the muscles cannot absorb force properly, and that force gets into areas that cannot handle it. These areas include tendons, ligaments, meniscus, hip/shoulder labrum, vertebral discs, etc. Because force absorption is the origin of the injury, ARPwave Systems accelerate recovery by building up the ability of the muscles to absorb force. This is done by using the ARPwave machines to deliver a unique type of electric stimulation to create adaptations in the nervous system, allowing it to fire the muscles correctly.

48. Defendant Salpeter was responsible for paying annually a total of \$68,250.00 for the Equipment Lease and another \$16,800 for the license of the Systems to Plaintiff ARPwave.

49. Defendant stopped making payments due and owing under the ARPwave Master Agreement and has claimed ownership by conversion of the ARP Trainer devices, refusing to return same to Plaintiffs. In early 2017, Defendant claimed to have sold three of the ARP Trainers subject to the ARPwave Master Agreement, in direct and willful violation his contractual obligations to Plaintiff ARPwave.

50. On May 27, 2010, Defendant Salpeter executed an ARPwave Individual Lease and License Agreement (“RX100 Agreement”) to lease and license the newly developed ARPwave RX100 unit and its associated protocols. Please See Exhibit “B” attached hereto.

51. The RX100 Agreement was subject to a five-year term and required a \$10,000 lease/license fee payment from Defendant Salpeter, as well as additional usage fees related to the amount of time the RX100 device was used by Defendant.

52. The RX100 Agreement clearly provides that the RX100 is the property of Plaintiff ARPwave and cannot be resold.

53. Similarly, the RX Agreement provides that:

1. "System(s)" shall mean the Licensor's proprietary training protocols and programs, copyrights, trade marks, service marks, trade secrets and all other intellectual property associated with Accelerated Recovery Program Protocols, Ultra Fit Athletic Mastery Protocols and ARP Muscle Testing Protocols, related programs, and related intellectual property. The System(s), and any and all rights thereto, shall at all times remain the exclusive intellectual and material property of Licensor...

and

3. Licensee acknowledges and agrees that without Licensor's express written consent, Licensee shall not make enhancements or modify, or alter the System(s) or any parts thereof, herein provided and licensed to Licensee, and that, moreover, regardless if said consent is obtained, any further enhancements of said System(s) or any parts thereof, shall at all times remain the sole and absolutely property of Licensor. Licensee and Licensor agree that from time to time Licensor may make enhancements or otherwise modify or alter the System(s) provided and licensed herein and that all such enhancements shall be the property of Licensor and the use thereof will be governed by this License.

54. The RX100 device, serial number 1001113, is still in the possession of Defendant Salpeter post-termination of the RX Agreement term. Defendant has refused to return same along with applicable protocols and related materials, despite demand by Plaintiff ARPwave.

55. On or about March 6, 2012, Defendant Salpeter entered into an Individual POV License ("POV License") with Plaintiff ARPwave, for purposes of licensing a new System, comprising of the ARP POV Sport training device and related protocols thereto. Please See Exhibit "C" attached hereto.

56. The POV License was subject to a sixty-month term and a fee of \$7500 payable by Defendant Salpeter.

57. The POV License provides that:

1. "System(s)" shall mean the Licensor's proprietary protocols and programs and all other intellectual property and equipment associated with ARP Wave LLC, related programs, and related intellectual property. The System(s) and any and all rights thereto, shall at all times remain the exclusive intellectual and material property of the Licensor, this agreement is non-cancellable for any reason and under no conditions can the POV be used commercially.

1.2. Licensor hereby grants and Licensee hereby receives and accepts solely in accordance with the terms and conditions set forth in this Agreement a non-exclusive license to Licensee for use of the ARP POV SYSTEM, which consists of the following:

ARP POV SPORT UNIT
ARP POV LOOSENING AND RECOVERY PROGRAM
ARP POV STRENGTH TRAINING PROGRAM

...

3.2 Without limitation, the system(s) are owned exclusively by the Licensor. Licensee acknowledges and agrees that the System(s) herein licensed are proprietary to Licensor and constitute protocols, programs, trademarks, service marks, copyrights and trade secrets of Licensor, and title thereto is not conveyed to Licensee and that Licensee's sole right and interest in and to the System(s) is the License herein granted. Licensee shall keep all System(s) licensed hereunder strictly confidential and shall not disclose, display, sell, lease, license, transfer, publish, or otherwise make available the System(s) to any other party without the written consent of Licensor. The provisions of this paragraph shall not be deemed to derogate or lessen responsibilities set forth in any other provision hereof or available at law.

58. Defendant Salpeter has continued to maintain possession of the ARP POV Sport device after the expiration of the POV license term but has failed to pay any applicable fees to Plaintiff ARPwave or return the device, despite demand, and continues to deprive Plaintiff of its rightful possession thereto.

59. Plaintiff ARPwave, at various points of the parties' relationship, provided discounted pricing and financing for the lease/license agreements entered into by Defendant Salpeter, who requested extended payment terms in order to assist him in building his business. Throughout the relationship, Defendant Salpeter represented that he really believed strongly in the technology and simply needed additional time to ramp up to full capacity.

60. Between 2014 and 2015, Defendant Salpeter purchased, at a discounted price, four new portable hand-held machines from ARPwave called the “ARP PRS” (Personal Recovery System). The ARP PRS was approved by the FDA as an over-the-counter device used to relax and strengthen muscles without the need for a prescription. Defendant continues to be in the possession of these ARP PRS devices, and is believed to be using same for commercial purposes.

61. Unknown to Plaintiffs at the time, in April of 2016, Defendant Salpeter registered Neurological Fitness and Recovery Facilities, LLC, a Texas Limited Liability Company, located at 912 S Cap of TX Hwy, Ste 170, Austin, Texas 78746, for purposes of promoting the “Neufit” brand and treatment system, which is a converted copy of ARPwave proprietary and patented Systems and technology previously leased and licensed to Defendant Salpeter by Plaintiff ARPwave.

62. Subsequently in May of 2017, Defendant Salpeter registered Neurological Fitness Equipment and Education, LLC, a Texas Limited Liability Company, also located at 912 S Cap of TX Hwy, Ste 170, Austin, Texas 78746, which is the current operating address of Defendants.

63. Defendants then began to perform virtually identical methods of electro-therapeutic stimulation, diagnosis, treatment and adjustment using a tunable electro-therapeutic stimulation device Defendants refer to as a "Neubie". A picture of the Neubie is shown in Exhibit “D”, attached hereto. Defendant Salpeter represents publicly on www.neu.fit that he is the creator of the Neubie device.

64. The Neubie is a private labeled version of the X-Trainer - Powered Muscle Stimulator marketed by Johari Digital Healthcare Ltd. of Boranada, Jodhpur (Rajasthan), India, promoted through the brochure attached hereto as Exhibit "E".

65. Upon information and belief, Defendants import the Neubie, which was specifically engineered at their request to copy the waveform and functionality of the patented digital devices manufactured and distributed by Plaintiffs.

66. The Neubie, like the X-Trainer - Powered Muscle Stimulator, outputs a signal transdermally applied across electrodes placed on the patient's skin.

67. The Neubie, like the X-Trainer - Powered Muscle Stimulator, outputs a tunable electric treatment signal which includes a periodic-exponential main pulse signal at a frequency of 1 to 500 hertz.

68. The Neubie, like the X-Trainer - Powered Muscle Stimulator, allows digital adjustment of the main pulse frequency, at a frequency within the range of 1 to 500 pulses per second, at an adjustment granularity of less than 25 pulses per second.

69. The Neubie, like the X-Trainer - Powered Muscle Stimulator, allows control over the power level of the main pulse.

70. The Neubie, like the X-Trainer - Powered Muscle Stimulator, allows digital adjustment of the duty cycle of the main pulse, referred to as "Work Time" and "Rest Time", at an adjustment granularity of less than 5 seconds.

71. The Neubie, like the X-Trainer - Powered Muscle Stimulator, outputs a signal having a waveform comprising a periodic-exponential background pulse at a frequency of 10 kilohertz.

72. Defendants perform treatments using the tuned electric treatment signal waveform of the Neubie by applying the waveform of the Neubie to electrodes placed on the patient's body.

73. Defendants use the Neubie to perform a method of electro-therapeutic diagnosis to determine a location of cellular disruption in muscle tissue of a conscious living patient.

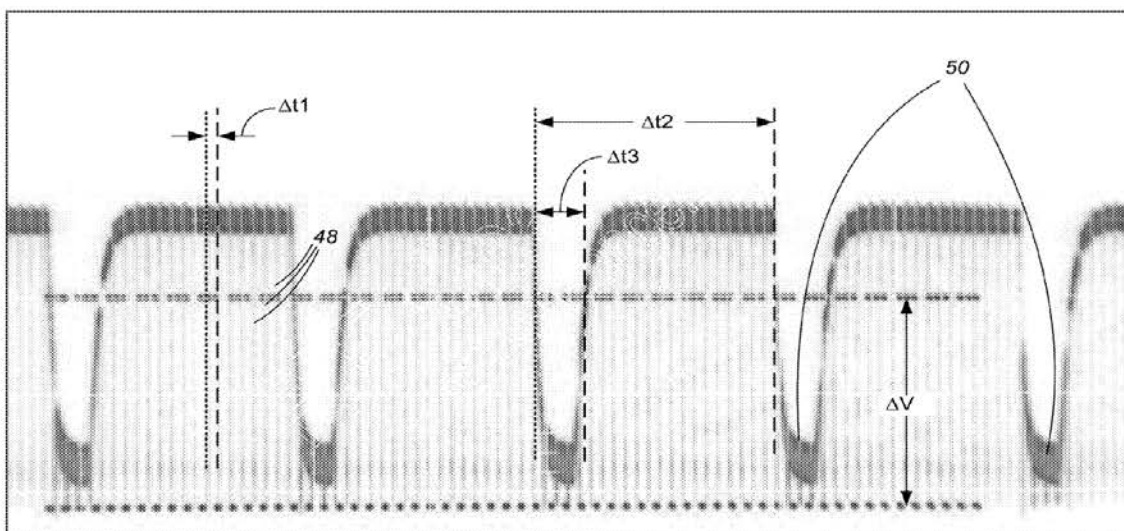
74. In performing the diagnosis, Defendants move the first electrode across the patient's skin while the second electrode is placed at a stationary anchor location, thereby locating a first cellular disruption end point where a sensation felt by the patient associated with the background pulse is maximized; while the first electrode is at the first cellular disruption end point, Defendants move the second electrode across the patient's skin, thereby locating an opposing cellular disruption end point where the sensation felt by the patient associated with the background pulse is maximized.

75. Defendants thereafter use the Neubie to perform a method of electro-therapeutic treatment by adjusting power on the main pulse of the electric treatment signal to a threshold where the patient compensates in response to the electric treatment signal, and having the patient perform movement associated with pain being addressed for a

number of repetitions while applying the electric treatment signal at the adjusted power, increasing power on the main pulse of the electric treatment signal, and having the patient repeat the movement for a number of repetitions while applying the electric treatment signal at the increased power.

76. Defendants use the Neubie to perform a method of electro-therapeutic adjustment in muscle tissue of a patient, including adjusting power of at least the main pulse of the electric adjustment signal, based on feedback from the patient, to a level felt by the patient which does not cause pain or discomfort, and during application of the adjusted electric adjustment signal, having the patient perform repetitions of controlled movements of a joint.

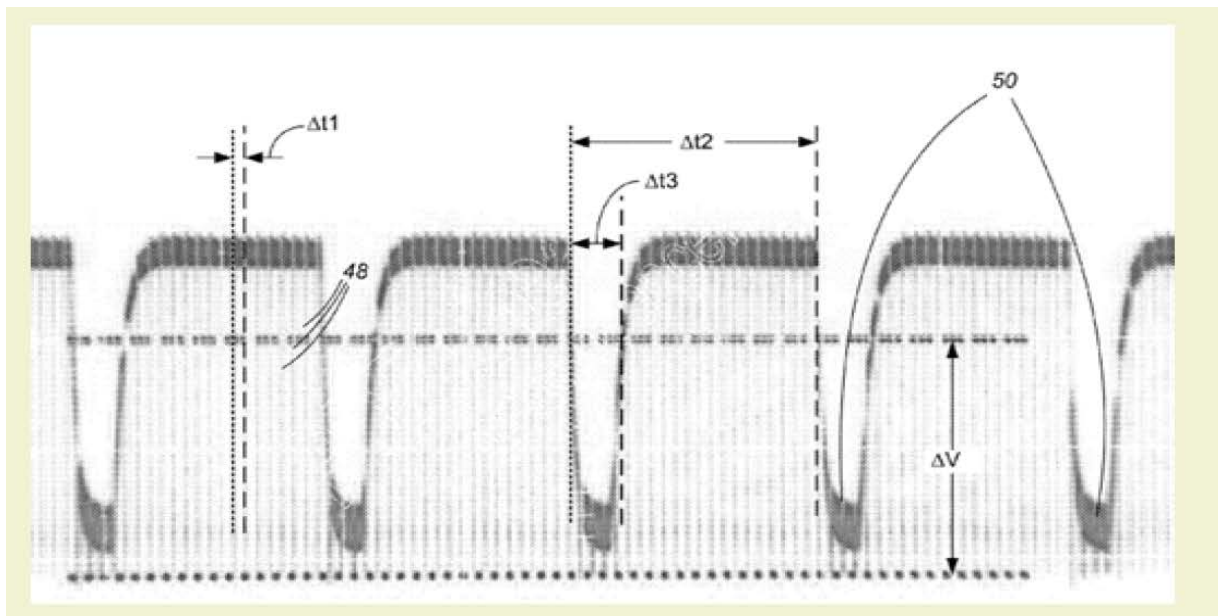
77. A preferred embodiment waveform protected by the patents-in-suit is shown in FIG. 2 of the '102 and '474 Patents and in FIG. 3 of the '892 Patent, reproduced below:



Drawing of waveform from patents-in-suit

This specific waveform is the new, digitally-created waveform of the new, patented machines, different from the older analog-created waveform of U.S. Patent Nos. 5,107,835 and 5,109,848.

78. Defendants copied this waveform, copying this identical drawing of the patents-in-suit to explain the waveform being used in their instruction manual:



Drawing of waveform from Neufit/Johari instruction manual of Ex. E, page 8.

Defendants have at all times known that the Neubie was a copy of Plaintiff's new, patented digital machines, and was not a copy of the Therastim® machine nor a copy of the older U.S. Patent Nos. 5,107,835 and 5,109,848. Defendants have at all times known that their methods of using the Neubie both copy Plaintiffs' new, patented methods of electro-therapeutic diagnosis, treatment, training and adjustment, and copy Plaintiffs'

confidential, trade secret methods and protocols. They are not a copy of the older Therastim® methods nor a copy of the older methods of U.S. Patent Nos. 5,107,835 and 5,109,848.

79. This is an exceptional case of patent infringement, including knowingly copying directly from Plaintiffs' patent documents in producing Defendants' Neubie device and promotional material.

80. Defendants actions detailed above infringe one or more claims of the '474 patent.

81. Defendants actions detailed above infringe one or more claims of the '102 patent.

82. Defendants actions detailed above infringe one or more claims of the '892 patent.

83. Defendant Salpeter currently represents to the public that he created “Neufit” in 2009, when in fact 2009 was the first year that he operated ARPwave Austin and was duly licensed and authorized by Plaintiff ARPwave to open and operate an ARPwave Clinic in Austin, Texas. A search of the USPTO trademark registration database demonstrates that the “Neufit” trademark was registered by Defendants in December of 2017 and represented to the USPTO to be first used in commerce on April 18, 2016.

84. Defendants represent that by using the Neubie, they can find exactly where these dysfunctional neurological patterns exist, and that they improve function and

accelerate the body's natural healing, which usually allows the symptom to resolve itself much more quickly than with traditional therapy. The programs and protocols employed by Defendants for the use of the Neubie are virtually identical to the proprietary training and treatment protocols and programs licensed to Defendant Salpeter by Plaintiff ARPwave.

85. Defendants have engaged in and continue to engage in theft, conversion and unauthorized use of Plaintiffs trade secret and confidential protocols, programs and proprietary methods of electro-therapeutic stimulation, diagnosis, treatment and adjustment using an infringing electro-therapeutic stimulation device, which was engineered and created as a functional copy of the machines manufactured and leased by Plaintiffs to Defendant Salpeter.

86. Defendant Salpeter has unlawfully converted and has intentionally and willfully refused to return the machines manufactured and leased by Plaintiffs to Defendant Salpeter.

87. Defendants have also solicited existing and prospective ARPwave contractual relationships, claiming that they "have developed a new form of direct current stimulation that rivals everything else in the market. In fact, we've had a flotilla of ARPwave owners cross over and purchase our device instead of continuing to use their existing ARP machine." Please See Exhibit "F" attached hereto.

88. Defendants have intentionally attempted to divert the contractual and business relationships of ARPwave from being those of Plaintiff to their own private

benefit and by specifically targeting medical professional, therapists, and consumers who use, license or are familiar with the ARPwave Systems.

89. Defendant Salpeter and the Defendants' entities, over which Salpeter exercises full dominion, ownership and operational control, have engaged in unlawful and deliberate conduct set forth herein, resulting in infringement of Plaintiffs patents, conversion and unauthorized use of Plaintiffs intellectual property and equipment, and willful breach of the provisions and terms of the Lease and License Agreements executed by Defendant Salpeter.

90. Defendants' unlawful and deliberate conduct has proximately caused direct and consequential damages to Plaintiffs in excess of \$1,000,000, and in the exact amount to be presented and proven at trial.

CLAIMS AND ALLEGATIONS AGAINST DEFENDANTS

CLAIM I

PATENT INFRINGEMENT UNITED STATES PATENT NO. 8,768,474

91. ARPwave repeats the allegations of paragraphs 1-90 of this Complaint.

92. On July 1, 2014, United States Patent No. 8,768,474, entitled Electro-Therapeutic Stimulation, was duly and legally issued to ARPwave as assignee of the inventors. ARPwave is the owner of the entire right, title and interest in and to United

States No. US 8,768,474 and has been and still is the owner thereof. A copy of United States Patent No. 8,768,474, is attached as Exhibit G, hereto.

93. Defendants have willfully and knowingly each made, used, sold and offered for sale, Electro-Therapeutic Stimulation services, which infringe United States Patent No. US 8,768,474. Defendants have each also induced others to infringe United States Patent No. US 8,768,474 by encouraging and promoting the use and/or sale by others of the infringing Electro-Therapeutic Stimulation services, as evidenced on their website and other public communications.

94. Defendants have had actual knowledge of United States Patent No. US 8,768,474 and their infringement of this patent has been and continues to be willful and deliberate.

95. ARPwave has been damaged by Defendants' infringement of United States Patent No. US 8,768,474 and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing and inducing the infringement of said patent.

96. ARPwave has also suffered monetary damages caused by Defendants' infringement in an amount to be proven at trial, plus costs, disbursements, interest on amounts due and reasonable attorneys fees.

CLAIM II

PATENT INFRINGEMENT UNITED STATES PATENT NO. 9,302,102

97. Plaintiff ARP Manufacturing repeats the allegations of paragraphs 1-96 of this Complaint.

98. On April 5, 2016, United States Patent No. 9,302,102 entitled Electro-Therapeutic Stimulation was duly and legally issued to ARP Manufacturing as assignee of the inventors. ARP Manufacturing is the owner of the entire right, title and interest in and to United States No. US 9,302,102 and has been and still is the owner thereof. A copy of United States Patent No. US 9,302,102 is attached as Exhibit H hereto.

99. Defendants have willfully and knowingly each made, used, sold, offered for sale and imported, Electro-Therapeutic Stimulator devices which infringe United States Patent No. US 9,302,102. Defendants have each also induced others to infringe United States Patent No. US 9,302,102 by encouraging and promoting the use and/or sale by others of the infringing Electro-Therapeutic Stimulator devices, as evidenced on their website and other public communications.

100. Defendants have had actual knowledge of United States Patent No. US 9,302,102 and their infringement of this patent has been and continues to be willful and deliberate.

101. ARP Manufacturing has been damaged by Defendants' infringement of United States Patent No. US 9,302,102 and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing and inducing the infringement of said patent.

102. ARP Manufacturing has also suffered monetary damages caused by Defendants' infringement in an amount to be proven at trial, plus costs, disbursements, interest on amounts due and reasonable attorneys fees.

CLAIM III

PATENT INFRINGEMENT UNITED STATES PATENT NO. 9,526,892

103. Plaintiff ARPwave repeats the allegations of paragraphs 1-102 of this Complaint.

104. On December 16, 2016, United States Patent No. 9,526,892 entitled Electro-Therapeutic Stimulation was duly and legally issued to ARPwave as assignee of the inventors. ARPwave is the owner of the entire right, title and interest in and to United States No. US 9,526,892 and has been and still is the owner thereof. A copy of United States Patent No. US 9,526,892 is attached as Exhibit I, hereto.

105. Defendants have willfully and knowingly each made, used, sold, offered for sale, Electro-Therapeutic Stimulation services, which infringe United States Patent No. US 9,526,892. Defendants have each also induced others to infringe United States Patent No. US 9,526,892 by encouraging and promoting the use and/or sale by others of the infringing Electro-Therapeutic Stimulation services, as evidenced on their website and other public communications.

106. Defendants have had actual knowledge of United States Patent No. US 9,526,892 and their infringement of this patent has been and continues to be willful and deliberate.

107. ARPwave has been damaged by Defendants' infringement of United States Patent No. US 9,526,892 and will continue to be damaged in the future unless Defendants are permanently enjoined from infringing and inducing the infringement of said patent.

108. ARPwave has also suffered monetary damages caused by Defendants' infringement in an amount to be proven at trial, plus costs, disbursements, interest on amounts due and reasonable attorneys fees.

CLAIM IV

MISAPPROPRIATION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION

109. Plaintiff ARPwave hereby realleges and incorporates by reference paragraphs 1 - 108, as set forth above.

110. Plaintiff ARPwave is the exclusive owner of the ARPwave Systems that are comprised of proprietary protocols, programs, techniques and methodologies for healing, treating, recovering and strengthening the human body with the assistance and use of the ARPwave electronic muscle stimulation devices.

111. Under the License Agreements executed by Defendant Salpeter, he was granted a non-exclusive license to use of specific ARPwave Systems, comprising of proprietary training protocols and programs, copyrights, trade secrets and other intellectual property solely, in conjunction with the ARPwave devices and in accordance with the terms and conditions set forth in the License Agreements.

112. Defendant Salpeter and the Defendant entities named herein, at the direction, dominion and control of Salpeter, have engaged in a willful course of conduct to misappropriate Plaintiffs' Trade Secrets for their own personal use and financial benefit.

113. Plaintiffs have made a substantial investment of time, effort, and money in creating the ARPwave Systems, which are of great economic value by virtue of being the subject of reasonable efforts to maintain secrecy, and have exclusive property rights therein.

114. The ARPwave Systems are shared only under provisions and agreements for the maintenance of strict confidentiality, such as the provisions agreed to by the Defendant Salpeter; they are not generally known to the public, and they give Plaintiffs an opportunity to obtain an advantage over competitors who do not know or use the ARPwave Systems.

115. Defendants have used and are currently using the ARPwave Systems and enhancements thereof, without Plaintiffs' authorization and in a manner never previously authorized by Plaintiffs.

116. By virtue of the foregoing, Defendants are unjustly enriched and have an unfair advantage in using the ARPwave Systems without having to bear the time and expense of independent development.

117. Defendants have and continue to unfairly compete with Plaintiffs and dilute the value of and endanger Plaintiffs' trade secrets by engaging in the acts set forth herein.

118. Defendants conduct has been the actual and proximate cause of damage to Plaintiffs which continue to accrue, as well as irreparable harm to Plaintiffs for which they have no adequate remedy at law, unless Defendants are enjoined by this Court from continuing to wrongfully exploit Plaintiffs trade secrets.

119. Plaintiffs have also suffered monetary damages in excess of \$1,000,000 caused by Defendants' misappropriation in an exact amount to be proven at trial, plus costs, disbursements, interest on amounts due and reasonable attorneys fees.

CLAIM V

BREACH OF CONTRACT

(Violation of ARPwave Lease and License Agreements)

120. Plaintiff hereby realleges and incorporates by reference paragraphs 1- 119 as set forth above.

121. Defendant Salpeter has executed and agreed to be bound by the terms and conditions of the ARPwave Clinic Master Lease and Agreement as well as the ARPwave Individual Lease and License Agreements for the RX 100 and ARP POV Sport devices, attached hereto as Exhibits "A - C."

122. Defendants, by virtue of their conduct described herein, including but not limited to: failing to make payments due and owing, breaching confidentiality provisions, misappropriating ARPwave trade secrets and related intellectual property, and failing to return and for converting Plaintiffs' equipment, have breached the terms of the Agreements executed with Plaintiff ARPwave.

123. As a direct and proximate result of Defendants breaches of their contractual obligations due and owing to Plaintiff ARPwave, ARPwave has sustained damages in excess of \$1,000,000, plus costs, disbursements, interest on amounts due and reasonable attorneys fees allowed for under the breached Agreements.

CLAIM VI
CONVERSION

124. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 - 123 as set forth above.

125. Defendant Salpeter has executed and agreed to be bound by the terms and conditions of the ARPwave Clinic Master Lease and Agreement as well as the ARPwave Individual Lease and License Agreements for the RX 100 and ARP POV Sport devices, attached hereto as Exhibits "A - C."

126. Defendant Salpeter leased various equipment from Plaintiff ARPwave subject to the Lease Agreements, which provided at all times the equipment remained the sole and exclusive property of ARPwave.

127. Defendant Salpeter has converted Plaintiff's equipment for his personal use and benefit and for the benefit of his co-defendants, thereby depriving Plaintiff of its rightful ownership interest therein.

128. As a direct and proximate result of Defendants conversion of the equipment belonging to Plaintiff ARPwave, ARPwave has sustained damages in excess of \$100,000, plus costs, disbursements, interest on amounts due and reasonable attorneys fees.

CLAIM VII
INTERFERENCE WITH CONTRACTUAL AND BUSINESS RELATIONSHIPS

129. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 - 128 as set forth above.

130. Various existing and prospective contractual relationships have existed between Plaintiffs and third parties, including but not limited to agreements for Plaintiffs products and services.

131. Defendants have engaged in a calculated, malicious course of conduct to intentionally interfere with said existing and prospective contractual relationships, by, among other things, diverting said relationships from being those of Plaintiff to their own private benefit, and by specifically targeting medical professionals, therapists, and consumers familiar with the ARPwave Systems.

132. As a direct and proximate result of Defendants' interference with the contractual and business relations of Plaintiffs, Plaintiffs have suffered harm to their existing and prospective business relations and have sustained damages in an amount to be proven at trial, plus costs, disbursements, interest on amounts due and reasonable attorneys fees.

CLAIM VIII

UNJUST ENRICHMENT

133. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 - 132 as set forth above.

134. Defendants have been unjustly enriched at the Plaintiffs' expense, entitling Plaintiffs to equitable restitution from Defendants in excess of \$1,000,000.

JURY
DEMAND

135. Plaintiffs respectfully request a jury trial for this matter.

WHEREFORE, the Plaintiffs pray that the Court enter an order and judgment:

A. That each Defendant has infringed (directly and by inducement) United States Patent No. 8,768,474.

B. That each Defendant has infringed (directly and by inducement) United States Patent No. 9,302,102.

C. That each Defendant has infringed (directly and by inducement) United States Patent No. 9,526,892.

D. Preliminarily and permanently enjoining and restraining the Defendants, their directors, members, officers, agents, servants, employees, subsidiaries, affiliates, and all persons in active concert or participation with, through, or under them, at first during the pendency of this action and thereafter perpetually from importing or selling products or services that infringe Plaintiffs' patents.

E. That each Defendant, within thirty (30) days after service of notice of entry of judgment or issuance of an injunction pursuant thereto, file with the Court and serve upon Plaintiffs' counsel a written report under oath setting forth details of the manner in which each Defendant has complied with the Court's injunction order.

F. That each Defendant account for and pay over to Plaintiffs' statutory damages or other damages sustained by Plaintiffs, Defendants' profits (each of them),

Plaintiffs' attorneys' fees and costs, and ordering that the amount of damages awarded Plaintiffs' be enhanced by an amount not inconsistent with the law.

G. Awarding Plaintiffs damages under 35 U.S.C. §§ 154 and 284, including treble damages for willful infringement.

H. Awarding Plaintiffs their attorneys fees as provided by 35 U.S.C. § 285.

I. Awarding damages sustained by Plaintiffs pursuant to Claim IV of the Complaint.

J. Awarding damages sustained by Plaintiffs pursuant to Claim V of the Complaint.

K. Awarding damages sustained by Plaintiffs pursuant to Claims VI of the Complaint.

L. Awarding damages sustained by Plaintiffs pursuant to Claims VII of the Complaint.

M. Awarding damages sustained by Plaintiffs pursuant to Claims VIII of the Complaint.

N. Awarding Plaintiffs' costs, disbursements, interest on amounts due and reasonable attorneys fees pursuant to Claims IV – VIII of the Complaint.

O. Awarding Plaintiffs such other relief as the Court may deem just and proper.

PARKER & WENNER, P.A.

Dated: July 18, 2018

s/Boris Parker

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SHEWCHUK IP SERVICES, LLC

Dated: July 18, 2018

/s/ Jeffrey D. Shewchuk

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