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ex rel. Edmund G. Brown Jr., Attorney General of the State of California
8

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 THE PEOPLE OF THE STATE OF CALIFORNIA ex
12 rel. EDMUND G. BROWN JR., Attorney General of
the State of California,
13
14 Plaintiff,
15
16 v.
17 SENSORY INTERGRATION INTERNATIONAL, a
California Nonprofit Public Benefit Corporation; S.I.
INTERNATIONAL, INCORPORATED, a California
18 Nonprofit Public Benefit Corporation; ANTHONY L.
WELLS; NILZA WELLS; LEE PENNINGTON
19 NEILL; PATRICIA OETTER; EILEEN RICHTER;
STEVEN J. COOL; MARGARET BLEDSOE;
BYRON TYLER; and DOES 3 THROUGH 50.
20
21 Defendants.

Case No. BC356213
SECOND AMENDED
COMPLAINT FOR DAMAGES,
FOR CIVIL PENALTIES, FOR
RESTITUTION, FOR AN
ACCOUNTING, FOR A
CONSTRUCTIVE TRUST, FOR A
PRELIMINARY AND
PERMANENT INJUNCTION, FOR
APPOINTMENT OF A RECEIVER,
FOR INVOLUNTARY
DISSOLUTION AND FOR OTHER
RELIEF ARISING FROM:
(1) BREACH OF FIDUCIARY
DUTY
(2) UNFAIR COMPETITION
(3) NEGLIGENCE
(4) VIOLATION OF GOV. CODE §
12586

25 Plaintiff, the People of the State of California ex rel. Bill Lockyer, Attorney General of
26 the State of California, complains and alleges in this Second Amended Complaint as follows:

27 General Allegations

28 1. Plaintiff EDMUND G. BROWN JR. is the duly elected Attorney General of

1 the State of California and is charged with the general supervision of all charitable organizations
2 within this State; with the enforcement and supervision over trustees, commercial fundraisers,
3 and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes;
4 and with enforcement and supervision under California's Unfair Competition Law for unlawful,
5 unfair, or fraudulent business acts or practices. The Attorney General is authorized to enforce, in
6 the name of the People, the provisions of the Supervision of Trustees and Fundraisers for
7 Charitable Purposes Act (Gov. Code, § 12580 et seq.), the Nonprofit Corporation Law (Corp.
8 Code, § 5000 et seq.), and those provisions of the Business and Professions Code that prohibit
9 unlawful, unfair, and fraudulent business practices (Bus. & Prof. Code, 17200 et seq.).

10 2. At all times material herein, defendants and each of them have been transacting
11 business in the County of Los Angeles. The violations of law hereinafter described have been
12 and are now being carried out in part within said county and elsewhere.

13 3. In May 1972, Defendant SENSORY INTERGRATION INTERNATIONAL,
14 (defendant "SENSORY"), also known as, and doing business as, Sensory Integration
15 International, (then known as the "Perceptual and Learning Disabilities Center") was
16 incorporated as a California nonprofit public benefit corporation. Its principal place of business
17 is located in the County of Los Angeles. SENSORY holds all of its assets in trust for charitable
18 purposes. In or around 1972, SENSORY applied for, and received, an exemption from taxation
19 under section 23701f of the California Revenue and Taxation Code, and section 501(c)(3) of the
20 Internal Revenue Code of the United States. Pursuant to the Amended Articles of Incorporation
21 of SENSORY, its charitable purposes include the following:

- 22 (a) to conduct research in the area of sensory integrative dysfunction;
- 23 (b) to fund pilot projects in the area of sensory integrative dysfunction;
- 24 (c) to provide continuing education for therapists and other professionals in the area
25 of sensory integrative dysfunction;
- 26 (d) to expand the information available to the general public about sensory integrative
27 dysfunction; and
- 28 (e) to conduct treatment programs for children with sensory integrative dysfunction.

1 4. Plaintiff is informed and believes that the “Ayres Clinic” is a part of
2 SENSORY and purports to be SENSORY’s center for the evaluation and treatment of children
3 with sensory integrative dysfunction.

4 5. In October 2001, defendant S.I. INTERNATIONAL, INCORPORATED,
5 (defendant “S. I., INC.”) was incorporated as a California nonprofit public benefit corporation.
6 Its principal place of business is located in the County of Los Angeles. According to its articles
7 of incorporation, S. I., INC. holds all of its assets in trust for public and charitable purposes.
8 Defendant S. I., INC. never received an exemption from taxation under section 23701f of the
9 California Revenue and Taxation Code or section 501(c)(3) of the Internal Revenue Code of the
10 United States. Pursuant to the articles of incorporation of S. I., INC., its charitable purpose is “to
11 provide treatment, fund research and educate the general public about sensory integration
12 dysfunction.”

13 6. There exists, and at all times relevant herein mentioned there existed, a unity of
14 interest and commonality of trustees between defendants SENSORY and S. I., INC. such that any
15 individuality and separateness between these two defendant corporations have ceased and
16 defendant S. I., INC. is the alter ego of defendant SENSORY. On information and belief, many
17 of the board members and officers of defendants SENSORY and S. I., INC. are the same. These
18 corporations had and/or have the same principal place of business and, at various times, the same
19 employees. At all times relevant herein they were operated in all essential aspects as one
20 corporation and enterprise. The assets of SENSORY and S. I., INC. have been commingled
21 and/or manipulated by those in control of the corporations. This has been done, at least in part,
22 in order to evade payment of obligations owed to SENSORY’s creditors.

23 7. Adherence to the fiction that defendant S. I., INC. is an entity separate and
24 distinct from defendant SENSORY would permit an abuse of the corporate privilege of these
25 defendants and would sanction fraud and promote injustice in that at least one of the purposes of
26 creating and incorporating S. I., INC., was to allow SENSORY to evade its creditors. In 2001, at
27 the time of S. I., INC.’s incorporation, SENSORY was heavily in debt to governmental agencies,
28 to consumers who were owed refunds for courses and treatments that SENSORY canceled, and

1 to persons who taught educational courses for SENSORY, but were never paid. In October
2 2001, the persons in control of SENSORY unanimously passed a motion to file a petition for
3 bankruptcy on behalf of SENSORY, effective October 31, 2001. Defendant S. I., INC., was
4 incorporated on October 25, 2001, at least in part, to attempt to hinder, delay and/or defraud
5 SENSORY'S creditors. After S. I., INC., was incorporated, the individual defendants herein
6 operated defendants SENSORY and S. I., INC. as one business enterprise. For example,
7 defendants advertised educational seminars in the name of defendant SENSORY on
8 SENSORY's website. Yet when registration fees were collected, defendants placed them in bank
9 accounts in the name of defendant S. I., INC. at a time when there were numerous outstanding
10 judgments and liens against defendant SENSORY.

11 8. Defendant ANTHONY L. WELLS, ("WELLS") is a resident of Los Angeles
12 County, State of California. At all times relevant herein, defendant WELLS was, and is, an
13 officer and/or member of the board of directors of defendants SENSORY and S. I., INC., and has
14 owed fiduciary duties of care and loyalty to SENSORY and S. I., INC. and their charitable
15 beneficiaries.

16 9. Defendant NILZA WELLS ("NILZA"), is a resident of Los Angeles County,
17 State of California. Plaintiff is informed and believes that, at times during the period of 1998 to
18 the present, defendant NILZA has acted, and is acting, as the *de facto* treasurer/chief financial
19 officer of SENSORY and, as such, has owed fiduciary duties of care and loyalty to SENSORY
20 and its charitable beneficiaries. At times during the period of 2001 to the present, defendant
21 Nilza has acted, and is acting, as an officer of S. I., INC., and has owed fiduciary duties of care
22 and loyalty to S. I., Inc. and its charitable beneficiaries.

23 10. Defendant LEE PENNINGTON NEILL ("NEILL") is a resident of Santa
24 Barbara County, State of California.

25 11. Plaintiff is informed and believes and thereon alleges that, at times during the
26 period of 1998 to the present, defendant NEILL was, and is, an officer and/or member of the
27 board of directors of SENSORY and, as such, has owed fiduciary duties of care and loyalty to
28 SENSORY and its charitable beneficiaries.

1 12. Defendant PATRICIA OETTER (“OETTER”) is a resident of Contra Costa
2 County, State of California.

3 13. Plaintiff is informed and believes and thereon alleges that, at times during the
4 period of 1998 to the present, defendant OETTER was, and is, an officer and/or member of the
5 board of directors of SENSORY and S. I., INC. and, as such, has owed fiduciary duties of care
6 and loyalty to SENSORY and S. I., INC. and their charitable beneficiaries.

7 14. Plaintiff is informed and believes and thereon alleges that defendant EILEEN
8 RICHTER (“RICHTER”) is a resident of the State of Minnesota. Plaintiff further alleges on
9 information and belief that, since at least 2001, defendant RICHTER has conducted business
10 throughout the State of California through educational courses conducted by her business
11 Professional Development Programs and through the sale of products by her business PDP
12 Products.

13 15. Plaintiff is informed and believes and thereon alleges that, at times during the
14 period of 1998 to the present, defendant RICHTER was, and is, an officer and/or member of the
15 board of directors of SENSORY and S. I., INC. and, as such, has owed fiduciary duties of care
16 and loyalty to SENSORY and S. I., INC. and their charitable beneficiaries.

17 16. Defendant STEVEN J. COOL (“COOL”) is a resident of the State of Oregon.
18 Plaintiff is informed and believes that since at least 2001, defendant COOL has conducted
19 business in the State of California from time to time as a paid instructor at seminars/workshops
20 conducted in California.

21 17. Plaintiff is informed and believes and thereon alleges that, at times during the
22 period of 1998 to the present, defendant Cool was, and is, an officer and/or member of the board
23 of directors of SENSORY and S. I., INC. and, as such, has owed fiduciary duties of care and
24 loyalty to SENSORY and S. I., INC., and their charitable beneficiaries.

25 18. Defendant MARGARET BLEDSOE (“BLEDSOE”) is a resident of Alameda
26 County, State of California.

27 19. Plaintiff is informed and believes and thereon alleges that, at times during the
28 period of 1998 to the present, defendant BLEDSOE was, and is, an officer and/or member of the

1 board of directors of SENSORY and S. I., INC., and, as such, has owed fiduciary duties of care
2 and loyalty to SENSORY and S. I., INC., and their charitable beneficiaries.

3 20. Defendant BYRON TYLER (“TYLER”) is a resident of Los Angeles,
4 California.

5 21. Plaintiff is informed and believes and thereon alleges that, at times during the
6 period of 1998 to the present, defendant TYLER was, and is, an officer and/or member of the
7 board of directors of SENSORY and S. I., INC. and, as such, has owed fiduciary duties of care
8 and loyalty to SENSORY and S. I., INC., and their charitable beneficiaries.

9 22. Defendants DOES 3 through 50 are named as fictitious defendants who have
10 participated with or acted in concert with one or more of the defendants, or who have acted on
11 behalf of or as agents, servants or employees of one or more of the defendants named herein, but
12 whose true names and capacities, whether individual, corporate or otherwise, are presently
13 unknown to plaintiff. Plaintiff is informed and believes and thereon alleges that defendants
14 DOES 3 through 50 have directly or indirectly participated in and are responsible for the acts and
15 omissions that are more specifically described herein. Because plaintiff is presently uninformed
16 as to the true names and capacities of defendants DOES 3 through 50, plaintiff sues them herein
17 by fictitious names, but will seek leave to amend this Second Amended Complaint when their
18 true names and capacities are discovered.

19 23. The named individual defendants and defendants DOES 3 through 50 have
20 committed and continue to commit the breaches of fiduciary duty, violations of trust, violations
21 of law and other wrongful acts as alleged hereafter in this Second Amended Complaint. In order
22 to preserve charitable assets and to prevent waste, dissipation and loss of charitable assets in this
23 State to the irreparable damage of the general public including the People of the State of
24 California, it is necessary that the requested injunctive relief and the appointment of a receiver
25 and/or director(s) herein prayed for be granted.

26 24. Since at least 1998 and continuing to the present, defendants have engaged in,
27 participated in, and aided and abetted, numerous unlawful and unfair practices, including, but not
28 limited to, the following:

1 —failed to refund fees received by SENSORY and/or S. I., INC., from customers for
2 educational seminar/workshops and treatment sessions that were canceled by SENSORY
3 and/or S. I., INC.;

4 —engaged in unfair practices intended to delay and hinder customers from receiving
5 refunds under SENSORY’S cancellation policies, including, but not limited to,
6 misrepresenting to customers that their refunds were in process or “in the mail” when
7 those representations were untrue;

8 —failed to pay agreed-upon fees to instructors for teaching services provided at
9 seminars/workshops sponsored by SENSORY and/or S. I., INC.;

10 —failed to provide promised annual and/or lifetime “membership” benefits to persons
11 who paid SENSORY and/or S. I., INC., fees for those benefits;

12 —made misrepresentations in connection with SENSORY’S advertisements for
13 seminars/workshops;

14 —failed to file annual reports with the Registry of Charitable Trusts for Sensory for fiscal
15 years 2002 through 2005, in violation of Government Code section 12586; failed to
16 register S. I., INC. with the Registry of Charitable Trusts and failed to file any annual
17 reports with the Registry for that corporation;

18 —failed to file any state tax returns for SENSORY in violation of Revenue and Taxation
19 Code section 23772 for at least fiscal years 2003 through 2005;

20 —failed to apply for tax-exempt status for S. I., INC. with the Franchise Tax Board
21 (“FTB”) and failed to file any tax returns with the FTB since incorporation;

22 —failed to file timely Statements of Information for SENSORY and S. I., INC. with the
23 Secretary of State’s Office in violation of Corporations Code section 6210;

24 — while suspended by the California Secretary of State, in violation of Corporations
25 Code section 5008.6, both SENSORY and S. I., INC., exercised corporate powers
26 including, but not limited to, those powers set forth in Corporations Code section 5140;

27 —while suspended by the Franchise Tax Board, S. I., INC. exercised corporate powers in
28 violation of Revenue and Taxation Code sections 23301 and 23301.5;

1 —engaged in actions or omissions that resulted in more than 20 tax assessments against
2 SENSORY by the Employment Development Department, which are currently
3 unsatisfied and are recorded as tax liens against SENSORY;
4 —engaged in actions, or omissions, that resulted in at least two tax assessments against S.
5 I., INC. by the Employment Development Department, which are currently unsatisfied
6 and are recorded as tax liens against S. I., INC.;

7 —engaged in actions, or omissions, that resulted in multiple assessments, by the Internal
8 Revenue Service, of substantial taxes, penalties and interest against SENSORY, which
9 are currently unsatisfied and are recorded as tax liens against SENSORY;

10 —engaged in actions, or omissions, that resulted in at least one assessment, by the
11 Internal Revenue Service, of substantial taxes, penalties and interest against S. I., INC.,
12 which is currently unsatisfied and is recorded as a tax lien against S. I., INC.;

13 —violated federal and state laws governing payroll (employment) taxes as to both
14 Sensory and S. I., Inc.;

15 —created and/or caused S. I., INC. to be incorporated at least in part, to hinder, delay
16 and/or defraud SENSORY's creditors;

17 —advertised and promoted educational seminars as sponsored and conducted by
18 SENSORY and then deposited registration fees received for those seminars into accounts
19 in the name of S. I., INC. This unfair practice was done, at least in part, to attempt to
20 hinder, delay and/or defraud SENSORY's creditors;

21 —misused an asset of SENSORY, namely, a limited right to use the names "A. Jean
22 Ayres," "Jean Ayres," and "the Ayres Clinic," by promoting and advertising educational
23 seminars and patient treatments using the afore-mentioned names and then depositing
24 funds for those seminars and treatments into bank accounts in the name of S. I., INC.

25 25. Plaintiff is informed and believes that defendants have committed additional
26 unlawful actions, or omissions, during the period of 1998 to the present, but cannot know the
27 extent of those actions/omissions until discovery has been conducted and defendants provide a
28 full and complete accounting of all receipts and disbursements from SENSORY'S and S. I.,

1 INC.'s financial accounts. Plaintiff will seek leave to amend this Second Amended Complaint to
2 allege such further and additional unlawful actions/omissions when they become known to
3 plaintiff.

4 **FIRST CAUSE OF ACTION**

5 **(For Breach of Fiduciary Duty)**

6 **(Against Defendants WELLS, NILZA, NEILL, OETTER, RICHTER,**

7 **COOL, BLEDSOE, TYLER and DOES 3 through 50)**

8 26. Plaintiff re-alleges and incorporates by reference as though fully set forth
9 herein each of the allegations of paragraphs 1 through 25 herein.

10 27. Plaintiff is informed and believes and thereon alleges that all individual
11 named defendants and DOES 3 through 50 and each of them have breached their duties of care
12 and loyalty to SENSORY by engaging in, participating in, aiding and abetting, and facilitating
13 unlawful actions, or omissions, including the specific acts/omissions alleged in paragraph 24,
14 above, in violation of common law trust principles and state statutes including, but not limited to,
15 Corporations Code section 5231. At times relevant herein, the named individual defendants and
16 DOES 3 through 50 have failed to act in good faith, in the best interests of SENSORY, and with
17 such care as an ordinarily prudent person in a like position would use under similar
18 circumstances.

19 28. Plaintiff is informed and believes and thereon alleges that defendants
20 WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50
21 and each of them have breached their duties of care and loyalty to S. I., INC., by engaging in,
22 participating in, aiding and abetting, and facilitating unlawful actions, or omissions, including the
23 specific acts/omissions alleged in paragraph 24, above, in violation of common law trust
24 principles and state statutes including, but not limited to, Corporations Code section 5231. At
25 times relevant herein, defendants WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE,
26 TYLER and DOES 3 through 50 have failed to act in good faith, in the best interests of S. I.,
27 INC., and with such care as an ordinarily prudent person in a like position would use under
28 similar circumstances.

1 29. As a proximate cause of the actions and omissions of the named individual
2 defendants and DOES 3 through 50, SENSORY has incurred damages and civil penalties and
3 other liabilities and disabilities including, but not limited to, the following:

4 (a) SENSORY has been notified by the FTB that its tax-exempt status for fiscal
5 years 2002 through 2005 has been disallowed due to SENSORY'S failure to file required
6 reports with the Registry of Charitable Trusts, and that the minimum tax of over \$3,600 has
7 been assessed, plus interest, and is due and owing to the State of California;

8 (b) as a result of SENSORY's failure to pay the minimum tax referenced in sub-
9 paragraph (a) immediately above, SENSORY'S status with the Franchise Tax Board is
10 suspended or will soon be suspended;

11 (c) The California Employment Development Department (EDD) has issued over
12 20 tax assessments against SENSORY. Those assessments remain unsatisfied and have
13 been recorded as tax liens against SENSORY;

14 (d) As a result of SENSORY's unfair business practices as alleged in paragraph
15 24, above, and the Second Cause of Action below, penalties of at least \$100,000 are due
16 from SENSORY, and should be borne by the named individual defendants and DOES 3
17 through 50;

18 (e) Over \$250,000 in taxes and penalties have been assessed against SENSORY
19 by the Internal Revenue Service, which assessments remain unsatisfied and have been
20 recorded as tax liens against SENSORY;

21 (f) Several money judgments, totaling well over \$100,000, were entered against
22 SENSORY, remain unsatisfied, and have been recorded as judgment liens against
23 SENSORY.

24 30. As a proximate cause of the actions and omissions of defendants WELLS,
25 NILZA, COOL, OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50, defendant
26 S. I., INC., has incurred damages, civil penalties and other liabilities and disabilities including,
27 but not limited to, the following:

28 (a) due to the failure of S. I., INC. to file state tax returns and timely pay any taxes

1 owed, S. I., INC.'s status with the FTB is suspended; as a result, S. I., INC.'s corporate
2 rights, powers and privileges are suspended;

3 (b) The California EDD has issued at least two tax assessments against S. I., INC.
4 Those assessments remain unsatisfied and have been recorded as tax liens against S. I.,
5 INC.;

6 (c) As a result of S. I., INC.'s, unfair business practices as alleged in paragraph
7 24, above, and the Second Cause of Action below, penalties of at least \$100,000 are due
8 from S. I., INC., and should be borne by defendants WELLS, NILZA, COOL,
9 BLEDSOE, AND TYLER and DOES 3 through 50;

10 (d) Over \$26,000 in taxes and penalties have been assessed against S. I., INC. by
11 the Internal Revenue Service, which assessments remain unsatisfied and have been
12 recorded as tax liens against S. I., INC.;

13 (e) Money judgments, totaling over \$25,000, were entered against S. I., INC.,
14 remain unsatisfied, and have been recorded as judgment liens against S. I., INC.

15 31. Plaintiff is informed and believes and thereon alleges that, as a result of
16 defendants' breach of their fiduciary duties of care and loyalty to SENSORY as alleged in this
17 Second Amended Complaint, and as a result of the failure of defendants to operate the
18 corporation in the manner required by law, charitable assets have been improperly diverted from
19 SENSORY to S. I., INC. To the extent it is determined that S. I., INC. is the alter ego of
20 SENSORY, all of S. I., INC.'s assets belong to SENSORY and are held for its benefit and the
21 benefit of its charitable beneficiaries. In the alternative, if it is determined that S. I., INC. is not
22 the alter ego of SENSORY, then all funds solicited by or on behalf of SENSORY and
23 subsequently improperly diverted to S. I., INC.'s financial accounts are rightfully due
24 SENSORY and its charitable beneficiaries. The Attorney General is entitled to an accounting
25 from defendants (from October 1, 2001 to the present) of all income and assets which were
26 improperly diverted from SENSORY to S. I., INC.

27 32. Plaintiff is informed and believes and thereon alleges that, as a result of
28 defendants' breach of their fiduciary duties of care and loyalty to SENSORY as alleged in this

1 Second Amended Complaint, and as a result of the failure of defendants to operate the
2 corporation in the manner required by law, charitable assets have been improperly diverted from
3 SENSORY to individual defendant(s). The Attorney General is entitled to an accounting from
4 defendants (from October 1, 1997 to the present) for their expenditures and disposition of all
5 income and assets which they obtained from, or improperly diverted from, SENSORY to one or
6 more individual defendants or otherwise wasted through their breach of fiduciary duty, fraud, or
7 other wrongful acts.

8 33. Plaintiff is informed and believes and thereon alleges that, as a result of the
9 breach of the fiduciary duties of care and loyalty of defendants WELLS, NILZA, COOL,
10 OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50 to S. I., INC., as alleged in
11 this Second Amended Complaint, and as a result of the failure of these defendants to operate the
12 corporation in the manner required by law, charitable assets have been improperly diverted from
13 S. I., INC. The Attorney General is entitled to an accounting from defendants WELLS, NILZA,
14 COOL, OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50 (from October 1,
15 2001, to the present) for their expenditures and disposition of all income and assets which they
16 obtained from, or improperly diverted from, S. I., INC., or otherwise wasted through their breach
17 of fiduciary duty, fraud, or other wrongful acts.

18 34. As a proximate result of defendants' breaches of fiduciary duty of care and
19 loyalty, SENSORY and the beneficiaries of the charitable trust have been damaged in an amount
20 presently unknown to the Attorney General and which cannot be ascertained without an
21 accounting by defendants. The facts necessary to ascertain the exact amount of damages to
22 SENSORY and its charitable beneficiaries are within the special knowledge of the individual
23 defendants. However, the Attorney General estimates the total damages proximately caused by
24 defendants' actions and omissions set forth in this cause of action exceed \$400,000.

25 35. As a proximate result of the breaches of fiduciary duty of care and loyalty of
26 defendants WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE, TYLER and DOES 3
27 through 50, S. I., INC. and the beneficiaries of the charitable trust have been damaged in an
28 amount presently unknown to the Attorney General and which cannot be ascertained without an

1 accounting by these defendants. The facts necessary to ascertain the exact amount of damages to
2 S. I., INC. and its charitable beneficiaries are within the special knowledge of defendants
3 WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50.
4 However, the Attorney General estimates the total damages proximately caused by actions and
5 omissions of these defendants set forth in this cause of action exceed \$400,000.

6 36. The defendants' acts as alleged above were willful, wanton, malicious, and
7 oppressive and were undertaken with the intent to defraud SENSORY and S. I., INC. and the
8 charitable beneficiaries of SENSORY and S. I., INC. and thus justify the awarding of exemplary
9 and punitive damages.

10 **SECOND CAUSE OF ACTION**

11 **(For Unfair Competition [Bus. & Prof. Code § 17200])**

12 **(Against Defendants SENSORY, S. I., INC., WELLS, NILZA, NEILL, OETTER,**
13 **RICHTER, COOL, BLEDSOE, TYLER and DOES 3 through 50)**

14 37. Plaintiff re-alleges and incorporates by reference as though fully set forth
15 herein each of the allegations of paragraphs 1 through 36 herein.

16 38. The defendants named herein and DOES 3-50 violated Business and
17 Professions Code section 17200 and continue to commit unfair, unlawful, or deceptive business
18 practices by engaging in acts or practices that include, but are not necessarily limited to, the
19 actions and omissions alleged in paragraph 24, above.

20 39. As a result of the aforementioned acts of unfair competition committed by
21 defendants SENSORY, S. I., INC., WELLS, NILZA, NEILL, OETTER, RICHTER, COOL,
22 BLEDSOE, and TYLER, plaintiff is entitled to civil penalties under Business and Professions
23 Code section 17206 in an amount which is presently unknown, but believed to be in excess of
24 \$100,000. Under that code provision, plaintiff is also entitled to seek restitution on behalf of the
25 victims of defendants' acts and omissions constituting unfair competition. Such restitution due
26 from the defendants is presently unknown, but believed to be in excess of \$100,000.

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1 THIRD CAUSE OF ACTION

2 (For Negligence)

3 (Against Defendants WELLS, NILZA, NEILL, OETTER,

4 RICHTER, COOL, BLEDSOE, TYLER, and DOES 3 through 50)

5 40. Plaintiff re-alleges and incorporates by reference as though fully set forth
6 herein each of the allegations of paragraphs 1 through 10, 12, 14, 16, 18, 20 and 22 through 25,
7 herein.

8 41. At all times relevant herein, each of the individual defendants named herein
9 and DOES 3 through 50 voluntarily undertook the duties and responsibilities of director and/or
10 officer of defendant SENSORY whether or not formally elected as director or officer and
11 whether or not they had resigned as such. The voluntary undertaking of these duties and
12 responsibilities created a duty on the part of the individual defendants and DOES 3-50 to exercise
13 due care in the performance of those duties and responsibilities.

14 42. At all times relevant herein, defendants WELLS, NILZA, COOL, OETTER,
15 RICHTER, BLEDSOE, TYLER and DOES 3 through 50 voluntarily undertook the duties and
16 responsibilities of director and/or officer of defendant S. I., INC., whether or not formally elected
17 as director or officer and whether or not they resigned as such. The voluntary undertaking of
18 these duties and responsibilities created a duty on the part of these defendants to exercise due
19 care in the performance of those duties and responsibilities.

20 43. The individually named defendants in this action and DOES 3 through 50
21 breached the duty of due care owed to SENSORY by committing the actions and omissions set
22 forth in paragraph 24 above, and committing other actions and omissions during the period of
23 1998 to the present of which plaintiff is currently unaware.

24 44. Defendants WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE,
25 TYLER and DOES 3 through 50 breached the duty of due care owed to S. I., INC., by
26 committing the actions and omissions set forth above, in paragraph 24 and committing other
27 actions and omissions during the period of 2001 to the present of which plaintiff is currently
28 unaware.

1 45. Plaintiff is informed and believes and thereon alleges that, as a proximate
2 result of defendants' breach of the duty of due care owed to SENSORY as alleged in this Second
3 Amended Complaint, and as a result of the failure of defendants to operate the corporation in the
4 manner required by law, charitable assets have been improperly diverted from SENSORY to S.
5 I., INC. To the extent it is determined that S. I., INC. is the alter ego of SENSORY, all of S. I.,
6 INC.'s assets belong to SENSORY and are held for its benefit and the benefit of its charitable
7 beneficiaries. In the alternative, if it is determined that S. I., INC. is not the alter ego of
8 SENSORY, then all funds solicited by or on behalf of SENSORY and subsequently improperly
9 diverted to S. I., INC.'s financial accounts are rightfully due SENSORY and its charitable
10 beneficiaries. The Attorney General is entitled to an accounting from defendants (from October
11 1, 2001 to the present) of all income and assets which were improperly diverted from SENSORY
12 to S. I., INC.

13 46. Plaintiff is informed and believes and thereon alleges that, as a result of
14 defendants' breach of duty of due care owed to SENSORY as alleged in this Second Amended
15 Complaint, and as a result of the failure of defendants to operate the corporation in the manner
16 required by law, charitable assets have been improperly diverted from SENSORY to individual
17 defendant(s). The Attorney General is entitled to an accounting from defendants (from October
18 1, 1997 to the present) for their expenditures and disposition of all income and assets which they
19 obtained from, or improperly diverted from, SENSORY to one or more individual defendants or
20 otherwise wasted through their breach of duty of due care, fraud, or other wrongful acts.

21 47. Plaintiff is informed and believes and thereon alleges that, as a result of the
22 breach of duty of due care of defendants WELLS, NILZA, COOL, OETTER, RICHTER,
23 BLEDSOE, TYLER and DOES 3 through 50 owed to S. I., INC., as alleged in this Second
24 Amended Complaint, and as a result of the failure of these defendants to operate the corporation
25 in the manner required by law, charitable assets have been improperly diverted from S. I., INC.
26 The Attorney General is entitled to an accounting from defendants WELLS, NILZA, COOL,
27 OETTER, RICHTER, BLEDSOE, AND TYLER and DOES 3 through 50 (from October 1,
28 2001, to the present) for their expenditures and disposition of all income and assets which they

1 obtained from, or improperly diverted from, S. I., INC., or otherwise wasted through their breach
2 of duty of due care or other wrongful acts.

3 48. As a proximate result of defendants' breaches of the duty of due care,
4 SENSORY and the beneficiaries of the charitable trust have been damaged in an amount
5 presently unknown to the Attorney General and which cannot be ascertained without an
6 accounting by defendants. The facts necessary to ascertain the exact amount of damages to
7 SENSORY and its charitable beneficiaries are within the special knowledge of the individual
8 defendants. However, the Attorney General estimates the total damages proximately caused by
9 defendants' actions and omissions set forth in this cause of action exceed \$400,000.

10 49. As a proximate result of the breach of duty of due care of defendants WELLS,
11 NILZA, COOL, OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50, S. I., INC.
12 and the beneficiaries of the charitable trust have been damaged in an amount presently unknown
13 to the Attorney General and which cannot be ascertained without an accounting by these
14 defendants. The facts necessary to ascertain the exact amount of damages to S. I., INC. and its
15 charitable beneficiaries are within the special knowledge of defendants WELLS, NILZA, COOL,
16 OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50. However, the Attorney
17 General estimates the total damages proximately caused by actions and omissions of these
18 defendants as set forth in this cause of action exceed \$400,000.

19 50. The defendants' acts as alleged above were willful, wanton, malicious, and
20 oppressive and were undertaken with the intent to defraud SENSORY and S. I., INC. and the
21 charitable beneficiaries of SENSORY and S. I., INC. and thus justify the awarding of exemplary
22 and punitive damages.

23 **FOURTH CAUSE OF ACTION**

24 **(For Violation of Government Code Section 12586**

25 **Against Defendants SENSORY, S. I., INC., WELLS, NILZA, NEILL, OETTER,**

26 **RICHTER, COOL, BLEDSOE, TYLER, and DOES 3 through 50)**

27 51. Plaintiff re-alleges and incorporates by reference as though fully set forth
28 herein each of the allegations of paragraph 1 through 25, above.

1 SIXTH CAUSE OF ACTION

2 (For Involuntary Dissolution [Corporations Code §§ 6510(b)(5) and
3 6511(a)(1)] – Against Defendant S. I., INC.)

4 57. Plaintiff re-alleges and incorporates by reference herein each and every
5 allegation contained in paragraphs 1 through 53, above.

6 58. Defendant S. I., INC., and individual defendants WELLS, NILZA, COOL,
7 OETTER, RICHTER, BLEDSOE, TYLER and DOES 3 through 50, by committing and
8 participating in the acts and omissions alleged in this Second Amended Complaint, have been
9 guilty of, or have knowingly countenanced, persistent and pervasive fraud and abuse of authority,
10 have engaged in the mismanagement of the charitable assets of S. I., INC., and have misapplied
11 and wasted those assets. Further, defendant S. I., INC., through the actions and omissions
12 alleged in this Second Amended Complaint has seriously offended against the statutes regulating
13 corporations and charitable organizations as more specifically alleged in this Second Amended
14 Complaint.

15 59. Involuntary dissolution of S. I., INC. is therefore necessary and appropriate
16 under the provisions of Corporations Code sections 6510(b)(5) and 6511(a)(1).

17 **WHEREFORE**, plaintiff prays for judgment as follows:

18 A. For a preliminary and permanent injunction, enjoining defendants WELLS,
19 NILZA, NEILL, OETTER, RICHTER, COOL AND BLEDSOE, their employees, agents,
20 servants, representatives, successors, and assigns, any and all persons acting in concert or
21 participation with them, and all other persons, corporations, or other entities acting under, by,
22 through, or on their behalf, from doing any of the following until they have first provided a full
23 and complete accounting for all funds received by, and disbursed from, any and all financial
24 accounts of SENSORY from October 1, 1997, to the present and any and all financial accounts
25 of S. I., INC. from October 1, 2001, to the present: (1) expending, disbursing, transferring,
26 encumbering, withdrawing or otherwise exercising control over any funds received by or on
27 behalf of SENSORY and by or on behalf of S. I., INC. or rightfully due SENSORY and/or S. I.,
28 INC.; (2) conducting business of any kind on behalf of, or relating to, SENSORY and/or S. I.,

1 INC., other than as necessary to assist the appointed Receiver or appointed director(s) in winding
2 up the affairs of, and dissolving, SENSORY and S. I., INC.;

3 B. Pursuant to Business and Professions Code section 17203, for a preliminary
4 and permanent injunction enjoining defendants, their successors, agents, representatives,
5 employees and all persons who act in concert with, or on behalf of, defendants from engaging in
6 unfair competition as defined in Business and Professions Code section 17200, including, but not
7 limited to, those acts and omissions alleged in this Second Amended Complaint;

8 C. For appointment of a Receiver pursuant to Corporations Code sections 6511,
9 subdivision (c), and 6513, or appointment of a director or directors by this Court, to take over
10 and manage the affairs of SENSORY and preserve its property pending the hearing and
11 determination of the Second Amended Complaint and, upon a finding that dissolution is
12 authorized, to wind up the affairs of the corporation;

13 D. For appointment of a Receiver pursuant to Corporations Code sections 6511,
14 subdivision (c), and 6513, or appointment of a director or directors by this Court, to take over
15 and manage the affairs of S. I., INC. and preserve its property pending the hearing and
16 determination of the Second Amended Complaint and, upon a finding that dissolution is
17 authorized, to wind up the affairs of the corporation;

18 E. On the First Cause of Action, for damages due SENSORY and its charitable
19 beneficiaries from all named individual defendants and defendants DOES 3 through 50 resulting
20 from the breaches of fiduciary duty of these defendants;

21 F. On the First Cause of Action, for damages due S. I., INC. and its charitable
22 beneficiaries from defendants WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE,
23 TYLER and defendants DOES 3 through 50 resulting from the breaches of fiduciary duty of
24 these defendants;

25 G. On the Second Cause of Action, pursuant to Business and Professions Code
26 section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500)
27 against defendants for each violation of Business and Professions Code section 17200 per day, as
28 proved at trial, in an amount no less than \$100,000;

1 H. On the Second Cause of Action, for restitution for the victims of defendants'
2 acts and omissions constituting unfair competition in an amount no less than \$100,000;

3 I. On the Third Cause of Action, for damages due SENSORY and its charitable
4 beneficiaries from all named individual defendants and defendants DOES 3 through 50 resulting
5 from the breaches of duty of due care of these defendants;

6 J. On the Third Cause of Action, for damages due S. I., Inc. and its charitable
7 beneficiaries from defendants WELLS, NILZA, COOL, OETTER, RICHTER, BLEDSOE, AND
8 TYLER and defendants DOES 3 through 50 resulting from the breaches of duty of due care of
9 these defendants;

10 K. On the Fourth Cause of Action, pursuant to Government Code section
11 12591.1, that the Court assess a civil penalty of at least \$1,000 for the first violation of section
12 12586 and for penalties of at least \$2,500 for each subsequent violation of section 12586, and
13 order that the defendants file all required reports;

14 L. That an order issue directing that all named individual defendants, and DOES
15 3-50 and each of them, render to the Court and to the Attorney General a full and complete
16 accounting of the financial activities and condition of SENSORY and their dealings with
17 SENSORY from October 1, 1997, to the present, to include the expenditure and disposition of all
18 revenues and assets received by or on behalf of SENSORY. Upon the rendering of such
19 accounting, that the Court determine the property, real or personal, or the proceeds thereof, to
20 which SENSORY and the charitable beneficiaries thereof are lawfully entitled, in whatsoever
21 form in whosoever hands they may now be, and order and declare that all such property or the
22 proceeds thereof is impressed with a trust for charitable purposes, that defendants are
23 constructive trustees of all such charitable funds and assets in their possession, custody or
24 control, and that the same shall be deposited forthwith in Court by each and every defendant now
25 holding or possessing the same or claiming any rights, title or interest therein. In addition, that
26 all named individual defendants and defendants DOES 3 through 50 be surcharged and held
27 liable and judgment entered against each of them for any and all such assets for which they fail to
28 properly account, together with interest thereon at the legal rate from the date of liability thereon;

1 and that any and all expenses and fees incurred by defendants in this action be borne by the
2 individual defendants and each of them and not by SENSORY or any other public or charitable
3 corporation or fund;

4 M. That an order issue directing that defendants WELLS, NILZA, COOL,
5 OETTER, RICHTER, BLEDSOE, TYLER and defendants DOES 3 through 50 and each of
6 them, render to the Court and to the Attorney General a full and complete accounting of the
7 financial activities and condition of S. I., INC. and their dealings with S. I., INC. from October 1,
8 2001, to the present, to include the expenditure and disposition of all revenues and assets
9 received by or on behalf of S.I., INC. Upon the rendering of such accounting, that the Court
10 determine the property, real or personal, or the proceeds thereof, to which S I., INC., and the
11 charitable beneficiaries thereof are lawfully entitled, in whatsoever form in whosoever hands they
12 may now be, and order and declare that all such property or the proceeds thereof is impressed
13 with a trust for charitable purposes, that defendants are constructive trustees of all such charitable
14 funds and assets in their possession, custody or control, and that the same shall be deposited
15 forthwith in Court by each and every defendant now holding or possessing the same or claiming
16 any rights, title or interest therein. In addition, that defendants WELLS, NILZA, COOL,
17 OETTER, RICHTER, BLEDSOE, TYLER and defendants DOES 3 through 50 be surcharged
18 and held liable and judgment entered against each of them for any and all such assets for which
19 they fail to properly account, together with interest thereon at the legal rate from the date of
20 liability thereon; and that any and all expenses and fees incurred by defendants in this action be
21 borne by the individual defendants and each of them and not by S. I., INC., or any other public or
22 charitable corporation or fund;

23 N. On the Fifth Cause of Action, that this Court order the involuntary dissolution
24 of SENSORY pursuant to the provisions of Corporations Code section 6518, provide for
25 satisfaction of all of its lawful debts, and establish a procedure for determining the disposition of
26 all remaining assets of SENSORY in a manner consistent with its charitable purpose and
27 consistent with any restrictions that have been placed upon any of SENSORY'S remaining
28 assets;

1 O. On the Sixth Cause of Action, that this Court order the involuntary dissolution
2 of S. I., INC. pursuant to the provisions of Corporations Code section 6518, provide for
3 satisfaction of all of its lawful debts, and establish a procedure for determining the disposition of
4 all remaining assets of S. I., INC. in a manner consistent with its charitable purpose and
5 consistent with any restrictions that have been placed upon any of S. I., INC.'s remaining assets;

6 P. For plaintiffs' costs of suit and other costs pursuant to Government Code
7 sections 12597 and 12598;

8 Q. For attorney's fees as provided in Government Code section 12598 and Code
9 of Civil Procedure section 1021.8; and

10 R. For such other and further relief as the Court may deem to be just and proper.

11 DATED: January 22, 2007

12 Respectfully submitted,

13 EDMUND G. BROWN JR. Attorney General
14 of the State of California
15 JAMES M. CORDI, Supervising
16 Deputy Attorney General

17 By 
18 SONJA K. BERNDT
19 Deputy Attorney General

20 Attorneys for Plaintiff
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DECLARATION OF SERVICE

(AG Mailroom)

Case Name: **The People of the State of California vs. Sensory Integration International, et al.**

No.: BC 356213

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 24, 2007, I served the attached **SECOND AMENDED COMPLAINT FOR DAMAGES, FOR CIVIL PENALTIES, FOR RESTITUTION, FOR AN ACCOUNTING, FOR A CONSTRUCTIVE TRUST, FOR A PRELIMINARY AND PERMANENT INJUNCTION, FOR APPOINTMENT OF A RECEIVER, FOR INVOLUNTARY DISSOLUTION AND FOR OTHER RELIEF ARISING FROM: (1) BREACH OF FIDUCIARY DUTY (2) UNFAIR COMPETITION (3) NEGLIGENCE (4) VIOLATION OF GOV. CODE §12586** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 So. Spring St., Los Angeles, CA 90013, addressed as follows:

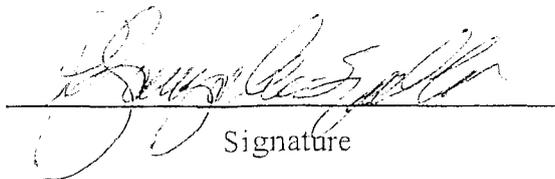
Jonathan B. Crane, Esq.
Law Offices of Jonathan B. Crane
3699 Wilshire Blvd., #700
Los Angeles, CA 90010

Jeffery Boykin, Esq.
Law Offices of Jeffery Boykin
319 Fayette Street, Suite 309
Raleigh, North Carolina 27601

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 24, 2007, at Los Angeles, California.

P. Gonzales-Sparks

Typed Name



Signature