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**FILED**

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GARY L. GRANVILLE, County Clerk  
By CK DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

11 KATALIN S. GRANT TER SARKISSOFF  
12 and JACQUES F. TER SARKISSOFF  
13 and VETERINARY REFERRAL SERVICE  
14 AND TRAUMA CENTER, INC., a  
California Corporation,

Plaintiffs,

vs.

17 ROBERT ROOKS and DOES 1 through  
20, Inclusive,

Defendants.

Case No. 51-96-52

COMPLAINT FOR:

1. Rescission and Damages  
based on Fraud [Civil  
Code sections 1689, 1692]
2. Rescission and Damages  
based on Negligent Mis-  
representation [Civil  
Code sections 1689, 1692]
3. Rescission and Damages  
based on Mutual Mistake  
and/or Innocent Misrep-  
resentation [Civil Code  
section 1689, 1692]
4. Rescission and Damages  
based on Unilateral Mis-  
take [Civil Code section  
1689, 1692]
5. Damages based on Breach  
of Contract [Civil Code  
sections 3300]
6. Damages based on Breach  
of Contract [Civil Code  
section 3300]
7. Damages based on Breach  
of Implied Covenant of  
Good Faith and Fair  
Dealing [Civil Code sec-  
tions 3294, 3300, 3333]
8. Damages based on Breach  
of Implied Covenant of  
Good Faith and Fair  
Dealing [Civil Code sec-

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- } tions 3294,3300,3333]  
9. Damages based on Fraud  
[Civil Code section 1572]  
10. Damages based on Promise  
without Intent to Per-  
form [Civil Code section  
1572]  
11. Damages based on Negli-  
gent Misrepresentation  
[Civil Code section 1572]  
12. Damages for Slander Per  
Se [Civil Code sections  
46,3294]

9 Plaintiffs, and each of them, allege:

10 FIRST CAUSE OF ACTION  
11 (Rescission and Damages based on Fraud)

12 1. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
13 F. TER SARKISSOFF are, and at all times herein mentioned were,  
14 residents of the County of Los Angeles, State of California.

15 2. Plaintiff CALIFORNIA VETERINARY REFERRAL SERVICE AND  
16 TRAUMA CENTER, INC., is, and at all times herein mentioned was, a  
17 corporation duly organized and existing under the laws of the  
18 State of California, with its principal place of business located  
19 in the County of Orange, State of California, and is presently  
20 owned by Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
21 F. TER SARKISSOFF.

22 3. Plaintiffs are informed and believe and thereon allege  
23 that Defendant ROBERT ROOKS is, and at all times herein mentioned  
24 was, a resident of the County of Orange, State of California.

25 4. The true names and capacities, whether individual,  
26 corporate, associate, or otherwise of Defendants DOES 1 through  
27 20, and each of them, are unknown to Plaintiffs who therefore sue  
28 said Defendants by such fictitious names and will, pursuant to

1 Section 474 of the California Code of Civil Procedure, ask leave  
2 to amend this complaint to show their true names and capacities  
3 when same have become ascertained. Plaintiffs are informed and  
4 believe and thereon allege that all Defendants named herein as  
5 DOCS are responsible in some manner for the happenings and events  
6 alleges herein, and the Plaintiffs' damages are proximately  
7 caused by these Defendants' acts.  
8

9 5. Plaintiffs are informed and believe and thereon allege  
10 that the Defendants, and each of them, in doing the acts herein  
11 alleged, were acting as the agents, representatives, servants or  
12 employees of each of the other Defendants and were acting within  
13 the course and scope of their employment or agency with the full  
14 knowledge and consent of each of the other Defendants.  
15 Defendants, and each of them, ratified the acts of each and said  
16 every other Defendant.

17 6. On or about August 30, 1986, in the County of Orange,  
18 State of California, Plaintiffs KATALIN S. GRANT TER SARKISSOFF  
19 and JACQUES F. TER SARKISSOFF entered into a written contract  
20 with Defendant ROBERT ROCKS, whereby Plaintiffs agreed to  
21 purchase and Defendant agreed to sell, all the assets employed in  
22 that veterinary practice then currently owned and operated by  
23 Defendant ROCKS, known as "Veterinary Referral Service & Trauma  
24 Center" located in the City of Fountain Valley, County of Orange,  
25 State of California, and the stock in VETERINARY REFERRAL SERVICE  
26 & TRAUMA CENTER, allegedly owned by Defendant ROCKS.

27 7. As a condition and material part of the consideration  
28 to the purchase of the business assets and stock described above,

1 Defendant promised to execute and perform under the terms of a  
2 consulting agreement for a period of twenty-four months. On or  
3 about August 30, 1986, Plaintiffs KATALIN S. GRANT TER SARKISSOFF  
4 and JACQUES F. TER SARKISSOFF entered into an agreement with  
5 Defendant ROOKS, whereby Defendant agreed, for a period of  
6 twenty-four months, to perform all medical services customary,  
7 necessary and as required in connection with the operation of a  
8 first class veterinary referral hospital.  
9

10 8. Under the contract of August 30, 1986, the purchase  
11 price of \$825,000.00, was to be paid with a two-part down payment  
12 of \$150,000.00, assumption and payment of obligations to two  
13 other doctors totaling \$37,000.00, assumption of a Small Business  
14 Administration loan in the amount of \$138,000.00, and a  
15 promissory note to Defendant ROOKS in the amount of \$500,000.00,  
16 payable in monthly payments of \$7,000.00, beginning February,  
17 1987. The indebtedness of \$500,000.00 was secured by real and  
18 personal property.

19 9. On and prior to said date, Defendant and DOES 1 through  
20 20, inclusive, and each of them, represented to Plaintiffs  
21 KATALIN S. GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF,  
22 certain material facts, including but not limited to the  
23 following:

24 (a) that the operations of the Trauma Center, the  
25 subject of the contract, itself generated and grossed in excess  
26 of \$1,000,000.00 annually;

27 (b) that the Trauma Center was fully equipped and  
28 operational and that all the furnishings and equipment, with the

1 exception of the X-ray machine and certain lease obligations  
2 owing to two other doctors, were free and clear and came with and  
3 constituted a complete facility;

4 (c) that, though they had "had a bit of a falling  
5 out", working with the animal Cancer Clinic located next door to  
6 the Trauma Center was most likely and that this could only add to  
7 the gross of the Trauma Center;

8 (d) that given the work of the Trauma Center, there  
9 was tremendous goodwill associated with it and that the Center  
10 enjoyed a good and solid reputation in and working relationship  
11 with the veterinary community, referrals from which community  
12 constitute the very life-blood of a referral service such as the  
13 Trauma Center;

14 (e) that the sum of \$825,000.00 was the fair and  
15 reasonable value of the Trauma Center, in light of its income,  
16 assets and associated goodwill.

17 10. Said representations were false in each of the  
18 following respects, among others:

19 (a) that Defendant ROCKS regularly and frequently  
20 traveled around neighboring counties to the offices of other  
21 veterinarians and there, performed dental and medical  
22 procedures on animals, the fees for which were shown on the books  
23 of the Trauma Center and added to its gross, but which fees were  
24 neither generated by business coming to the facility, nor  
25 business of the facility;

26 (b) that the obligations owing to the two doctors were  
27 much more extensive than represented and that many pieces of the  
28

1 equipment in the Trauma Center were and are encumbered, some of  
2 which have subsequently been repossessed;

3 (c) that work with the animal Cancer Clinic was not  
4 likely inasmuch as the individuals in charge would not work with  
5 the Trauma Center so long as Defendant ROOKS was associate with  
6 it;

7 (d) that the Trauma Center, did not enjoy tremendous  
8 goodwill, solid reputation or good working relationship with the  
9 veterinary community, as this had been eroded due to its  
10 association with Defendant ROOKS;

11 (e) that the sum of \$825,000.00 was not a fair value  
12 for the Trauma Center, based on the inflated income, the  
13 indebtedness and the over-valued goodwill of the Center.

14 11. Defendants, and each of them, knew the foregoing  
15 representations were false when made, and concealed and  
16 suppressed the true from Plaintiffs KATALIN S. GRANT TER  
17 SARKISSOFF and JACQUES F. TER SARKISSOFF, which facts were known  
18 to Defendant ROOKS and other Defendants, by virtue of their  
19 ownership and management of the Trauma Center.

20 12. Defendants, and each of them, in making said  
21 representations, intended to deceive and defraud Plaintiffs  
22 KATALIN S. GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF and  
23 to induce them to enter into said contract.

24 13. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
25 F. TER SARKISSOFF could not, in the exercise of reasonable  
26 diligence, could not have discovered Defendants' intention. In  
27 reasonable and justifiable reliance on Defendants'

1  
2 representations as aforesaid, said Plaintiffs executed the August  
3 30, 1986, contract for the purchase of the Trauma Center. Said  
4 Plaintiffs would not have entered into said contract had they not  
5 believed the truth of Defendants' representations.

6 14. Pursuant to the terms of the contract, Plaintiffs  
7 KATALIN S. GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF  
8 have performed each and every obligation required of them, having  
9 paid to Defendant ROCKS to date the sum of \$150,000.00,  
10 representing the down payment, assumed and paid the obligations  
11 to the two other doctors, taken over payments on the Small  
12 Business Administration loan, and made monthly payments in the  
13 sum of \$7,000.00, beginning February, 1986, for the balance of  
14 the purchase price due Defendant ROCKS on a promissory note.

15 15. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
16 F. TER SARKISSOFF had no knowledge of said injury caused to them  
17 by Defendants until in or about November, 1986, when they were  
18 able to devote their undivided attention to the management and  
19 affairs of the Trauma Center, which management and affairs they  
20 had previously entrusted to Defendant ROCKS, employed in the  
21 Center. Only then did said Plaintiffs track the gross monthly  
22 income and the debts and encumbrances owing entities and  
23 individuals relative to equipment of and used in the business.

24 16. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
25 F. TER SARKISSOFF intend service of summons of this complaint to  
26 serve as notice of rescission of the aforementioned contract, and  
27 hereby offers to restore all consideration furnished by Defendant  
28 ROCKS under said contract, on condition that Defendant restore to

1 then the consideration furnished by Plaintiffs KATALIN S. GRANT  
2 TER SARKISSOFF and JACQUES F. TER SARKISSOFF in a sum believed by  
3 Plaintiffs to well exceed \$200,000.00. The exact amount of such  
4 distributions, including future payments, shall be determined  
5 according to proof presented at time of trial.

6  
7 17. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
8 F. TER SARKISSOFF will suffer irreparable and substantial harm if  
9 consideration furnished by them, together with interest thereon  
10 at the legal rate from the date of rescission, is not restored,  
11 in that they have received nothing of value in return therefor,  
12 and said sum will be forever lost in absence of a determination  
13 of rescission herein.

14 18. As a direct and proximate result of Defendants'  
15 representations as aforesaid, Plaintiffs KATALIN S. GRANT TER  
16 SARKISSOFF and JACQUES F. TER SARKISSOFF have further suffered  
17 certain consequential damages in an exact amount to be determined  
18 according to proof presented at time of trial.

19 SECOND CAUSE OF ACTION  
(Rescission and Damages Based on Negligent Misrepresentation)

20 19. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
21 F. TER SARKISSOFF hereby refer to the allegations contained in  
22 paragraphs 1 through 10, inclusive, and paragraphs 13 through 18.  
23 inclusive, of the First Cause of Action hereinabove, and by  
24 reference repeats all of said allegations contained therein as  
25 though fully set forth.

26 20. Defendants, and each of them, made the foregoing  
27 representations without reasonable belief as to the truth or  
28 correctness of said representations and without exercising

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1 reasonable care to insure that the true and material facts were  
2 disclosed to Plaintiffs. Defendants negligently made such  
3 misrepresentations and negligently failed to disclose the true  
4 and material facts to Plaintiffs, in order to induce Plaintiffs  
5 KATALIN S. GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF to  
6 enter into said August 30, 1986, contract to purchase the Trauma  
7 Center and otherwise act as herein alleged.  
8

9 21. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
10 F. TER SARKISSOFF are accordingly entitled to rescind said August  
11 30, 1986, contract in its entirety, and to restitution of any and  
12 all consideration therefor, together with interest thereon at the  
13 legal rate, as well as, to recover their consequential damages,  
14 all as hereinabove alleged.

15 THIRD CAUSE OF ACTION  
16 (Rescission and Damages based on Mutual Mistake and/or  
17 Innocent Misrepresentation)

18 22. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
19 F. TER SARKISSOFF herety refer to the allegations contained in  
20 paragraphs 1 through 10, inclusive, and paragraphs 13 through 18,  
21 inclusive, of the First Cause of Action, and paragraph 21 of the  
22 Second Cause of Action hereinabove, and by reference repeats all  
23 of said allegations contained therein as though fully set forth.

24 23. At the time that Defendants made the foregoing  
25 representations to Plaintiffs KATALIN S. GRANT TER SARKISSOFF and  
26 JACQUES F. TER SARKISSOFF, Defendants and said Plaintiffs were  
27 each mutually mistaken and ignorant as to the true facts, as  
28 hereinabove alleged. Defendants and said Plaintiffs each  
believed the material facts represented by Defendants to be true.

1  
2 24. Said mutual mistake and/or innocent misrepresentations  
3 by Defendants materially affected the terms of the August 30,  
4 1986, contract in that said Plaintiffs would not have agreed to  
5 purchase the Trauma Center thereby for the purchase price of  
6 \$825,000.00, had they known the true facts concerning the income,  
7 the assets and the goodwill, which materially affected and  
8 decreased the value of the Center substantially.

9 FOURTH CAUSE OF ACTION  
(Rescission and Damages based on Unilateral Mistake)

10 25. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
11 F. TER SARKISSOFF hereby refer to the allegations contained in  
12 paragraphs 1 through 10, inclusive, and paragraphs 13 through 18,  
13 inclusive, of the First Cause of Action, and paragraph 21 of the  
14 Second Cause of Action hereinabove, and by reference repeats all  
15 of said allegations contained therein as though fully set forth.

16 26. At the time that Defendants made the foregoing  
17 representations to Plaintiffs KATALIN S. GRANT TER SARKISSOFF and  
18 JACQUES F. TER SARKISSOFF, said Plaintiffs were unilaterally  
19 mistaken and ignorant as to the true facts as hereinabove  
20 alleged, and said Plaintiffs believed the material facts  
21 represented by Defendants to be true.

22 27. Defendants, and each of them, knew or had reason to  
23 know of said Plaintiffs' unilateral mistake regarding the true  
24 facts and Defendants' misrepresentations thereof.

25 28. Said Plaintiffs' unilateral mistake was due to the  
26 fault of Defendants in making the foregoing false  
27 representations, and Defendants' failure to disclose the true  
28 facts to said Plaintiffs.

1  
2 FIFTH CAUSE OF ACTION  
(Damages Based On Breach of Contract)

3 29. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
4 F. TER SARKISSOFF hereby refer to the allegations contained in  
5 paragraphs 1 through 8, inclusive, of the First Cause of Action  
6 hereinabove, and by reference repeats all of said allegations  
7 contained therein as though fully set forth.

8 30. In addition to the terms of the August 30, 1986,  
9 contract as hereinabove alleged, the contract contained certain  
10 representations and warranties made by Defendant EOOKS, as  
11 seller, to wit:

12 a. [Defendant EOOKS] has good and marketable  
13 title to all of his assets and interest in assets,  
14 whether real, personal, mixed, tangible or intangible,  
15 which constitute all the assets and interest in assets  
16 that are used in the business of the veterinary  
17 practice. All these assets are free and clear of  
18 restrictions on or conditions to transfer or assignment  
19 and are free and clear of mortgages, liens, pledges,  
20 charges, encumbrances, equities, claims, easements,  
21 rights of way, covenants, conditions or restrictions...

22 31. Within a section, entitled "Liabilities", of the August 30,  
23 1986, contract, it states that "[n]one [is] assumed". The  
24 section further provides:

25 The parties hereto agree that [Plaintiffs KATALIN S.  
26 GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF] are  
27 acquiring the veterinary practice known as Veterinary  
28 Referral Service & Trauma Center free and clear of all

1 liabilities arising or incurred prior to the closing  
2 date, and [Defendant ROOKS] shall be responsible for  
3 his respective liabilities incurred through the closing  
4 date, excepting loans assumed or in the process of  
5 being assumed by [said Plaintiffs].  
6

7 32. As a condition and material part of the consideration  
8 for the purchase contract of August 30, 1986, Defendant ROOKS  
9 entered into a consultation agreement with said Plaintiffs, on  
10 August 30, 1986, as hereinabove alleged.

11 33. Plaintiffs, and each of them, have performed all  
12 conditions, covenants, and promises required by them on their  
13 part to be performed in accordance with the terms of the purchase  
14 contract and of the consultation contract, both dated August 30,  
15 1986.

16 34. In or about September, 1986, Defendant ROOKS breached  
17 the purchase contract of August 30, 1986, by failing to deliver  
18 all assets of the Trauma Center free and clear, including but not  
19 limited to a vacuum cleaner, washing machine, clothes dryer,  
20 computer, phone system, and certain animal cages, all of which  
21 assets were a necessary part of and necessarily used in the  
22 operation of the Trauma Center.

23 35. In or about December, 1986, Defendant ROOKS breached  
24 the purchase contract of August 30, 1986, by failing to perform  
25 under that consultation contract of August 30, 1986, which  
26 contract execution and performance thereunder were material  
27 conditions of the purchase contract of August 30, 1986.  
28 Defendant further breached in or about February, 1987, and

1 continues to breach the purchase contract to the present, by  
2 failing to return to the Trauma Center and perform any services  
3 whatsoever.  
4

5 36. As a result of Defendant's breach, certain pieces of  
6 equipment have been repossessed, disrupting the operation of the  
7 Trauma Center, bear a significantly greater indebtedness than  
8 anticipated, lost substantial income due to Defendant ROCKS  
9 absence, and have had to shift the focus of services offered by  
10 the Trauma Center due to the loss of Defendant ROCKS veterinary  
11 expertise, all to their financial detriment and damage in a sum  
12 according to proof at time of trial. Additionally, under the  
13 terms of the contract, Plaintiffs are entitled to costs and  
14 attorneys fees.

15 SIXTH CAUSE OF ACTION  
16 (Damages based on Breach of Contract)

17 37. Plaintiffs hereby refer to the allegations contained in  
18 paragraphs 1 through 8, inclusive, of the First Cause of Action  
19 hereinabove, and by reference repeats all of said allegations  
20 contained therein as though fully set forth.

21 38. On or about August 30, 1986, in the County of Orange,  
22 State of California, Plaintiffs VETERINARY REFERRAL SERVICE AND  
23 TRAUMA CENTER, INC., KATALIN S. GRANT TER SARKISSOFF and JACQUES  
24 F. TER SARKISSOFF entered into a consulting agreement with  
25 Defendant ROCKS, whereby Defendant agreed, for a period of  
26 twenty-four months, to perform all medical services customary,  
27 necessary and as required in connection with the operation of a  
28 first class veterinary referral hospital, for said Plaintiffs at  
the Trauma Center facility. Services were to be rendered for not

1 more than three days per week. Defendant was to be compensated  
2 at the rate of \$500.00 per full day or otherwise, at the rate of  
3 \$50.00 per hour for any day comprised of less than nine hours.

4 39. Plaintiffs, and each of them, have duly performed all  
5 of the terms of the consulting agreement. Until Plaintiffs took  
6 steps to mitigate Plaintiffs' loss resulting from Defendant  
7 ROOKS' actions in contravention of the agreement, as hereinafter  
8 alleged, Plaintiffs were ready, able, and willing to perform, and  
9 offered to perform, all of the terms of the agreement to be  
10 performed on Plaintiffs' part.

11 40. In or about September, 1986, pursuant to the consulting  
12 agreement, Defendant ROOKS provided the medical services as  
13 agreed, and continued to perform until in or about December,  
14 1986, when Defendant's attitudes towards his employer began to  
15 deteriorate so as to disrupt the operation of the Trauma Center  
16 and breach the terms of the consulting agreement. At such time,  
17 Defendant's work schedule became erratic, and he unilaterally  
18 changed pricing policies for certain medical procedures.  
19 Defendant interfered with the referral relationship in the  
20 veterinary community, with cash flow within the office, and with  
21 the office staff.

22 41. Defendant ROOKS further willfully and permanently  
23 breached his obligations under the consulting contract when, in  
24 or about February, 1987, he failed to return to the Trauma Center  
25 after having left in January, 1987, as agreed, to study and sit  
26 for his Board Certification. Defendant has yet to convey to  
27 Plaintiffs his intentions with regard to his employment at the  
28

1 Trauma Center.  
2

3 42. As a condition and material part of the consideration  
4 for the purchase contract of August 30, 1986, as hereinabove  
5 alleged, Defendant ROOKS had entered into the consultation  
6 agreement with said Plaintiffs. Defendants services were vital  
7 to the Trauma Center, in that as a Board qualified surgeon, he  
8 was capable of doing certain operations that other veterinarians,  
9 such as Plaintiff KATALIN S. GRANT TER SARKISSOFF could not, or  
10 others would not, do but rather refer such cases to the Trauma  
11 Center. Additionally, he had promised to train and assist  
12 Plaintiff KATALIN S. GRANT TER SARKISSOFF in herself becoming  
13 Board qualified and ultimately certified in the area of surgery,  
14 so that her services could later support the Trauma Center and  
15 attendant referrals. Beyond this, due to his familiarity with  
16 the operations of a trauma center and referral service, and more  
17 particularly the subject Trauma Center as its past owner, his  
18 advice and attention as to its operation was necessary.

19 43. If Defendant ROOKS had fully performed the terms of the  
20 consultation agreement, Plaintiffs would have had a working  
21 facility, capable of sustaining its routine services and  
22 business. However, Plaintiffs have had to shift the nature of  
23 the services offered by the Trauma Center, and have stopped  
24 providing certain surgery and related functions. It now  
25 functions as night care and a basic emergency facility for  
26 animals.

27 44. As a proximate result of Defendant ROOKS breach of the  
28 consulting agreement as hereinabove alleged, Plaintiffs, and each

1 of them, have been damaged in a sum according to proof at trial.  
2 Additionally, under the terms of the agreement, Plaintiffs are  
3 entitled to costs and attorneys fees.  
4

5 SEVENTH CAUSE OF ACTION  
6 (Damages based on Implied Covenant of  
7 Good Faith and Fair Dealing)

8 45. Plaintiffs hereby refer to the allegations contained in  
9 paragraphs 1 through 8, inclusive, of the First Cause of Action,  
10 and paragraphs 30 through 36, inclusive, of the Fifth Cause of  
11 Action hereinabove, and by reference repeats all of said  
12 allegations contained therein as though fully set forth.

13 46. Implied in the purchase contract of August 30, 1986, as  
14 hereinabove alleged, was a covenant by Defendant ROCKS that he  
15 would act in good faith and deal fairly with Plaintiffs KATALIN  
16 S. GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF, and each  
17 of them, and that Defendant would do nothing to deprive said  
18 Plaintiffs of the benefits of the contract.

19 47. Defendant ROCKS and said Plaintiffs had a special  
20 relationship in that said Plaintiffs, as buyers to Defendant as  
21 seller/owner/operator, was in a vulnerable position, having to  
22 rely on the representations of Defendant, both oral and written,  
23 as to the completeness of a facility in the nature of the Trauma  
24 Center, as to the referral network existing in the veterinary  
25 community and relative to the Trauma Center, and as to the  
26 management and staff necessary to the operation given the type of  
27 facility. Said Plaintiffs entered the subject contract in order  
28 to enter the veterinary trauma care and referral service industry  
which entre was encouraged by the fact that the subject Trauma



1 Center was the only one available for purchase at the time in the  
2 area, and that Defendant was to stay on to work and to train  
3 Plaintiff KATALIN S. GRANT TER SARKISSOFF. Defendant was aware  
4 of said Plaintiffs' vulnerability, and the usual measure of  
5 contract damages provided no incentive for his performance under  
6 the agreement.  
7

8 48. Defendant ROOKS breached its obligations under the  
9 purchase contract by failing to advise Plaintiffs of the true  
10 financial state of the Trauma Center, by failing to deliver all  
11 assets of the Trauma Center free and clear, which assets were a  
12 necessary part of and necessarily used in the operation of the  
13 Trauma Center, and by failing to perform under that consultation  
14 contract of August 30, 1986, which contract execution and  
15 performance thereunder were material conditions of the purchase  
16 contract of August 30, 1986. This bad faith breach was a  
17 violation of the covenant of good faith and fair dealing in that  
18 Defendant ROOKS was in a superior position, due to his knowledge  
19 of the history and entire operation of the Trauma Center.

20 49. As a proximate result of the bad faith breach by  
21 Defendant of its obligations under the contract, Plaintiffs have  
22 suffered damages in an amount according to proof.

23 50. As a further proximate result of the tortious breach of  
24 the implied covenant of good faith and fair dealing by Defendant,  
25 Plaintiffs have been damaged in its business strength, position  
26 and reputation within the industry, all to its general damage in  
27 a sum according to proof.

28 51. Defendant has done, and is doing, the things herein

1 alleged with the intent of injuring or destroying Plaintiffs'  
2 business and goodwill so as to make it impossible for Plaintiffs  
3 to meet their obligations under the purchase contract of August  
4 30, 1986, and in so doing has acted maliciously and oppressively  
5 towards Plaintiffs. Consequently, Plaintiffs should recover, in  
6 addition to actual damages, damages to make an example of and to  
7 punish Defendant. The amount of such exemplary damages sought is  
8 \$1,000,000.00.  
9

10 EIGHTH CAUSE OF ACTION

11 (Damages based on Breach of the Implied Covenant  
12 of Good Faith and Fair Dealing)

13 52. Plaintiffs hereby refer to the allegations contained in  
14 paragraphs 1 through 8, inclusive, of the First Cause of Action,  
15 and paragraphs 38 through 43, inclusive, of the Sixth Cause of  
16 Action hereinabove, and by reference repeats all of said  
17 allegations contained therein as though fully set forth.

18 54. Implied in the consulting agreement of August 30, 1986,  
19 as hereinabove alleged, was a covenant by Defendant ROOKS that he  
20 would act in good faith and deal fairly with Plaintiffs  
21 VETERINARY TRAUMA CENTER AND REFERRAL SERVICE, INC., KATALIN S.  
22 GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF, and each of  
23 them, and that Defendant would do nothing to deprive said  
24 Plaintiffs of the benefits of the agreement.

25 55. Said Plaintiffs and Defendant ROOKS had a special  
26 relationship in that Plaintiffs, as employer and Defendant as a  
27 key employee and sole consultant, were in a vulnerable position,  
28 having to rely on the surgical expertise of Defendant, the only  
surgeon on staff, and on Defendant's advice as Defendant was the

1 former owner and only operator of the Trauma Center, to provide  
2 the very services which they and the Center were in business to  
3 supply. Plaintiffs entered the subject agreement in order to  
4 secure the services of a surgeon and of one familiar with the  
5 operation of a trauma facility, and in particular, the operation  
6 of the subject Trauma Center, so as to allow the Center to remain  
7 in business. Defendant was aware of Plaintiffs' vulnerability,  
8 and the usual measure of contract damages provided no incentive  
9 for his continued performance under the agreement.

10 56. When Defendant's attitudes towards his employer began  
11 to deteriorate so as to disrupt the operation of the Trauma  
12 Center, Defendant by his actions breached the terms of the  
13 consulting agreement as hereinabove alleged. Defendant ROOKS  
14 further willfully and permanently breached his obligations under  
15 the consulting agreement when, in or about February, 1987, he  
16 failed to return to the Trauma Center after having left in  
17 January, 1987, as agreed, to study and sit for his Board  
18 Certification. This bad faith breach was a violation of the  
19 covenant of good faith and fair dealing in that Defendant was in  
20 a superior position, having knowledge that without his honest  
21 advise as to the operation of the Center and without his services  
22 as a surgeon, the Trauma Center could no longer remain in  
23 business offering the services which it had in the past.

24 57. As a proximate result of the bad faith breach by  
25 Defendant of its obligations under the contract, Plaintiffs have  
26 suffered damages in an amount according to proof.

27 58. As a further proximate result of the tortious breach of  
28

1 the implied covenant of good faith and fair dealing by Defendant,  
2 Plaintiffs have been damaged in their business strength, position  
3 and reputation within the veterinary community, all to its  
4 general damage in a sum according to proof.

5  
6 59. Defendant has done, and is doing, the things herein  
7 alleged with the intent of injuring or destroying Plaintiffs'  
8 business and goodwill so as to make it impossible for Plaintiffs  
9 to meet their obligations under the purchase contract of August  
10 30, 1986, and in so doing has acted maliciously and oppressively  
11 towards Plaintiffs. Consequently, Plaintiffs should recover, in  
12 addition to actual damages, damages to make an example of and to  
13 punish Defendant. The amount of such exemplary damages sought is  
14 \$1,000,000.00.

15 NINTH CAUSE OF ACTION  
16 (Damages based on Fraud)

17 60. Plaintiffs hereby refer to the allegations contained in  
18 paragraphs 1 through 15, inclusive, of the First Cause of Action  
19 hereinabove, and by reference repeats all of said allegations  
20 contained therein as though fully set forth.

21 61. As a proximate result of Defendants' fraud and deceit  
22 and the facts herein alleged, Plaintiffs KATALIN S. GRANT TER  
23 SARKISSOFF and JACQUES F. TER SARKISSOFF were induced to enter  
24 into the purchase contract of August 30, 1986, and expend a sum  
25 of money well in excess of \$200,000.00 as consideration  
26 therefore, in addition to sums of money and hours of time in an  
27 attempt to derive a profit from the business sold to Plaintiffs  
28 by Defendant, but has received no profit or other compensation  
therefrom, by reason of which Plaintiffs have been damaged in a

1 sum according to proof at time of trial.

2  
3 62. Defendants have done, and are doing, the things herein  
4 alleged with the intent of injuring or destroying Plaintiffs'  
5 business and goodwill so as to make it impossible for Plaintiffs  
6 to meet their obligations under the purchase contract of August  
7 30, 1986, and in so doing have acted maliciously and oppressively  
8 towards Plaintiffs. Consequently, Plaintiffs should recover, in  
9 addition to actual damages, damages to make an example of and to  
10 punish Defendant. The amount of such exemplary damages sought is  
11 \$1,000,000.00.

12 TENTH CAUSE OF ACTION  
13 (Damages based on Promise without Intent  
14 to Perform)

15 63. Plaintiffs hereby refer to the allegations contained in  
16 paragraphs 1 through 8, inclusive, of the First Cause of Action  
17 hereinabove, and by reference repeats all of said allegations  
18 contained therein as though full, set forth.

19 64. On and prior to August 30, 1986, Defendant ROOKS  
20 promised Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
21 F. TER SARKISSOFF that Defendant would work and continue to work  
22 for said Plaintiffs and Plaintiff VETERINARY REFERRAL SERVICE AND  
23 TRAUMA CENTER, INC., if said Plaintiffs would purchase  
24 Defendant's business, to wit, the Veterinary Referral Service &  
25 Trauma Center and his corporation VETERINARY REFERRAL SERVICE AND  
26 TRAUMA CENTER, INC., and employ him, under contract, for a period  
27 of not less than twenty-four months from the date of said  
28 purchase.

65. At the time Defendant ROOKS made the promise to said

1 Plaintiffs, Defendant had no intention of performing it.

2  
3 66. The promise was made by Defendant ROOKS with the intent  
4 to induce said Plaintiffs to purchase the Trauma Center, then  
5 enter a consulting agreement whereby Defendant would be employed  
6 in the Trauma Center as one of only a few surgeons, and be in a  
7 position to destroy the operation and reputation of the Center  
8 from within, ultimately failing to report for work so as to  
9 deprive the Center of his most necessary services, all to the  
10 diminution in value and income of the Trauma Center. Once  
11 depleted, said Plaintiffs as buyers now unable to pay off the  
12 secured indebtedness owing to Defendant, Defendant would be able  
13 to foreclose on the collateral securing the indebtedness and,  
14 perhaps, even regain control and ownership of the Trauma Center  
15 at a much reduced price.

16 67. Plaintiffs KATALIN S. GRANT TER SARKISSOFF and JACQUES  
17 F. TER SARKISSOFF, at the time the promise was made and at the  
18 time they took the actions herein alleged, were ignorant of  
19 Defendant's secret intention not to perform and said Plaintiffs  
20 could not, in the exercise of reasonable diligence, have  
21 discovered Defendant's secret intention. In reliance on the  
22 promise of Defendant, Plaintiffs entered into the contract to  
23 purchase Defendants business and corporation. If said  
24 Plaintiffs had known of the actual intention of Defendant ROOKS,  
25 Plaintiffs would not have taken such action.

26 68. Defendant ROOKS failed to abide by his promise and on  
27 or about December, 1986, breached the consultation agreement by  
28 acts detrimental to the growth, reputation, success, and

1 prosperity of the Trauma Center. In or about February, 1987,  
2 Defendant failed to report for work at the Center at all. But  
3 for the breach of the consultation agreement by Defendant,  
4 Plaintiffs would have continued to perform their duties under the  
5 agreement.

6  
7 69. As a proximate result of Defendant's promise without  
8 intent to perform and the facts herein alleged, Plaintiffs were  
9 induced to enter into the purchase contract and consulting  
10 agreement both of August 30, 1986, and expend a sum of money well  
11 in excess of \$200,000.00 as consideration therefore, in addition  
12 to sums of money and hours of time in an attempt to derive a  
13 profit from the business sold to Plaintiffs by Defendant, but has  
14 received no profit or other compensation therefrom, by reason of  
15 which Plaintiffs have been damaged in a sum according to proof at  
16 time of trial.

17 70. Defendants have done, and are doing, the things herein  
18 alleged with the intent of injuring or destroying Plaintiffs'  
19 business and goodwill so as to make it impossible for Plaintiffs  
20 to meet their obligations under the purchase contract of August  
21 30, 1986, and in so doing have acted maliciously and oppressively  
22 towards Plaintiffs. Consequently, Plaintiffs should recover, in  
23 addition to actual damages, damages to make an example of and to  
24 punish Defendant. The amount of such exemplary damages sought is  
25 \$1,000,000.00.

26 ELEVENTH CAUSE OF ACTION  
27 (Damages based on Negligent Misrepresentation)

28 71. Plaintiffs hereby refer to the allegations contained in  
paragraphs 1 through 10, inclusive, and paragraphs 13 through 16,

1 inclusive, of the First Cause of Action, and paragraph 20 of the  
2 Second Cause of Action hereinabove, and by reference repeats all  
3 of said allegations contained therein as though fully set forth.  
4

5 72. As a proximate result of Defendants' negligent  
6 misrepresentations and the facts herein alleged, Plaintiffs  
7 KATALIN S. GRANT TER SARKISSOFF and JACQUES F. TER SARKISSOFF  
8 were induced to enter into the purchase contract of August 30,  
9 1986, and expend a sum of money well in excess of \$200,000.00 as  
10 consideration therefore, in addition to sums of money and hours  
11 of time in an attempt to derive a profit from the business sold  
12 to Plaintiffs by Defendant, but has received no profit or other  
13 compensation therefrom, by reason of which Plaintiffs have been  
14 damaged in a sum according to proof at time of trial.

15 TWELFTH CAUSE OF ACTION  
16 (Damages for Slander Per Se)

17 73. Plaintiffs hereby refer to the allegations contained in  
18 paragraphs 1 through 5, inclusive, of the First Cause of Action  
19 hereinabove, and by reference repeats all of said allegations  
20 contained therein as though fully set forth.

21 74. In or about December, 1986, and continuing until the  
22 present, Defendant HOOKS stated to referring veterinarians and  
23 other prospective referral sources in and around Orange County,  
24 that Plaintiffs KATALIN S. GRANT TER SARKISSOFF, JACQUES F. TER  
25 SARKISSOFF and VETERINARY REFERRAL SERVICE AND TRAUMA CENTER,  
26 INC., were unreliable, unprofessional and unable to perform their  
27 proffered services, including surgery, for their customers. which  
28 include referring veterinarians.

75. These words were heard by existing customers of



1  
2 Plaintiffs, Mr. Dennis Claus, and several other persons whose  
3 names are not known to Plaintiffs.

4 76. These words were slanderous per se because they tend to  
5 injure Plaintiffs in their trade and business by imputing to it  
6 an inability to practice veterinary medicine, the nature of its  
7 business.

8 77. As a result of the above-described statements,  
9 Plaintiffs have been damaged in their business strength, position  
10 and reputation within the veterinary community, all to their  
11 general damage in a sum according to proof at trial.

12 78. The statements hereinabove alleged were made by  
13 Defendant with a desire to oppress Plaintiffs, and Defendants  
14 have done, and are doing, the things herein alleged with the  
15 intent of injuring or destroying Plaintiffs' business and  
16 goodwill so as to make it impossible for Plaintiffs to meet their  
17 obligations under the purchase contract of August 30, 1986, and  
18 in so doing have acted maliciously and oppressively towards  
19 Plaintiffs. Consequently, Plaintiffs should recover, in addition  
20 to actual damages, damages to make an example of and to punish  
21 Defendant. The amount of such exemplary damages sought is  
22 \$1,000,000.00.

23 WHEREFORE, Plaintiffs, and each of them, prays judgment  
24 against Defendants, and each of them, as follows:

25 FIRST, SECOND, THIRD, and FOURTH CAUSES OF ACTION

26 1. A determination by the Court that said contract has  
27 been rescinded and ordering restitution of the consideration  
28 given by Plaintiffs, in a sum to be determined according to proof

1 at time of trial, with interest thereon at the legal rate from  
2 the date of rescission;

3 2. For consequential damages in a sum to be determined  
4 according to proof at time of trial;

5 FIFTH CAUSE OF ACTION

6 3. For compensatory damages in a sum to be determined  
7 according to proof at time of trial;

8 SIXTH CAUSE OF ACTION

9 4. For compensatory damages in a sum to be determined  
10 according to proof at time of trial;

11 SEVENTH CAUSE OF ACTION

12 5. For compensatory damages in a sum to be determined  
13 according to proof at time of trial;

14 6. For damages in a sum according to proof based on the  
15 diminution in value of Plaintiffs' goodwill and reputation;

16 7. Exemplary and punitive damages in the sum of  
17 \$1,000,000.00;

18 EIGHTH CAUSE OF ACTION

19 8. For compensatory damages in a sum to be determined  
20 according to proof at time of trial;

21 9. For damages in a sum according to proof based on the  
22 diminution in value of Plaintiffs' goodwill and reputation;

23 10. Exemplary and punitive damages in the sum of  
24 \$1,000,000.00;

25 NINTH CAUSE OF ACTION

26 11. For damages in a sum to be determined according to  
27 proof at time of trial;

1  
2 12. Exemplary and punitive damages in the sum of  
3 \$1,000,000.00;

4 TENTH CAUSE OF ACTION

5 13. For damages in a sum to be determined according to  
6 proof at time of trial;

7 14. Exemplary and punitive damages in the sum of  
8 \$1,000,000.00;

9 ELEVENTH CAUSE OF ACTION

10 15. For damages in a sum to be determined according to  
11 proof at time of trial;

12 TWELFTH CAUSE OF ACTION

13 16. For damages in a sum according to proof based on the  
14 diminution in value of Plaintiffs' goodwill and reputation;

15 17. Exemplary and punitive damages in the sum of  
16 \$1,000,000.00;

17 ALL CAUSES OF ACTION

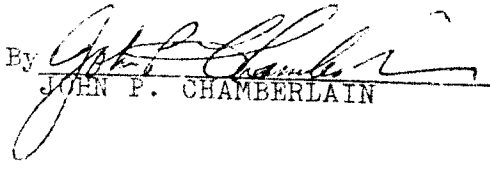
18 18. Attorney's fees in a sum according to proof;

19 19. For costs of suit herein incurred;

20 20. For such other and further relief as the Court may deem  
21 proper.

22 Dated: April 2, 1987

23 CHAMBERLAIN and VIAU  
24 a professional law corporation

25  
26 By   
JOHN P. CHAMBERLAIN  
27  
28