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7 Attorneys for Plaintiff ALAN “ALFIE” PETTIT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF RIVERSIDE – PALM SPRINGS COURTHOUSE**

10 ALAN “ALFIE” PETTIT, an individual,

11 Plaintiff,

12 v.

13 MARK VINCENT SOFONIO, M.D., an  
14 individual; and DOES 1 through 25,

15 Defendants.

Case No.: PSC2003446

[Assigned to Dept. PS1]  
[Hon. Kira L. Klatcho]

**PLAINTIFF’S MEDIATION BRIEF**

**Date: March 5, 2021**  
**Time: 10:00 a.m.**  
**Mediator: Hon. Michael Marcus**  
**ADR Services, Inc.**  
**1900 Ave. of the Stars, Ste. 200**  
**Los Angeles, CA 90067**

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17  
18 **I. INTRODUCTION**

19 This is an action for discrimination in the provision of medical care. In summary, Plaintiff  
20 claims that Defendants discriminated against him based on their knowledge that he is HIV  
21 positive by refusing to provide him with radiofrequency (RF) INTRAcel micro-needling  
22 treatment. In this action, Plaintiff states causes of action for violation of the Unruh Civil Rights  
23 Act, discrimination in violation of the Disabled Person’s Act, and intentional infliction of  
24 emotional distress.  
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1           **II. THE PARTIES AND THEIR ATTORNEYS IN THIS ACTION**

2           Plaintiff Alan “Alfie” Pettit is a 51 year old resident of Palm Springs who has been HIV  
3 positive since he was 19 years old. Alfie gained notoriety with a drag queen performance as  
4 “Arial TramPway” at the Hard Rock Hotel and Carnival Cabaret for many years as well as a  
5 recent but unsuccessful run for Palm Springs City Council. He is represented in this action by  
6 civil rights attorney Frank E. Marchetti of Marchetti Law.  
7

8           Defendant Mark Vincent Sofonio, M.D. is a plastic surgeon specializing in cosmetic  
9 surgery procedures and maintains an office in Rancho Mirage. Defendant is represented in this  
10 action by Laurie DeYoung and Kelsey Wong of Gordon Rees Scully Mansukhani, LLP.  
11

12           **III. PROCEDURAL AND SETTLEMENT NEGOTIATION HISTORY OF THIS**  
13                           **ACTION**

14           Alfie filed this action in pro per on July 28, 2020. On August 24, 2020 attorney Alan  
15 Horwitz began representing Alfie in this action. On December 15, 2020, attorney Frank  
16 Marchetti replaced Mr. Horwitz as counsel for Alfie.

17           Defendant filed an Answer to the Complaint. Trial has not been set, but is anticipated to  
18 be set at the Case Management Conference scheduled for March 29, 2021.

19           The parties have exchanged some written discovery. Depositions were noticed in  
20 October, but taken off calendar. The parties have agreed to hold off on depositions pending the  
21 outcome of this mediation.  
22

23           On October 27, 2020, Plaintiff made a settlement demand of \$270,000. Defendant  
24 responded with an offer of \$1,500. There have been no further negotiations.

25           **IV. STATEMENT OF FACTS**

26           Alfie has been feeling the sting of discriminatory treatment ever since he was diagnosed  
27 HIV positive. He was diagnosed at age 19 and was working as a waiter at the time for Red  
28 Lobster. Alfie disclosed his HIV status to his supervisor, looking for sympathy due to the fact

1 that an HIV diagnosis at that time was close to a death sentence. Instead, management sent him  
2 home and terminated his employment.

3 Alfie was deeply traumatized by these events and struggled with addictions for years until  
4 going into rehab in 1999. Around that time, he was diagnosed with mycobacterium avium  
5 complex (“MAC”), an HIV opportunistic infection with a 25% mortality rate at the time. MAC  
6 attacked Alfie’s lymph glands and the skin on his neck, causing ulcerations and leaving  
7 significant scarring. He did ultimately recover from MAC, but has been very conscious of the  
8 scarring on his neck and has sought treatment to remove it. He closely connects his self-esteem  
9 with his appearance, particularly as an entertainer and public personality.  
10

11 Alfie discovered Radiofrequency (“RF”) Microneedling as a potential solution to remove  
12 the scarring on his neck. The INTRAcel RF Microneedling device has been established as an  
13 effective device for improving scarring such as that suffered by Alfie. The device uses applies a  
14 large number of microneedles to a 1cm area of the skin and delivers RF heat energy into the  
15 middle layer of the skin, which triggers a repair response from the body. Alfie conducted  
16 thorough research on this procedure and strongly believed that this was the best treatment for  
17 him.  
18

19 Alfie had been a regular patient of Dr. Sofonio for various skin treatments including  
20 Botox and fillers, IPL Laser treatments and ultherapy, and made an appointment to undergo RF  
21 Microneedling on July 18, 2018. Alfie had previously met with Dr. Sofonio’s nurse Patti Owens  
22 on June 11, 2018 to discuss the procedure. Nurse Owens was trained on the INTRAcel RF  
23 Microneedling device and was to be the one conducting the procedure. However, on July 10,  
24 2018, just two hours after he scheduled the appointment for July 18, 2021, Alfie received a call  
25 from Nurse Owens who informed Alfie that his appointment was being cancelled due to his HIV  
26 status. When Alfie asked why his HIV status meant the appointment had to be cancelled, Nurse  
27 Owens responded that it was “out of her hands” and that the provider of the INTRAcel RF  
28

1 Microneedling device did not allow the procedure to be used on immunocompromised/HIV  
2 positive patients. She refused to answer Alfie’s question regarding whether this was due to a fear  
3 of transmission.

4 Alfie began contacting other cosmetic surgeons who also used these same INTRAcel RF  
5 Microneedling device and they each confirmed that Alfie’s HIV status would be no issue in  
6 treatment and that there was little to no risk of transmission. They indicated that as long as Alfie  
7 was in good health, there would be no problem with conducting the procedure.

8 Alfie sent a letter of complaint to Dr. Sofonio on August 1, 2018 via certified mail.  
9 Adding insult to injury, the letter was returned to him, designated “refused”. Dr. Sofonio  
10 demonstrated complete indifference to Alfie’s concerns by not even receiving and considering  
11 his letter of complaint.

12 On August 27, 2018, Dr. Sofonio sent a letter to Alfie because he had learned that Alfie  
13 was still complaining about his office’s discriminatory refusal to treat Alfie. Dr. Sofonio  
14 strongly urged Alfie to undergo laser treatments that do not involve needles and potential  
15 bleeding by the patient rather than the INTRAcel RF Microneedling treatment. Dr. Sofonio’s  
16 letter further confirmed what Alfie had already determined – that Nurse Owens had lied to Alfie  
17 when she said that going forward with the procedure was “out of her hands” because the provider  
18 of the device did not allow the procedure to be used on immunocompromised/HIV positive  
19 patients. Dr. Sofonio represented that the hand piece (also known as a “wand”) of the device  
20 would not be able to be decontaminated after treating an HIV positive patient and would risk  
21 infection of other patients. In his letter, Dr. Sofonio stated that if Alfie insisted on going forward  
22 with the INTRAcel RF Microneedling treatment, he (rather than Nurse Owens) would perform  
23 the treatment, with the following caveat: “However, we will be required to purchase a new  
24 headpiece just for you. This will involve a significant increased cost.”  
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1 Dr. Sofonio's statement that Alfie would have to pay to have his own hand piece used  
2 was beyond insulting and left him feeling like a diseased pariah. With universal precautions  
3 adopted by the healthcare industry over the last four decades to treat patients without knowledge  
4 regarding their HIV (or other infectious diseases) status, there should be no need to require Alfie  
5 and only Alfie to have to pay more than other patients. Alfie saw this offer for what it was-  
6 further discriminatory treatment and a further attempt to dissuade Alfie from going through with  
7 the treatment because Dr. Sofonio and Nurse Owens did not want to treat Alfie because of their  
8 unreasonable AIDS-phobia.  
9

10 As a result of Dr. Sofonio's discriminatory conduct, Alfie experienced extreme mental  
11 anguish, humiliation, depression, and grief. Emotionally, he was taken back to when he was first  
12 diagnosed with HIV and every time since then that he has been discriminated and treated as a  
13 pariah. He began isolating and went "off the grid" for many months. He gave away his cherished  
14 pug "Petunia". He experienced excessive fatigue and gained weight. The stress caused him to  
15 engage in erratic behavior. He gave away his Drag collection, which was directly connected to  
16 his entertainment persona and livelihood. He packed up his entire house to either move it or  
17 store it, then three weeks later had everything unpacked and returned to its place in his home.  
18

19 On May 6, 2019, Alfie's friend Michael Ralke was at a party at the Ace Hotel. While  
20 there, he ran into Shirley Wolfe, a nurse with Dr. Sofonio's office. Nurse Shirley had been doing  
21 Alfie's cosmetic procedures for years. While Mr. Ralke was speaking with Nurse Shirley, she  
22 cryptically commented that what happened to Alfie at Dr. Sofonio's office was "wrong" and  
23 should never have happened. The after-party was loud and crowded and not an appropriate place  
24 to discuss further, but Mr. Ralke felt that Nurse Shirley had more she wanted to say, so he  
25 discussed the matter with Alfie. Alfie then made an appointment to get a Botox treatment from  
26 Nurse Shirley with the hopes that she would be willing to talk further.  
27  
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1 Alfie met with Nurse Shirley for his appointment on May 30, 2019 at Dr. Sofonio's  
2 office. The staff was very curt and cold to him when he arrived for his appointment. He had no  
3 interaction with Dr. Sofonio, nor did he want to. During the procedure, Nurse Shirley bent down  
4 and whispered to Alfie that what happened to Alfie with Dr. Sofonio's office "was wrong". She  
5 said that Alfie should "go after" Dr. Sofonio and the manufacturer of the INTRAcel RF  
6 Microneedling device. She pantomimed getting a bowling "strike", implying that Alfie had a  
7 clear case against Dr. Sofonio and the manufacturer. She further showed Alfie his medical  
8 records and how the folder had a red dot on the front center, which she indicated was the  
9 equivalent of a "scarlet letter" and meant the patient was HIV positive.

11 On August 5, 2020, Alfie and his friend Michael Ralke again spoke with Nurse Shirley,  
12 who was no longer working at Dr. Sofonio's office. She relayed how after she heard that Nurse  
13 Owens had refused to do the procedure, Nurse Shirley discussed it with Dr. Sofonio who stated  
14 "Patti won't do it (the microneedling) because he's (Alfie) HIV positive." Nurse Shirley  
15 responded "what the fuck?" and Dr. Sofonio replied "She (Patti) has a right to refuse to do it."  
16 Nurse Shirley said that Dr. Sofonio indicated that he would do it himself "despite him (Dr.  
17 Sofonio) not being trained to do it." Regarding Dr. Sofonio's prerequisite that Alfie purchase his  
18 own hand piece for the device, Nurse Shirley stated "Then every time it's used it should be  
19 replaced if there is a real concern about contamination" - clearly implying that this is not the  
20 practice.  
21

23 Nurse Shirley further told Alfie about her interactions with Nurse Owens. Nurse Owens  
24 told Nurse Shirley "I don't want to do it because he's (Alfie) HIV positive." Nurse Shirley  
25 responded "Patti, I'm sure you know about Universal Precautions?" but Nurse Owens interrupted  
26 and said "I'm NOT going to do it. Dr. Sofonio will do it."

27 Nurse Shirley related another discussion with Nurse Owen where Nurse Owen stated  
28 "The company (Jeisys Medical, the manufacturer of the device) said it is up to the practitioner

1 whether to do the procedure; it's not a company issue." Nurse Shirley further related a  
2 conversation that she had with Dr. Sofonio's office staff about placing red dots on the front of  
3 files of patients whom the office knew to be HIV positive, wherein she stated "You're not  
4 supposed to be doing that" and they responded "Well that is just the way we do it."

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6 Alfie seeks general damages for the mental anguish and emotional distress that he  
7 suffered as a result of the discriminatory conduct of Dr. Sofonio and his office. The Unruh Civil  
8 Rights Act allows Alfie to recover treble damages. Defendant's conduct was malicious and  
9 oppressive in its disregard for Alfie's civil rights and Alfie will be seeking punitive damages.  
10 Additionally, Alfie will be seeking attorney's fees and costs, which are recoverable under the  
11 Unruh Civil Rights Act. Comparable jury verdicts have resulted in judgments averaging  
12 \$650,000 to \$750,000.

13  
14 **V. CONCLUSION**

15 Plaintiff thanks the mediator for his time and effort in assisting the parties in attempting  
16 to resolve this action.

17  
18 Dated: February 24, 2021

**MARCHETTI LAW**

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22 Frank E. Marchetti  
23 Attorneys for Plaintiff  
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