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5 Attorney for Plaintiff,
CARDIOVASCULAR BIOTHERAPEUTICS, INC.

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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **SAN DIEGO DIVISION**
11

12 CARDIOVASCULAR
13 BIOTHERAPEUTICS, INC.,

14 Plaintiff,

15 v.

16 PHAGE BIOTECHNOLOGY
17 CORPORATION, a Delaware
18 Corporation; NEW TECHNOLOGIES
19 HOLDING PTE, LTD., a Singapore
20 private limited company; PHAGE
21 PHARMACEUTICALS, INC., a Delaware
22 Corporation; THOMAS J. STEGMANN,
an individual; FREDERICK M.
23 CHANSON, an individual,

24 Defendants.
25
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27
28

Case No.: '11CV1215 WQHRBB

COMPLAINT:

1. **INFRINGEMENT;**
2. **BREACH OF CONTRACT;**
3. **BREACH OF FIDUCIARY DUTY;**
4. **BREACH OF FIDUCIARY DUTY (AIDER & ABETTOR);**
5. **MISAPPROPRIATION OF TRADE SECRETS (CAL. CIV. CODE § 3426);**
6. **FRAUD;**
7. **REQUEST FOR DECLARATORY RELIEF;**
8. **REQUEST FOR INJUNCTIVE RELIEF.**

1 **COMPLAINT**

2 **JURISDICTIONAL ALLEGATIONS**

3 1. Jurisdiction of this court exists per the exclusivity rule in matters of patent and
4 copyright Infringement, 28 USC §§ 1338 (a)-(b).

5 **VENUE**

6 2. Venue is proper in this judicial district because at least one of the Defendants is a
7 corporate entity with its base of operations within this judicial district.

8 **PARTIES**

9 3. Plaintiff CardioVascular BioTherapeutics, Inc., is a Delaware corporation, with its
10 base of operations in the County of Clark, State of Nevada (herein “CVBT” and/or
11 “CARDIO”).

12 4. Defendant Phage Biotechnology Corporation (herein “Phage Biotech”), also
13 known as PBC Biotechnology Corp., is a Delaware corporation with its base of
14 operations in the County of San Diego, California.

15 5. Defendant New Technologies PTE, Ltd., (herein “New Tech”) is a Singapore
16 private limited company with its principal base of operations in Singapore.

17 6. Defendant Phage Pharmaceuticals, Inc. (herein “Phage”) is a Delaware
18 corporation with its base of operations in the County of San Diego, California.

19 7. Defendant Thomas J. Stegmann is an individual whose residence is in Germany.
20 He is former board member, and officer, of Plaintiff, and a former board member, and
21 officer, of Defendant Phage Biotech.

22 8. Defendant Frederic Chanson is a resident of Urdorf, Switzerland. He is a former
23 board member of Plaintiff; is a former board member, and officer, of Defendant Phage
24 Biotech, is a director of Defendant New Tech, and is the current CEO and a director of
25 Defendant Phage Pharma.

26 9. Richard C. Ritter is a resident of Switzerland, was a board member of Phage
27 Biotech, and is a board member of New Tech and Phage Pharma.

1 10. Vincent J. Roth is an attorney, licensed in the State of California, who was at all
2 relevant times serving as general counsel for both Plaintiff, and for Defendants Phage
3 Biotech, New Tech, and Phage Pharmaceuticals despite the extreme conflict of interest
4 and Plaintiff's refusal to provide him any waiver of such conflicts.

5 **GENERAL ALLEGATIONS**

6
7 **OTHER LITIGATION**

8 11. Phage Biotech was a debtor in bankruptcy from October 2, 2008 until April 13,
9 2011 when the Debtor's bankruptcy was dismissed for cause. That case was *In re: Phage*
10 *Biotechnology Corporation*, 08-bk-09859-LA which was brought in the Southern District
11 of California.

12 12. During the pendency of the Phage Biotech bankruptcy, Phage Biotech sued
13 Plaintiff for turnover, styled *Phage Biotechnology Corporation v. CardioVascular*
14 *BioTherapeutics, Inc.*, 10-ap-90006. That case was dismissed by the bankruptcy court on
15 April 13, 2011, and that order is attached hereto as Exhibit 1.

16 13. During the pendency of the Phage Biotech bankruptcy, New Tech sued Plaintiff
17 for injunctive relief and to assert an interest in Plaintiff's patents, styled *New*
18 *Technologies Holdings PTE, Ltd. v. CardioVascular BioTherapeutics, Inc.*, 10-ap-90263.
19 That case was dismissed by the bankruptcy court on April 13, 2011.

20
21 **HISTORY**

22 14. CardioVascular BioTherapeutics, Inc. is the owner of the technologies and
23 inventions of Dr. Thomas J. Stegmann in his methodologies for the application and use of
24 FGF-1 human fibroblast growth factor in various manners of wound healing including the
25 delivery of FGF-1 into ischemic heart tissue as well as in diabetic wound healing.

26 15. Plaintiff is the owner and assignee of U.S. Patent 7,252,818. This is CVBT's
27 intellectual property for the methodologies of Dr. Thomas J. Stegmann for use of FGF-1
28 in various wound healing applications, and the patent is attached hereto as Exhibit 2.

1 16. CVBT was and is in the business of developing and implementing, among its
2 technologies, the use of FGF-1 growth factor for use in wound healing. Phage Biotech
3 was in the business of manufacturing and producing FGF-1 growth factor to supply to its
4 customer base, including CVBT.

5 17. In or about early 2008, CVBT board members Stegmann, Chanson & Ritter
6 attempted an internal take over of CVBT, but were unsuccessful.

7 18. After that effort failed, these same parties, who were directors or managed to get
8 voted into positions as directors of Phage Biotechnology Corp., tried the same thing to
9 seize control over Phage Biotechnology Corp., and were successful in obtaining control
10 over the Board of Directors of Phage Biotech.

11 19. Until the takeover of Phage Biotechnology Corp. on or about September of 2008
12 by Stegmann, Chanson, and Ritter, Plaintiff had a cordial, cooperative and mutually
13 beneficial business relationship with Phage Biotechnology Corp.

14 20. The cooperative relationship between the two companies led in multiple points of
15 time to a sharing of technology through successive generations of a Joint Patent
16 Agreement the most recent generation of which was dated February 28, 2007 (“Joint
17 Patent Agreement” or “JPA”). The operative JPA is attached hereto as Exhibit 3.

18 21. The JPA is a written contract between Phage Biotech and Plaintiff at the time
19 Phage Biotech became a debtor in bankruptcy. The written contract contained various
20 provisions contemplating the possibility of bankruptcy of either party.

21 22. The Joint Patent Agreement included the following exclusive, irrevocable license
22 in all Phage Biotech IP inventory granted to CVBT:

23 4.1 Within the Field. PHAGE hereby grants to
24 CARDIO a non-revocable, royalty bearing
25 (subject to Section 11), exclusive right
26 within the Territory to the Patent Rights in
27 the Field, including the right to sublicense
28 to third parties within the Field, provided
that any third party sublicensee shall be

1 subject to all of CARDIO's obligations under
2 Sections 14, 15,17 and 18.^{1, 2}

3 23. During the course of Phage Biotechnology's bankruptcy proceeding, Phage moved
4 the court to reject the Joint Patent Agreement on April 27, 2009.

5 24. Phage Biotechnology's "rejection" of the Joint Patent Agreement is, as a matter of
6 law, a material breach of the contract. 11 USC § 365 (g); *In re: G.I. Industries, Inc.* (9th
7 Cir. 2000) 204 F.3d 1276, 1282; *In re: Bergt* (Bankr. D. Ala. 1999) 241 B.R. 17, 25-36;
8 *In re: Ortiz* (C.D. Cal. 2009) 400 B.R. 755, 766-768; *Valley Investments, L.P. v.*
9 *Bancamerica Commerical Corp.* (2001) 88 Cal. App. 4th 816, 828-829 (2001); *In re:*
10 *Picnic 'N Chicken* (Bankr. S.D. Cal. 1986) 58 B.R. 523; *In re: Blackburn* (Bankr. S.D.
11 Cal. 1988) 88 B.R. 273, 276.³

12 25. Phage Biotechnology's "rejection" of the contract applies only to those non-
13 severable, *executory* provisions of the agreement, and not to the agreement in its entirety.
14 11 USC §§ 365 (a), (g).

15 26. By way of "rejection," Phage Biotechnology attempted to terminate the non-
16 revocable IP licenses vested in Plaintiff through the JPA. The "rejection" of a contract in
17 bankruptcy **never terminates** an IP license vested in the other contracting party. 11 USC

18
19 ¹ The FIELD, is defined in the JPA, under § 2.1 of the agreement: "Field" shall encompass any
20 angiogenic or wound healing compositions, (including in particular, but without limitation, all FGF
21 species, fragments, derivatives, and analogs thereof, nucleic acid sequences encoding angiogenic or
22 wound healing proteins/peptides), vectors and host cells comprising said DNA sequences, methods of
23 making the angiogenic or wound healing compositions, and methods of inducing angiogenesis or wound
healing employing the said compositions. CARDIO-developed devices and methods of use thereof for
delivery of angiogenic or wound healing compositions are NOT included within the Field, and are NOT
subject to joint ownership or any other terms of this Agreement."

24 ² Section 11, the sole consideration of CardioVascular BioTherapeutics, Inc. required by Phage and
25 conferred by CVBT under the JPA for the extension of the irrevocable license by Phage Biotechnology
26 Corp., is for the payment of Royalties on sales, as follows: "§ 11. Royalty: In consideration for the grant
of the exclusive right to the Patent Rights in the Field, CARDIO shall pay PHAGE a six percent (6%)
royalty on the net sales price of finished Product to end customer or distributor."

27 ³ In her ruling on March 7, 2011, Judge Adler confirmed this determination and ruled that by rejecting the
28 executory provisions of the JPA, Phage Biotechnology had materially breached the agreement. Said order
is attached hereto as Exhibit 4. The court may take judicial notice per FRE 902, 1005.

1 § 365 (n). Yet, Phage Biotech attempted to terminate the IP licenses vested in Plaintiff
2 anyway, sending various letters to Plaintiff stating as much and operating under the
3 grossly mistaken idea that there “rejection” equated to termination of Plaintiff’s IP
4 licenses and rights under the JPA.

5 27. During the course of its bankruptcy, Phage Biotech sold by approved asset sale⁴
6 the bulk of its assets to New Technologies Holding, PTE Ltd., a company organized by,
7 and whose only directors were, Defendants Chanson and Stegmann as well as Richard
8 Ritter.

9 28. New Technologies Holdings, PTE Ltd., is a company formed by CHANSON,
10 STEGMANN and Ritter solely for the purpose of permitting them to sell all Phage
11 Biotech’s IP inventory to themselves. However, despite their purchase of the assets, the
12 non-revocable licenses assigned to Plaintiff remain, as follows:

13 The parties agree that each party is a
14 "licensee of intellectual property" as that
15 term is defined in §365(n) of the Bankruptcy
16 Code and will continue to have all of the
17 rights relating to technology licensed
18 hereunder as provided in this Agreement, at
19 its election, notwithstanding any bankruptcy
20 by the other party, even if PHAGE or CARDIO
21 attempts to reject this Agreement as an
22 "executory contract" under the Bankruptcy
23 Code. JPA § 7 titled Rights Upon Insolvency.

24 29. Defendants New Tech and Phage Pharma are the self-proclaimed, acknowledged,
25 and by virtue of the bankruptcy court’s approval of the sale of Phage Biotech’s assets, are
26 in-fact the successors-in-interest of Phage Biotech.

27 30. Phage Pharma is nothing more than Phage Biotech re-tooled, using essentially the
28 same facilities, management, directors, technology, employees, documents, and records
that made up and comprised Phage Biotech such that Phage Pharma, a wholly owned

⁴ The asset purchase of New Technologies Holdings PTE, Ltd. became final by order of Judge Adler on March 7, 2011. See Exhibit 4.

1 (and the only existing) subsidiary and asset of New Tech, is an alter-ego of Phage
2 Biotech in all respects and is merely a conduit for, and entirely financially dependent on,
3 New Tech.⁵

4 31. New Tech is a shell and a sham, a company formed purposefully to deceive the
5 United States Bankruptcy Court into the belief that they were an operating and existing,
6 separate, arms-length entity from Phage Biotech when in reality the company was no
7 more than an alter-ego of Plaintiff's former officers and directors who sought to make use
8 of the United States Bankruptcy Court to circumvent their obligations and irrevocable
9 licenses existent in Plaintiff through Phage Biotech and mount a decidedly unsuccessful
10 attack on Plaintiff's patents and proprietary technologies.⁶

11 32. Especially egregious was the conduct of Stegmann, who as the inventor of the
12 technology owned by CVBT and patented by it, was also an officer and director of
13 Plaintiff. Stegmann, upset at having had his relationship with CVBT terminated for
14 cause, sought to circumvent and avoid the myriad assignments and transfers of his
15 technologies to CVBT, all for significant consideration, attempted to seize his technology
16 back by asserting claims against CVBT and its technologies in the US Bankruptcy Court
17 where Phage Biotech could operate as a debtor-in-possession.

18 33. That effort was fostered, implemented, and carried out through the equally
19 egregious conduct of Vincent J. Roth, who was *general counsel for Plaintiff*. Mr. Roth
20 continued to "represent" CVBT, giving legal advice based on his own self-dealing and
21 the interests of his other employer, Phage Biotech. Mr. Roth aligned himself with
22 Stegmann, Chanson, Phage Biotech, New Tech, and Phage Pharma while still
23
24

25 ⁵ In 2010, during the course of the Phage Biotech bankruptcy, Plaintiff took the deposition of
26 New Tech and its designated representative admitted that New Tech is no more than a holding
27 company with no other asset or interest other than Phage Pharma.

28 ⁶ The directors of New Tech include Chanson, Ritter, and Stegmann; its President is Ritter and
its VP is Chanson. The only directors of Phage Pharma are Ritter and Chanson.

1 representing CVBT, and over CVBT's refusal to provide him a written waiver of conflict
2 to permit such enormously conflicting representation.

3 34. Regardless, Vincent J. Roth continued on a pattern of conduct to implement the
4 Defendants' effort to seize CVBT's technologies through the US Bankruptcy Court by
5 intentionally misrepresenting to CVBT, and to the court, the nature of the agreements and
6 relationship between the two companies, the legal effect and impact of various actions
7 being done in the bankruptcy court, and by drafting documents filed with regulatory
8 agencies seeped in such misinformation as to CVBT but in all respects designed to
9 benefit all named Defendants.

10 35. Through his flawed and inexpert misunderstanding of the law in various areas,
11 including but not limited to contract law, bankruptcy law, securities law, and the Code of
12 Professional Responsibility applicable to all attorneys – where Mr. Roth has incorrectly
13 asserted to his client, Plaintiff, that such rules only apply to “litigators” and not
14 “corporate attorneys,” Mr. Roth initiated actions against CVBT and on behalf of Phage
15 while still representing CVBT and after, testified adversely to CVBT, and disclosed
16 information imparted to him by CVBT under the attorney-client privilege which he then
17 used, and continues to use, for the benefit of Defendants.⁷

18 36. Defendants knew of Mr. Roth's incredible and enormous conflicts of interest, and
19 employed him anyway ... indeed their purpose in employing Mr. Roth was to insure their
20 access to his privileged knowledge of CVBT, to permit them to damage CVBT where
21 Mr. Roth would provide Plaintiff knowingly false and inexpert advice all to his client and
22 former client CVBT's harm and Defendants' intentional gain.

23 37. Plaintiff was, and is, a significant shareholder in Phage Biotech, and is also a
24 significant creditor.

25
26 ⁷ Plaintiff has brought a separate action against Vincent J. Roth, a resident of Orange County,
27 California, alleging: breach of fiduciary duties, breach of contract, and professional negligence.
28 The claims are related to the claims asserted against Defendants herein, but not based in federal
law. Plaintiff will file a notice of related case as soon as the case information is known to
Plaintiff.

1 38. Plaintiff has suffered significant harm, loss and damages as a result of Defendants'
2 conduct, and has incurred significant special damages attributable to Defendants' acts.
3 These include delay costs in wound healing trials which exceed \$10,000,000; costs of
4 rebuilding a cell bank which was lost when Phage Biotech breached its agreements to
5 Plaintiff and failed to keep proper records or pay for storage of material in an amount of
6 approximately \$120,000; the costs of development of a new method of production for
7 FGF-1 when breached its agreements to Plaintiff of approximately \$3,134,333.00; delays
8 in clinical heart trials resulting in harm of at least \$1,125,000.00 to Plaintiff, and the
9 incurrence of in excess of \$100,000 in attorney's fees and costs of suit.

10 39. All such damages resulted from Defendants' conduct, which conduct was the
11 proximate, and actual, cause of such harm.

12 **FIRST CLAIM FOR RELIEF**

13 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., PHAGE
14 PHARMACEUTICALS, INC., THOMAS J. STEGMANN, and FREDERICK CHANSON)

15 **INFRINGEMENT OF PATENT**

16 35 USC § 271

17 40. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
18 through 39 of this Complaint as though set forth in full in this claim for relief.

19 41. The technology at issue involves the process and method of delivery of FGF-1
20 fibroblast human growth factor into ischemic (oxygen starved) heart tissue. The
21 methodology was invented by Dr. Thomas J. STEGMANN (a named Defendant herein),
22 who assigned all interests in his invention, and any FGF-1 related inventions, to CVBT
23 for significant consideration.

24 42. Plaintiff is the undisputed legal owner of all technologies which form the basis of
25 U.S. Patent 7,252,818, styled:

26 METHOD OF PRODUCING BIOLOGICALLY ACTIVE
27 HUMAN FIBROBLAST GROWTH FACTOR AND ITS USE
28 IN PROMOTING ANGIOGENESIS

1 43. Defendants are former Board Members, and former utility partners who were in
2 the business of producing “FGF-1,” a human fibroblast growth factor that Plaintiff uses in
3 the application of its patented methodology for use of its proprietary technologies.

4 44. Plaintiff is currently conducting its Phase II (human) FDA clinical trials in
5 multiple U.S. states, toward the end of advancing its drug candidate into approved use
6 with the populace for the prevention and cure of ischemic heart disease.

7 45. As set forth in this complaint, former Board Members Chanson & Stegmann,
8 while board members, conceived and implemented, along with RITTER, a plan to seize
9 CVBT. That plan having failed, Defendants Chanson & Stegmann, along with Ritter,
10 seized control of Defendant Phage Biotech in an orchestrated effort to impugn, interfere,
11 and infringe on Plaintiff’s patent rights.

12 46. Defendants New Tech and Phage Pharma are the successors-in-interest to Phage
13 Biotech.

14 47. Plaintiff also possesses irrevocable licenses in all other Phage Biotech patent
15 inventory, as set forth *supra*.

16 48. Phage Bio, New Tech, Phage Pharma, Stegmann and Chanson have infringed on
17 the Plaintiff’s patent in developing and seeking FDA approval of a wound healing
18 application of FGF-1 when the obtained access to the technology by way of
19 confidentiality agreements drafted into a Joint Patent Agreement, the latest version of
20 which was February 28, 2007, between Phage Biotech and CVBT.

21 49. Chanson, as a former director of CVBT, had signed a confidentiality agreement
22 with CVBT.

23 50. Stegmann, as both a former officer and director of CVBT, had not only signed a
24 confidentiality agreement with CVBT, he assigned irrevocably all of his interests in his
25 inventions and related inventions to CVBT for significant consideration.

26 51. Phage Biotech had filed a Chapter 11 bankruptcy petition in October 2008 which
27 was dismissed by the bankruptcy court for cause on April 13, 2011.
28

1 52. New Tech and its subsidiary Phage Pharma are the successors-in-interest to Phage
2 Biotech, and have sought approval of a wound healing process for use of FGF-1.

3 53. Plaintiff has been damaged in a sum subject to proof at trial, but estimated in the
4 millions of dollars, in its capital raising, reputation and incurrence of damages including
5 attorney's fees.

6 54. In addition to the equitable and legal remedies available to Plaintiff resulting from
7 Defendants' infringement available under 35 USC § 271, Plaintiff seeks an award of its
8 incurred attorney's fees in this action and costs of suit. 35 USC § 285.

9 **SECOND CLAIM FOR RELIEF**

10 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., PHAGE
11 PHARMACEUTICALS, INC., THOMAS J. STEGMANN, and FREDERICK CHANSON)

12 **BREACH OF CONTRACT (WRITTEN)**

13 55. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
14 through 54 of this Complaint as though set forth in full in this claim for relief.

15 56. Plaintiff, and Defendant Phage Biotech entered into an agreement dated February
16 28, 2007 entitled "Joint Patent Agreement." Said agreement is attached to this complaint
17 as Exhibit 3.

18 57. Phage Biotech through its directors, Stegmann, Chanson & Ritter, acting as
19 "creditors," brought Phage Biotech into bankruptcy by filing an involuntary Chapter 7
20 petition on October 2, 2008. That petition was converted to Chapter 11 on the Debtor's
21 motion.

22 58. Phage Biotech made no efforts to reorganize, and in fact, the bankruptcy filing
23 was no more than an effort by Stegmann, Chanson & Ritter to seize the IP assets of
24 Plaintiff through the use of the United States bankruptcy court. Defendants Stegmann,
25 Chanson, in cooperation with Richard Ritter and unknown others as their agents, created
26 Defendant NEW TECHNOLOGIES PTE, LTD.

27 59. Phage Biotech failed to take any steps to reorganize, and on April 13, 2011, Phage
28 Biotech's Chapter 11 bankruptcy was dismissed for cause.

FIRST BREACH OF WRITTEN CONTRACT

1
2
3 60. During the course of its bankruptcy, Defendant Phage Biotech materially
4 breached the Joint Patent Agreement by moving to reject the executory provisions of the
5 agreement during the course of its bankruptcy. A rejection of a contract in the course of a
6 bankruptcy is a material breach of the agreement as a matter of law. 11 USC § 365 (g);
7 *In re: Pomona Valley Med. Group, Inc.* (9th Cir. 2007) 476 F.3d 665, 671; *In re: Picnic*
8 *'N Chicken* (Bankr. S.D. Cal. 1986) 58 B.R. 523

9 61. The motion to reject the JPA by Phage Biotech was filed April 27, 2009. The
10 motion was granted on March 19, 2009. The order became final on April 13, 2011 (*see*
11 Exhibit 4).

12 62. By virtue of its rejection of the JPA, Phage Biotech is in material breach of the
13 JPA. 11 USC § 365 (g).

14 63. As the successor-in-interest, and *de facto* alter-ego of Phage Biotech, Defendant
15 PHAGE PHARMACEUTICALS, INC. remains bound by the non-executory terms of the
16 JPA, and stands in material breach of it.

17 64. Defendant NEW TECHNOLOGIES PTE, LTD., as the purchaser and assignee of
18 all assets of Phage Biotech, stands in breach of the JPA on the same grounds.

19 65. Plaintiff has incurred loss, harm, and damages due to such material breach all to its
20 general damage including attorney's fees and costs of suit, and seeks an award recovering
21 such damages from Defendants.

22
23 SECOND BREACH OF WRITTEN CONTRACT

24 66. Defendants New Tech and Phage Pharma are the successors-in-interest and
25 assignees of Phage Biotech, and despite their efforts to assert otherwise in the bankruptcy
26 court, they are bound and constrained by the severable and non-executory provisions of
27 the JPA, all of which survived rejection. (*e.g.* non-compete clauses / confidentiality
28 clauses survive rejection. *In re: Hughes* (BC SD OH 1994) 166 B.R. 103, 105; a first

1 right of refusal survives. *In re Robert L Helms Const & Develop Co, Inc.* (9th Cir. 1998)
2 139 F. 3d 702, 706; licenses in intellectual property survive. 11 USC § 365 (n)(1)(B).)

3 67. Defendants New Tech and Phage Pharma have breached the surviving terms of
4 the JPA by attempting to assert the use of technologies irrevocably licensed to Plaintiff,
5 and by inserting themselves into the Field, as defined in § 2.1 of the JPA, through the use
6 of Plaintiff's confidential and proprietary information.

7 68. Said Defendants, in breach of the JPA, have commenced a direct competition with
8 Plaintiff in the use of technology wholly owned by Plaintiff, and otherwise reserved to
9 Plaintiff by virtue of its patents, its irrevocable licenses, and its proprietary and
10 confidential processes using FGF-1 growth factor in wound healing

11 69. Defendants are prohibited from competing with Plaintiff in the Field by the
12 express terms of the JPA, including the confidentiality clause, and as follows:

13
14 Termination. In the event that PHAGE (i)
15 becomes insolvent; (ii) fails to pay its
16 debts or perform its obligations in the
17 ordinary course of business as they mature;
18 (iii) admits in writing its insolvency or
19 inability to pay its debts or perform its
20 obligations as they mature; or (iv) becomes
21 the subject of any voluntary composition or
22 general assignment for the benefit of
23 creditors that is not dismissed with
24 prejudice within thirty (30) days after the
25 institution of such proceeding, then CARDIO
26 may terminate this Agreement upon written
27 notice ("Notice") to PHAGE setting forth the
28 date the termination will be effective
("Termination Date"). On the Termination
Date, **PHAGE shall discontinue all use of the
Patent Rights, patents and other rights
licensed to it hereunder** and, within five
(5) days, shall return all copies of
Confidential Information to CARDIO.
[emphasis added].

70. Plaintiff has incurred loss, harm, and damages due to such material breach all to its
general damage including attorney's fees and costs of suit, and seeks an award recovering

1 such damages from Defendants, and such other relief as the court may find just and
2 proper including equitable relief (*c.f.* Cause of Action Eight, *supra*: Injunctive Relief).

4 THIRD BREACH OF WRITTEN CONTRACT

5 71. The Joint Patent Agreement (*see* Exhibit 3) contains a Right of First Refusal for
6 CVBT to purchase the assets and IP inventory of Phage Biotech in the event that a sale
7 was contemplated whether Phage Biotech was in, or out, of bankruptcy.

8 72. Phage Biotech ignored the Right of First Refusal vested in Plaintiff through the
9 JPA, and instead its directors sold the assets of Phage Biotech to themselves under the
10 guise of NEW TECHNOLOGIES PTE, LTD. (by creating a foreign company in a foreign
11 jurisdiction, although it was formed, run and funded by the same Phage directors who
12 instituted the Phage Biotech bankruptcy), and then misled the bankruptcy court by
13 deliberate falsehood and contrivance into approving of the sale transaction as an arms-
14 length purchase.

15 73. At all relevant times, Phage Biotech knew that Plaintiff had a contractual right of
16 First Refusal under the JPA, as follows in pertinent part:

17
18 8. Right of First Refusal

19 8.1 In the event that PHAGE files a
20 voluntary petition for bankruptcy pursuant
21 to title 11 of the United States Code (the
22 "Bankruptcy Code") or is the subject of an
23 involuntary bankruptcy petition pursuant to
24 the Bankruptcy Code, if at any time during
25 such a bankruptcy proceeding PHAGE shall
26 receive an offer from any party to purchase
27 PHAGE's ownership interests in any of the
28 Jointly Owned Patents or Jointly Owned
Patent Applications, or PHAGE's rights as a
licensee or licensor of the Patent Rights
under this Agreement, which offer PHAGE
intends to accept, then PHAGE shall deliver
to CARDIO a copy of said offer or proposed
contract (with the name of the proposed
purchaser deleted, if PHAGE so desires), and

1 CARDIO shall have the right, for a period of
2 fourteen (14) days after delivery of such
3 offer or contract, to purchase such
4 ownership interests or license rights on the
5 same terms and provisions as set forth in
6 such offer or contract. CARDIO shall exercise
7 this right, if at all, by delivering its
8 written notice of exercise to PHAGE on or
9 before the expiration of said fourteen (14)
10 day period. //

74. Phage Biotech materially breached the express provisions of the JPA by its failure
8 to adhere to its mandatory obligation under § 8.1 of the JPA.

9 75. In fact, during the course of Phage Biotech's bankruptcy, Plaintiff objected to the
10 sale of Phage Biotech and its assets, and attempted to bid for the company. In retaliation,
11 and in an effort to continue the efforts of Defendants to deceive the bankruptcy court and
12 seize Plaintiff's IP as their own, Phage actually objected to Plaintiff's bid, litigated
13 against Plaintiff's objections to sale, and refused to honor Plaintiff's first right of refusal.

14 76. At all relevant times, Defendants Phage Pharma and New Tech were the
15 successors-in-interest to Phage Biotech, and continued to dispute, refute, and force
16 litigation designed to frustrate Plaintiff's Right of First Refusal, all to Plaintiff's general
17 damage and forced incursion of attorney's fees and costs of suit.

18 77. Plaintiff suffered actual harm, loss and damages as a result of Defendants' efforts
19 to ignore, prevent, circumvent, and defeat its First Right of Refusal in their own self-
20 interest and unlawful effort to perpetuate the seizure of Plaintiff's technologies through
21 the bankruptcy court.

22 78. In addition to recovery of its damages, losses, and compensation for harms arising
23 from such breaches of contract, Plaintiff seeks rescission of the sale of assets of Phage
24 Biotech to Defendant New Technologies Holding PTE, Ltd., disgorgement of any profits
25 received by virtue of such sale, and pending resolution of this case, that a constructive
26 trust be instituted by the court over the assets of Phage Biotech which Plaintiff alleges are
27 held by New Technologies Holding PTE, Ltd. merely as a holder-in-due-course.
28

FOURTH BREACH OF WRITTEN CONTRACT

79. Defendant Stegmann was an officer and director of Plaintiff, and executed a consulting agreement. That written contract outlined the conditions under which various confidential and proprietary information of CVBT would be imparted to Stegmann. That agreement is attached hereto as Exhibit 5.

80. Further, Defendant Stegmann executed, in multiple generations, agreements outlining the terms and conditions under which he assigned and sold to Plaintiff all rights to his technologies.

81. Both agreements expressly provide for equitable (injunctive) remedies in the event of breach, and the payment of attorney's fees to the prevailing party in any dispute thereunder.

82. Stegmann breached his written agreements with Plaintiff in that he, upon termination of his relationship with the company as officer and director for cause, instituted an effort to seize his assigned technology from Plaintiff through the Phage Biotech bankruptcy. At all relevant times preceding the Phage Biotech bankruptcy, and thereafter until replaced, Stegmann was a chief-executive officer and president of Phage Biotech.⁸

83. Stegmann breached the unwritten covenant of good faith & fair dealing inherent in the operation of his still valid agreements with Plaintiff by such conduct, as well as by fostering and implementing the infringement on Plaintiff's patent and its wholly owned technologies - which infringement is the subject of this lawsuit.

84. In addition to recovery of its damages, losses, and compensation for harms arising from such breaches of contract which Plaintiff realistically estimates to be millions of dollars, Plaintiff seeks an order of set-off for the damages to Plaintiff resulting from

⁸ In point of fact, following the bankruptcy court approved sale of Phage Biotech's assets to New Tech, the only remaining officer of Phage Biotech then and now was Vincent J. Roth, who despite his attorney-client relationship with Plaintiff, instituted and continued litigations against Plaintiff on behalf of his other clients, Phage Biotech and New Tech.

1 Stegmann's conduct, and a determination as to what amounts, if any, may be owed to
2 Stegmann by Plaintiff from such agreements in light of Stegmann's bad acts.

3 **THIRD CLAIM FOR RELIEF**

4 (As to THOMAS J. STEGMANN and FREDERICK CHANSON)

5 **BREACH OF FIDUCIARY DUTIES**

6
7 85. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
8 through 84 of this Complaint as though set forth in full in this claim for relief.

9 86. Defendants Stegmann and Chanson were at various times directors of Plaintiff
10 through 2009.

11 87. Stegmann and Chanson owed a fiduciary duty to Plaintiff by virtue of their
12 election to, and acceptance of a position on, Plaintiff's board of directors.

13 88. Said Defendants breached their fiduciary obligations to Plaintiff by self-dealing,
14 by attempting to seize Plaintiff's patent and technologies through the instrumentality of
15 the US Bankruptcy Court and the Phage Biotech bankruptcy.

16 89. By acting to harm and injure Plaintiff through their conduct and efforts to attempt
17 to seize Plaintiff's patent and technologies, through their impugning of Plaintiff in
18 writing and verbally to investors, shareholders, and equity partners of Plaintiff, through
19 their efforts to manipulate the stock price of Plaintiff by short-selling their shares and
20 engaging in inappropriate self-dealing under 15 USC §§ 78(i), (j), and other prohibiting
21 statutes.

22 90. Plaintiff has been harmed and damaged by the conduct of Defendants Stegmann
23 and Chanson in an amount as yet undetermined, but reasonably estimated to be in the
24 millions of dollars, and seeks an order compensating Plaintiff for such loss, harm, and
25 injuries as well as such equitable relief the court may require and to the extent permitted
26 by law, and under the agreements between Plaintiff and said Defendants, an award of
27 incurred attorney's fees and costs of suit.

28 91. Defendants' conduct as Plaintiff's former directors and/or lawyers were done in
gross dereliction of their duties and obligations to Plaintiff, and its shareholders, and is

1 outrageous, willful, malicious, and oppressive ... done with the intent to injure and with
2 absolute disregard for the rights of Plaintiff. Such willful, outrageous, oppressive and
3 malicious conduct justifying an award of punitive damages against Defendants, subject to
4 proof at trial.

5 **FOURTH CLAIM FOR RELIEF**

6 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., and
7 PHAGE PHARMACEUTICALS, INC.)

8 **BREACH OF FIDUCIARY DUTIES (AIDER & ABETTOR)**

Rest. 2d Torts § 876

9 92. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
10 through 91 of this Complaint as though set forth in full in this claim for relief.

11 93. Plaintiff's general counsel was until his resignation in such capacity on June 4,
12 2010, Vincent J. Roth.

13 94. Vincent J. Roth breached his fiduciary duties to Plaintiff by representing multiple
14 parties adverse to Plaintiff while general counsel for Plaintiff, and thereafter, all to
15 Plaintiff's detriment, harm and continuing loss.

16 95. Vincent J. Roth provided legal advice and work product which was not only in-
17 expert and false, but purposely designed to injure Plaintiff for the benefit of his other
18 clients, Phage Biotech, New Tech and Phage Pharma.

19 96. Vincent J. Roth made and continues to make use of information he obtained
20 during the course of his representation of Plaintiff as its attorney for the benefit of
21 Plaintiff's adversaries, Defendants Phage Biotech, Phage Pharma, and New Tech.

22 97. Defendants knew of Vincent J. Roth's outrageous breach of his fiduciary duties to
23 Plaintiff, and sanctioned, condoned, and permitted such conduct, all to Plaintiff's
24 detriment and when confronted with these breaches and disqualifying conduct, opposed,
25 objected, and litigated against Plaintiff and argued, ineffectively, that no breach of
26 fiduciary arises when an attorney litigates against his existing client or violates other
27 rules of professional conduct.
28

1 98. Defendants not only fostered an environment making it possible for Vincent J.
2 Roth to continue to harm and injure Plaintiff, but Defendants profited by such torts,
3 encouraged the breaches of fiduciary duty by Roth, and compensated him for it.

4 99. Defendants relied and continued to rely upon the information Vincent J. Roth
5 provided to Defendants which he obtained from Plaintiff through the attorney-client
6 privilege.

7 100. These Defendants therefore knowingly approved, sanctioned, facilitated and
8 condoned the breach of fiduciary duties by Vincent J. Roth, compensating Mr. Roth for
9 his services in this regard, and profited by it both monetarily and by relying on his
10 breaches of duty in the pursuit of their failed litigation against Plaintiff.

11 101. Defendants are therefore liable to Plaintiff as aiders and abettors and these
12 breaches of fiduciary duties by Mr. Roth. *Fiol v. Doellstedt* (1996) 50 Cal. App. 4th
13 1318, 1325-26 (citing *Saunders v. Superior Court* (1994) 27 Cal. App. 4th 832, 846);
14 *Nelson v. Union Bank of California, NA* (CD Cal. 2003) 290 F. Supp. 2d 1101, 1118.

15 102. Said breaches of fiduciary duties by Mr. Roth which occurred during the course of
16 his continued representation of Plaintiff, and continued past his date of resignation of
17 September 4, 2010 through the current day.

18 103. Plaintiff had no idea of the scope of harm and breaches of fiduciary duties by
19 Vincent J. Roth, who they trusted and relied upon to advise them and assist them during
20 the course of disputed, complex litigation events when Mr. Roth was self-dealing and
21 injuring Plaintiff on behalf of Defendants, and they were condoning and profiting
22 thereby.

23 104. Plaintiff has been damaged, and continues to be damaged by Defendants' conduct
24 in aiding and abetting Vincent J. Roth's breaches of fiduciary duty he owes to Plaintiff, in
25 an amount as yet undetermined, but reasonably estimated to be millions of dollars.

26 105. In addition to compensation for such harm, loss and damages, Plaintiff seeks its
27 attorney's fees and costs where allowable by law as a component of damages incurred to
28

1 remedy Defendants' torts as well as costs of suit and such other relief, equitable and
2 legal, as the court may find just and proper.

3 106. Plaintiff has incurred special damages as a result of the acts of Defendants which
4 included delay costs in wound healing trials which exceed \$10,000,000; costs of
5 rebuilding a cell bank which was lost when Phage Biotech breached its agreements to
6 Plaintiff and failed to keep proper records or pay for storage of material in an amount of
7 approximately \$120,000; the costs of development of a new method of production for
8 FGF-1 when breached its agreements to Plaintiff of approximately \$3,134,333.00; delays
9 in clinical heart trials resulting in harm of at least \$1,125,000.00 to Plaintiff, and the
10 incurrence of in excess of \$100,000 in attorney's fees and costs of suit due to such
11 breaches of the duties Defendants' owed to Plaintiff. All such damages resulted from
12 Defendants' conduct, which conduct was the proximate, and actual, cause of such harm.

13 107. Defendants' conduct in actually facilitating and profiting by the breach of
14 fiduciary duties of Plaintiff's lawyer is outrageous, willful, malicious, and oppressive ...
15 done with the intent to injure and with absolute disregard for the rights of Plaintiff. This
16 conduct is even more egregious in that both Chanson and Ritter are lawyers, albeit
17 foreign attorneys, and knew that such conduct was an outrageous breach of Roth's duties
18 to Plaintiff, but sought to profit by it anyway. Such willful, outrageous, oppressive and
19 malicious conduct is sufficient to justify an award of punitive damages against
20 Defendants, subject to proof at trial.

21 **FIFTH CLAIM FOR RELIEF**

22 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., PHAGE
23 PHARMACEUTICALS, INC., THOMAS J. STEGMANN, and FREDERICK CHANSON)

24 **MISAPPROPRIATION OF TRADE SECRETS**

25 Cal. Civ. § 3426

26 108. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
27 through 107 of this Complaint as though set forth in full in this claim for relief.
28

1 109. Defendants wrongly obtained the trade secrets of Plaintiff, and have
2 misappropriated them for their own use in their efforts to infringe on Plaintiff's patents
3 and technologies that are the basis of this action.

4 110. Defendants Stegmann and Chanson were privy to the trade secrets of Plaintiff as
5 directors of the company, and Stegmann sold and assigned all of his interests in his
6 inventions, which are Plaintiff's proprietary technologies, to Plaintiff.

7 111. Defendants Phage Pharma, New Tech and Phage Biotech were all privy to
8 confidential and privileged trade secrets of Plaintiff through the sharing of such
9 information in the Joint Patent Agreement, attached to this complaint as Exhibit 3. Such
10 sharing was subject to the broad and sweeping confidentiality clause included in that
11 agreement at § 19.

12 112. Further, Defendants' made use of information imparted to Vincent J. Roth from
13 Plaintiff under the attorney-client privilege. Defendants knew that any proprietary,
14 confidential and trade secrets information imparted to him by Plaintiff was designed,
15 intended, and required to be kept confidential and that he was under a statutory duty not
16 to disclose any such information.

17 113. Plaintiff's trade secrets which have been unlawfully misappropriated by
18 Defendants include: its processes for designing methods for injection of FGF-1 into
19 tissue; its processes for seeking and securing FDA approval for wound healing
20 applications of FGF-1; its internal and private communications with its attorneys,
21 affiliates and/or equity partners regarding the same, the processes and methods of
22 conducting Plaintiff's clinical trials in the use of FGF-1; and the methods and identities of
23 Plaintiff's capitalizing partners.

24 114. Defendants have unlawfully misappropriated the trade secrets of Plaintiff, which
25 Plaintiff kept hidden, confidential and privileged through confidentiality clauses and
26 disclosure only to those people with either a statutory obligation to protect Plaintiff's
27 secrets, or a fiduciary obligation to do so. Defendants' misappropriation involves the
28

1 retaining of people with such knowledge by Defendants and the intentional efforts to
2 circumvent Plaintiff's patent and technologies which is the subject of this lawsuit.

3 115. Defendants have been damaged, harmed and suffered loss and seek compensatory
4 damages for such loss and harm, in addition to equitable relief as well as an award of
5 Plaintiff's attorney's fees and costs where permitted by law.

6 116. Further, Defendants' conduct is willful, malicious and egregious, designed to harm
7 Plaintiff in its business and carried out in a manner shocking to the ordinary citizen in
8 that ... Plaintiff's former directors, Stegmann and Chanson, are perpetrating this conduct
9 despite their fiduciary obligation to the shareholders and the company. Plaintiff's former
10 officer, Stegmann, who sold and assigned all of his inventions to Plaintiff for what is now
11 Plaintiff's proprietary trade secrets and patented technologies, is perpetrating this
12 conduct. Lastly, Defendants have employed the auspices of Plaintiff's own general
13 counsel, Vincent J. Roth, who has willingly taken steps to injure and harm Plaintiff in
14 gross dereliction of his duties of loyalty to Plaintiff and his obligations under the Rules of
15 Professional Conduct, in order to proceed with Defendants' efforts to circumvent the
16 agreements between Plaintiff and Defendants, to deceive and mislead the US Bankruptcy
17 court in an effort to seize Plaintiff's technologies, and to facilitate the infringement of
18 Plaintiff's patent which is the subject of this lawsuit.

19 117. Such willful, outrageous, oppressive and malicious conduct justifying an award of
20 punitive damages against Defendants, subject to proof at trial.

21 **SIXTH CLAIM FOR RELIEF**

22 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., and
23 PHAGE PHARMACEUTICALS, INC.)

24 **FRAUD**

25 Federal Rules of Civil Procedure Rule 60 (b)(3)

26 118. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
27 through 117 of this Complaint as though set forth in full in this claim for relief.
28

1 119. Defendants Phage Biotech, New Tech, and Phage Pharma have committed fraud
2 upon the United States Bankruptcy Court such that they deceived, and acted with the
3 knowing intent to deceive, the United States Bankruptcy Court by claiming:

- 4 • That CVBT owes any money of any kind to
5 Phage Biotech.
- 6 • That CVBT's irrevocable licenses to all
7 Phage Biotech IP were surrendered or void
8 for want of consideration.
- 9 • The relationship of Chanson, Ritter &
10 Stegmann to New Technology Holdings PTE,
11 Ltd.

12 And by intentionally omitting:

- 13 • That CVBT had a contractual right of first
14 refusal under the JPA for the purchase of
15 Phage Biotech.

16 120. By its intentional deceit of the bankruptcy court as to each of the preceeding,
17 Phage Biotech sought and received an order approving the sale of Phage Biotech's assets
18 to New Tech. The court was induced into making a finding that the sale was "arms
19 length" by virtue of Defendants' intentional deceit.

20 121. Further, the court was misled as to the contractual first right of refusal vested in
21 Plaintiff such that Plaintiff's non-executory right was ignored by Defendants and Plaintiff
22 was not permitted to assert it.⁹

23 122. Through the misrepresentation of Defendants that money was owed to Phage
24 Biotech by CVBT, Phage Biotech was permitted to reject the JPA. The rejection of the
25 JPA did not extinguish Plaintiff's rights to seek relief under the JPA, and CVBT did not

26 ⁹ In all fairness, Judge Adler acknowledged that the appropriate methodology was to directly, or
27 indirectly, attack the order by way of an additional proceeding ... but Judge Adler dismissed the
28 entire bankruptcy and all related adversaries before Plaintiff could bring its cross-complaints in
that forum.

1 owe any money to Phage Biotech; the claim was a fabrication designed to permit Phage
2 Biotech to perpetuate their failed effort to seize Plaintiff's technology and patent.

3 123. As a result of these intentional acts of deceit and fraud by Defendants, Plaintiff
4 seeks an order that the Sale Order and Rejection Order, both final as of March 7, 2010
5 (see Exhibit 4), are void. Federal Rules of Civil Procedure Rule 60(b)(3).

6 124. Defendants' conduct was willful, malicious and egregious, designed to
7 intentionally deceive and manipulate the United States Bankruptcy Court for the unjust
8 gain of Defendants such as to justify an award of punitive damages.

9 **SEVENTH CLAIM FOR RELIEF**

10 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., PHAGE
11 PHARMACEUTICALS, INC., THOMAS J. STEGMANN, and FREDERICK CHANSON)

12 **REQUEST FOR DECLARATORY RELIEF**

28 USC §§ 2201-2202

13 125. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
14 through 124 of this Complaint as though set forth in full in this claim for relief.

15 126. Plaintiff possessed irrevocable licenses to all Phage Biotech IP technology as set
16 forth in the JPA, attached hereto as Exhibit 3.

17 127. Defendant, Phage Biotech, attempted to terminate those licenses in bankruptcy by
18 way of rejection of the JPA. However, Plaintiff's licenses cannot be terminated by
19 rejection in bankruptcy, and survive upon Plaintiff's election, which Plaintiff so elected.
20 11 USC § 365 (n)(1)(B). Further, the JPA outlines the scope of what will occur should
21 Phage Biotech attempt to "revoke" it while in bankruptcy:

22
23 The parties agree that each party is a
24 "licensee of intellectual property" as that
25 term is defined in §365(n) of the Bankruptcy
26 Code and will continue to have all of the
27 rights relating to technology licensed
28 hereunder as provided in this Agreement, at
its election, notwithstanding any bankruptcy
by the other party, even if PHAGE or CARDIO
attempts to reject this Agreement as an
"executory contract" under the Bankruptcy
Code. JPA § 7 titled Rights Upon Insolvency.

1 128. Defendant, Phage Biotech, attempted to terminate Plaintiff’s irrevocable license
2 by declaring “amounts were owing,” to it and bringing a turnover adversary against
3 Plaintiff during the course of the bankruptcy.

4 129. However, the license clause of the JPA states unequivocally that the license grant
5 under § 4.1 is subject only to the requirement to pay royalties under § 11 of the
6 agreement.

7
8 4.1 Within the Field. PHAGE hereby grants to
9 CARDIO a non-revocable, royalty bearing
10 (subject to Section 11), exclusive right
11 within the Territory to the Patent Rights in
12 the Field, including the right to sublicense
13 to third parties within the Field, provided
14 that any third party sublicensee shall be
15 subject to all of CARDIO's obligations under
16 Sections 14, 15,17 and 18.

13 130. Plaintiff seeks an order of the court in declaratory relief that its exclusive,
14 irrevocable licenses to the use of Phage Biotech IP patent rights, worldwide (the
15 “Territory” under the JPA) remain in legal force and effect, regardless of whether Phage
16 Biotech is deemed by the court to have sold the property – it was sold appurtenant to
17 CVBT’s irrevocable intellectual property licenses.

18 131. Plaintiff further seeks whatever related relief is deemed just and proper. 28 USC §
19 2202.

20 **EIGHTH CLAIM FOR RELIEF**

21 (As to PHAGE BIOTECHNOLOGY CORP., NEW TECHNOLOGIES HOLDING, PTE LTD., PHAGE
22 PHARMACEUTICALS, INC., THOMAS J. STEGMANN, and FREDERICK CHANSON)

23 **INJUNCTIVE RELIEF**

24 11 USC § 283; Joint Patent Agreement § 22; Cal. Civ. Code § 3426.2 (a);

25 132. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1
26 through 131 of this Complaint as though set forth in full in this claim for relief.

27 133. Plaintiff seeks a preliminary injunction to halt Defendants’ infringement on its
28 patent per 11 USC § 283.

1 134. Further, Defendants Phage Biotech, Phage Pharma and New Tech are subject to
2 the provisions of the Joint Patent Agreement as set forth herein as parties to it, or the
3 successors-in-interest to the Phage Biotech. As such, said Defendants have agreed to the
4 imposition of injunctive relief where they are in breach of the JPA. As further set forth
5 herein, they are in breach of the JPA for the reasons outlined, and as a matter of law.

6 135. The JPA contains an equitable relief clause at § 22 which states:

7
8 22. Equitable Relief. The parties recognize
9 that irreparable injury will result from a
10 breach of any provision of this Agreement
11 and that money damages will be inadequate to
12 fully remedy the injury. Accordingly, in the
13 event of a breach or threatened breach of
14 one or more of the provisions of this
15 Agreement, any party who may be injured (in
16 addition to any other remedies which may be
17 available to that party) will be entitled to
18 one or more preliminary or permanent orders
19 (i) restraining and enjoining any act which
20 would constitute a breach, or (ii)
21 compelling the performance of any obligation
22 which, if not performed, would constitute a
23 breach.

18 136. Further, Plaintiff seeks to halt the continuous misappropriation of its trade secrets,
19 and the use of its trade secrets by Defendants to infringe on Plaintiff's patent.

20 137. Plaintiff seeks a preliminary injunction under Cal. Civ. Code § 3426.2 (a).

21 **JURY DEMAND**

22 138. Plaintiff demands a trial before a jury.

23
24 Wherefore, Plaintiff PRAYS for:

- 25 1) General damages, as plead and subject to proof at trial;
26 2) Special damages, in the amount of \$14,479,333;
27 3) Punitive damages, as the court may permit;
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

CardioVascular BioTherapeutics, Inc.

(b) County of Residence of First Listed Plaintiff Clark, NV (EXCEPT IN U S PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kerry P. Zeiler, ZEILER LAW GROUP, 1855 W. Katella Ave., Ste. 365, Orange, CA 92867; (714) 953-6600

DEFENDANTS

Phage Biotechnology Corporation, Phage Pharmaceuticals, Inc., New Technologies Holding PTE, Ltd., Thomas J.

County of Residence of First Listed Defendant San Diego, CA (IN U S PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known) '11CV1215 WQHRBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U S Government Plaintiff, 2 U S Government Defendant, 3 Federal Question (U S Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 USC 271, 28 USC 2201-2202

Brief description of cause: Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$ 20,000,000.00, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

06/01/2011 /s/ Kerry P. Zeiler

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE