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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 30 2010

L. REYNA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DESERT REGION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

BIOELEMENTS, INC.,

Defendant.

Case No. *INC* 10071659

COMPLAINT FOR VIOLATION OF
CARTWRIGHT ACT (Bus. & Prof. Code
§ 16720 et seq.) AND UNFAIR
COMPETITION LAW (Bus. & Prof. Code
§ 17200 et seq.)

[Not Subject to Filing Fees Per Gov't Code §
6103]

The People of the State of California ("California"), through Edmund G. Brown Jr.,
Attorney General of California ("AG Brown"), allege as follows:

INTRODUCTION

1. California brings this civil antitrust lawsuit against Bioelements, Inc.
("Bioelements"), for engaging in vertical price-fixing of Bioelements cosmetics and related
products, in per se violation of the Cartwright Act (Bus. & Prof. Code § 16720 et seq.), as well as
the Unfair Competition Law (the "UCL," Bus. & Prof. Code § 17200 et seq.). California seeks
injunctive relief and the imposition of statutory penalties, as well as other relief, against

1 Bioelements for engaging in this unlawful business practice.

2 **PARTIES**

3 2. Plaintiff California is represented in this lawsuit by AG Brown.

4 3. As Attorney General of California, under Business & Professions Code section
5 16754, *inter alia*, AG Brown is empowered to initiate and to litigate lawsuits in California
6 superior courts for violations of the Cartwright Act (Bus. & Prof. Code § 16720 et seq.).

7 4. As Attorney General of California, under Business & Professions Code section
8 17204, *inter alia*, AG Brown is empowered to initiate and to litigate lawsuits in courts of
9 competent jurisdiction for violations of the UCL (Bus. & Prof. Code § 17200 et seq.).

10 5. Defendant Bioelements is an Illinois corporation, with its physical headquarters
11 located in Colorado Springs, CO. Bioelements's founder and president, Barbara Salomone, is
12 domiciled and works for Bioelements in La Quinta.

13 **JURISDICTION AND VENUE**

14 6. This Court has original jurisdiction over this matter pursuant to the California
15 Constitution, article VI, section 10, and Business & Professions Code sections 16750, 16754,
16 16754.5, 17203, 17204, and 17206.

17 7. This Court has personal jurisdiction over Bioelements because the company's
18 founder and president, Barbara Salomone, is domiciled and works for Bioelements within this
19 State; Bioelements has made and currently has many dozens of business contracts with companies
20 physically based and/or located in this State, which contracts are the bases for the allegations in
21 this lawsuit; and Bioelements regularly delivers and/or sells cosmetics and related products into
22 and within this State.

23 8. Venue is proper in this County under Business & Professions Code section 16754
24 because some of the offenses complained of were committed in this County; Bioelements does
25 business in this County; and Bioelements's founder and president, Barbara Salomone, is
26 domiciled and works for Bioelements within this County.

27 **FACTUAL ALLEGATIONS**

28 9. Bioelements makes, packages, and markets a line of human beauty-care products,

1 under the brand name “Bioelements” or multiple-word brand names in which one of the words is
2 “Bioelements.”

3 10. Beginning in mid 2009, Bioelements entered into many dozens of written
4 contracts, entitled either “Bioelements Agreement for Authorized Professional Account Status” or
5 “Bioelements Internet Only Accounts Agreement,” with third-party companies – several dozen of
6 them physically located in California – that distribute and/or sell, retail to the public, Bioelements
7 products, where such contracts contained resale price maintenance components. The “Authorized
8 Professional Account” contract states, in part, that “Accounts shall not charge less than the
9 Manufacturer’s Suggested Retail Price (MSRP).” The “Internet Only Accounts” contract states,
10 in part, that “Accounts are prohibited from charging more or less than the Manufacturer’s
11 Suggested Retail Price (MSRP).”

12 **ALLEGED VIOLATIONS OF LAW**

13 **First Count: Violation of the Cartwright Act**

14 11. California realleges paragraphs 1 through 10, above.

15 12. Bioelements has engaged in vertical price-fixing in per se violation of the
16 Cartwright Act, Business & Professions Code section 16720 et seq. *Harris v. Capitol Records*
17 *Distrib. Corp.*, 64 Cal. 2d 454, 463 (1966); *Mailand v. Burckle*, 20 Cal. 3d 367, 377 (1978);
18 *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 369 (2001); *Kunert v. Mission Fin. Servs.*
19 *Corp.*, 110 Cal. App. 4th 242, 263 (2003).

20 13. Bioelements must immediately and permanently be enjoined from further violation
21 of the Cartwright Act.

22 **Second Count: Violation of the Unfair Competition Law**

23 14. California realleges paragraphs 1 through 10, above.

24 15. Bioelements has engaged in unfair competition, in violation of the UCL, Business
25 & Professions Code section 17200 et seq., by vertical price-fixing in violation of the Cartwright
26 Act, Business & Professions Code section 16720 et seq.

27 16. Bioelements must immediately and permanently be enjoined from further violation
28 of the UCL.

PRAYER FOR RELIEF

California prays for judgment against Bioelements including the following relief:

1. That the Court declare that Bioelements's above-described conduct constitutes per se illegal vertical price-fixing under the Cartwright Act, Business & Professions Code section 16720 et seq.

2. That the Court declare that Bioelements's above-described conduct constitutes unfair competition under the UCL, Business & Professions Code section 17200 et seq.

3. That, under Business & Professions Code sections 16750 and/or 16754.5, the Court immediately enter a permanent injunction against further participation in vertical price-fixing by Bioelements and its successors, assigns, agents, employees, representatives, and all entities or persons acting in concert with them.

4. That, under Business & Professions Code section 17203 the Court immediately enter a permanent injunction against further engaging in acts of unfair competition, by engaging in vertical price-fixing, by Bioelements and its successors, assigns, agents, employees, representatives, and all entities or persons acting in concert with them.

5. That, under Business & Professions Code section 17206, the Court assess a \$2,500 civil penalty against Bioelements for each violation of the UCL, Business & Professions Code section 17200 et seq.

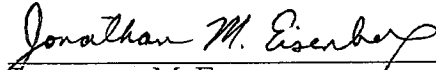
6. That, under Business & Professions Code sections 16750, the Court order Bioelements to reimburse California for the reasonable attorney fees and costs accrued by California in investigating this matter and pursuing this lawsuit.

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7. That the Court grant such other legal and equitable relief as the Court deems just and proper.

Dated: December ~~28~~, 2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California



JONATHAN M. EISENBERG
Deputy Attorney General
Attorneys for Plaintiff
THE PEOPLE OF THE STATE OF
CALIFORNIA

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