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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 11 2011

V. SALDANA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

BIOELEMENTS, INC.,

Defendant.

Case No. 12011157

**[PROPOSED] FINAL JUDGMENT
INCLUDING PERMANENT
INJUNCTION**

The People of the State of California ("California"), plaintiff, appearing through Edmund G. Brown Jr., Attorney General of California, by Deputy Attorney General Jonathan M. Eisenberg, and Bioelements, Inc. ("Bioelements"), defendant, appearing through its counsel; Orrick, Herrington & Sutcliffe LLP, by Lisa Tenorio-Kutzkey, have consented to the entry of this Final Judgment Including Permanent Injunction (hereinafter, the "Judgment").

This Judgment is entered without any taking of evidence or proof, and without any adjudication of any issue of fact or law. This Judgment does not constitute evidence of or any admission by Bioelements regarding any issue of fact or law alleged in the complaint in this matter. This Judgment and the accompanying stipulation for entry of final judgment constitute the complete, final, and exclusive agreement between California and Bioelements resolving this matter, and supersede any prior oral or written agreement between these parties.

1 California and Bioelements having approved this Judgment as to form and content and
2 having waived their rights of appeal,

3 **IT IS HEREBY ORDERED THAT:**

4 1. This Court has jurisdiction over California and Bioelements and the subject matter
5 of this lawsuit, and venue for this matter is proper in this Court.

6 2. This Judgment's injunctive provisions, stated in paragraph 3, *infra*, shall apply to
7 and cover:

8 a. Bioelements, as well as its agents, employees, officers, directors, owners,
9 representatives, partners, successors, assigns, and all entities or persons acting in
10 concert with them and/or under Bioelements's direct or indirect control

11 (collectively, the "Enjoined Parties"); and

12 b. All articles, articles of commerce, articles of consumption, articles of merchandise,
13 articles of produce, articles of trade, articles of use, commodities, commodities of
14 commerce, commodities of merchandise, commodities of produce, goods,
15 merchandise, produce, products, or transportation:

16 i. Developed, manufactured, packaged, marketed, or distributed by the
17 Enjoined Parties, individually, collectively, or in any subset of the
18 collective group; and/or

19 ii. Bearing (by the Enjoined Parties, individually, collectively, or in any
20 subset of the collective group under), or being marketed by the Enjoined
21 Parties, individually, collectively, or in any subset of the collective group
22 under, the brand name or trademark BIOELEMENTS (by itself or as part
23 of a multi-word brand name or trademark), as well as any brand name or
24 trademark containing the multi-letter combinations "bio" or "elements"
25 (collectively, the "Subject Bioelements Products").

26 3. Under Business & Professions Code sections 16750, 16754.5, and 17203, the
27 Enjoined Parties (individually, collectively, or in any subset of the collective group), are
28 permanently enjoined and restrained from:

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- a. Making with any third party, including but not limited to an independent contractor of any type, any contract, obligation, or agreement, oral or written, to "increase the price of merchandise or any commodity" (Bus. & Prof. Code §16720(a)), relating to one or more of the Subject Bioelements Products.
- b. Making with any third party, including but not limited to an independent contractor of any type, any agreement or contract, oral or written, "to fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, barter, use or consumption in this State" (Bus. & Prof. Code §16720(d)), relating to one or more of the Subject Bioelements Products.
- c. For any of the Subject Bioelements Products, "[m]ak[ing] or enter[ing] into or execut[ing] or carry[ing] out any contracts, obligations, or agreements of any kind or description [including oral or written], by which [any Enjoined Bioelements Entity and any third party, including but not limited to an independent contractor of any type] do all or any or any combination of the following:
 - i. Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value[;]
 - ii. Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure[;]
 - iii. Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity[; and/or]
 - iv. Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or

1 commodity, that its price might in any manner be affected." (Bus. & Prof.
2 Code §16720(e).)

3 4. To ensure compliance with this Judgment's injunctive provisions, stated in
4 paragraph 3, *supra*, Bioelements shall do the following:

- 5 a. Within ten calendar days of the entry of this Judgment, Bioelements shall provide
6 a copy of this Judgment to each current Bioelements director and officer, as well
7 as any current Bioelements employee whose job responsibilities have ever
8 included calculating, determining, establishing, estimating, monitoring, or setting
9 retail prices for any Bioelements products. Thereafter, within two weeks of the
10 provision of said copies of this Judgment to the above-mentioned people, a
11 Bioelements director, officer, or attorney shall do the following:
- 12 i. Prepare a declaration under penalty of perjury under the laws of the State
13 of California stating, "Bioelements has complied in full with the
14 requirements of paragraph 4(a) of the final judgment in People v.
15 Bioelements, Inc." (with no other verbiage contradicting same); and
16 ii. Have that declaration delivered (by personal messenger or U.S. mail) to
17 Jonathan M. Eisenberg, c/o Office of the Attorney General, 300 South
18 Spring St., Ste. 1702, Los Angeles, CA 90013.
- 19 b. Within two weeks of the entry of this Judgment, Bioelements shall send written
20 correspondence to each entity that, since January 1, 2009, made any agreement
21 with Bioelements to maintain in any manner resale prices established or set by
22 Bioelements for any Bioelements products, with each piece of said correspondence
23 stating, "This letter is to inform you that Bioelements is immediately, unilaterally
24 disavowing all parts of Bioelements's distributor or resale agreement with you that
25 purportedly obligated you to maintain certain resale prices for Bioelements
26 products. As far as Bioelements is concerned, you do not have an agreement with
27 Bioelements to maintain any resale prices for Bioelements products" (with no
28 other verbiage contradicting same). Each piece of said correspondence shall be on

1 Bioelements letterhead, signed by a director or officer of Bioelements, addressed
2 to the last known U.S. mail address of the recipient entity, and delivered by U.S.
3 mail, return receipt requested. Thereafter, within two weeks of the delivery of all
4 said pieces of correspondence to the above-mentioned entities, as confirmed by the
5 return receipts (to be maintained by Bioelements), a Bioelements director, officer,
6 or attorney shall do the following:

- 7 i. Prepare a declaration under penalty of perjury under the laws of the State
8 of California stating, "Bioelements has complied in full with the
9 requirements of paragraph 4(b) of the final judgment in People v.
10 Bioelements, Inc." (with no other verbiage contradicting same); and
11 ii. Have that declaration delivered (by personal messenger or U.S. mail) to
12 Jonathan M. Eisenberg, Deputy Attorney General, c/o Office of the
13 Attorney General, 300 South Spring St., Ste. 1702, Los Angeles, CA
14 90013.

15 5. Upon entry of this Judgment, Bioelements shall pay to California the sum of
16 \$15,000 as civil penalties under Business & Professions Code section 17206. Said civil penalties
17 shall be paid by Bioelements in equal installments of \$7,500 due on January 15, 2011, and July
18 15, 2011; however, nothing in the foregoing shall limit Bioelements's ability to pay said civil
19 penalties prior to these dates.

20 6. Upon entry of this Judgment, Bioelements shall pay to California the sum of
21 \$36,000 for the costs of the investigation in this matter, attorney fees, and other expenses, under
22 Business & Professions Code section 16750. Said costs, attorney fees, and other expenses shall
23 be paid by Bioelements in equal installments of \$18,000 due on January 15, 2011, and July 15,
24 2011; however, nothing in the foregoing shall limit Bioelements's ability to pay said costs,
25 attorney fees and other expenses prior to these dates. These attorney-fees/costs payments are
26 designated for the exclusive use of the Office of the Attorney General for the investigation and
27 prosecution of antitrust violations, and for consumer education and outreach.

28 7. The sums of money described in paragraphs 5 and 6, *supra*, shall be paid by

1 certified checks made payable to "California Attorney General's Office" and delivered promptly
 2 (by personal messenger or overnight courier) to Jonathan M. Eisenberg, Deputy Attorney
 3 General, c/o Office of the Attorney General, 300 South Spring St., Ste. 1702, Los Angeles, CA
 4 90013.

5 8. The payments required by this Judgment are not dischargeable in bankruptcy.

6 9. This Judgment fully and finally resolves only those matters specifically set forth in
 7 the allegations of the complaint in this lawsuit, for conduct that occurred before entry of this
 8 Judgment.

9 10. Nothing in this Judgment shall be construed to relieve Bioelements of its
 10 obligations to comply, or to prohibit Bioelements from complying, with all applicable local, state,
 11 and federal laws, regulations, or rules, or to permit Bioelements to engage in any acts or practices
 12 prohibited by any applicable local, state, or federal law, regulation, or rule.

13 11. This Court shall retain jurisdiction over this matter for purposes of enabling
 14 California or Bioelements to apply to the Court at any time for further directions or orders as may
 15 be necessary or appropriate for the construction or carrying out of this Judgment, for modification
 16 of any of the injunctive provisions of this Judgment, for enforcement of or compliance with this
 17 Judgment, and/or for the punishment of any violation of this Judgment.

18 12. This Judgment shall be binding and effective immediately upon entry by the Clerk
 19 of this Court, and the Clerk is ordered to enter this judgment forthwith.

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 21 Dated: _____

Judge Harold W. Hopp
 Superior Court Judge

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