

STATE OF TEXAS
Plaintiff,

v.

BIO PERFORMANCE, INC., AND
LOWELL MIMS, and GUSTAVO
ROMERO
Defendants

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IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

73rd JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this day came on to be considered the above-entitled and numbered cause in which the State of Texas is Plaintiff and Bio Performance, Inc., Lowell Mims, and Gustavo Romero are Defendants. The parties, appearing by and through their attorneys of record, wish to make the following stipulations and agree to the entry of this Final Judgment and Permanent Injunction.

It is stipulated that the parties have compromised and settled all claims stated by Plaintiff in this cause. It is further stipulated that Plaintiff and Defendants agree to and do not contest the entry of this judgment. Defendants expressly deny the allegations made in Plaintiff's Original Petition and deny that they have engaged in any conduct in violation of the laws of Texas, and enter into this agreed judgment in order to avoid the expense and uncertainty of litigation.

The Court then proceeded to read the pleadings and stipulations of the parties, and it appears to the Court that the parties agree to the entry of this judgment and that they have approved entry of this judgment.

1. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that, as used in this Judgment, the following terms are defined as follows:

A. "Consumer" and "person" means any individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;

B. "Automobile" or "vehicle" means any four-wheeled vehicle propelled by fuel which

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is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and which is rated at 6,000 lbs. gross vehicle weight or less.

C. "Defendant(s)" means Bio Performance, Inc., and Lowell Mims, and Gustavo Romero, their officers, agents, servants, employees, and any other persons in active concert or participation with them;

D. "Bio Performance Product" means the Bio Performance fuel additive sold and marketed by Defendants from December 2005 through May 2006, whether in powdered, pill or liquid form, and whether sold under the name "Bio Performance" or under any other name;

E. "Distributor" means any agent, Independent Business Owner, manager, area manager, or any other person employed or authorized by Defendants to sell Defendants' product. "Distributor" also means any person to whom Defendants sell Bio Performance Products for the purpose of potential resale.

F. "EPA" means the United States Environmental Protection Agency.

G. "Scientific Substantiation":

(i) for the purpose of making any claim relating to vehicle "emissions" means having the [Bio Performance] product tested by an independent laboratory approved or referenced by the United States Environmental Protection Agency pursuant to "Federal Test Procedure ("FTP")" procedures and testing protocols set forth in Title 40 CODE OF FEDERAL REGULATIONS Part 86 *et seq.* as currently exists or may hereinafter be amended. Said FTP test procedures may be modified to allow for testing required for retrofit devices pursuant to TITLE 40 CODE OF FEDERAL REGULATIONS § 610 *et seq.*

(ii) for the purpose of making any claim relating to vehicle "fuel economy" or "fuel efficiency" means having the [Bio Performance] product tested by an independent laboratory approved or referenced by the United States Environmental Protection Agency pursuant to "Federal Test Procedure ("FTP")" procedures and testing protocol set forth in Title 40 CODE OF FEDERAL REGULATIONS Part 86 *et seq.* and pursuant to the "Highway Fuel Economy Test ("HFET")" procedures and testing protocol set forth in TITLE 40 CODE OF FEDERAL REGULATIONS PART 600 *et seq.* as

currently exists or may hereinafter be amended. Said FTP and HFET test procedures may be modified to allow for testing required for retrofit devices pursuant to TITLE 40 CODE OF FEDERAL REGULATIONS § 610 *et seq.*, as currently exists or may hereinafter be amended.

H. "Fuel economy" and "fuel efficiency" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the Administrator of the EPA in accordance with procedures established pursuant to Title 40 of the Code of Federal Regulations as now exists or may be hereinafter amended.

I. "Independent laboratory" means a test facility operated independently of any motor vehicle, motor vehicle engine, or fuel additive manufacturer or distributor capable of performing evaluation tests on fuel additives which are added to the fuel supplies of automobiles by means other than through fuel dispenser pumps. Additionally, the laboratory shall have no financial interests in the outcome of these tests other than a fee or expense charged for each test performed.

J. "Compensation" means payment of money, a financial benefit, or another thing of value. The term does not include payment based on sale of a product to a person, including a participant, who purchases the product for actual use or consumption.

K. "Consideration" means the payment of cash or the purchase of a product. The term does not include:

- (i) a purchase of a product, or sales kit(s), materials or aids furnished at cost to be used in making a sale and not for resale;
- (ii) a purchase of a product subject to a repurchase agreement that complies with the definition of repurchase agreement below; or
- (iii) time and effort spent in pursuit of a sale or in a recruiting activity.

L. "Participate" means to contribute money into a pyramid promotional scheme without promoting, organizing, or operating the scheme.

M. "Participant" means a "distributor" as defined herein who participates in any manner in a multi-level marketing plan or pyramid promotion sponsored by Defendants.

N. "Product" means a good, a service, or intangible property of any kind.

O. "Pyramid promotional scheme" means a plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of other persons to participate in the plan or operation rather than from the sale of a product by a person introduced into the plan or operation.

P. "Promoting a pyramid promotional scheme" means:

- (i) inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme; or
- (ii) assisting another person in inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme, including by providing references.

Q. "Repurchase agreement" means an enforceable agreement by the seller to repurchase, on written request of the purchaser and not later than 30 days after the purchaser receives the product, all unencumbered products that are in an unused, commercially resalable condition at a price not less than 90 percent of the amount actually paid by the purchaser for the products being returned, less any consideration received by the purchaser for purchase of the products being returned. A product that is no longer marketed by the seller is considered resalable if the product is otherwise in an unused, commercially resalable condition and is returned to the seller not later than 30 days from the date the purchaser receives the product, except that the product is not considered resalable if before the purchaser purchased the product it was clearly disclosed to the purchaser that the product was sold as a nonreturnable, discontinued, seasonal, or special promotion item.

R. "Emissions" means any substance being produced or emitted from the exhaust of an automobile during its operation, including, but not limited to hydrocarbons, carbon monoxide, oxides of nitrogen, carbon dioxide, green house gasses or any other substance transmitted into the ambient air.

2. **IT IS FURTHER ORDERED** that Defendants, Bio Performance, Inc., Lowell Mims, and Gustavo Romero, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them who receive actual notice of this Agreed Final

Judgment by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or devise, shall be restrained from engaging in the following acts or practices:

A. Representing, expressly or by implication, that any product, including Bio Performance products, will reduce by any amount or percentage the emissions of gasoline or diesel powered vehicles, unless Defendants have in their possession at the time such representation is made scientific substantiation for the specific amount and type of reduced emissions represented;

B. Representing, expressly or by implication, that any product, including Bio Performance products, will improve or increase the fuel economy or fuel efficiency of gasoline or diesel powered vehicles, unless Defendants have in their possession at the time such representation is made scientific substantiation for the specific amount or percent of increased fuel economy or fuel efficiency represented;

C. Representing, expressly or by implication, that any product, including Bio Performance products, have any beneficial effect upon the operation of a motor vehicle unless Defendants have in their possession sufficient scientific testing by an independent laboratory located within the United States or a peer reviewed scientific study which specifically substantiates such representation;

D. Representing, expressly or by implication, that any product reduces emissions of gasoline or diesel powered vehicles by a greater percent or amount than specifically supported by scientific substantiation.

E. Representing, expressly or by implication, that any product increases the fuel economy or fuel efficiency of gasoline or diesel powered vehicles by a greater percent or amount than specifically supported by scientific substantiation.

F. Representing, expressly or by implication, that Bio Performance products: 1) are safe and non-toxic; 2) do not contain naphthalene; or 3) will produce any enzymatic or catalytic reactions in any type of fuel unless specifically supported by scientific substantiation.

G. Representing that Bio Performance products will decrease, reduce or eliminate any type of emission without specifying the exact type of emission by common and

scientific name as well as the specific amount of the reduction as supported by scientific substantiation.

H. Failing to conspicuously disclose on Defendants' website and in any written¹ or oral communication (made personally by or at the request of the individual defendants), advertisement, or solicitation to any prospective person or purchaser of any Bio Performance product the following information:

"This product contains naphthalene as an active ingredient. Short term exposure, inhalation, ingestion, or dermal contact with naphthalene is associated with hemolytic anemia, damage to the liver, and neurological damage. Please store in a ventilated area at all times".

I. Selling Bio Performance products to any distributor who has not agreed in writing or electronically to conspicuously disclose on their website and in any written² or oral communications, advertisements or solicitations to any prospective person or purchaser of any Bio Performance product the following information:

"This product contains naphthalene as an active ingredient. Short term exposure, inhalation, ingestion, or dermal contact with naphthalene is associated with hemolytic anemia, damage to the liver, and neurological damage. Please store in a ventilated area at all times".

J. Distributing, selling, shipping, mailing, delivering, or sending Defendants' Bio

¹If the communication, solicitation or advertising is written or on the Internet, then such disclosure must be made in 12 Point Times New Roman Bold Font.

²If the communication, solicitation or advertising is written or on the Internet, then such disclosure must be made in 12 Point Times New Roman Bold Font.

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Performance products to any person, distributor, entity, or business which Defendants know, or by the exercise of reasonable diligence³ should know, uses any of the following (or similar) express or implied representations in any advertising relating to Bio Performance products:

- 1) will reduce by any amount the emissions of gasoline or diesel powered vehicles by a greater percent or amount than specifically supported by scientific substantiation;
- 2) will improve or increase gasoline efficiency or fuel economy of gasoline or diesel powered vehicles by a greater percent or amount than specifically supported by scientific substantiation;
- 3) have any beneficial effect upon the operation of a motor vehicle not supported by sufficient scientific testing by an independent laboratory located within the United States or a peer reviewed scientific study which specifically substantiates such representation;
- 4) will reduce by any amount or percentage the emissions of gasoline or diesel powered vehicles which is not supported by scientific substantiation for the specific amount and type of reduced emissions represented;
- 5) will improve or increase the fuel economy or fuel efficiency of gasoline or diesel powered vehicles which is not supported by scientific substantiation for the specific amount or percent of increased fuel economy or fuel efficiency represented;
- 6) are safe and non-toxic; do not contain naphthalene; or will produce any enzymatic or catalytic reactions in any type of fuel unless specifically supported by scientific substantiation;
- 7) will decrease, reduce or eliminate any type of emission or gas without specifying the exact type of emission by common and scientific name;
- 8) are approved or certified by the EPA or any other governmental agency;

³ Defendants are hereby ordered to affirmatively exercise reasonable diligence in attempting to persuade any person, entity or distributor known to the Defendants to be engaging in the type of conduct prohibited in this order, to cease and desist such conduct. Defendants shall not sell or distribute any of their *Bio Performance* products to any person, entity or distributor known to Defendants to be engaging in the type of conduct and advertising prohibited in this order after the exercise of reasonable diligence by Defendants to ascertain same. Defendants shall be under a continuing duty to utilize reasonable diligence to determine whether or not any person, entity or distributor is engaging in the type of advertising of Defendants' products which are prohibited by this order prior to shipping or distributing any products to them.

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9) Defendants shall be entitled to rely on the written, including electronic, representations of a participant that he or she has agreed not to make any of the representations in this paragraph unless and until Defendants have actual knowledge that such representations are being made. This in no way diminishes the obligations imposed on Defendants by footnote 3 in this order.

K. Representing, expressly or by implication, that EPA registration confers or bestows any kind of EPA or governmental approval of Bio Performance products;

L. Representing, expressly or by implication, that any governmental body or agency has certified or approved Bio Performance products for any type of benefit or intended use unless such governmental body or agency has stated such in writing;

M. Failing to notify each and every person or distributor who Defendants have reason to know or believe are marketing Bio Performance products of the specific terms of the court's injunction in this cause. Notification may be by email;

N. Failing to require each and every agent, independent business owner, manager, area manager, or any other person to whom Defendants distribute Bio Performance products to agree in writing or electronically that they shall comply with the terms of this injunction if they in any manner market, advertise, or attempt to introduce into commerce any Bio Performance products;

O. Failing to honor all repurchase agreements required by this injunction.

P. Misrepresenting the income levels, earnings, product sales, profits or payments that a person may reasonably expect to earn, generate or receive as a Bio Performance participant or distributor; practices constituting such misrepresentations may include, but are not limited to, making any false or misleading visual, audio or other display of bonus or commission checks earned or received by Bio Performance participants, tax forms, or similar types of records or other documents or representations specifying income from Bio Performance. Defendants may make statements about documented actual income levels of participants and actual personal earnings; provided, however, that when any such statements of actual income are made by Defendants, they shall clearly and conspicuously disclose the following information:

(i) The number of Bio Performance distributors in the geographic market;

- (ii) A definition of that geographic market; and either
- (iii) The number of distributors in the geographic market who have achieved the stated level of income; or
- (iv) The average distributor income in that geographic market.

Nothing herein shall prevent Defendants from providing such information based on the level of activity or achievement or qualification of the dealer or distributors as long as the nature of, and number in, that level of activity or achievement or qualification is clearly expressed.

Q. Failing to provide all present and future distributors with a company approved enforceable repurchase agreement as defined in paragraph 1Q herein and failing to provide as a separate document attached to the application to be a dealer or distributor, clearly disclosing to the dealer or distributor that all products that have been or will be sold to the dealer or distributor are returnable items which are subject to the repurchase agreement.

R. Selling more than Five Hundred Dollars (\$500.00) worth of Defendants' products to any distributor at any one or more times so that any dealer or distributor is never more than \$500 at risk or in debt to Defendants for the purchase of Defendants' products as inventory or in purchase orders in the operation of said distributorship, provided, however, that this paragraph shall not prohibit Defendants from selling more than Five Hundred Dollars (\$500.00) worth of product to any person to fulfill actual sales made by that person.

S. Operating, participating in or promoting a pyramid promotional scheme.

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3. **IT IS FURTHER ORDERED** that as an alternative to complying with the prohibitions contained in paragraph 2 P and 2 R herein, Defendants may register as a seller of business opportunities and comply with all the requirements of the Texas Business Opportunity Act, TEX. BUS. COMM. CODE ANN. §41.001 *et seq.* (2006)(hereafter the TBOA), including but not limited to the procurement of a \$25,000 bond as per TBOA § 41.101, and the disclosures regarding earnings representations as per TBOA § 41.160.

4. **IT IS FURTHER ORDERED** that Plaintiff, the State of Texas, have judgment in the amount of One Hundred Fifty Thousand and No /100 Dollars (\$150,000.00) for civil penalties from and against Defendants Bio Performance, Inc., Lowell Mims, and Gustavo Romero, jointly and severally, which the Court further finds are civil fines and penalties to and for a governmental unit

and not for pecuniary compensation and which do not constitute an antecedent debt with respect to this litigation. The civil penalty shall be paid out of the funds identified in this judgment which are to be paid to the State of Texas.

5. **IT IS FURTHER ORDERED** that Plaintiff, the State of Texas, have judgment in the amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00) from and against Defendants Bio Performance, Inc., and Lowell Mims, and Gustavo Romero, jointly and severally, for reimbursement of the State's attorneys' fees, court costs and investigative costs incurred in this case, which sum is for the benefit of the State of Texas, a governmental unit, and which is not compensation for any actual or pecuniary loss and does not constitute an antecedent debt with respect to this litigation. These fees and costs shall be paid out of the funds identified in this judgment which are to be paid to the State of Texas.

6. **IT IS FURTHER ORDERED** that Plaintiff, the State of Texas, have judgment based upon its pleadings and the stipulations herein and recover from Defendants, Bio Performance, Inc., Lowell Mims, and Gustavo Romero, the sum of Seven Million Three Hundred Sixty Thousand One Hundred Fourteen and 11/100 Dollars (\$7,360,114.11) jointly and severally, to be used in whole or in part, for restoration of money or other property received from persons by Defendants as Plaintiff determines appropriate. The State of Texas may disburse any collected restitution herein to identifiable persons as it deems advisable and necessary in its discretion. In the event any portion of this collected restitution judgment is not distributed to identifiable persons of Plaintiff's choosing, within a reasonable time period to be determined by Plaintiff, such amounts shall revert to Plaintiff, State of Texas, for use as either additional attorney fees, consumer education, or for use in consumer law clinics for State of Texas law schools as designated by the Office of the Texas Attorney General.

7. **IT IS FURTHER ORDERED** that all sums of money on deposit in the following accounts on deposit at TBank be transferred to TBank account # [REDACTED] standing in the name of Bio Performance, Inc. within 5 business days from the date this order is presented to TBank:

Account #	Name on Account	Amount ⁴
██████████	Gustavo Romero	\$ 4,970.00
██████████	Lowell & Lisa Mims	\$ 80.00
██████████	MercArt USA L.L.C.	\$ 239,145.09

After all funds are transferred from the above referenced accounts to T-Bank account # ██████████, said accounts numbered ██████████, ██████████ and ██████████ are released from the asset freeze imposed by this court and may be utilized or closed by the account holder at their direction. T-Bank may deduct its normal transfer fees to effectuate this order.

8. **IT IS FURTHER ORDERED** that after the funds are transferred pursuant to the preceding and succeeding paragraphs of this order, all funds then held by T-Bank, in the following accounts together with any interest accrued thereon, be remitted to the State of Texas in satisfaction of this judgment by cashier's check made payable to the "State of Texas" bearing the reference "AG # ██████████" and delivered to the attention of Leela Fireside, Consumer Protection and Public Health Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548 or at her physical address, 300 W. 15th St., WPC Building, Floor 9, Austin, Texas, 78711, on the 15th day after the date this order is presented to said Bank:

Account #	Name on Account	Amount ⁵
██████████	Bio Performance, Inc.	\$6,706,089.30
██████████	Bio Performance, Inc.	\$1,413,613.17

It is also Ordered that T Bank may deduct all reasonable costs of said cashier's check, and any other normal bank processing fees, from said account numbers standing in the above referenced names prior to issuing said cashier's checks.

9. **IT IS FURTHER ORDERED** that all sums of money on deposit in the following

⁴Previously verified amounts appear in this column and do not necessarily reflect interest or normal processing or transfer fees allowed under this order to transfer said monies pursuant to this order.

⁵Previously verified amounts together with any transfers of monies from other accounts pursuant to this and other orders of the same date appear in this column and do not necessarily reflect interest or normal processing fees allowed under this order to remit said monies to the State of Texas.

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account on deposit at J. P. Morgan Chase Bank be transferred to J. P. Morgan Chase Bank account # [REDACTED] standing in the name of Bio Performance, Inc. within 5 business days from the date this order is presented to J. P. Morgan Chase Bank:

Account #	Name on Account	Amount ⁵
[REDACTED]	Gustavo Romero or Magdalena Muldoon	\$ 27,494.34

After all funds are transferred from the above referenced account to J. P. Morgan Chase Bank account # [REDACTED], said account number [REDACTED] is released from the asset freeze imposed by this court and may be utilized or closed by the account holder at their direction. J. P. Morgan Chase Bank may deduct its normal transfer fees to effectuate this order.

10. IT IS FURTHER ORDERED that after the funds are transferred pursuant to the preceding paragraph of this order, all funds then held by JP Morgan Chase Bank, in the following accounts together with any interest accrued thereon, be remitted to the State of Texas in satisfaction of this judgment by cashier's check made payable to the "State of Texas" bearing the reference "AG # [REDACTED]", and delivered to the attention of Leela Fireside, Consumer Protection and Public Health Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548 or at her physical address, 300 W. 15th St., WPC Building, Floor 9, Austin, Texas, 78711, within 5 days from the date this order is presented to said Bank:

Account #	Name on Account	Amount ⁷
[REDACTED]	Bio Performance, Inc.	\$ 48,751.23
[REDACTED]	Bio Performance, Inc.	\$ 172,958.50

It is also Ordered that JP Morgan Chase Bank may deduct all reasonable costs of said cashier's check, and any other normal or applicable bank processing fees, from said account numbers standing in the above referenced names prior to issuing said cashier's checks.

⁵Previously verified amounts on deposit appear in this column and do not necessarily reflect interest or normal processing or transfer fees allowed under this order to transfer said monies pursuant to this order.

⁷Previously verified amounts together with any transfers pursuant to this order appear in this column and do not necessarily reflect interest or normal processing fees allowed under this order to remit said monies to the State of Texas.

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11. **IT IS FURTHER ORDERED** that all sums of money on deposit in the following accounts on deposit at AIM Investment Services, Inc. be transferred to TBank account # [REDACTED] standing in the name of Bio Performance, Inc. within 5 business days from the date this order is presented to AIM Investment Services, Inc.:

Account #	Name on Account	Amount ⁸
[REDACTED]	Gustavo Romero for the benefit of Carolina Romero	\$9,763.84
[REDACTED]	Gustavo Romero for the benefit of Jimena Romero	\$ 9,721.71
[REDACTED]	Gustavo Romero for the benefit of Sofia Romero	\$12,962.28

After all funds are transferred from the above referenced accounts to T-Bank account # [REDACTED], said accounts numbered [REDACTED], [REDACTED] and [REDACTED] are released from the asset freeze imposed by this court and may be utilized or closed by the account holder at their direction. AIM Investment Services, Inc. may deduct its normal transfer fees or early withdrawal penalties to effectuate this order.

12. **IT IS FURTHER ORDERED** that all sums of money (save and except the sum of \$5,000) on deposit in the following account at ING USA ANNUITY AND LIFE INSURANCE COMPANY be transferred to TBank account # [REDACTED] standing in the name of Bio Performance, Inc. within 5 business days from the date this order is presented to TBank:

Account #	Name on Account	Amount ⁹
[REDACTED]	Gustavo Romero	\$172,082.46

After all funds, save and except the sum of \$5,000, are transferred from the above referenced account to T-Bank account # [REDACTED], said account numbered [REDACTED] is released from the

⁸Previously verified amounts appear in this column and do not necessarily reflect interest or normal processing fees allowed under this order to remit said monies to the State of Texas.

⁹Previously verified surrender values appear in this column and do not necessarily reflect interest or normal processing or transfer fees allowed under this order to transfer said monies pursuant to this order. The sum of \$5,000 will remain in this account after the transfer ordered herein.

asset freeze imposed by this court and may be utilized by the account holder at his direction. ING USA may deduct its normal transfer fees to effectuate this order.

13. **IT IS FURTHER ORDERED** that all sums of money held by Wells Fargo Bank, Concord Merchant Services and CTC Holdings in the following Bio Performance, Inc. merchant credit card accounts together with any interest accrued thereon, be remitted to the State of Texas in satisfaction of this judgment by cashier's check made payable to the "State of Texas" bearing the reference "AG # [REDACTED]", and delivered to the attention of Leela Fireside, Consumer Protection and Public Health Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas, 78711-2548 or at her physical address, 300 W. 15th St., WPC Building, Floor 9, Austin, Texas, 78711, within 5 days from the date that either this order is presented to said Bank or within 5 days from the date the normal "reserve status" is removed from the funds in said accounts:

Account #	Name on Account	Amount ¹⁰
[REDACTED]	Concord (Merchant Services)	\$4,938.08
[REDACTED]	CTC Holdings (Merchant acct.)	\$3,000.00

14. Plaintiff, State of Texas, is Ordered to pay the following Intervenor, third parties, state agencies, and the State of Ohio, from the monies remitted to the State in satisfaction of this judgment, in the following amounts and within 30 days after receipt of said monies by the State:

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State of Ohio	\$ 90,000.00
Super Check Cashing	\$ 15,816.94
Axys Logistics	\$ 13,575.92
Giaet Systems, Inc.	\$ 62,681.90
Protec Labs	\$179,812.87
Advantage Fulfillment	\$ 30,520.16
Texas Workforce Commission	\$ 1,113.75
Texas Workforce Commission	\$ 3,200.00
Verizon	\$ 1,550.66
Eby Enterprises	\$ 20,000.00
Federal Express	\$ 2,044.20
Crouch & Russell, CPA's	\$ 10,000.00

¹⁰Previously verified amounts together with any transfers pursuant to this order appear in this column and do not necessarily reflect interest or normal processing fees allowed under this order to remit said monies to the State of Texas.

15. **IT IS FURTHER ORDERED** that the following accounts situated in the following banks or financial institutions be completely released from this Court's asset freeze (as set forth in its Temporary injunction dated June 1, 2006) effective immediately:

Bank	Account #	Name on Account
TBank	[REDACTED]	Gustavo Romero
TBank	[REDACTED]	Lowell & Lisa Mims
Wells Fargo Bank	[REDACTED]	Bio Performance, Inc.
Bluffview Securities, L.P.	[REDACTED]	Gustavo Romero & Magdalena Muldoon

Defendants shall use the monies released to them in this paragraph to satisfy the following third party claims arising from the operation of Bio Performance, Inc.: Emord Associates, Chase Visa, E-Advisors, and Bragg, Chumlea and McQuality for attorney fees incurred by Defendants.

16. **IT IS FURTHER ORDERED** that the State of Texas may pay certain vendors and other third parties as it deems necessary from the restitution sums it receives by virtue of this Judgment for the sole purpose of acquiring and processing documents and data needed to determine which persons are entitled to restitution.

17. **IT IS FURTHER ORDERED** that all assets held in the name of Bio Performance, Inc., Lowell Mims or Gustavo Romero which are not otherwise dealt with in this Judgment are completely released from any previous order of this Court, including the temporary injunction dated June 1, 2006. Plaintiff will cooperate with Defendants in notifying appropriate banking authorities so as to correct any erroneous credit information respecting Defendants. Defendants will cooperate with Plaintiffs in securing all necessary documents to effectuate restitution.

18. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the State of Texas shall have all writs of execution and other processes necessary to enforce this Agreed Final Judgment and Permanent Injunction. Defendants and their spouses, by their signatures below, hereby acknowledge notice of this Judgment and Permanent Injunction and acceptance of same; therefore, no writ need be issued.

¹³For franchise taxes.

19. **IT IS FURTHER ORDERED** that all other costs of court expended or incurred in this cause be borne by the party incurring same.
20. All relief not expressly granted herein is denied.

SIGNED this 23 day of January, 2007.



PRESIDING JUDGE

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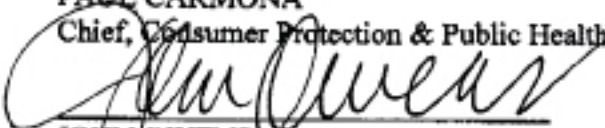
AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED AS OF 12-29-06:

GREG ABBOTT
ATTORNEY GENERAL OF TEXAS


KENT C. SULLIVAN
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

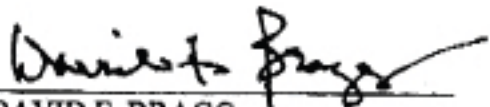
PAUL CARMONA
Chief, Consumer Protection & Public Health Division



JOHN OWENS
SBN 15379200
Deputy Chief, Consumer Protection Division
Consumer Protection &
Public Health Division
P.O. Box 12548



**ATTORNEYS FOR PLAINTIFF,
THE STATE OF TEXAS**



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Austin, Texas 78701



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Lowell Mims
LOWELL MIMS, Individually and on
behalf of Bio Performance, Inc.

Gustavo Romero
GUSTAVO ROMERO, Individually and
on behalf of Bio Performance, Inc.

Lisa Mims
LISA MIMS

Magdalena Muldoon
MAGDALENA MULDOON

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Agreed Final Judgment
Cause No. 2006C107589
State v. Bio Performance, Inc et al

CERTIFIED COPY CERTIFICATE STATE OF TEXAS
I, MARGARET G. MONTEMAYOR, BEXAR COUNTY DISTRICT
CLERK, CERTIFY THAT THE FOREGOING IS A TRUE AND
CORRECT COPY OF THE ORIGINAL RECORD AS INDICATED
BY THE VOLUME, PAGE AND COURT ON SAID DOCUMENT.
WITNESS MY OFFICIAL HAND AND SEAL OF OFFICE THIS

JAN 23 2007

MARGARET G. MONTEMAYOR
BEXAR COUNTY, TEXAS

By: Margaret G. Montemayor DEPUTY