

2006C107589

FILED
DISTRICT CLERK
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THE STATE OF TEXAS
Plaintiff

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IN THE DISTRICT COURT AT 8:08
2006 MAY 10

v.

DEPUTY
CLERK, TEXAS

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

73rd

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, complains of Lowell Mims, Gustavo Romero, and Bio Performance, Inc., Defendants, and for cause of action would respectfully show as follows:

I. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

II. JURISDICTION

2. This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (hereafter the "DTPA") upon the ground that Defendants have engaged in false, deceptive and

misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

III. DEFENDANTS

3. Defendant Bio Performance, Inc. (“Bio Performance”) is a Texas Corporation with headquarters in Irving, Texas. Lowell Mims is the company’s President. Gustavo Romero is the Vice-President and co-founder. Bio Performance does business in Texas as alleged specifically below, and this proceeding arises out of such business done in this State. Defendant Bio Performance, Inc., may be served by serving its registered agent Lowell Mims, at 1300 W. Walnut Hill Lane, Suite 164, Irving, Texas 75038, or anywhere he may be found.

4. Defendant Bio Performance, Inc. also is known as BioPerformance, and does business through a number of web sites such as www.mybpbiz.com and is also known as BioPerformance Fuel. It markets products (powder and pills), through its website and multi-level marketing program, that are advertised to increase gas mileage and decrease emissions when put into cars and other vehicles. Bio Performance is actually an illegal pyramid scheme. **(See Exhibit A, Gary Adkins Affidavit and Attachments 1 and 2 (cd) and 3 and 4 (“whois” information showing web site ownership information and web site page printouts))**.

5. Defendant Lowell Mims is an individual. He is the President of Bio Performance and conducts seminars marketing Bio Performance around the country. Defendant Mims co-owns with Defendant Romero the Bio Performance web site located at www.mybpbiz.com. Defendant Mims may be served at 7721 Pine Street, Irving, Texas

75063-3493. (See Exhibit B, Certified Copy of Public Records, Texas Secretary of State).

6. Defendant Gustavo Romero is an individual. He is Vice President and co-founder of Bio Performance. Upon information and belief, Defendant Romero was instrumental in initially bringing the pills and powders marketed to consumers to the United States. Defendant Romero co-owns with Defendant Mims the Bio Performance web site located at www.mybpbiz.com. (See Exhibit A, Affidavit Gary Adkins, Attachment 3, page GA004). Defendant Romero is the listed contact person for Bio Performance with the Dallas Better Business Bureau. Both his telephone number and the number of Bio Performance are no longer working numbers. (See Exhibit C, Affidavit of Mary K. Vinson). Defendant Romero may be served at 2104 Aristocrat Drive, Irving, Texas 75063-3476.

IV. VENUE

7. Venue of this suit lies in BEXAR County, Texas for the following reasons:

A) Under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in BEXAR County, Texas.

B) Under the DTPA § 17.47(b), venue is proper because Defendants and their agents have done business and undertaken transactions in Bexar County as follows: Defendants, at times material to this Petition, promoted their products and pyramid promotional scheme through seminars in Bexar County. (See Exhibit A, Affidavit Gary Adkins, Attachment 4 page GA027).

V. PUBLIC INTEREST

8. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State.

9. Deceptive trade practices, including pyramid promotional schemes, are declared unlawful pursuant to § 17.46(a) and (b) of the Texas Business and Commerce Code. The promotion of deceptive trade practices on the Internet is of concern because the Internet makes it possible for operators to quickly reach thousands of consumers and to obtain payments from them through the electronic transfer of monies. Further, the promotion of deceptive trade practices via the Internet may serve to undermine consumer confidence in electronic commerce. Accordingly, the Consumer Protection Division of the Office of the Attorney General believes and is of the opinion that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

10. Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by § 17.45(6) of the DTPA.

VII. ACTS OF AGENTS

11. Whenever in this Petition it is alleged that any Defendant did any act, it is meant that:

A) Defendant performed or participated in the act; or

B) Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

VIII. NOTICE BEFORE SUIT

12. Pursuant to §17.47(a) of the Deceptive Trade Practices act, contact has not been made with the Defendants herein to inform them of the unlawful conduct alleged herein, for the reason that the Consumer Protection Division is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that Defendants might evade service of process, destroy relevant records and secrete assets if prior notice of this suit were given.

IX. NATURE OF DEFENDANTS' OPERATIONS

13. Defendants promote, market, and advertise their pyramid scheme to consumers purporting to sell them non-toxic pills and powders which are falsely represented by Defendants to improve fuel efficiency and reduce emissions in motor vehicles. Defendants primarily market these products via the Internet, through seminars, and in person. **(See Exhibit A, Affidavit Gary Adkins, Attachments 1 through 4)**. Defendants operate an illegal pyramid promotional scheme as defined by § 17.461(a)(6) of the DTPA which provides that: a pyramid promotional scheme is 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.

14. The person who introduces new members to the pyramid is referred to in these types of operations as an “upline.” The people who enter the pyramid directly below and after the initial purchaser are known as “downlines.”

15. The major difference between an illegal pyramid and a legal multi-level marketing plan is that an illegal pyramid pays commissions based primarily on the recruitment of persons, whereas a legal multi-level marketing plan pays commissions based on the sale of bona fide goods and services.

X. SPECIFIC FACTUAL ALLEGATIONS

The “Top Secret Gas Pill”

16. Defendants advertise and promote pills and powders that are registered with the Environmental Protection Agency (EPA) as fuel additives. A review of the EPA records for registered additives for gasoline shows a product registered by Bio Plus International, Inc. to be labeled under the name of “Bio Performance.” The EPA registration application also lists the manufacturer as Peco S.A. de C.V., a company located in Mexico City, Mexico. **(See Exhibit D, EPA records).** Defendants’ website additionally indicates that Comercializadora Peco S.A. de C.V. is the manufacturer. **(See Exhibit A, Affidavit Gary Adkins, Attachment 4 page GA019).**

17. According to Defendants’ website, and their representations made to the EPA, the pills and powders have been tested resulting in the following claims made by Defendants:

A. Introduction of the pills and powders in fuel will improve fuel quality, and diminish the emission of polluting gases.

B. The results of tests of the products proved increase in fuel efficiency with better combustion, eliminating carbon monoxide and other harmful “Greenhouse Gases.”

C. The product is alleged to be, or contain, an “enzyme catalyst” which is represented to have physical properties which modify the physical state of the fuels accelerating the breaking of “links” “liberating the total energy contained within.”

D. The product is represented to be “totally non-toxic” and “will not irritate the skin or respiratory system.”

E. Consumers are told that results of up to 30% improvement of fuel efficiency and environmental benefits such as a 50% reduction in emissions can be obtained from use of the product in their vehicle engines.

F. Defendants’ web site contains materials represented to be laboratory tests and a material safety data sheet that are provided as evidence of the safety and efficacy of these products.

(See Exhibit A, Affidavit Gary Adkins, Attachment 4 page GA019, and Exhibit D, EPA document).

18. Moreover, contrary to the representations made by Defendants, the EPA reports that naphthalene is used in the production of phthalic anhydride; it is also used in mothballs.¹ Acute (short-term) exposure of humans to naphthalene by inhalation,

¹ U.S. Environmental Protection Agency. *Toxicological Review of Naphthalene (CAS No. 91-20-3) in Support of Summary Information on the Integrated Risk Information System (IRIS)*. National Center for Environmental Assessment, Cincinnati, OH. (1998), available at <http://www.epa.gov/iris/subst/0436.htm>.

ingestion, and dermal contact is associated with hemolytic anemia, damage to the liver, and neurological damage.²

19. The State of Texas has retained an expert, Professor Ronald D. Matthews, Ph.D., P.E., to test Defendants' product to determine its composition and fuel efficiency/emission claims. The State also retained experts at a laboratory that specializes in testing fuel and fuel additives. The laboratory tests indicate that fuel into which the recommended quantity of Bio Performance additive has been placed has a lower British Thermal Unit value ("btu") than fuel that does not have the additive. Moreover, the laboratory tests confirm that the additive appears to be largely naphthalene and high molecular weight alkanes. (See **Exhibit E, Affidavit of Dan E. Worcester, Senior Project Engineer, InterTek Automotive Research**).

20. Plaintiff's automotive engineering expert, Professor Matthews, reviewed these chemical tests and states that these chemicals have no effect upon gasoline fuel, and will not result in any increase in fuel economy in either gasoline or diesel powered engines. (**Exhibit F, Affidavit of Professor Matthews**). Therefore, Defendants' product is not what it is claimed to be. It is in fact a product [mothballs and high molecular weight alkanes] built on an illegal pyramid.

The "Compensation Plan"

21. While one can buy these pills and powders from the Defendants through their Bio Performance web site, the products are also marketed through multi-level marketing. At seminars held by Defendants regarding the product, consumers are encouraged to sign

² *Id.*

up to become dealers. Those who choose to become dealers must follow the rules of the Compensation Plan to receive compensation and promotions.

22. Bio Performance has a Compensation Plan on its web site. (See **Exhibit A, Affidavit of Gary Adkins, Attachment 4 pages GA029-033**). Defendants use the term "Business Volume" (BV) as a point system for determining whether consumers are eligible for a commission. Transactions are assigned different "BV" values. For example, if consumers sign up to get \$59 worth of product shipped to them every month this equals 50 "BV." A participant must acquire an average of 50 "BV" per month for his or her account to remain active. (See **Exhibit A, Affidavit of Gary Adkins, Attachment 4 pages GA029-033**). Additionally, "BV" affects the participant's ascension through the levels of the Bio Performance ranks. Upon information and belief, what this means is that much of Bio Performance's "sales" are actually consumers trying to improve their status in the company by getting product automatically shipped to them instead of making retail sales to non-participant customers. Plaintiff has received complaints from consumers who have signed up to be Managers or Area Managers in Bio Performance. These complaints contain attachments that purport to be emails from Bio Performance to consumers. These emails state that the foundation of the company is its auto ship program. (**Exhibit C Affidavit of Mary K. Vinson, page 2**).

23. Consumers can complete an online application or pay \$29 to get a sales aid kit. Consumers appear to be paid at most \$8.10 for each bottle of pills they sell for the suggested retail price. To participate at the "Manager" level a consumer must purchase a product pack and sales aid kit for fees totaling \$197.47 or must accumulate 300 personal

BV. At this level, the consumer appears to get a 5% commission from sales made by people who the consumer signs up to sell the product. (See **Exhibit A, Gary Adkins Affidavit and Attachment 4 pages GA 029-033**).

24. By contrast to the \$8.10 profit per bottle of pills, if a consumer signed up new participants into the plan or scheme, the consumer is paid \$50 for each "Manager" and the consumer accumulates "BV." Bio Performance represents that consumers who sign up as Managers can make up to \$2,000 a week from commissions from people who they sign up. If the consumer signs up at the "Area Manager" level, for a cost of over \$500, the consumer can get up to 6% commission. Bio Performance represents to consumers who sign up as Area Managers that they can make up to \$2,000 a day from the people they sign up. Also, Bio Performance represents to consumers they can earn "BV", \$50 for signing up a Manager, \$200 for signing up an Area Manager and \$150 for each person they talk into "upgrading" from Manager to Area Manager. (See **Exhibit A, Gary Adkins Affidavit, Attachment 4 page GA030**).

25. Throughout these levels, consumers still make at most \$8.10 per bottle of pills they sell at the suggested retail price. Upon information and belief, most Defendants strongly encourage, through seminars and other sales tools, consumers to sign up at the over \$500 level. Defendants represent to consumers that they want to be a Fortune 500 Company and make "1,000 Millionaires" from their sales people. (**Exhibit A, Gary Adkins Affidavit, Attachment 4, page GA025, and Exhibit C Affidavit Mary Vinson, page 2**).

26. Among other things, Defendants misrepresented the character of their Compensation Plan by representing that the operation is a multi-level marketing plan, when in fact the operation is a pyramid promotional scheme as defined under Texas law.

27. For example, Defendants make the following representation on their website Policies and Procedures form regarding commissions:

There is no fee, charge or required purchase to participate in any phase of BioPerformance's marketing plan. Advancement through any phase of the marketing plan can be accomplished strictly by you and your sales team retailing product. All commissions are earned strictly from product sales.

(See Exhibit A, Gary Adkins Affidavit, Attachment 2).

This income representation is deceptive and misleading because it causes prospective purchasers to believe that these commissions are being paid based primarily on the sales of goods and services when in actuality, these commissions are being paid on the basis of introducing others into becoming dealers.

28. Attachment 2 to Exhibit "A" contains the Bio Performance website page describing the basic structure of the pyramid, and a recent printout of Bio Performance's description of its business, all of which have been displayed on the Internet at www.mybpbiz.com web site at various times; all exhibits are true and correct copies and are fully incorporated herein.

29. Defendants are sending out emails, holding seminars and representing to consumer that Bio Performance intends to be a Fortune 500 Company, it intends to make 1,000 millionaires, and it encourages people to sign up new participants at the Area Manager level. **(Exhibit C Affidavit of Mary K. Vinson, page 2).** The communications from the company often end with quotes from Lowell Mims. **(Id).**

30. By contrast, Plaintiff alleges that consumers report that the telephone number for Bio Performance is no longer a working number. An investigator with Plaintiff's office called both the number for Bio Performance and the telephone number for the Bio Performance contact person listed with BBB (Gustavo Romero) - both numbers have recordings saying that they are no longer working numbers. **(Exhibit C Affidavit of Mary K. Vinson, pages 1- 2)**. Consumers also complain that Bio Performance will no longer accept credit cards and is requiring people who sign up with the program to pay via direct draft of bank accounts. An investigator with Plaintiff's office reviewed the Bio Performance web site and observed that it states that electronic draft of a bank account is the only form of payment the company will accept. **(Exhibit C Affidavit of Mary K. Vinson, page 2)**. Upon information and belief, it is much easier for a consumer to request a charge back on a credit card than it is for a consumer to stop electronic debits from a bank account if the consumer wishes to cancel the purchase for any reason.

XI. FALSE, MISLEADING OR DECEPTIVE ACTS

31. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA. Such acts include:

A. Promoting a pyramid promotional scheme, as defined by §17.461(a)(5)(A),(6), by inducing or attempting to induce one or more other persons to participate in the Bio Performance pyramid on the Internet and in seminars, and continuing to promote such a pyramid in violation of DTPA §17.46(b)(21);

B. Promoting a pyramid promotional scheme, as defined by §17.461(a)(5)(B),(6), by assisting another person in inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme in violation of DTPA §17.46(b)(21);

C. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2);

D. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA §17.46(b)(3);

E. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA §17.46(b)(5);

F. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of DTPA § 17.46(b)(7);

G. Advertising goods or services with the intent not to sell them as advertised in violation of § 17.46(b)(9);

H. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of § 17.46(b)(24);

XII. INJURY TO CONSUMERS

32. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored.

XIII. NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANT'S ASSETS

33. Plaintiff requests immediate relief by way of a temporary restraining order and temporary injunction to preserve and protect Defendants' assets from dissipation so that the victims of defendants' actions can receive the restitution to which they are entitled. Defendants' assets are subject to dissipation because they market a bogus product which does not improve fuel economy or reduce emissions and which is sold primarily through an illegal pyramid. (See Exhibit C, Attachment "1", Affidavit of Mary Vinson). All of the monies taken in by Defendants constitute contraband. If Defendants' assets are not immediately frozen pending a temporary and permanent injunction hearing, such assets will be subject to dissipation, may be removed from the jurisdiction of this court, may be secreted, all of which would eliminate any possibility that Defendants' victims will receive restitution at final trial. (See Exhibit C, Attachments "3, 5 & 7", Affidavit of Mary Vinson). Defendants' bank records indicate that over \$15,000,000 has been received from consumers and other persons because of Defendants' false representations with regard to its products. (See Exhibit C, Attachments "3, 5 & 7", Affidavit of Mary Vinson). These same bank records reveal that much of this money is being dissipated and that significant sums are being diverted to the individual Defendants Mims and Romero. (See Exhibit C, Attachment "7", Affidavit of Mary Vinson).

XIV. EQUITABLE RESCISSION

34. All agreements between consumers and Defendant should be subject to the equitable remedy of rescission.

XV. CONSTRUCTIVE TRUST

35. A constructive trust should be placed upon all of Defendants' assets in favor of all consumers victimized by Defendants and in favor of the State of Texas until this Court determines the appropriate amount of restitution and disgorgement.

XVI. DISGORGEMENT

36. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from their putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from consumers together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XVII. REPATRIATION OF ASSETS

37. After due notice and a hearing, the court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court or into the Court's registry.

**XVIII. REQUEST TO CONDUCT DISCOVERY PRIOR
TO TEMPORARY INJUNCTION HEARING**

38. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of victims and other witnesses who reside out of state and/or subpoena range who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

XIX. TRIAL BY JURY

39. Plaintiff herein requests a jury trial and tenders the jury fee to the Bexar County District Clerk's office pursuant to TEX. R. CIV. P. 216 and the TEX. GOV'T CODE ANN. § 51.604.

**XX. APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

40. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.

41. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be

issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;

B. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court;

C. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendants, or subject to access or control by Defendants, without providing Plaintiff and the Court prior notice by motion seeking such access;

D. Selling, marketing, promoting, distributing, advertising or allowing others to sell, market, promote, distribute, or advertise, the sale of all Bio Performance products by representing, expressly or by implication, that these products 1) will reduce the emissions of motor propelled vehicles, 2) improve gasoline efficiency or fuel economy of motor propelled vehicles, or 3) are safe and non-toxic;

E. Accepting or paying monies or remuneration of any type or character for, or in furtherance of, the sale, distribution, marketing, promotion, or advertising of all Bio Performance products wherein it is represented, expressly or by implication, that these products 1) will reduce the emissions of motor propelled vehicles, 2) improve gasoline efficiency or fuel economy of motor propelled vehicles, or 3) are safe and non-toxic;

F. Failing to conspicuously disclose on its website, in any written advertisement or solicitation, and in any oral communication with any consumer or prospective purchaser or buyer the following information in 13 point Times New Roman Bold Font the following information: "Short term exposure, inhalation, ingestion, and dermal contact with Bio Performance products can cause hemolytic anemia, damage to the liver, and neurological damage";

G. Selling, distributing, sending, mailing, printing, giving, disseminating, advertising, referencing, or allowing any other person, entity or business affiliated with Defendants or subject to their control, directly or indirectly, to sell distribute, send, give, mail, print, advertise, reference, or disseminate, any materials that in any manner represent, expressly or by implication, that Bio Performance products 1) will reduce the emissions of motor propelled vehicles, 2) improve gasoline efficiency or fuel economy of motor propelled vehicles, or 3) are safe and non-toxic;

H. Representing, expressly or by implication, that Bio Performance products increase or boost enzymatic reaction if used in fuel which is placed in vehicles or other fuel burning devices;

I. Failing to completely remove the following claims from any web site,

promotional materials, or advertisements: 1) that Bio Performance products are non-toxic; 2) that Bio Performance products will result in reductions in emissions or “greenhouse gasses”; 3) that using Bio Performance products will result in improvement in fuel efficiency or fuel economy; 4) that Bio Performance products contain anything that will produce any “enzymatic” reactions;

J. Failing to prevent or stop other sellers, distributors, or buyers of Defendants’ products from completely removing the following claims from any of their web sites, promotional materials, or advertisements: 1) that Bio Performance products are non-toxic; 2) that Bio Performance products will result in reductions in emissions or “greenhouse gasses”; 3) that using Bio Performance products will result in improvement in fuel efficiency or fuel economy; 4) that Bio Performance products contain anything that will produce any “enzymatic” reactions;

K. Failing to notify each and every agent, independent business owner, manager, area manager, or any other person 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;

L. Failing to notify each and every agent, independent business owner, manager, area manager, or any other person who Defendants have reason to know or believe are marketing Bio Performance products that they should comply with this injunction if they in any manner market, advertise, or attempt to introduce into commerce any Bio Performance products.

42. In addition, Plaintiff State of Texas respectfully prays that this Court will:

A) Order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses;

B) Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in the amount of not more than \$20,000 per violation of the DTPA;

C) Order Defendants to pay Plaintiff State of Texas' attorney fees and costs of court pursuant to the TEX. GOVT. CODE, § 402.006(c)

E) Order Defendants to pay both pre-judgment and post judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and

F) Grant all other relief to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

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