

09/25/2023

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 FOR THE COUNTY OF SACRAMENTO
14

15 THE PEOPLE OF THE STATE OF CALIFORNIA,

16 Plaintiff,

17 v.

18 BIORA THERAPEUTICS, INC.

19 Defendant.
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Case No. 23CV008397

~~PROPOSED~~
FINAL JUDGMENT AND
PERMANENT INJUNCTION

BY FAX



1 Plaintiff, the People of the State of California ("Plaintiff" or "People"), has filed a
2 Complaint for permanent injunction and other relief in this matter, alleging that Defendant Biora
3 Therapeutics, Inc. ("Defendant") violated California Business and Professions Code sections
4 17200 et seq. and 17500 et seq. Plaintiff, by its counsel, and Defendant, appearing through
5 counsel, have agreed to the entry of this Final Judgment ("Judgment") by the Court without the
6 taking of proof and without trial or adjudication of any fact or law and with all parties having
7 waived their right to appeal. The Court having considered the matter and good cause appearing
8 states as follows:

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

10 **I. PARTIES AND JURISDICTION**

11 1. This Court has jurisdiction over the allegations and subject matter of the People's
12 Complaint filed in this action, and the parties to this action; venue is proper in this County; and
13 this Court has jurisdiction to enter this Judgment and to enforce its provisions.

14 **II. DEFINITIONS**

15 2. For the purposes of this Judgment:

16 a. "Biora" or "Defendant" mean Biora Therapeutics, Inc. and its predecessor
17 entity, Progenity, Inc., and, to the extent acting on their behalf, any officers, directors,
18 shareholders, employees, representatives (other than legal counsel), affiliates, parents,
19 subsidiaries, operating companies, or other affiliated entities that are working under contract to
20 provide any type of services to Defendant subsequent to the entry of this Judgment.

21 b. "Communication(s)" means every disclosure, transfer, exchange, or
22 transmission of information, whether oral, written, or electronic, and whether face-to-face, by
23 telecommunications, telephone, computer, mail, e-mail, text message, instant message, facsimile
24 (fax) machine, or otherwise.

25 c. "Consumer" means a person who received genetic testing services from
26 Biora at the time they resided in California.

27 d. "Plaintiff" or "People" means Plaintiff the People of the State of
28 California.

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1 g. Engaging in any acts or practices that violate California Business and
2 Professions Code sections 17200 or 17500.

3 4. In addition, pursuant to California Business and Professions Code sections 17203
4 and 17535, Defendant is hereby ordered to, as follows:

5 a. Return any payment received after the entry of this Judgment from a
6 Consumer for genetic testing services provided before the date of this Judgment. Such payments
7 shall be returned to the addresses from which they were sent within thirty (30) days of receipt by
8 certified mail or any method of delivery that provides for tracking. All returned payments, shall
9 include a written notice explaining that "Biora Therapeutics, Inc., formerly known as Progenity,
10 Inc., is refusing this payment as the debt has been waived. The patient owes no further amounts to
11 Biora Therapeutics, Inc. for genetic testing services prior to this notice;"

12 b. Use reasonable efforts to ensure that its waiver of the debts of Consumers
13 pursuant to this Judgment does not result in the issuance of 1099 Forms to any affected
14 Consumer; and

15 c. Within thirty (30) days of this Judgment, send notice to Consumers with an
16 outstanding balance at any time since August 31, 2022 and whose debts Defendant waives or has
17 waived ("Notice") that states in plain English: (a) that the Defendant has waived the Consumer's
18 debts incurred for services it provided under the name Progenity, Inc., (b) the Consumer's prior
19 balance before waiver, and (c) a current zero balance. The Notice shall not otherwise contain
20 advertisement or promotional material and no release of liability shall be required or solicited in
21 connection to the debt waiver.

22 i. Defendant shall send the Notice in writing by U.S. mail to the last
23 known address for each Consumer;

24 ii. Defendant will take reasonable efforts to identify address
25 information for any Notice returned as undeliverable, including
26 through the use of a reputable public information database, and
27 resend such Notice to the updated address information;

28 iii. Defendant will also send an electronic copy of the Notice by email

1 to each Consumer for which it has an email address.

2 d. Create and provide a report to the People one hundred and eighty days
3 (180) after entry of this Judgment. The report shall confirm waiver of all debts pursuant to
4 paragraph 5 and identify all Communications made after the entry of this Judgment with any
5 Consumer for whom Defendant waived debt related to a genetic testing service. It will also list
6 the number of Notices that it sent by U.S. mail, the number that were returned as undeliverable,
7 the efforts made to locate contact information for Consumers where a Notice was returned as
8 undeliverable and the number that it sent out by electronic mail.

9 **IV. CONSUMER RESTITUTION**

10 5. Pursuant to California Business and Professions Code section 17203 and 17535
11 and the Compliance Provisions stated herein, Defendant shall within seven (7) days of entry of
12 this Judgment waive all of the outstanding debts of Consumers owed to Defendant, including
13 interest and late fees, for genetic testing services provided before the date of this Judgment.

14 6. Defendant will confirm waiver of such debts pursuant to the Compliance
15 Provisions in Paragraph 4.

16 **V. CIVIL PENALTIES**

17 7. Defendant is hereby ordered pursuant to California Business and Professions Code
18 sections 17206 and 17536 to pay civil penalties in the total amount of \$200,000.00 dollars (two
19 hundred thousand dollars) as follows:

20 a. Defendant shall wire the entire amount to the Office of the California
21 Attorney General, no later than fifteen (15) days following the entry date of the Judgment or the
22 date when payment instructions are provided by the People, whichever is later.

23 **VI. RELEASE**

24 This Judgment shall have a res judicata effect and shall constitute a full, final, and binding
25 settlement and release, to the fullest extent permitted by law, of each cause of action set forth in
26 the accompanying Complaint, and of any and all liabilities, rights, claims, actions, causes of
27 action, demands, penalties, fines, damages, restitution, costs, attorney's fees, losses, and remedies
28 that Plaintiff has or could have brought against Defendant and all of its past and present officers,

1 directors, shareholders, employees, affiliates, subsidiaries, predecessors, assigns and successors
2 arising out of the factual allegations in the Complaint relating to Defendant's conduct to the
3 extent such practices were or could have been asserted in the Complaint or addressed by the terms
4 of this Judgment. Plaintiff acknowledges that this Judgment resolves the above-captioned action
5 and the People's investigation into Biora. **Section VI. has no effect or impact on any potential**
6 **or actual claims brought or that could be brought by any consumer of Biora's genetic**
7 **testing services.**

8 VII. GENERAL PROVISIONS

9 8. Jurisdiction is retained for the purpose of enabling any party to this Judgment to
10 apply to the Court at any time for such further orders and directions as may be necessary and
11 appropriate for the construction or carrying out of the Judgment, for the modification of any of
12 the provisions thereof, for the enforcement of compliance herewith, or for the punishment of
13 violations hereof.

14 9. Defendant shall cooperate fully with the California Attorney General's Office in
15 any investigation by that office concerning Biora's compliance with this Judgment.

16 10. Defendant shall pay all court costs and reasonable attorneys' fees associated with
17 any filings by the People to successfully enforce any provision of this Judgment.

18 11. All notices under this Judgment shall be provided to the following via email and
19 overnight mail:

20 a. For the People:
21 Ari Dybnis, Deputy Attorney General
22 Office of the Attorney General
23 300 S. Spring Street, Suite 1702
24 Los Angeles, CA 90013
25 Ari.Dybnis@doj.ca.gov

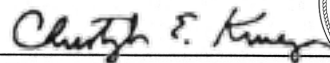

26 b. For Defendant:
27 M. Kendall Day
28 Jonathan Phillips
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Counsel for Defendant

12. The clerk is ordered to enter this Judgment forthwith.

IT IS SO ORDERED, this 6 day of June, 2023.



JUDGE OF THE SUPERIOR COURT
Cheryl E. Kimey

DECLARATION OF SERVICE BY E-MAIL

Case Name: People of the State of California v. Biora Therapeutics, Inc.
No.: 23CV008397

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On September 14, 2023, I served the attached **[PROPOSED] FINAL JUDGMENT AND PERMANENT INJUNCTION** by transmitting a true copy via electronic mail addressed as follows:

Jonathan M. Phillips

Kendall M. Day

Becca Smith

Gibson Dunn

JPhillips@gibsondunn.com

KDay@gibsondunn.com

BSmith@gibsondunn.com

Attorneys for Defendant, Biora Therapeutics, Inc.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 14, 2023, at Sacramento, California.

Leticia Aguirre

Declarant


Signature