

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM308824

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Intellectual Property Escrow Agreement

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Muscle Elements, Inc.		05/08/2014	CORPORATION: DELAWARE
Eric Tomko		05/08/2014	INDIVIDUAL: UNITED STATES
Casey Crane		05/08/2014	INDIVIDUAL: UNITED STATES
James Tracy		05/08/2014	INDIVIDUAL: UNITED STATES
Kevin Ramos		05/08/2014	INDIVIDUAL: UNITED STATES
Marcus Smalls		05/08/2014	INDIVIDUAL: UNITED STATES

RECEIVING PARTY DATA

Name:	Bio-Engineered Supplements & Nutrition, Inc.
Street Address:	5901 Broken Sound Pkwy NW
Internal Address:	Suite 600
City:	Boca Raton
State/Country:	FLORIDA
Postal Code:	33487
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 7

Property Type	Number	Word Mark
Serial Number:	85896035	MUSCLE ELEMENTS
Serial Number:	85923894	ME MUSCLE ELEMENTS
Serial Number:	85924579	BUILD A BETTER YOU, WITH ME
Serial Number:	85953890	AMINO FLOW
Serial Number:	85953881	PRE-CRE
Serial Number:	85953854	212
Serial Number:	85974057	LEANWORKS

CORRESPONDENCE DATA

Fax Number: 3126095005

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 3126097850

Email: abufalino@vedderprice.com

Correspondent Name: ANGELO J. BUFALINO

TRADEMARK

Address Line 1: VEDDER PRICE P.C.
Address Line 2: 222 N. LASALLE ST., SUITE 2400
Address Line 4: CHICAGO, ILLINOIS 60601

ATTORNEY DOCKET NUMBER:	45193.02.0019
NAME OF SUBMITTER:	Angelo J. Bufalino
SIGNATURE:	/angelo bufalino/
DATE SIGNED:	06/26/2014

Total Attachments: 25

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INTELLECTUAL PROPERTY ESCROW AGREEMENT

INTELLECTUAL PROPERTY ESCROW

THIS INTELLECTUAL PROPERTY ESCROW AGREEMENT (this "Agreement") is made and entered into effective as of May 8, 2014, by and between Muscle Elements Inc., a Delaware corporation, Eric Tomko, Casey Crane, James Tracy, Kevin Ramos and Marcus Smalls (collectively "Assignors"), Kent Pratt, Esq., as escrow agent ("Escrow Agent"), and Bio-Engineered Supplements & Nutrition, Inc., a Delaware corporation, its successors and assigns ("Assignee") with reference to the following facts:

A. On May 8, 2014, a Consent Final Judgment ("**Consent Judgment**"), was entered by the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida in a case styled *Bio-Engineered Supplements & Nutrition, Inc. vs. Muscle Elements, Inc. d/b/a Muscle Elements, Casey Crane, James Tracy, Eric Tomko, Kevin Ramos and Marcus Smalls*; Case No. 502013CA013954XXXXMB, which orders, among other things, that Assignors shall "transfer all rights, title and interest in and to the Intellectual Property [as defined in the Consent Judgment] to Kent Pratt, Esq., a third-party escrow agent, or another third party escrow agent agreed to by the Parties (the "Escrow Agent"). [Assignors] shall execute any and all documents necessary to effectuate such transfer. The Escrow Agent shall hold the Intellectual Property in escrow pending [Assignors'] compliance with their obligations under [the Consent Judgment]." A copy of the **Consent Judgment** is attached hereto as Exhibit A and made a part hereof for all purposes.

B. Under the **Consent Judgment**, the **Intellectual Property** includes the following:

a. the following trademark applications:

- i. "Muscle Elements"; Serial No. 85896035
- ii. "ME Muscle Elements"; Serial No. 85923894
- iii. "Build a Better U, With Me"; Serial No. 85924579
- iv. "AmiNo Flow"; Serial No. 85953890
- v. "Pre-Cre"; Serial No. 85953881
- vi. "212"; Serial No. 85953854
- vii. "LeanWorks"; Serial No. 85974057

b. the following products, including all formulas, labels and sales and marketing materials conceived, developed or created by or on behalf of any of the Assignors, and all modifications and extensions relating thereto, including but not limited to different flavors, colors, ingredients or package sizes:

- i. Amino product currently named by Assignors as "AmiNo Flow"
- ii. Pre-workout product currently named by Assignors as "Pre-Cre"
- iii. Fat-burning product currently named by Assignors as "212"
- iv. Diet product currently named by Assignors as "LeanWorks"

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REEL: 005310 FRAME: 0003

C. Pursuant to the **Consent Judgment**, the Escrow Agent shall hold the Intellectual Property in escrow ("**Escrowed Materials**") pending Assignors' compliance with their obligations under the **Consent Judgment**. Within two business days of receipt of all or any part of the Escrowed Materials, Escrow Agent shall send by e-mail to Assignee's counsel, with a copy to Assignors' counsel, a written description of the Escrowed Materials received as of the date of the notice. Such notices shall be sent by the Escrow Agent each time Escrowed Materials are received by him under this Agreement.

D. **Assignors** shall bear full responsibility for prosecuting and defending the trademark applications and any rights in the **Intellectual Property**, at their own expense.

E. The **Consent Judgment**, among other things, requires the **Assignors** to make certain payments to **Assignee** at specific periods of time as more fully set forth in the **Consent Judgment**.

F. With respect to the **Assignors'** payment obligations under the **Consent Judgment** and the **Escrow Agent's** responsibilities in the event of non-payment by **Assignors** or certain other occurrences affecting **Assignors**, the **Consent Judgment** provides as follows:

If any of the [Assignors] (i) fails to make a payment within five calendar (5) days of the Due Date [as defined in the Consent Judgment], (ii) ceases doing business as Muscle Elements, (iii) defaults on any of the payment obligations in [the Consent Judgment], (iv) (a) is declared insolvent or bankrupt by a court of competent jurisdiction; (b) files a voluntary petition in bankruptcy, or has filed against it an involuntary petition in bankruptcy, in any court of competent jurisdiction; or (c) purports to assign its assets or the Intellectual Property for the benefit of creditors, prior to [Assignee's] receipt of the entire [sum of] \$1,000,000.00, then upon the submission of an affidavit from [Assignee] attesting under oath to the occurrence of one or more of the foregoing events, the Escrow Agent is hereby directed and authorized to immediately and unconditionally release, transfer and assign to [Assignee] all right, title and interest in and to the Intellectual Property without delay or additional expense to [Assignee].

G. The Parties wish to employ the services of **Escrow Agent** to act as the escrow holder with regard to the **Escrowed Materials** for the limited purposes set forth herein, and **Escrow Agent** has agreed to serve as such escrow holder, under the terms and conditions provided in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby irrevocably provide the following escrow instructions to **Escrow Agent**.

1. Recitals. The foregoing recitals are true and correct and incorporated into this Agreement for all purposes.

2. Deposits.

(a) **Assignors**, simultaneously with the execution of this Agreement, shall deposit with the **Escrow Agent** the **Escrowed Materials** consisting of the Assignment documents and other materials referenced in and in the form attached to Exhibit B, which is attached hereto and made a part hereof. The **Escrow Agent** shall bear no responsibility with respect to the validity or enforceability of the **Escrowed Materials**, other than to verify that the **Escrowed Materials** identified on Exhibit B have been duly executed and received.

(b) **Assignors** may from time to time deliver additional materials to be held hereunder together with an acknowledgment signed by the **Assignors** in the form included in the Annex to Exhibit B attached hereto that such materials are subject to the terms and provisions of this Agreement.

(c) **Escrow Agent** shall notify **Assignee** immediately upon its receipt of any such additional materials and shall verify that **Assignee** has received a copy of the list of items delivered.

(d) Concurrently with receipt of **Escrowed Materials**, **Escrow Agent** shall sign and deliver to the **Assignors** and **Assignee** an acknowledgment of receipt of the **Escrowed Materials**. **Escrow Agent** agrees to accept supplemental materials as specified herein, and agrees to hold the **Escrowed Materials** in safekeeping under the terms and conditions of this Agreement.

(e) The signature by the **Assignors** on Exhibit B or any Annex to Exhibit B shall constitute the **Assignors'** representation and warranty that Exhibit B (including annexes) is true, accurate and complete.

3. Manner of Holding of Escrowed Materials.

(a) **Escrow Agent** shall hold the **Escrowed Materials** in a fire safe area.

(b) **Escrow Agent** shall have the obligation to reasonably protect the safety and security of the **Escrowed Materials**.

(c) In the event of any proceeding or litigation concerning any of **Escrowed Materials**, **Escrow Agent** shall immediately notify **Assignors** and **Assignee**. In such event, the **Escrow Agent** will retain the **Escrowed Materials** until otherwise ordered by a court or such other authority having jurisdiction with respect thereto. If **Escrow Agent** receives a subpoena or any other order from a court or other judicial tribunal pertaining to the release of the **Escrowed Materials**, **Escrow Agent** shall immediately notify **Assignors** and **Assignee** unless prohibited by law. It shall be the responsibility of **Assignors** and **Assignee** to challenge any such order; provided, however, that **Escrow Agent** does not waive his rights to present his position with respect to any such order. **Escrow Agent** shall not be required to disobey any order from a court or other judicial tribunal.

4. Representations. **Assignors**, by depositing any materials pursuant to this Agreement, represent and warrant to and for the benefit of **Assignee** as follows:

(a) **Assignors** lawfully possess all rights, title and interest in and to all of the **Escrowed Materials**;

(b) With respect to all of the **Escrowed Materials**, **Assignors** have the right and authority to grant to **Escrow Agent** and **Assignee** the rights as provided in this Agreement;

(c) The **Escrowed Materials** are not subject to any lien or other encumbrance that entitles the holder of the lien or encumbrance to terminate this Agreement, withdraw the **Escrowed Materials**, or prevent or hinder **Assignee's** access to the **Escrowed Materials** or receipt thereof following a **Release Condition** (as defined below); and

(d) The **Escrowed Materials** are Proprietary Intellectual Property and constitute **Intellectual Property** for purposes of 11 U.S.C. § 365(n).

5. Removal of Escrowed Material. The **Escrowed Materials** may be removed and/or exchanged only on written instructions signed by both the **Assignors** and **Assignee**, or as otherwise provided in Section 6 of this Agreement.

6. Release of Escrowed Materials. Release of **Escrowed Materials** is subject to the terms and conditions of this Section 6.

(a) Release Conditions. As used in this Agreement, "**Release Condition**" shall mean with respect to a release to **Assignee**, any of the following:

- (i) Any **Assignor's** failure to make a payment within five (5) calendar days of the Due Date [as defined in the **Consent Judgment**], provided that **Assignee** has provided the one-time notice of non-payment and opportunity to cure to the **Assignor[s]** as provided for in the **Consent Judgment**, and **Assignor[s]** fail to timely cure the non-payment.
- (ii) Any **Assignor's** ceasing to do business as Muscle Elements.
- (iii) Any **Assignor's** default on any of the payment obligations in the **Consent Judgment**.
- (iv) Any **Assignor**, prior to **Assignee's** receipt of the sum of \$1,000,000.00 as required in the **Consent Judgment**, is declared insolvent or bankrupt by a court of competent jurisdiction; files a voluntary petition in bankruptcy, or has filed against it an involuntary petition in bankruptcy, in any court of competent jurisdiction; or purports to assign its assets or the **Intellectual Property** for the benefit of creditors.

(b) Filing For Release. If **Assignee** believes in good faith that a **Release Condition** has occurred, **Assignee** shall be entitled to immediately submit to the **Escrow Agent** an affidavit ("**Release Affidavit**") attesting under oath to the occurrence of one or more of the foregoing events and the **Escrow Agent** is hereby directed and authorized to immediately and

unconditionally release, transfer and assign to **Assignee** all right, title and interest in and to the **Escrowed Materials** without delay or additional expense to **Assignee**.

(c) Release of Deposit.

(i) **Escrow Agent** shall promptly release to **Assignee** the **Escrowed Materials** deposited by or on behalf of Assignors upon receipt of a **Release Affidavit** from **Assignee**.

(ii) **Escrow Agent** shall promptly release the **Escrowed Materials** to **Assignee** at any time as directed by written instructions signed by both **Assignors** and **Assignee**.

(iii) **Escrow Agent** shall promptly release to the **Assignors** the **Escrowed Materials** as directed by written instructions signed by both the **Assignors** and the **Assignee** or a court order directing the release.

(iv) Evidence of such release set forth in clauses (i) (ii) and (iii) of this Section 6(c) shall be made via delivery of the Release of **Escrowed Materials** to the receiving party, executed and acknowledged by the **Escrow Agent** and the receiving party, which acknowledgement may be executed in counterparts.

7. Rights of Escrow Agent.

(a) Except as set forth in Paragraph 7(d) below, if conflicting demands are made or notices served upon **Escrow Agent** with respect to this Agreement, the parties hereto expressly agree that **Escrow Agent** shall have the absolute right at its election to do any of the following:

(i) withhold and stop all further proceedings in, and performance of this Agreement;

(ii) file a suit in interpleader in order to obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

(ii) deliver all **Escrowed Materials** intact to another location to be selected by mutual agreement of **Assignors** and **Assignee** within 30 days after **Escrow Agent** delivers notice thereof to **Assignee** and **Assignors**.

(b) **Escrow Agent** may act in reliance upon any instruction, instrument, or signature reasonably believed by **Escrow Agent** to be genuine. **Escrow Agent** shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. **Escrow Agent** shall not be responsible for failure to act as a result of causes beyond the reasonable control of **Escrow Agent**.

(c) **Assignors** and **Assignee** agree to indemnify, defend and hold harmless **Escrow Agent** from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("**Liabilities**") incurred by **Escrow Agent**

relating in any way to this Agreement except to the extent such **Liabilities** are finally determined to have been primarily caused by the gross negligence or willful misconduct of **Escrow Agent** or his breach of this Agreement. The obligations of the parties set forth in this Section 7(c) shall survive the resignation or removal of the **Escrow Agent** or the termination of this Agreement.

(d) Notwithstanding anything contained herein to the contrary, **Escrow Agent** shall promptly release the **Escrowed Materials** to **Assignee** upon receipt of a **Release Affidavit** from **Assignee** that references one or more of the **Release Conditions** regardless of the delivery of conflicting instructions or demands from or on behalf of **Assignors** or any **Assignor**.

8. Term of Agreement.

(a) The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Section 8. This Agreement shall be terminated in the event (i) **Assignors** and **Assignee** jointly instruct **Escrow Agent** in writing that the Agreement is terminated; (ii) **Assignee** provides written notice to **Escrow Agent** that it has received the full \$1,000,000.00 from **Assignors**, at which point **Assignors** can request the **Escrow Agent** to return or destroy the **Escrowed Materials** or (iii) **Escrow Agent** instructs **Assignors** and **Assignee** in writing that the Agreement is terminated for nonpayment in accordance with Section 8(b) or by resignation in accordance with Section 8(c).

(b) In the event fees owed to **Escrow Agent** are not paid when due, **Escrow Agent** shall provide written notice of delinquency to **Assignors** and **Assignee**. **Assignors** or **Assignee** shall have the right to make the payment to **Escrow Agent** to cure the default. If the past due payment is not received in full by **Escrow Agent** within one month of the date of such notice, then **Escrow Agent** shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to **Assignors** and **Assignee**. **Escrow Agent** shall have no obligation to take any action under this Agreement so long as any undisputed payment due to **Escrow Agent** remains unpaid and delinquent, except action to hold and safeguard the **Escrowed Materials** and transfer or dispose of the **Escrowed Materials** following termination as provided in this Section 8.

(c) **Escrow Agent** reserves the right to terminate this Agreement, for any reason, by providing **Assignors** and **Assignee** with 90-days' written notice of its intent to terminate this Agreement. Within the 90-day period, the parties shall use diligent efforts to enter into a substantially similar agreement with another entity acceptable to both parties and willing and able to perform the functions of escrow agent hereunder and thereupon shall provide **Escrow Agent** with joint written instructions authorizing **Escrow Agent** to forward the **Escrowed Materials** to another escrow company and/or agent or other designated recipient. **Escrow Agent** shall transfer and dispose of the **Escrowed Materials** in accordance with any such joint written instruction. If **Escrow Agent** does not receive said joint written instructions within 90 days of the date of **Escrow Agent's** written termination notice, then **Escrow Agent** shall have no obligation to take any action under this Agreement, except action to hold and safeguard the **Escrowed Materials** and transfer or dispose of **Escrowed Materials** following termination as provided in this Section 8. Alternatively, the **Escrow Agent** may petition a court of competent jurisdiction to appoint a successor escrow agent, and such court's decision shall be binding upon **Assignors** and **Assignee**.

(d) Upon termination of this Agreement, **Escrow Agent** shall destroy, return, or otherwise deliver the **Escrowed Materials** in accordance with **Assignors'** and **Assignee's** joint written instructions. If there are no such joint written instructions, **Escrow Agent** may, at its sole discretion, commence legal action interpleading **Assignors** and **Assignee**, deposit the **Escrowed Materials** with the court in such action and otherwise handle and dispose of the **Escrowed Materials** in accordance with court order. In no event shall **Escrow Agent** have the right to destroy the **Escrowed Materials** or return them to **Assignors** absent joint written instructions to such effect or final order of a court of competent jurisdiction.

9. Disclaimer. **Escrow Agent** hereby disclaims and relinquishes any title to or ownership of **Escrowed Materials** deposited with **Escrow Agent** under this Agreement.

10. Fees. **Assignee** shall pay all fees and expenses in connection with **Escrow Agent's** obligations under this Agreement, as charged from time to time by **Escrow Agent**, in accordance with the Fee Schedule attached hereto as Exhibit C.

11. Notices. Any communication, notice or demand of any kind whatsoever under this Agreement shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by facsimile or electronic-mail (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Assignors:

Muscle Elements, Inc.
6500 West Rogers Circle, Suite 5000
Boca Raton, Florida 33487

With copies to:

Attn: G. Joseph Curley, Esq.
Gunster, Yoakley & Stewart, P.A.
777 S. Flagler Drive, Suite 500 E
West Palm Beach, FL 33401
gcurley@gunster.com

If to Assignee:

Bio-Engineered Supplements & Nutrition, Inc.
Attn: Legal Department
5901 Broken Sound Pkwy NW
Boca Raton, Florida 33487-2775

With copies to:

Eric D. Isicoff, Esq.
Isicoff, Ragatz & Koenigsberg
1200 Brickell Ave., Suite 1900
Miami, Florida 33131
isicoff@irlaw.com

If to the Escrow Agent:

Kent Pratt, Esq.
340 Columbia Drive, Suite 311
West Palm Beach, Florida 33409

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

It shall be the responsibility of each of the **Assignors** to notify in writing **Assignee** and the **Escrow Agent** of their address for notice, including telephone, facsimile and email information, and of any change in the **Assignors'** address(es). The **Escrow Agent** shall have the right to rely on the last known address of the **Assignee** and of each **Assignor**.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 11 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

12. Representations. **Escrow Agent** represents and warrants that he has no financial or other interest or relation with **Assignors**, their principals or officers. **Escrow Agent** further represents, warrants and covenants that the employees of **Escrow Agent** who have access to the **Escrowed Materials** also have no such interest or relation with **Assignors**, their principals or officers.

13. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. However, **Escrow Agent** shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of **Assignors** and **Assignee**; and **Escrow Agent** shall have no obligation in performing this Agreement to recognize any successor or assign of **Assignors**, any other **Assignors** or **Assignee** unless **Escrow Agent** receives and acknowledges written notice of such assignment.

14. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

15. Headings. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

16. Governing Law. The laws of the State of Florida shall govern this Agreement.

17. Right of Use Following Release. **Assignee** has the right under this

Agreement to use the **Escrowed Materials** for the purpose of continuing the benefits afforded to **Assignee** by the **Escrowed Materials** following a release thereof to **Assignee** in accordance with this Agreement.

18. Liability of Escrow Agent.

(a) The **Escrow Agent** shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement or any other person. The **Escrow Agent** shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the **Escrow Agent** shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION. **Escrow Agent** shall not be required to advance its own funds in the performance of its duties hereunder.

(b) **Escrow Agent** shall place the **Escrowed Materials** in a vault or such other secure location so as to satisfy the requirements of Section 3 above. The **Escrow Agent**, however, does not insure that the **Escrowed Materials** will not be damaged or destroyed due to temperature, humidity, fire, smoke, electrical interference or other environmental factors, and the **Escrow Agent** is only required to take the same precautions to control the environment in which the **Escrowed Materials** will be stored as it would normally take in the storage of paper documentation.

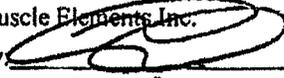
19. Court Orders. In the event that any of the **Escrowed Materials** shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, **Escrow Agent** shall provide **Assignee** and **Assignors** with written notice within 10 days after the occurrence of such event. The **Escrow Agent** is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the **Escrow Agent** obeys or complies with any such writ order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

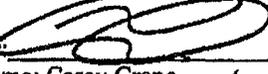
20. Advice of Counsel. The **Escrow Agent** shall have the right, but not the obligation, to consult with counsel of its choice and shall not be liable for action taken or omitted to be taken by **Escrow Agent** either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the **Escrow Agent**.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

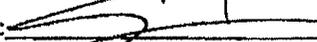
writing, have caused this Agreement to be executed the date first above written.

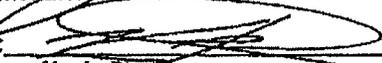
ASSIGNORS

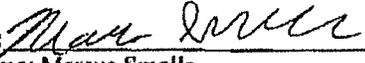
Muscle Elements Inc.
By: 
Name: Casey Crane
Title: President

By: 
Name: Casey Crane

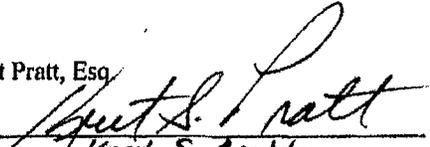
By: 
Name: James Tracy

By: 
Name: Eric Tomko

By: 
Name: Kevin Ramos

By: 
Name: Marcus Smalls

ESCROW AGENT

Kent Pratt, Esq.
By: 
Name: Kent S. Pratt
Title: Escrow Agent

ASSIGNEE

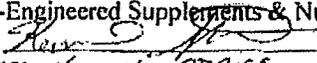
Bio-Engineered Supplements & Nutrition, Inc.
By: 
Name: Kenneth STRICK
Title: General Counsel

EXHIBIT A
CONSENT FINAL JUDGMENT

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

BIO-ENGINEERED SUPPLEMENTS &
NUTRITION, INC. f/k/a WINCHESTER,
INC.,

CIVIL DIVISION: AB

Plaintiff,

CASE NO: 502013CA013954XXXXMB

vs.

MUSCLE ELEMENTS INC. d/b/a
MUSCLE ELEMENTS, CASEY CRANE,
JAMES TRACY, ERIC TOMKO, KEVIN
RAMOS and MARCUS SMALLS,

Defendants.

2014 MAY -8 AM 9:45
SHARON R. BOGGS, CLERK
PALM BEACH COUNTY
CIRCUIT COURT
CLERK: File this document
in the Court file.
Judge: [redacted]

FILED

CONSENT FINAL JUDGMENT

THIS CONSENT FINAL JUDGMENT ("Judgment") came before the Court upon the agreement of the parties: Plaintiff, Bio-Engineered Supplements & Nutrition, Inc., f/k/a Winchester, Inc. ("BSN" or "Plaintiff"), and Defendants, Muscle Elements Inc. d/b/a Muscle Elements ("Muscle Elements"), Casey Crane ("Crane"), James Tracy ("Tracy"), Eric Tomko ("Tomko"), Kevin Ramos ("Ramos") and Marcus Smalls ("Smalls" and, collectively with the other defendants, "Defendants"). Each of the Defendants or Plaintiff is referred to herein singularly as a "Party" or, collectively, as "Parties."

RECITALS

1. In the interests of resolving this matter and avoiding further cost of litigation, and as a result of having engaged in a comprehensive mediation, the Parties have agreed that this action should be finally resolved by entry of this Judgment. This Judgment is final and binding on the Parties and their successors and assigns.

2. By mutual agreement of the Parties in writing, and upon proper application to the Court, this Judgment may be amended or modified in the interests of justice and fairness in order to effectuate the provisions of this Judgment.

3. If one or more of the provisions herein is rendered unlawful or unenforceable, the Parties shall make good faith efforts to agree upon appropriate amendments to this Judgment in order to effectuate the purposes of the Judgment. In any event, the remaining provisions will remain in full force and effect unless the purposes of the Judgment cannot, despite the Parties' best efforts, be achieved.

4. This Judgment fully and finally resolves any and all claims and counterclaims that were or could have been asserted by the Parties in this action styled *Bio-Engineered Supplements & Nutrition, Inc., f/k/a Winchester, Inc. v. Muscle Elements Inc. d/b/a Muscle Elements, Casey Crane, James Tracy, Eric Tomko, Kevin Ramos, and Marcus Smalls*, Case. No. 502013CA013954XXXXMB, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. Each Party disclaims all liability in this matter. No Party admits the claims or defenses of any other Party.

FINDINGS

Having carefully examined the terms and provisions of this Judgment, and based on the pleadings, record and representations of the Parties, the Court makes the following findings:

5. This Court has jurisdiction over the subject matter of this action and the Parties.

6. Muscle Elements has applied for trademark registrations and developed product formulas, labels, and sales and marketing materials collectively referred to herein as "Intellectual Property." The Intellectual Property includes:

a. the following trademark applications (individually referred to as the

“[trademark name] Mark” and collectively referred to as “Marks”):

- i. “Muscle Elements”; Serial No. 85896035
- ii. “ME Muscle Elements”; Serial No. 85923894
- iii. “Build a Better U, With Me”; Serial No. 85924579
- iv. “AmiNo Flow”; Serial No. 85953890
- v. “Pre-Cre”; Serial No. 85953881
- vi. “212”; Serial No. 85953854
- vii. “LeanWorks”; Serial No. 85974057

b. the following products, including all formulas, labels and sales and marketing materials conceived, developed or created by or on behalf of any of the Defendants, and all modifications and extensions relating thereto, including but not limited to different flavors, colors, ingredients or package sizes:

- i. Amino product currently named by Defendants as “AmiNo Flow”
- ii. Pre-workout product currently named by Defendants as “Pre-Cre”
- iii. Fat-burning product currently named by Defendants as “212”
- iv. Diet product currently named by Defendants as “LeanWorks”

7. The terms of this Judgment are adequate, fair, reasonable, equitable and just.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

8. The Preliminary Injunction previously entered herein on September 25, 2013 and the Interim Consent Decree entered herein on December 13, 2013 are dissolved upon entry of this Judgment, the injunction bond of \$125,000.00 is discharged, and the Clerk of the Court is hereby directed to return the \$125,000.00 to Plaintiff forthwith.

9. Defendants shall transfer all rights, title and interest in and to the Intellectual

Property to Kent Pratt, Esq., a third-party escrow agent, or another third-party escrow agent agreed to by the Parties (the "Escrow Agent"). Defendants shall execute any and all documents necessary to effectuate such transfer. The Escrow Agent shall hold the Intellectual Property in escrow pending Defendants' compliance with their obligations under this Judgment. Defendants shall bear full responsibility for prosecuting and defending the trademark applications and any rights in the Intellectual Property, at their own expense.

10. Commencing January 1, 2015, Defendants shall pay to BSN:
 - a. \$1.00 for each and every unit bearing the 212 Mark or the LeanWorks Mark (or any colorable imitation thereof or any other mark, logo, insignia or design that is, or is likely to be, confusingly similar to or could cause deception or mistake with respect to the 212 Mark or LeanWorks Mark) sold or distributed directly or indirectly by any of the Defendants;
 - b. \$0.75 for each and every unit bearing the AmiNo Flow Mark or the Pre-Cre Mark (or any colorable imitation thereof or any other mark, logo, insignia or design that is, or is likely to be, confusingly similar to or could cause deception or mistake with respect to the AmiNo Flow Mark or Pre-Cre Mark) sold or distributed directly or indirectly by any of the Defendants; and
 - c. \$0.50 for each and every unit of any product, other than those listed in (a) and (b) above, developed, sold and/or distributed directly or indirectly by any of the Defendants.
 - d. Payments shall not be due on any quantities of free samples distributed in the ordinary course of business.
11. Payments referenced in the preceding paragraph shall be made quarterly, no later

than the thirtieth (30th) day following the last day of each calendar quarter (the "Due Date"), and shall continue until the Defendants have paid BSN the total amount of \$1,000,000.00. Notwithstanding the foregoing, for the two (2) year period from January 1, 2015 to December 31, 2016, the per unit payment amount reflected in Paragraph 10 shall be reduced by 50%. Along with each payment, the Defendants at their expense shall submit to BSN a report prepared by an independent accounting firm mutually agreed upon by the Parties that certifies the preceding calendar quarter's sales (net of returns), states the amount due to BSN, and identifies how the payment was calculated. Defendants may pre-pay all or any part of the \$1,000,000.00 due to BSN hereunder at anytime without penalty.

12. Each of the Defendants shall not sell or distribute, directly or participate in any way in causing the sale of, any products to Europa Sports Products, Inc. until the Defendants have paid to BSN the total amount of \$1,000,000.00.

13. If any of the Defendants sells, transfers or assigns all or any part of the assets or business of Muscle Elements (including the Intellectual Property), whether by sale of stock or assets, merger, assignment, or otherwise, any unpaid portion of the \$1,000,000.00 must be paid to BSN as a condition of that transaction at or before the closing or effective date of such transaction. Any purported sale, transfer or assignment shall be null and void unless and until the entire \$1,000,000.00 provided for herein has been paid in full to BSN; provided, however, Defendants may transfer shares of Muscle Elements, Inc. amongst Defendants; and provided, further, Muscle Elements, Inc. shall be permitted to sell stock to investors so long as all such investors agree to be bound by the terms and conditions hereof and do not attempt to encumber the Intellectual Property.

14. BSN shall have the right to have an independent third-party conduct quarterly

audits of the Defendants' business records, which audit shall be limited to the purpose of ensuring the Defendants' compliance with the payment requirements set forth herein. If the audit reveals that the Defendants failed to make payments to BSN during any quarter in an amount that exceeds, by 5% or more, the payments actually accounted for and paid to BSN during that quarter, then, in addition to paying to BSN such past due amounts, the Defendants shall reimburse BSN for all expenses incurred in performing the audit.

15. If any of the Defendants (i) fails to make a payment within five calendar (5) days of the Due Date, (ii) ceases doing business as Muscle Elements, (iii) defaults on any of the payment obligations in this Judgment, (iv) (a) is declared insolvent or bankrupt by a court of competent jurisdiction; (b) files a voluntary petition of bankruptcy, or has filed against it an involuntary petition in bankruptcy, in any court of competent jurisdiction; or (c) purports to assign its assets or the Intellectual Property for the benefit of creditors, prior to BSN's receipt of the entire \$1,000,000.00, then upon the submission of an affidavit from BSN attesting under oath to the occurrence of one or more of the foregoing events, the Escrow Agent is hereby directed and authorized to immediately and unconditionally release, transfer and assign to BSN all right, title and interest in and to the Intellectual Property without delay or additional expense to BSN. In addition, in the event of a default of any of the obligations in this Judgment by any of the Defendants, BSN shall have the immediate right to enforce this Judgment in its full amount with credit being given for any amounts paid prior to the date of default. BSN will provide Defendant Muscle Elements, Inc. at its last known business address with a notice of non-payment and opportunity to cure, upon the first occasion of non-payment by the Due Date. Thereafter, BSN shall not be obligated to provide further notice of non-payment, but Defendants shall continue to have a five (5) day grace period as set forth in Paragraph 15(i), above.

16. The Defendants shall not solicit or hire any BSN employee for one year from the date of entry of this Judgment. This restriction shall not apply to any BSN employee terminated by BSN without cause or upon written consent from BSN.

17. Defendants shall cause any and all existing liens, rights or security interests on the Intellectual Property and any and all of Defendants' inventory (now existing or hereafter coming into existence; including but not limited to any liens, rights or security interests filed by Indrio Investments LLC and Lake Park Towing Services, Inc.) to be subordinated to a first priority lien and security interest on same which shall be filed by and in the name of BSN. Prior to paying the \$1,000,000.00 payment, the Defendants shall not pledge the Intellectual Property as security or collateral for any loan or any other obligation without the prior written consent of BSN, which consent may be withheld by BSN for any reason or no reason. Any attempt by any of the Defendants to sell, transfer, assign or otherwise encumber all or any part of the Intellectual Property except as expressly provided herein shall be null and void and be of no force or effect.

18. Each of the Defendants is hereby permanently enjoined from using or disclosing to any third parties BSN's confidential and proprietary information and trade secrets; provided that Plaintiff establishes the confidential/proprietary information/trade secret(s) at issue, and use or disclosure thereof by any Defendant. Sale of the products listed in Paragraph 6(b) above shall not constitute a violation of this provision.

19. Defendants shall be jointly and severally liable for all of Muscle Elements' obligations set forth in this Judgment.

20. BSN shall withdraw any opposition to Muscle Elements' trademark applications for the Marks.

21. No Party shall make any representations, communications or other intelligible

transmission (whether via oral, written, electronic, radiographic or any other means, including, but not limited to, e-mail, YouTube, Facebook, Twitter, InstaGram, LinkedIn or other social media or internet domain) of any information, opinion, recommendation, position or viewpoint (whether true or false) regarding, relating to or concerning any Party or any Party's products or reputation, where such representation, communication or other intelligible transmission which would reasonably be construed to (i) disparage any Party or any Party's products, business practices or reputation; (ii) cast any Party or any Party's products, business practices or reputation in a negative or unfavorable light; and/or (iii) impugn any Party or Party's products, business practices or reputation. Any Party asserting that another Party has violated this provision shall provide the other Party with written notice of the asserted violation and an opportunity to cure before taking legal action with respect to the same.

22. The Parties shall limit any public statement regarding this litigation, whether via press release, internet or social media, to the following mutually-agreeable, neutral statement:

"Muscle Elements and BSN have resolved their differences and the pending litigation between them has been concluded."

23. Each Party shall bear its own attorneys' fees and costs incurred in this action, including in the appellate court.

24. No Party shall contest this Court's jurisdiction to hear a dispute arising from this Judgment nor challenge a Party's ability to bring an action to enforce the terms of this Judgment in this Court.

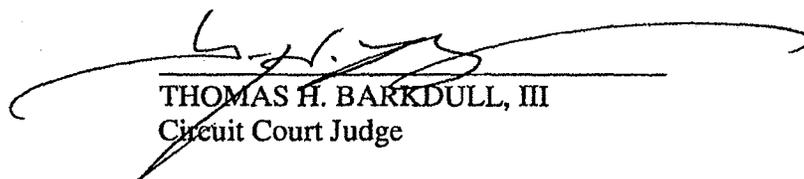
25. In the event of any litigation arising out of or relating to this Judgment, the prevailing party shall be entitled to recover all of its attorneys' fees and costs reasonably incurred in connection with said litigation.

26. The Parties shall execute and exchange a mutual general release, which will

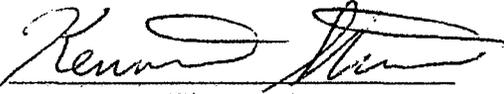
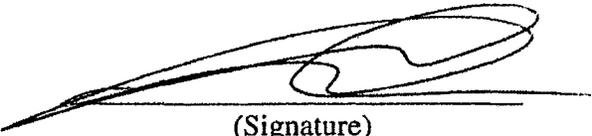
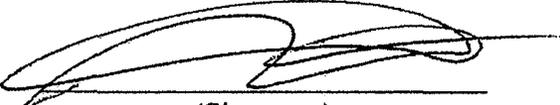
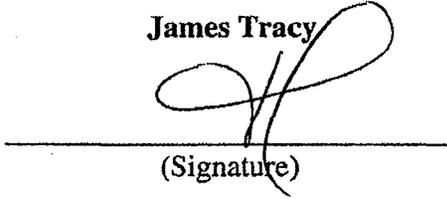
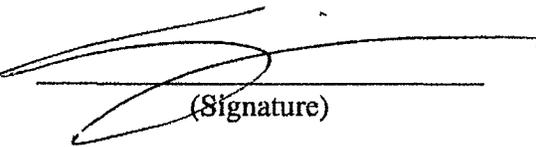
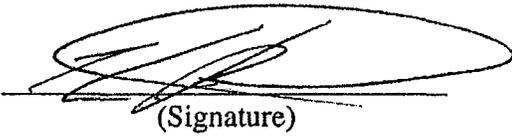
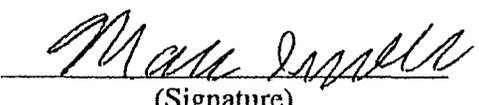
expressly exclude the obligations of this Consent Judgment.

27. As a condition of entry of this Consent Final Judgment, the Parties shall file a Joint Motion for Dismissal of the Appeal pending in the Fourth District Court of Appeals; Case No. 4D13-4033, with each party to bear their own attorneys' fees and costs.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, on this 8th day of ~~April~~^{May}, 2014.


THOMAS H. BARKDULL, III
Circuit Court Judge

Parties' signed consents to this Judgment:

<p>Bio-Engineered Supplements & Nutrition, Inc. f/k/a Winchester, Inc.</p> <p> (Signature)</p> <p>By: <u>Kenneth Strick</u> (Print name)</p> <p>Its: <u>Senior Vice President</u> (Title)</p>	<p>Muscle Elements Inc. d/b/a Muscle Elements</p> <p> (Signature)</p> <p>By: <u>CASEY CRANE</u> (Print name)</p> <p>Its: <u>President</u> (Title)</p>
<p>Casey Crane</p> <p> (Signature)</p>	<p>James Tracy</p> <p> (Signature)</p>
<p>Eric Tomko</p> <p> (Signature)</p>	<p>Kevin Ramos</p> <p> (Signature)</p>
<p>Marcus Smalls</p> <p> (Signature)</p>	

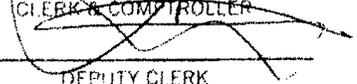


STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions if any as required by law.

THIS 8th DAY OF May, 2014

SHARON R. BOCK
CLERK & CONTROLLER

By: 
DEPUTY CLERK

**EXHIBIT B
ESCROWED MATERIALS AND TRANSFER DOCUMENTS**

Name

Signature

Title

EXHIBIT B- ANNEX

SUPPLEMENTAL ESCROWED MATERIALS

TRADEMARK

REEL: 005310 FRAME: 0025

EXHIBIT C

ESCROW AGENT'S FEE SCHEDULE

TRADEMARK

REEL: 005310 FRAME: 0026



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Kent S. Pratt**
Stephen F. Radford, Jr.
*Board Certified Civil Trial Lawyer
*Supreme Court Certified Circuit Mediator

VIA E-MAIL

June 9, 2014

Eric Isicoff, Esquire
Ed Marod, Esquire
Joseph Curley, Esquire
Amy Levenberg, Esquire
Bridgette Berry, Esquire
Christopher Yannuzzi, Esquire

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Re: BSN/ME
Our File No. 2-3212

Dear Counsel:

Please find attached the signature page containing my signature as Escrow Agent. To complete the Escrow Agreement be advised that any fees that might be associated with my involvement in this case will be billed at \$450.00 per hour, the same fee I billed as mediator. However, I trust there will be little to no work involved on my part. I look forward to the receipt of the escrowed materials and upon receipt will advise all counsel of record of the materials received in accordance with the Escrow Agreement.

If anyone has any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

Kent S. Pratt

KSP/kam
Enclosure