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19 CHENG SHAO

20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF CALIFORNIA

22 THOMAS T. AOKI, M.D., an individual, and)	CASE NO. 2:11-CV-02797-TLN-CKD
23 AOKI DIABETES RESEARCH INSTITUTE,)	
24 a California Non-Profit Corporation,)	
25)	
26 Plaintiffs,)	
27)	
28 vs.)	STIPULATION, CONSENT
)	JUDGMENT, PERMANENT
)	INJUNCTION, AND ORDER
29 GREGORY FORD GILBERT, an individual;)	
30 BIONICA, INC., a Nevada corporation, et al.)	
31)	
32 Defendants.)	
33)	

34 This Stipulation, Consent Judgment and Permanent Injunction (“Consent Judgment”) is
35 entered into by and between Plaintiffs THOMAS T. AOKI, M.D., and AOKI DIABETES
36 RESEARCH INSTITUTE (hereinafter collectively referred to as “Plaintiffs”) and Defendants
37 HEALTH INNOVATIONS, LP, ACSRC, LLC, SHUYUAN “SHERRY” TANG, and CHENG
38 SHAO (hereinafter collectively referred to as “Hayward Clinic Defendants”), subject to approval
39 by the Court.

1 WHEREAS, on October 24, 2011, Plaintiffs initiated this action against the Hayward
2 Clinic Defendants and others alleging claims for Patent Infringement, Copyright Infringement,
3 Trade Secret Misappropriation, False and Misleading Advertising under the Lanham Act (15
4 U.S.C. §1125(a)(1)) and Cal. Bus. & Prof. Code §17500, and Unfair Competition under the
5 Lanham Act (15 U.S.C. §1125(a)) and Cal. Bus. & Prof. Code §17200.

6 WHEREAS, the basis of Plaintiffs' claims against the Hayward Clinic Defendants arise
7 from the operation of a clinic at 22455 Maple Court, #304, Hayward, California 94541 (the
8 "Hayward Clinic"), from which the Hayward Clinic Defendants provided treatment to patients
9 known as Metabolic Activation Therapy ("MAT® Treatment"), later referred to by the Hayward
10 Clinic Defendants as "Artificial Pancreas Therapy," which the Hayward Clinic Defendants
11 acknowledge involved the use of the following U.S. Patents: No. 6,579,531 (the "531 patent");
12 No. 6,582,716 (the "716 patent"); No. 6,613,342 (the "342 patent"); No. 6,613,736 (the "736
13 patent"); No. 6,821,527 (the "527 patent"); No. 6,967,191 (the "191 patent"); and No. 7,692,351
14 (the "351 patent").

15 WHEREAS, the Hayward Clinic Defendants wish to conclude this litigation with
16 Plaintiffs at the initial pleading stage without contesting the action, nor the validity or
17 enforceability of any claims of the patents at issue in this proceeding; and

18 WHEREAS, Plaintiffs and the Hayward Clinic Defendants, through their respective
19 counsel, hereby agree to entry of this Consent Judgment;

20 NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED AND ADJUDGED,
21 AS TO THE HAYWARD CLINIC DEFENDANTS:

22 1. This is an action for Patent Infringement, Copyright Infringement, Trade Secret
23 Misappropriation, False and Misleading Advertising under the Lanham Act (15 U.S.C.
24 §1125(a)(1)) and Cal. Bus. & Prof. Code §17500, and Unfair Competition under the Lanham Act
25 (15 U.S.C. §1125(a)) and Cal. Bus. & Prof. Code §17200.

26 2. With respect to the patent, copyright and Lanham Act claims this Court has original
27 and/or exclusive subject matter jurisdiction over the subject matter of this action and the
28 Hayward Clinic Defendants under 28 U.S.C. §§ 1331 and 1338(a) and (b). The Court has

1 supplemental jurisdiction with respect to the California Business & Professions Code based
2 claims pursuant to 28 U.S.C. § 1367(a). Venue is proper in this Court pursuant to 28 U.S.C.
3 §1391(b).

4 3. The Hayward Clinic Defendants admit that Plaintiff Dr. Aoki is the owner of all right,
5 title and interest in and to the 531 patent, the 716 patent, the 342 patent, the 736 patent, the 527
6 patent, the 191 patent, and the 351 patent.

7 4. The Hayward Clinic Defendants do not contest that all of the claims of the 531 patent,
8 the 716 patent, the 342 patent, the 736 patent, the 527 patent, the 191 patent, and the 351 patent
9 are valid and enforceable.

10 5. During the operation of their Hayward Clinic, the Hayward Clinic Defendants admit
11 that they made, used, sold, or offered for sale the MAT® Treatment technology described in the
12 531 patent, the 716 patent, the 342 patent, the 736 patent, the 527 patent, the 191 patent, and the
13 351 patent.

14 6. The Hayward Clinic Defendants have ceased all operations and permanently closed
15 the Hayward Clinic, ceased all MAT® Treatments, whether directly or indirectly, and ceased all
16 other day-to-day operations of the Hayward Clinic.

17 7. Effective as of the date this Consent Judgment is entered by the Court, the Hayward
18 Clinic Defendants and any and all of their agents, representatives, subsidiaries, directors,
19 principals, officers, successors, assigns, and all others acting in concert or participation with
20 them and not named separately in the Action (in other words, this does not apply to any other
21 named defendant in this action), are hereby permanently enjoined and restrained from engaging
22 in any of the following activities:

23 (a) making, using, offering to sell, or selling within the United States, or importing into
24 the United States (either directly, indirectly) any of the MAT® Treatment technology described
25 within the 531 patent, the 716 patent, the 342 patent, the 736 patent, the 527 patent, the 191
26 patent, or the 351 patent.

27 (b) teaching others how to perform the MAT® Treatment;

28 (c) sharing information, copyrighted material or trade secrets with any third-parties

1 regarding the MAT® Treatment technology;

2 (d) providing medical data, patient/medical records, or other information kept at the
3 Hayward Clinic to any third-parties or any other defendant named in this action (except as
4 required by law);

5 (e) billing insurance companies and Medicare for MAT® Treatments performed by the
6 Hayward Clinic Defendants at any of their facilities and making any further attempts to collect
7 payment from insurance or Medicare for those treatments;

8 (f) writing any books, articles, letters, blogs, social media posts, or any other writing
9 about the MAT® Treatment;

10 (g) making media presentations, participating in speaking engagements, presenting
11 lectures or educational sessions on the subject of the MAT® Treatment;

12 (h) acting as an advisor or consultant to investors, patients or any member of the public
13 on the subject of the MAT® Treatment;

14 (i) visiting senior citizens' groups or senior housing facilities to discuss the MAT®
15 Treatment;

16 (j) engaging in any form of fundraising to provide the MAT® Treatment or to open
17 clinics that will provide the MAT® Treatment; and

18 (k) profiting in any manner with respect to the MAT® Treatment.

19 (l) assisting, aiding or abetting any other person or business entity in engaging in or
20 performing any of the activities referred to in subparagraphs (a) through (k) above.

21 8. Plaintiffs and the Hayward Clinic Defendants shall bear their own costs and attorneys
22 fees.

23 9. This Consent Judgment constitutes a final judgment concerning the subject matter of
24 this action as between the Plaintiffs and the Hayward Clinic Defendants identified on page 1.

25 10. Plaintiffs and the Hayward Clinic Defendants waive any right to appeal from this
26 Consent Judgment.

27 11. Upon entry of this Consent Judgment, this case is closed as to the Hayward Clinic
28 Defendants only; provided, however, that this Court shall retain jurisdiction to enforce the terms

1 and provisions of this Consent Judgment and the permanent injunction stipulated to herein.

2
3 SO STIPULATED AND CONSENTED:

4 DATED: August 19, 2014

/s/ Joanna R. Mendoza

JOANNA R. MENDOZA

Attorney for Plaintiffs

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7 DATED: August 19, 2014

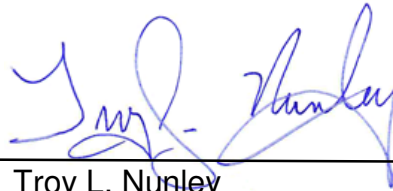
/s/ Marcus D. Merchasin

MARCUS D. MERCHASIN

Attorney for the Hayward Clinic Defendants

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10 **IT IS SO ORDERED.**

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13 Dated: August 25, 2014

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Troy L. Nunley

United States District Judge