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9 Commissioner of Department of Business Oversight

10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) **CONSENT ORDER**
14)
15 RINGSIDE DEVELOPMENT COMPANY dba)
16 BIO-ONE, INC.,)
17 Respondent.)
18)
19 _____)

20 This Consent Order is between the Commissioner of Business Oversight (Commissioner) and
21 Respondent Ringside Development Company dba Bio-One Inc. (Ringside) (collectively, the parties),
22 and is made with respect to the following facts:

23 **I.**
24 **RECITALS**

25 A. The Commissioner is authorized to administer and enforce the provisions of the
26 Franchise Investment Law (Corp. Code, § 31000 et seq.) (FIL) and the rules and regulations
27 promulgated thereunder which control the registration, offer and sale of franchises in California.
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1 B. Ringside is an Arizona corporation organized on May 28, 2010 with a principal place
2 of business located at 1846 East Innovation Park Drive, Suite 100, Phoenix, Arizona, 95755.
3 Ringside is also a Colorado corporation organized on March 24, 2016 with a principal place of
4 business located at 5231 South Quebec Street, Suite 303, Greenwood Village, Colorado 80111.
5 Ringside does business under the name Bio-One Inc. or Bio-One Colorado, Inc., and under the
6 registered trademark Bio One or Bio-One.

7 C. The President of Ringside is Jason O'Brien. Jason O'Brien is authorized to enter into
8 this Consent Order on behalf of Ringside.

9 D. On July 22, 2014, Ringside executed written agreement with former franchisee,
10 AMBK, Inc., that constitutes a franchise offering and sale in California. Ringside was not registered
11 to offer or sell franchises under the FIL and was not exempt from registration under Corporations
12 Code section 31110.

13 E. The Commissioner informed Ringside of her intent to order Ringside to: (1) desist and
14 refrain from offering and selling unregistered franchises in California, and (2) pay an administrative
15 penalty pursuant to Corporations Code section 31110 (Enforcement Action).

16 F. Ringside informed the Commissioner of its intent to cooperate with the Commissioner
17 to remedy any past violations and consent to entry of this Consent Order.

18 G. The Commissioner finds that this Consent Order is appropriate, in the public interest,
19 and consistent with the purposes fairly intended by the policy and provisions of the FIL.

20 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
21 forth herein, the parties stipulate as follows:

22 **II.**

23 **TERMS**

24 1. Purpose. The Consent Order resolves the Commissioner's investigation of Ringside's
25 violations of the FIL, avoids the expense and uncertainty of a hearing or other litigation, protects
26 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
27 the FIL.
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1 2. Desist and Refrain Order. Ringside stipulates that it engaged in the offer and sale of a
2 franchise in this state referred to above in Paragraph D of the Recitals, which was subject to
3 registration under the FIL, without the offer first being registered or exempt in violation of
4 Corporations Code section 31110. Pursuant to Corporations Code section 31406, Ringside is hereby
5 ordered to desist and refrain from the further offer or sale of franchises in California unless and until
6 the offers have been duly registered under the FIL or are otherwise exempt.

7 3. Administrative Penalty. Pursuant to Corporations Code section 31406, the
8 Commissioner hereby issues a citation and assesses an administrative penalty in the amount of
9 \$2,500.00. Ringside agrees to pay the administrative penalty of \$2,500.00. The penalty of \$2,500.00
10 shall be due 15 business days from the effective date of this Consent Order and shall be made payable
11 to the Commissioner in the form of a check or Automated Clearing House deposit to the “Department
12 of Business Oversight,” and transmitted to the attention of: Accounting- Enforcement Division,
13 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice
14 of payment shall be sent to Kelly Suk, Counsel, 320 West 4th Street, Suite 750, Los Angeles,
15 California 90013.

16 4. Finality of Order. Ringside agrees to comply with this Consent Order and stipulates
17 that the Consent Order is deemed final. This Consent Order is binding on all heirs, assigns and/or
18 successors in interest.

19 5. Remedy for Breach. In the event Ringside fails to comply with the terms of this
20 Consent Order, Ringside agrees that this Consent Order may be converted to an enforceable civil
21 judgment for the entire administrative penalty amount of \$2,500.00. Ringside further agrees that
22 such civil judgment may be entered by the court on an *ex parte* basis without further notice or hearing
23 to Ringside.

24 6. Waiver of Hearing Rights. Ringside acknowledges that the Commissioner is ready,
25 willing, and able to proceed with the filing of an administrative enforcement action on the charges
26 contained in this Consent Order, and Ringside hereby waives the right to a hearing, and to any
27 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, Ringside
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1 further expressly waives any requirement for the filing of a pleading that may be afforded by
2 Government Code section 11415.60, subdivision (b); the California Administrative Procedure Act,
3 the California Code of Civil Procedure, or any other provision of law; and by waiving such rights,
4 Ringside effectively consents to this Consent Order becoming final.

5 7. Future Actions by the Commissioner. The Commissioner reserves the right to bring
6 any future action against Ringside or any of its partners, owners, officers, directors, shareholders,
7 employees, or successors for any and all future violations of the FIL. This Consent Order shall not
8 serve to exculpate Ringside or any of its partners, owners, officers, directors, shareholders,
9 employees, or successors from liability for any and all future violations of the FIL that may arise or
10 occur after the date of the Consent Order.

11 8. Third Party Action. This Consent Order does not create any private rights or remedies
12 against Ringside, create any liability for Ringside or limit defenses of Ringside for any person or
13 entity not a party to this Consent Order.

14 9. Full and Final Settlement. The parties hereby acknowledge and agree that this
15 Consent Order is intended to constitute a full, final and complete resolution of the allegations
16 contained in the Recitals. No further proceedings or actions will be brought by the Commissioner
17 upon those contentions, excepting therefrom any proceeding to enforce compliance with the terms of
18 this Consent Order, or action if such proceeding or action is based upon discovery of new and further
19 violations of the CFL which do not form the basis for this Consent Order or which were knowingly or
20 willfully concealed from the Commissioner by Ringside. Further, this Consent Order may be revoked
21 and the Commissioner may pursue any and all remedies available under law against Ringside if the
22 Commissioner later discovers that Ringside knowingly or willfully withheld information used and
23 relief upon in this Consent Order.

24 10. Commissioner's Duties. The parties acknowledge and agree that nothing contained in
25 this Consent Order shall operate to limit the Commissioner's ability to assist any other agency, (city,
26 county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such
27 agency against Ringside or any other person based upon any of the activities alleged in these matters
28 or otherwise.

1 11. Bankruptcy. Ringside agrees the facts and violations set forth in the Recitals above, in
2 this Consent Order may be taken as true without further proof in any bankruptcy case or subsequent
3 civil litigation the Department may pursue to enforce its rights to any payment or money judgment
4 under the terms of this Order, including but not limited to, any nondischargeability complaint in any
5 bankruptcy proceeding and that this Order shall have collateral estoppel effect in any bankruptcy
6 case.

7 12. Waiver, Amendment, and Modification. No waiver, amendment, or modification of
8 this Consent Order will be valid or binding unless it is in writing and signed by all parties affected by
9 it. Waiver of a provision of this Consent Order shall not operate to waive any other provision.

10 13. Integration. This Consent Order is the final written expression and the complete and
11 exclusive statement of all the agreements, conditions, promises, representations, and covenants
12 between the parties with respect to the subject matter and supersedes all prior discussions between the
13 parties, their representatives, and any other person. Each of the parties represents, warrants, and
14 agrees that in executing this Consent Order it has placed no reliance on any statement, representation,
15 or promise of any other party, or any other person or entity not expressly set forth herein, or upon the
16 failure of any party or any other person or entity to make any statement, representation or disclosure
17 of anything whatsoever. The parties have included this clause to preclude any claim that any party
18 was in any way fraudulently induced to execute this Consent Order and to preclude the introduction
19 of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order

20 14. Headings. The headings to the paragraphs of this Consent Order are for convenience
21 only and do not affect its meaning.

22 15. No Presumption Against Drafting. The parties acknowledge they have had the
23 opportunity to draft, review and edit the language of this Consent Order. No presumption for or
24 against any party arising out of drafting all or any part of this Consent Order will be applied in any
25 action relating to, connected, to, or involving this Consent Order. The parties waive the benefit of
26 California Civil Code section 1654 and any successor or amended statute, providing that in cases of
27 uncertainty, language of a contract should be interpreted most strongly against the party who caused
28 the uncertainty to exist.

1 16. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has received independent advice from its attorney(s) and/or representatives with respect to the
3 advisability of executing this Consent Order.

4 17. Effective Date. This Consent Order shall not become effective until signed by all
5 parties and delivered by the Commissioner’s counsel by email to Michael Katz at
6 michael@businesslawyer.com.

7 18. Counterparts. This Consent Order may be executed in one or more counterparts, each
8 of which shall be an original but all of which, together, shall be deemed to constitute a single
9 document.

10 19. Settlement Authority. Each signator hereto covenants that he or she possesses all
11 necessary capacity and authority to sign and enter into this Consent Order on behalf of the named
12 party.

13 20. Public Record. Ringside hereby acknowledges this Consent Order is a public record.

14 IN WITNESS WHEREOF, the parties have approved and executed this Consent Order on the
15 dates set forth opposite their respective signatures.

16 Dated: 11/14/18

JAN LYNN OWEN
Commissioner of Business Oversight

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20 By: _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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22
23 Dated: 11/7/18

RINGSIDE DEVELOPMENT COMPANY dba
BIO-ONE INC.

24
25
26 By: _____

JASON O’BRIEN
President and CEO