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J. DAVID NAVARRO, Clerk
By DEBRA J. URIZAR
DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, Department of Finance,	
vs.	Civil No. CV OC 9606319D
BIOGAN MEDICAL INTERNATIONAL, INC., a Delaware corporation, and RONALD J. TOLMAN,	**COMPLAINT**
Defendants.	Fee Category: Exempt

COMES NOW the State of Idaho, Department of Finance, Gavin M. Gee, Director, by and through counsel, to complain and allege as follows:

JURISDICTION

1. This action is brought under the provisions of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and in particular Idaho Code §30-1442, wherein the Director of the Idaho Department of Finance (Department) is empowered to bring actions seeking

injunctive and other relief against defendants who have either violated or are about to violate provisions of the Idaho Securities Act or any Rule thereunder.

VENUE

2. The acts and practices alleged herein comprising violations of law by the above-named Defendants occurred in the conduct of trade and commerce in Ada County, and elsewhere in the State of Idaho.

DEFENDANTS

3. Defendant Biogan Medical International, Inc. (Biogan) is a Delaware corporation, with its main business office at 7213 Potomac Drive, Boise, Idaho. At present, Biogan is allegedly engaged in the development of Magna Motor, an electromagnetic motor, and allegedly in the process of attempting to open foreign markets for the sale of medical supplies.

4. Biogan is the surviving corporation of a 1989 merger with a shell corporation. Biogan was originally organized to acquire biotechnology companies and finance their development through the public markets. Through mid-year 1994, Biogan was unsuccessful in acquiring any companies, or in conducting any other significant business activities. Biogan was, and is, a "blind pool" company for purposes of the company's compliance with Rule 280 of the rules pursuant to the Idaho Securities Act (IDAPA 12.01.08.280). That rule prohibits a blind pool from qualifying for the "manual exemption" from registration.

5. Biogan's stock is publicly traded in a lower-tier, over-

the-counter market. According to a Biogan filing with the Securities and Exchange Commission, the trading price for Biogan stock was never above $.001 per share during 1994 and through the fourth quarter of 1995. Since October 1995, Biogan's stock has traded in the public markets for between $.005 and more than $1.00 per share.

6. Defendant Ronald J. Tolman (Tolman) is the vice-president of Biogan. Tolman assisted in the preparation and production of the press releases and the Business Plan described below. In addition, Tolman served as a salesman for Biogan stock sold directly to investors. He has never been licensed as a securities salesman in Idaho. Tolman's last known address is 2326 Bruins Ave., Boise, Idaho 83704.

BACKGROUND

7. Beginning on a date uncertain, but at least since February 1994, Defendants issued, offered and sold, and aided and abetted in the offer and sale of, Biogan stock in more than fifty transactions to residents of Idaho and other states. More than thirty Idaho residents purchased stock directly from Biogan between February 1994 and March 1996. Biogan stock is not registered for sale in Idaho.

8. No disclosure documents were provided to securities investors who invested during 1994 early 1995. A brief business plan was provided to some 1995 investors.

9. In April 1996, Biogan, through Tolman, submitted its Annual Report to the Securities and Exchange Commission. In the

report, Biogan states: "Management does not now have any basis for projecting revenues from such activities, and presently anticipates that it will need to raise additional cash ... to meet cash requirements for continuing operations." The report also discloses that more than 87 million shares of common stock were issued to officers of Biogan between September and December 1995. The fair market value of these shares was reported as $.001 per share. The issuance and valuation of these shares were not disclosed to purchasers of Biogan securities.

10. Beginning in early 1996, Biogan, through its officers and other employees, began to distribute information about Biogan's future business prospects. This information took the form of press releases and a Business Plan produced and distributed by the company. Among other items, the 1996 Business Plan provided pre-tax forecasts of profitability for Biogan. The Plan indicated that Biogan expected to be profitable by the fourth quarter of 1996, and that the company expected profits in excess of $7.3 million and $28.9 million for 1997 and 1998 respectively. Pre-tax profits for the year 2000 and beyond were projected to be in the hundreds of millions.

11. Through various mediums, prospective Idaho investors learned about Biogan and its new electromagnetic motor business venture. Upon inquiry, the 1996 Business Plan was distributed to prospective Idaho investors and various representatives of securities broker-dealers by Biogan, its officers, and employees. Idaho residents purchased publicly traded shares of Biogan, and

purchased stock directly from the company, based on the 1996 Business Plan and/or information received from other investors that was based on information presented in the Business Plan.

12. All written literature proposed to be used directly or indirectly in connection with the offer, sale, or advisability of purchasing or selling securities in Idaho is required, by rule, to be filed with the Director at least three business days prior to its use. Rule 010.02. (IDAPA 12.01.08.010.02). The materials distributed by Defendants to prospective investors were not filed with the Director as required by the rule.

13. Prospective investors also obtained information about Biogan through various media stories about Biogan and its principals. The media reports quote Tolman and other Biogan officers as saying that Biogan stock is an attractive investment opportunity. According to one media story, Tolman stated, "I expect as the work becomes public on this, the value of those shares will move rather drastically.... The Biogan stock should double or triple in value."

COUNT ONE

The allegations contained in paragraphs 1 through 13 are hereby realleged as if fully set forth.

14. Beginning on a date uncertain but at least since February 1994, Defendants have sold or offered for sale, or caused to be sold, either directly or indirectly, or aided and abetted in the offer and sale, to Idaho residents and others, securities in the

form of Biogan stock.

15. The securities offered and sold by Defendants were not registered with the Department as required by Idaho Code §30-1416.

16. Defendants have violated Idaho Code §30-1416.

COUNT TWO

The allegations contained in paragraphs 1 through 16 are hereby realleged as if fully set forth.

17. At no time has Defendant Tolman been licensed by the Department of Finance as a salesman to sell or offer for sale securities as required by Idaho Code §30-1406.

18. Defendants have violated Idaho Code §30-1406.

COUNT THREE

The allegations contained in paragraphs 1 through 18 are hereby realleged as if fully set forth.

19. Beginning on a date uncertain, but at least since 1995, Defendants distributed written literature that was used directly or indirectly in connection with the offer, sale, or advisability of purchasing Biogan securities in Idaho.

20. The written materials distributed by Defendants were not filed with the Director as required by Rule 010.02. of the rules pursuant to the Idaho Securities Act (IDAPA 12.01.08.010.2).

21. The Defendants have violated Rule 010.02. of the rules pursuant to the Idaho Securities Act.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a Judgment in favor of Plaintiff and against Defendants as follows:

A. That Defendants be adjudged to have violated the Idaho Securities Act.

B. That Defendants be permanently enjoined from engaging in any acts, practices or omissions which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and in particular, that they be permanently enjoined from:

1. Selling or offering for sale nonexempt securities in any form in the State of Idaho until such time as the securities have been registered with the Idaho Department of Finance in accordance with Title 30, Chapter 14, Idaho Code;
2. Transacting securities business in the State of Idaho until such time as Defendants have registered as broker-dealers or salesmen for a broker-dealer or issuer with the Idaho Department of Finance, in accordance with Title 30, Chapter 14, Idaho Code;
3. While engaged in or in connection with the offer, sale or purchase of any security:
   (a) Employing any device, scheme or artifice to defraud any investors in the securities;
   (b) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(c) Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

4. Aiding, abetting, counseling, inducing or causing any other person to engage in any of the types of conduct described in paragraphs 1, 2, 3, or 4, above.

C. That Defendants be prohibited from claiming the availability of, using, or offering or selling securities, under any exemptions under the Idaho Securities Act without receiving the prior written consent of the Director.

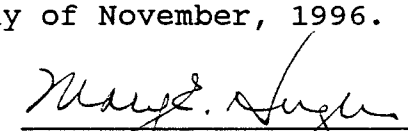
D. That Defendants be ordered to restore to each person in interest any consideration which may have been acquired or transferred in violation of the Idaho Securities Act.

E. That Defendants be ordered to pay a civil penalty to Plaintiff in an amount of $10,000 for each violation of the Idaho Securities Act.

F. That Plaintiff be awarded attorney's fees and costs incurred in the preparation and the prosecution of this action, and if judgment is taken by default herein, that $1,000 is a reasonable attorney's fee.

G. Such other and further relief as this Court may deem equitable and just.

DATED this 27th day of November, 1996.



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