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LOS ANGELES
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KATHERINE LEE BUCKLAND, *et al.*,
Plaintiffs,
v.
THRESHOLD ENTERPRISES, LTD., *et al.*
Defendant.

Case No. BC344046
[Hon. Robert L. Hess]

**[PROPOSED] CONSENT
JUDGMENT ONLY AS TO
DEFENDANT BIOTECH
INTERNATIONAL CORPORATION**

Complaint Filed: December 7, 2005
1st Amended Crimpt.: January 24, 2006
Location: Dept. 24, Room 314

This Consent Judgment is entered into by and between the California Women's Law Center (hereinafter "CWLC") and Biotech International Corporation (hereinafter "Biotech").

1. Definitions. As used in this Consent Judgment, the following definitions shall apply:

1.1 "Regulated Chemicals" are: Progesterone, Medroxyprogesterone acetate, Testosterone and its esters, Methyltestosterone, Testosterone cypionate, and/or Testosterone enanthate as an ingredient. Each Regulated Chemical is a chemical known to the State of California to cause cancer and/or reproductive toxicity.

1.2 "Products" are consumer creams, gels and/or lotion products containing as an ingredient one or more of the Regulated Chemicals. "Products" shall also include any future Products that are manufactured by or on behalf of Biotech for sale in California under any product name or brand, whether a current or new name and/or brand.

1 1.3 CWLC and Biotech will be referred to collectively as the "Consenting Parties" or
2 individually as a "Consenting Party."

3 **2. Background.**

4 2.1 CWLC is a non-profit California corporation with its principal place of business
5 and/or headquarters located at 6300 Wilshire Boulevard, Suite 980, Los Angeles, California.
6 CWLC has served as a unique advocate in California, working in collaboration with others to
7 protect, secure and advance the comprehensive civil rights of women and girls.

8 2.2 Biotech is a Connecticut corporation with its principal place of business and/or
9 headquarters located at 107 Oakwood Drive, Glastonbury, Connecticut 06033. Biotech
10 manufacturers, distributes, and/or sells its Products across the United States, including in
11 California, through various distributors and retail outlets.

12 2.3 Beginning on or about July 28, 2005, CWLC served Biotech, and each of the
13 appropriate public enforcement agencies, with a "60-Day Notice" (the "Notice") that provided
14 Biotech and the public enforcement agencies with a notice alleging that Biotech was in violation
15 of Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that
16 the use of the Products exposes them to Regulated Chemicals. Biotech stipulates for the purpose
17 of this Consent Judgment that the 60-Day Notice sent to it was adequate to comply with Title 22,
18 California Code of Regulations § 12903. None of the public enforcement agencies has
19 commenced or begun to diligently prosecute an action against Biotech for such alleged
20 violations.

21 2.4 On December 7, 2005, CWLC and Ms. Katherine L. Buckland, executive director
22 of CWLC, filed an initial complaint entitled *Buckland, et al. v. Threshold Enterprises, Ltd., et*
23 *al.*, No. BC 344046, in the Los Angeles County Superior Court. They filed a First Amended
24 Complaint on January 24, 2006 (the "First Amended Complaint"). In the First Amended
25 Complaint, CWLC alleged solely a violation of Proposition 65 (Health & Safety Code §25249.5,
26 *et seq.*) against Biotech.
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1 2.5 For purposes of this Consent Judgment only, the Consenting Parties stipulate that
2 this Court has jurisdiction over the violations alleged by CWLC contained in the Notice and the
3 First Amended Complaint, and personal jurisdiction over Biotech as to the acts or omissions
4 alleged by CWLC in the First Amended Complaint; that venue is proper in the County of Los
5 Angeles; and that this Court has jurisdiction to enter this Consent Judgment.

6 2.6 Biotech denies that any of its Products have been or are in violation of any law,
7 and further contends that all its Products have been and are safe for use as directed. However,
8 the Consenting Parties desire to resolve this matter as between each other (including those
9 allegations in the Notice, the First Amended Complaint, and all related matters) without further
10 litigation or cost.

11 2.7 The Consenting Parties enter into this Consent Judgment to settle certain disputed
12 claims as alleged by CWLC in the Notice and the First Amended Complaint, to avoid prolonged
13 and costly litigation, and to promote the public interest. By executing and complying with this
14 Consent Judgment, no Consenting Party admits any facts or conclusions of law including, but
15 not limited to, any facts or conclusions of law regarding any violations of Proposition 65 (H&S
16 Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim or requirement
17 relating to or arising from Biotech's Products. This Consent Judgment shall not be construed as
18 an admission by Biotech as to any of the allegations by CWLC in the Notice or the First
19 Amended Complaint.

20 3. **Injunctive Relief.**

21 3.1 **Biotech Has Exited the Market.**

22 Biotech has voluntarily exited the market for the Products. If Biotech chooses to re-enter
23 the California market for these Products, Biotech shall comply with the terms set forth in the
24 following Paragraph 3.2.

25 3.2 **Future Product Sales Require a Warning.**

26 Pursuant to H&S Code § 25249.7(a), the sale of a Product by Biotech shall be
27 accompanied by a warning. This warning shall be provided both by (a) product labeling
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1 pursuant to Paragraph 3.2.1; and (b) warnings for any mail order and Internet sales pursuant to
2 Paragraph 3.2.2.

3 **3.2.1 Product Label Warnings.**

4 At the earliest such time when, in the ordinary course of business, new labels for the
5 Products are printed on or after January 1, 2007, Biotech shall include (in the same type size as
6 the surrounding, non-heading text) the following warning on the label of each of its Products that
7 it manufactures and ships for sale into California, including the specific name or names of the
8 Regulated Chemicals where shown:

9 "WARNING: This product contains [Progesterone,
10 Medroxyprogesterone acetate, Testosterone and its esters,
11 Methyltestosterone, Testosterone cypionate, and/or Testosterone
12 enanthate], a chemical(s) known to the State of California to cause
13 cancer. Consult with your physician before using this product."

14 **3.2.2 Additional Warnings for Mail Order or Internet Sales.**

15 If Biotech sells a Product by mail order or over the Internet to a purchaser in the State of
16 California on or after the date that is 90 days after the entry of this Consent Judgment by the
17 court, the following additional requirements shall apply:

18 (1) For such mail order sales, the warning language required under this Consent
19 Judgment at paragraph 3.2.1 shall be included in the mail order catalogue, either on the same
20 page as any order form, or on the same page(s) upon which the Product's price is listed, in the
21 same type size as the surrounding, non-heading text.

22 (2) For such Internet sales, the warning language required under this Consent
23 Judgment at paragraph 3.2.1 shall be displayed (in the same type size as the surrounding, non-
24 heading text) in one or more of the following ways: (a) on the same page upon which the
25 Product is displayed or referenced; (b) on the same page as any order form for any Product;
26 (c) on the same page as the price for the Product is displayed; (d) on one or more pages
27 displayed to a purchaser over the Internet or via electronic mail during the checkout and order
28 confirmation process for sale of a Product; or (e) in any manner such that it is likely to be read

1 and understood by an ordinary individual under customary business conditions prior to the
2 purchase of the Product.

3 **4. Financial Settlement and Attorneys' Fee Payments.**

4 4.1 In lieu of damages or penalties, Biotech shall pay to CWLC the sum of
5 \$37,500.00 ("settlement amount"), and shall make that payment to the Client Trust Account of
6 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
7 funds. This settlement amount shall be due and payable within five (5) calendar days after the
8 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
9 promptly thereafter by the Carrick Law Group P.C. to CWLC.

10 **4.2 Attorneys Fees and Costs.**

11 The Consenting Parties shall each bear their own attorneys' fees and costs.

12 **5. Claims Covered and Released.**

13 This Consent Judgment includes the resolution of actual and potential claims that
14 were considered or could have been brought by CWLC regarding Biotech's Products. This Consent
15 Judgment is a final and binding resolution between CWLC and Biotech of any and all alleged
16 violation of Proposition 65 (H&S Code § 25249.5 *et seq.*) or any other law or claim that was or
17 could have been asserted by CWLC arising from or related to Products manufactured, distributed, or
18 sold by Biotech through the date of entry of this Consent Judgment, including, but not limited to any
19 claims for attorneys' fees and costs. However, the CWLC cannot and expressly does not release
20 any other claims that could be brought by any other individual or organization, including
21 specifically and without limitation any personal injury or directly related claims.

22 In consideration of the payment set forth in Paragraph 4.1 above, CWLC hereby releases
23 Biotech and its predecessors, successors, affiliates and assigns, the officers, directors, employees,
24 shareholders, and counsel of each of them, from and against the claims described in this paragraph,
25 known and unknown, to the extent such claims do, did, or could arise from or relate to Biotech's
26 Products. Biotech hereby releases CWLC from and against any claims arising out of CWLC's
27 filing or prosecution of this action. Each Consenting Party respectively waives any right to
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1 appeal or other review of this Consent Judgment, except as expressly provided in this Consent
2 Judgment.

3 **6. Covenant Not To Sue.** CWLC and Biotech covenant and agree that with regard to those
4 matters released herein and that are described above, neither CWLC nor Biotech will ever
5 institute a lawsuit or administrative proceedings against the other, nor shall CWLC or Biotech
6 assert any claim of any nature against any person or entity hereby released with regard to any
7 such matters which have been released. However, nothing in this paragraph shall be interpreted
8 to preclude enforcement of this Consent Judgment pursuant to Section 8 below.

9 **7. Enforcement of Consent Judgment.** Any Consenting Party may, by noticed motion or
10 order to show cause before the Superior Court of Los Angeles, enforce this Consent Judgment.
11 To enforce this Consent Judgment, any Consenting Party must first give written notice of any
12 violation of this Consent Judgment alleged to have occurred to the Consenting Party alleged to
13 be in violation. The Consenting Parties shall meet and confer in good faith and attempt to
14 resolve the alleged violation. If a resolution is not reached within thirty (30) days of the date of
15 the notice, the aggrieved Consenting Party may move the Court to hear and resolve the dispute.
16 The prevailing Consenting Party in any proceeding brought to enforce this Consent Judgment
17 shall be entitled to recover from the other Consenting Party the prevailing Consenting Party's
18 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
19 enforcement proceeding.

20 **8. Application of Consent Judgment.** Sections 3, 5 and 6 of this Consent Judgment shall
21 apply to, be binding upon and inure to the benefit of the Consenting Parties, their divisions,
22 subdivisions, subsidiaries, affiliates, successors, predecessors and assigns, and the directors,
23 officers, employees, legal counsel, and agents of each of them, as applicable, and will inure to
24 the benefit of the Consenting Parties' parent companies, all suppliers, distributors, wholesalers,
25 retailers and contract manufacturers, and all of their respective directors, officers, employees,
26 legal counsel, and agents.

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- 1 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
2 modified or terminated upon written agreement of the Consenting Parties, with approval of the
3 Court, or upon noticed motion for good cause shown.
- 4 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in
5 accordance with, the laws of the State of California.
- 6 **11. Entire Agreement.** The Consenting Parties declare and represent that this Consent
7 Judgment contains the entire agreement between the Consenting Parties. This Consent
8 Judgment supersedes any prior or contemporaneous negotiations, representations, agreements
9 and understandings of the Consenting Parties with respect to such matters, whether written or
10 oral. Parol evidence shall be inadmissible to show agreement by, between or among the
11 Consenting Parties to any term or condition contrary to or in addition to the terms and conditions
12 contained in this Consent Judgment.
- 13 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment
14 for good cause shown under Section 9 hereof, the Consenting Parties agree that they,
15 individually or collectively, will not seek to challenge or to have determined invalid, void or
16 unenforceable any provision of this Consent Judgment or this Consent Judgment itself. The
17 Consenting Parties understand that this Consent Judgment contains the relinquishment of legal
18 rights and each Consenting Party has, as each has deemed appropriate, sought the advice of legal
19 counsel, which each of the Consenting Parties has encouraged the other to seek. Further, no
20 Consenting Party has reposed trust or confidence in any other Consenting Party so as to create a
21 fiduciary, agency or confidential relationship.
- 22 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The
23 language of this Consent Judgment shall be construed as a whole according to its fair meaning
24 and not strictly for or against any Consenting Party.
- 25 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
26 represents and warrants that each signatory has all requisite power, authority and legal right
27 necessary to execute and deliver this Consent Judgment and to perform and carry out the
28 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment

1 represents that each has been duly authorized to execute this Consent Judgment. No other or
2 further authorization or approval from any person will be required for the validity and
3 enforceability of the provisions of this Consent Judgment, except entry by the Court.

4 **15. Cooperation and Further Assurances.** The Consenting Parties hereby will execute
5 such other documents and take such other actions as may be necessary to further the purposes
6 and fulfill the terms of this Consent Judgment.

7 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the
8 same force and effect as if all the signatures were obtained in one document.

9 **17. Notices.**

10 **17.1** All correspondence and notices required by this Consent Judgment to CWLC shall
11 be sent follows:

12 Katherine Lee Buckland, Esq.
13 Executive Director
14 California Women's Law Center
15 6300 Wilshire Boulevard, Suite 980
16 Los Angeles, CA 90048
17 Tel: (323) 951-1041
18 Fax: (323) 951-9870
19 E-mail: katie.buckland@cwlc.org

With a copy to:
Roger Lane Carrick, Esq.
The Carrick Law Group, P.C.
350 S. Grand Avenue, Suite 2930
Los Angeles, CA 90071-3406
Tel: (213) 346-7930
Fax: (213) 346-7931
E-mail: roger@carricklawgroup.com

18 **17.2** All correspondence and notices required by this Consent Judgment to Biotech
19 shall be sent as follows:

20 Mr. Gregory Kelly
21 President
22 Biotech International Corporation
23 107 Oakwood Drive
24 Glastonbury, Connecticut
25 Tel: (860) 633-8111 ext. 230
26 Fax: (860) 652-3266
27 E-mail: gkelly@BIOTECHCORP.com

With a copy to:
Roger A. Colaizzi, Esq.
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
Tel: (202) 344-8051
Fax: (202) 344-8300
E-mail: racolaizzi@venable.com

25 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
26 Judgment shall be null and void, and without any force or effect, unless fully approved as
27 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
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1 execution thereof by Biotech or CWLC shall not be construed as an admission by Biotech or
2 CWLC of any fact, issue of law or violation of law.

3 **19. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this Consent
4 Judgment.

5 **20. Compliance with Reporting Requirements.** CWLC shall comply with the reporting
6 form requirements referred to in Health and Safety Code section 25249.7(f) and established in
7 Title 11 of the California Code of Regulations sections 3000-3008. Copies of all such reports
8 shall be supplied as provided in Paragraph 18.2.

9 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
10 as use their respective best efforts, to secure the Attorney General's approval of this Consent
11 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

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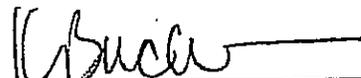
13 **IT IS SO STIPULATED.**

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15 Date: September 4, 2006

CALIFORNIA WOMEN'S LAW CENTER

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17 By: 
Katherine Lee Buckland
Executive Director

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19

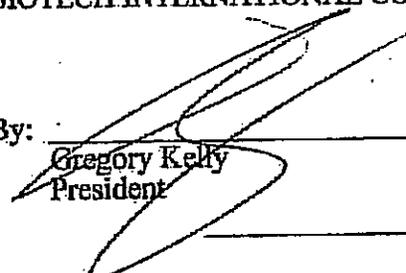
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21 Date: September 8, 2006

BIOTECH INTERNATIONAL CORPORATION

22

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24 By: 
Gregory Kelly
President

25

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NOV 03 2006

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KATHERINE LEE BUCKLAND, *et al.*,

Plaintiffs,

v.

THRESHOLD ENTERPRISES, LTD., *et al.*

Defendants.

Case No. BC 344046

[Hon. Robert L. Hess]

**[PROPOSED] FINDINGS AND
ORDER**

Complaint Filed: December 7, 2005
1st Amended Cmplt.: January 24, 2006

Location: Dept. 24, Room 314

FINDINGS AND ORDER

1. The Court finds that the warnings that may be required in Section 3 of the stipulated Consent Judgment in this matter regarding the sale of certain products by defendant BIOTECH INTERNATIONAL CORPORATION comply with the provisions of Health & Safety Code §§ 25249.5-25249.13.

2. In the stipulated Consent Judgment in this matter, the Parties' agreement in Section 4 of the Consent Judgment that no civil penalties are warranted is in accord with the criteria set forth in Health & Safety Code § 25249.7(b) (2), in that payments totaling \$37,500.00 in financial relief in the form of "in lieu of damages or penalties" are to be made by the Defendant to Plaintiff California Women's Law Center ("CWLC"). The Court finds that CWLC

1 has committed to use this financial relief in conformity with Proposition 65's overall goals as
2 well as its own non-profit articles of incorporation to address the litigation's public health issue
3 of protecting women's health through CWLC's programs, which include but are not limited to
4 projects addressing public health, domestic violence, reproductive rights, and physical fitness
5 issues.

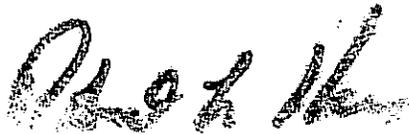
6 3. Because each Party to the Consent Judgment is bearing its own attorneys' fees and
7 costs, no finding by the Court is required as to whether those fees and costs are reasonable.

8 4. In light of the findings made above, and based upon the Court's review of the
9 proposed stipulated Consent Judgment executed among the Parties, the Court finds that this
10 Consent Judgment serves and will serve the public interest

11 5. The Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
12 Court.

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14 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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16 DATED: NOV 03 2006



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18 _____
19 **ROBERT L. HESS**
20 **JUDGE OF THE SUPERIOR COURT**