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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.*  
Defendants.

Case No. BC344046  
[Hon. Robert L. Hess]  
**[PROPOSED] CONSENT  
JUDGMENT ONLY AS TO  
DEFENDANT MATOL BOTANICAL  
INTERNATIONAL LTD.**  
Complaint Filed: December 7, 2005  
Location: Dept. 24, Room 314

This Consent Judgment is entered into by and between Katherine Lee Buckland ("Ms. Buckland"), the California Women's Law Center ("CWLC" – collectively with Ms. Buckland, "Plaintiffs"), and defendant Matol Botanical International Ltd. (hereinafter "Defendant"). Plaintiffs and Defendant may be collectively referred to herein as "Parties."

- 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

1 Products that are manufactured by or on behalf of Defendant for sale to consumers in California  
2 under any product name or brand, whether a current or new name and/or brand.

3 **1.3** Plaintiff and Defendant will be referred to collectively as the “Parties” or  
4 individually as a “Party.”

5 **2. Background.**

6 **2.1** Ms. Buckland is the Executive Director of the California Women’s Law Center  
7 (“CWLC”), a non-profit California corporation. Since its founding in 1989, CWLC has served  
8 as a unique advocate in California, working in collaboration with others to protect, secure and  
9 advance the comprehensive civil rights of women and girls. The CWLC works to ensure,  
10 through systemic change, that life opportunities for women and girls are free from unjust social,  
11 economic, and political constraints. CWLC is based in Los Angeles, and was incorporated  
12 under the laws of the State of California in 1989.

13 **2.2** Ms. Buckland is a “consumer” within the meaning of the California Consumer  
14 Legal Remedies Act (“CLRA”), California Civil Code (“Civil Code”) § 1761(d). Ms. Buckland  
15 is also a “person” within the meaning of California Business and Professions (“B&P”) Code  
16 §§17201, 17204 and 17506. She brought and settles this lawsuit on her own behalf and, to the  
17 fullest extent permitted by law, on behalf of the general public. CWLC is a “person” within the  
18 meaning of Health & Safety Code §§25249.7(d) and 25249.11(a). CWLC brings its Proposition  
19 65 cause of action in the public interest.

20 **2.3** Defendant is a Canadian corporation. Defendant directly or indirectly sells to  
21 California consumers Products, all of which Plaintiffs allege contain a chemical or chemicals  
22 listed by the State of California as known to cause cancer and/or reproductive toxicity pursuant  
23 to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety  
24 Code § 25249.5 et seq. (“Proposition 65”); Title 22, California Code of Regulations § 12000 et  
25 seq.

26 **2.4** Beginning on or about July 28, 2005, CWLC served Defendant and each of the  
27 appropriate public enforcement agencies with a “60-Day Notice” that provided Defendant and  
28 the public enforcement agencies with a notice alleging that Defendant was in violation of

1 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the  
2 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose  
3 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,  
4 California Code of Regulations §12903. None of the public enforcement agencies has  
5 commenced and begun diligently prosecuting an action against Defendant for such alleged  
6 violations.

7 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served  
8 Defendant with a notice letter (the “CLRA Notice” -- collectively with the 60-Day Notice,  
9 “Notices”) via certified mail, return receipt requested, stating *inter alia* as follows:

10 These Products have been sold to literally millions of California  
11 consumers without any of the noticed companies providing a clear  
12 and reasonable warning prior to their purchase by a consumer that  
13 the Progesterone, Medroxyprogesterone acetate, Testosterone and  
14 its esters, Methyltestosterone, Testosterone cypionate, and/or  
15 Testosterone enanthate in these Products are chemicals known to be  
16 carcinogens and/or reproductive toxins by the State of California.  
17 Nor has any of the noticed companies disclosed the potential  
18 adverse health effect risks posed by exposure to these chemicals in  
19 these Products because Progesterone, Medroxyprogesterone acetate,  
20 Testosterone and its esters, Methyltestosterone, Testosterone  
21 cypionate, and/or Testosterone enanthate in these Products are  
22 chemicals regulated as drugs by the U.S. Food and Drug  
23 Administration under the federal Food, Drug and Cosmetic Act.  
24 These omissions of material facts constitute deceptive  
25 representations and misrepresentations, failure to disclose that the  
26 product is a regulated drug, and misbranding in violation of § 1770  
27 of the CLRA.

28 **2.6** On December 7, 2005, Ms. Buckland and CWLC filed their initial complaint  
entitled *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles  
County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended First  
Amended First Amended Complaint, which is the now-operative complaint in this matter (the  
“First Amended First Amended Complaint”). CWLC alleged violations of Proposition 65  
against Defendant, while Ms. Buckland alleged violations of the CLRA, Business & Professions  
Code §§ 17200 *et seq.* and 17500 *et seq.*, and Civil Code §§1709 and 1710, against Defendant,  
respectively.

1           **2.7** For purposes of this Consent Judgment only, the Parties stipulate that this Court  
2 has jurisdiction over the allegations of the violations contained in the Notices and the First  
3 Amended Complaint, and personal jurisdiction over Defendant as to the acts or omissions  
4 alleged in the First Amended Complaint; that venue is proper in the County of Los Angeles; and  
5 that this Court has jurisdiction to enter this Consent Judgment.

6           **2.8** Defendant denies that the Products have been or are in violation of any law, and  
7 further contends that all Products have been and are safe for use as directed. However, the  
8 Parties desire to resolve this matter (including the Notices, First Amended Complaint and all  
9 related matters) without further litigation or cost.

10           **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as  
11 alleged in the Notices and the First Amended Complaint, to avoid prolonged and costly  
12 litigation, and to promote the public interest. By executing and complying with this Consent  
13 Judgment, no Party admits any facts or conclusions of law including, but not limited to, any facts  
14 or conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code  
15 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False  
16 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65  
17 (Health & Safety Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim  
18 or requirement relating to or arising from Defendant's Products. This Consent Judgment shall  
19 not be construed as an admission by Defendant as to any of the allegations in the 60-Day Notice,  
20 the CLRA Notice or the First Amended Complaint.

21 **3. Injunctive Relief.**

22           **3.1 Sale of Products Requires a Warning.**

23           Pursuant to Civil Code § 1782(d), B&P Code §§ 17203 and 17535, and Health & Safety  
24 Code §25249.7(a), the sale of a Product by Defendant to consumers in California shall be  
25 accompanied by a warning. This warning shall be provided both by (a) product labeling  
26 pursuant to Paragraph 3.1.1; and (b) warnings for any mail order and Internet sales pursuant to  
27 Paragraph 3.1.2.  
28

1                                   **3.1.1 Product Label Warnings**

2           At the earliest such time when, in the ordinary course of business, new labels for the  
3 Products are printed on or after January 1, 2006, Defendant shall include:

4           (1) on the label of each of its Products that it manufactures and ships for sale into  
5 California, (in the same type size as the surrounding, non-heading text), the following warning,  
6 including the specific name or names of the Regulated Chemicals where shown:

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

12           (2) on every Product that it manufactures and ships for sale outside of California, either  
13 on the label or on a separate sticker affixed to the Product, the statement: "Not for sale in  
14 California."

15                                   **3.1.2 Additional Warnings for Mail Order or Internet Sales**

16           If Defendant sells a Product by mail order or over the Internet to a purchaser in the state  
17 of California on or after the date that is 90 days after the entry of this consent judgment by the  
18 court, the following additional requirements shall apply:

19           (1) For such mail order sales, the warning language required under this Consent  
20 Judgment at paragraph 3.1.1 shall be included in the mail order catalogue, either on the same  
21 page as any order form, or on the same page(s) upon which the Product’s price is listed, in the  
22 same type size as the surrounding, non-heading text.

23           (2) For such Internet sales, the warning language required under this Consent  
24 Judgment at paragraph 3.1.1 shall be displayed (in the same type size as the surrounding, non-  
25 heading text) in one or more of the following ways: (a) on the same page upon which the  
26 Product is displayed or referenced; (b) on the same page as any order form for any Product; (c)  
27 on the same page as the price for the Product is displayed; (d) on one or more pages displayed to  
28 a purchaser over the Internet or via electronic mail during the checkout and order confirmation

1 process for sale of a Product; or (e) in any manner such that it is likely to be read and understood  
2 by an ordinary individual under customary business conditions prior to the purchase of the  
3 Product.

### 4 **3.1.3 Additional Warnings to Distributors**

5 Within 10 days of the date of entry of this Consent Judgment, Defendant shall notify, in  
6 writing, each of the independent distributors distributing its Product as of that date in California,  
7 Oregon, Nevada, and Arizona (or any other independent distributor that, according to  
8 Defendants' records, regularly ships Defendants' Product to consumers in California) that its  
9 Product is not intended for and may not be sold or shipped to consumers in California, and  
10 Defendant shall also so notify any new independent distributor meeting the aforementioned  
11 criteria.

12 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and  
13 effective when, in the ordinary course of business, new labels and advertising, marketing, mail  
14 order catalog or Internet-based descriptions of each of its respective Products are printed or  
15 posted electronically on or after January 1, 2006, Defendant agrees to remove any "health-  
16 related" claims (as that term is used by the U.S. Food and Drug Administration under Title  
17 21 United States Code § 201(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-  
18 The-Counter Topically Applied Hormone Drug Products) made by Defendant for any of its  
19 respective Products.

## 20 **4. Financial Settlement and Attorneys' Fee Payments.**

21 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of  
22 \$33,345.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of  
23 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available  
24 funds. This Settlement Amount shall be due and payable within five (5) calendar days after the  
25 date of notice of entry of this Consent Judgment. This Settlement Amount shall be disbursed  
26 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

27 **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees  
28 and costs.

1 **5. Claims Covered and Released.**

2 This Consent Judgment includes the resolution of all actual and potential claims that were  
3 considered or could have been brought by Plaintiffs regarding the Regulated Chemical(s) in  
4 Defendant's Products. This Consent Judgment is a final and binding resolution between  
5 Plaintiff and Defendant of any and all alleged violations of Proposition 65, the CLRA, the Unfair  
6 Competition Law, the False Advertising Law, Civil Code §§1709 and 1710, or any other law  
7 that was or could have been asserted by Plaintiff arising from or related to Defendant's Products  
8 up through the date of entry of this Consent Judgment, including, but not limited to any claims  
9 for attorneys' fees and costs (collectively "Claims"). Plaintiffs hereby release the Defendant  
10 Releasees (as defined below) and waive all rights to institute or participate in, directly or  
11 indirectly, any form of legal action seeking any form of relief (whether injunctive,  
12 compensatory, punitive, or otherwise) arising from the Claims against Defendant, its officers,  
13 directors, employees, agents, attorneys, consultants, representatives, shareholders, parents,  
14 subsidiaries, affiliates, divisions, predecessors, successors, subdivisions, downstream  
15 distributors, downstream retailers, downstream customers, and upstream suppliers of the raw  
16 materials used in the Products (the "Defendant Releasees"); however, Plaintiffs cannot and  
17 expressly do not release any other claims, including specifically and without limitation any  
18 personal injury or directly related claims, that could be brought by any other individual or  
19 organization. Defendant hereby releases each Plaintiff from and against any claims arising out  
20 of each Plaintiff's notices and their filing or prosecution of this action. Each Party respectively  
21 waives any right to appeal or other review of this Consent Judgment, except as expressly  
22 provided in this Consent Judgment.

23 **6. Covenant Not To Sue.** The Parties covenant and agree that with regard to those matters  
24 that the Parties have herein released and that are described above, neither Plaintiffs nor  
25 Defendant will ever institute a lawsuit or administrative proceedings against the other, nor shall  
26 Plaintiffs or Defendant assert any claim of any nature against any person or entity hereby  
27 released with regard to any such matters which have been released. However, nothing in this  
28

1 paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to  
2 paragraph 7 below.

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

13 **8. Application of Consent Judgment.** Paragraphs 3, 5 and 6 of this Consent Judgment  
14 shall apply to, be binding upon and inure to the benefit of the Parties, Ms. Buckland and the  
15 CWLC, their divisions, subdivisions, subsidiaries, affiliates, successors, predecessors and  
16 assigns, and the directors, officers, employees, legal counsel, and agents of each of them, as  
17 applicable, and will inure to the benefit of the Parties' parent companies, all suppliers,  
18 distributors, wholesalers, retailers and contract manufacturers, and all of their respective  
19 directors, officers, employees, legal counsel, and agents.

20 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be  
21 modified or terminated upon written agreement of Defendant and Plaintiffs, with approval of the  
22 Court, or upon noticed motion for good cause shown. However, the Parties shall meet and  
23 confer in good faith and attempt to mutually agree upon any modification prior to the filing of  
24 any motion. The Parties acknowledge that new toxicological information or exposure  
25 assessments concerning hazardous substances and testing methodologies are continuously  
26 becoming available, and that statutory and regulatory standards applicable to the Products may  
27 evolve in the future, either of which may establish good cause for modification of this Consent  
28 Judgment. The burden of proof in any such motion shall be on the moving party to establish



1 such good cause. The prevailing Party in any such motion shall be entitled to recover from the  
2 other Party the prevailing Party's reasonable attorneys' fees and costs incurred in the preparation  
3 and prosecution of such a motion.

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 Parties declare and represent that no promise, inducement or  
7 other agreement has been made conferring any benefit upon any party except those contained  
8 herein and that this Consent Judgment contains the entire agreement pertaining to the subject  
9 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,  
10 representations, agreements and understandings of the Parties with respect to such matters,  
11 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or  
12 among the Parties to any term or condition contrary to or in addition to the terms and conditions  
13 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any  
14 promise, representation or warranty, expressed or implied, not contained in this Consent  
15 Judgment except with regard to that certain declaration executed under penalty of perjury by the  
16 Defendant providing information that induced Ms. Buckland and CWLC to enter into the  
17 financial terms of this Consent Judgment, which declaration may be used solely as evidence in  
18 any future enforcement proceeding brought pursuant to Paragraph 7 above.

19 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment  
20 for good cause shown under Paragraph 9 hereof, the Parties agree that they, individually or  
21 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any  
22 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that  
23 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each  
24 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has  
25 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other  
26 Party so as to create a fiduciary, agency or confidential relationship.

1 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The  
2 language of this Consent Judgment shall be construed as a whole according to its fair meaning  
3 and not strictly for or against any Party.

4 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment  
5 represents and warrants that each signatory has all requisite power, authority and legal right  
6 necessary to execute and deliver this Consent Judgment and to perform and carry out the  
7 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment  
8 represents that each has been duly authorized to execute this Consent Judgment. No other or  
9 further authorization or approval from any person will be required for the validity and  
10 enforceability of the provisions of this Consent Judgment, except entry by the Court.

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

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

16 **17. Notices.**

17 **17.1** All correspondence and notices required by this Consent Judgment to Ms.  
18 Buckland shall be sent to:

19 Katherine Lee Buckland, Esq.  
20 California Women's Law Center  
21 6300 Wilshire Boulevard, Suite 980  
22 Los Angeles, CA 90048  
23 Tel: (323) 951-1041  
24 Fax: (323) 951-9870  
25 katie@cwlc.org

With a copy to:  
26 Roger Lane Carrick, Esq.  
27 The Carrick Law Group, P.C.  
28 350 S. Grand Avenue, Suite 2930  
Los Angeles, CA 90071-3406  
Tel: (213) 346-7930  
Fax: (213) 346-7931  
E-mail: roger@carricklawgroup.com

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26 ///

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1           **17.2** All correspondence and notices required by this Consent Judgment to CWLC shall  
2 be sent to:

3                           Katherine Lee Buckland  
4                           Executive Director  
5                           California Women’s Law Center  
6                           6300 Wilshire Boulevard, Suite 980  
7                           Los Angeles, CA 90048  
8                           Tel: (323) 951-1041  
9                           Fax: (323) 951-9870  
10                          katie@cwlc.org

                          With a copy to:  
                          Roger Lane Carrick  
                          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

11           **17.3** All correspondence and notices required by this Consent Judgment to Defendant  
12 shall be sent to Defendant as follows:

13                           Kelley A. Leithman, Esq.  
14                           Legal Counsel  
15                           Matol Botanical International  
16                           290 Labrosse Avenue  
17                           Pointe Claire, Quebec H9R 6R6  
18                           CANADA

                          With a copy to:  
                          Trenton H. Norris, Esq.  
                          Bingham McCutchen LLP  
                          Three Embarcadero Center, Suite 2500  
                          San Francisco, CA 94111-4067  
                          Tel: (415) 393-2602  
                          Fax: (213) 393-2286  
                          E-mail: trent.norris@bingham.com

19           **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent  
20 Judgment shall be null and void, and without any force or effect, unless fully approved as  
21 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the  
22 execution thereof by Defendant or Plaintiffs shall not be construed as an admission by Defendant  
23 or Plaintiffs of any fact, issue of law or violation of law.

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

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

1 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well  
2 as use their respective best efforts, to secure the Attorney General's approval of this Consent  
3 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.  
4

5 **IT IS SO STIPULATED.**

6 Date: March 12, 2006

KATHERINE LEE BUCKLAND, an individual

7  
8 By: Katherine Lee Buckland  
9 KATHERINE LEE BUCKLAND

10 Date: March 12, 2006

CALIFORNIA WOMEN'S LAW CENTER

11  
12 By: Katherine Lee Buckland  
13 Executive Director

14 Date: March \_\_, 2006

MATOL BOTANICAL INTERNATIONAL LTD.

15  
16  
17 By: \_\_\_\_\_

18 Title: \_\_\_\_\_  
19

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

21  
22 DATED: \_\_\_\_\_  
23

24 \_\_\_\_\_  
25 ROBERT L. HESS  
26 JUDGE OF THE SUPERIOR COURT  
27  
28

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

4  
5 **IT IS SO STIPULATED.**

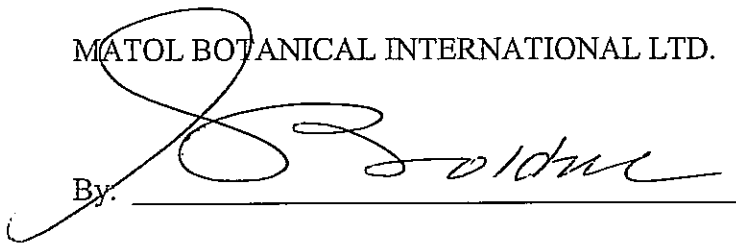
6 Date: March \_\_, 2006 KATHERINE LEE BUCKLAND, an individual

7  
8 By: \_\_\_\_\_  
KATHERINE LEE BUCKLAND

9  
10 Date: March \_\_, 2006 CALIFORNIA WOMEN'S LAW CENTER

11  
12 By: \_\_\_\_\_  
Executive Director

13  
14 Date: March 16, 2006 MATOL BOTANICAL INTERNATIONAL LTD.

15  
16  
17 By: \_\_\_\_\_  


18 Title: CEO

19  
20 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

21  
22 DATED: \_\_\_\_\_

23  
24 \_\_\_\_\_  
ROBERT L. HESS  
JUDGE OF THE SUPERIOR COURT