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6 WOMEN'S LAW CENTER

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 07 2005

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
J. SUNGA

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

11 KATHERINE LEE BUCKLAND, an individual,
AND CALIFORNIA WOMEN'S LAW CENTER,
12 a CALIFORNIA non-profit corporation,

13 Plaintiffs,

14 v.

15 THRESHOLD ENTERPRISES, LTD., a
DELAWARE corporation; ALLVIA
16 INTEGRATIVE PHARMACEUTICALS, INC., a
ARIZONA corporation; AT LAST NATURALS,
17 INC., a NEW YORK corporation; BIOCENTRIC
LABS, INC., a COLORADO corporation; BIO-
18 HEALTH, A DIVISION OF ZLABS LLC, a
ARIZONA limited liability company; BIOTECH
19 INTERNATIONAL CORPORATION, a
CONNECTICUT corporation; CANNON
20 MEDICAL CLINIC, INC., A DIVISION OF
GEORGE L. CANNON, M.D., INC., a ARIZONA
21 professional corporation; CANYON GROUP
CORPORATION, a NEVADA corporation;
22 METABOLIC RESPONSE MODIFIERS, INC., a
CALIFORNIA corporation; MATOL
23 BOTANICAL INTERNATIONAL LTD., INC., a
CANADIAN corporation; MAXIMUM LIVING,
24 INC., a CALIFORNIA corporation; MEAD LABS,
LLC, a OREGON limited liability company;
25 NATURE'S LIGHT, INC., a COLORADO
corporation; NOW HEALTH GROUP, INC., a
26 ILLINOIS corporation D/B/A NOW FOODS;

Case No. BC344046

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, CIVIL
PENALTIES, DAMAGES AND
PUNITIVE DAMAGES; DEMANDS
FOR JURY TRIAL**

Bus. & Prof. Code § 17200 *et seq.*;
Bus. & Prof. Code § 17500 *et seq.*;
Civil Code §1709;
Civil Code §1710;
Civil Code 1750 *et seq.*; and
Health & Safety Code § 25249.6 *et seq.*

Environmental/Toxic Tort (30)

28 *CAPTION CONTINUES ON NEXT PAGE*

1 PURE ESSENCE LABORATORIES, INC., a
2 NEVADA corporation; SUPERNUTRITION
3 LIFE-EXTENSION RESEARCH, INC., D/B/A
4 SUPERNUTRITION, a CALIFORNIA
5 corporation; SWANSON HEALTH PRODUCTS,
6 INC., a NORTH DAKOTA corporation;
7 VITAMIN POWER, INCORPORATED, a NEW
8 YORK corporation; VITAMIN SHOPPE
9 INDUSTRIES, INC., a NEW YORK corporation;
10 MADISON PHARMACY ASSOCIATES, INC., a
11 WISCONSIN corporation; WOMEN'S HEALTH
12 AMERICA, INC., a WISCONSIN corporation;
13 YOUNG AGAIN NUTRITION, LLC, a TEXAS
14 limited liability company D/B/A YOUNG AGAIN
15 NUTRIENTS; CREATIVISION, INC., a
16 COLORADO corporation D/B/A ALTERNATIVE
17 MEDICINE NETWORK; BETTER HEALTH
18 NATURALLY, INC., a CALIFORNIA
19 corporation; FOUNTAIN OF YOUTH
20 TECHNOLOGIES, INC., a OHIO corporation;
21 HELEN PENSANTI, M.D., INC., a
22 CALIFORNIA corporation; BOTANICAL
23 LABORATORIES, a WASHINGTON corporation
24 D/B/A ZAND HERBAL FORMULAS; ELATION
25 THERAPY, INC., a GEORGIA corporation;
26 KENOGEN, INC., a OREGON corporation;
27 NATURE'S BOUNTY, INC., a NEW YORK
28 corporation; NBTY, INC., a DELAWARE
corporation; NUTRI-COLOGY, INC., a
CALIFORNIA corporation; OPTIMUM
SOLUTIONS, LLC, a LOUISIANA limited
liability company; RADIANT LIFE SYSTEMS,
LLC, a NEW MEXICO limited liability company;
WOMEN'S MEDICINE, INC., A DIVISION OF
THE NATURAL HORMONE INSTITUTE OF
AMERICA, a FLORIDA corporation; and
DEFENDANT DOES 1 through 1,000, inclusive,

Defendants.

1 Plaintiffs, by and through their counsel, hereby allege the following on information and
2 belief:

3 INTRODUCTION

4 1. This complaint seeks to remedy the continuing failure of THRESHOLD
5 ENTERPRISES, LTD., a DELAWARE corporation; ALLVIA INTEGRATIVE
6 PHARMACEUTICALS, INC., a ARIZONA corporation; AT LAST NATURALS, INC., a
7 NEW YORK corporation; BIOCENTRIC LABS, INC., a COLORADO corporation; BIO-
8 HEALTH, A DIVISION OF ZLABS LLC, a ARIZONA limited liability company; BIOTECH
9 INTERNATIONAL CORPORATION, a CONNECTICUT corporation; CANNON MEDICAL
10 CLINIC, INC., A DIVISION OF GEORGE L. CANNON, M.D., INC., a ARIZONA
11 professional corporation; CANYON GROUP CORPORATION, a NEVADA corporation;
12 METABOLIC RESPONSE MODIFIERS, INC., a CALIFORNIA corporation; MATOL
13 BOTANICAL INTERNATIONAL LTD., INC., a CANADIAN corporation; MAXIMUM
14 LIVING, INC., a CALIFORNIA corporation; MEAD LABS, LLC, a OREGON limited liability
15 company; NATURE'S LIGHT, INC., a COLORADO corporation; NOW HEALTH GROUP,
16 INC., a ILLINOIS corporation D/B/A NOW FOODS; PURE ESSENCE LABORATORIES,
17 INC., a NEVADA corporation; SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC.,
18 D/B/A SUPERNUTRITION, a CALIFORNIA corporation; SWANSON HEALTH
19 PRODUCTS, INC., a NORTH DAKOTA corporation; VITAMIN POWER, INCORPORATED,
20 a NEW YORK corporation; VITAMIN SHOPPE INDUSTRIES, INC., a NEW YORK
21 corporation; MADISON PHARMACY ASSOCIATES, INC., a WISCONSIN corporation;
22 WOMEN'S HEALTH AMERICA, INC., a WISCONSIN corporation; YOUNG AGAIN
23 NUTRITION, LLC, a TEXAS limited liability company D/B/A YOUNG AGAIN
24 NUTRIENTS; CREATIVISION, INC., a COLORADO corporation D/B/A ALTERNATIVE
25 MEDICINE NETWORK; BETTER HEALTH NATURALLY, INC., a CALIFORNIA
26 corporation; FOUNTAIN OF YOUTH TECHNOLOGIES, INC., a OHIO corporation; HELEN
27 PENSANTI, M.D., INC., a CALIFORNIA corporation; BOTANICAL LABORATORIES, a
28 WASHINGTON corporation D/B/A ZAND HERBAL FORMULAS; ELATION THERAPY,

1 INC., a GEORGIA corporation; KENOGEN, INC., a OREGON corporation; NATURE'S
2 BOUNTY, INC., a NEW YORK corporation; NBTY, INC., a DELAWARE corporation;
3 NUTRI-COLOGY, INC., a CALIFORNIA corporation; OPTIMUM SOLUTIONS, LLC, a
4 LOUISIANA limited liability company; RADIANT LIFE SYSTEMS, LLC, a NEW MEXICO
5 limited liability company; WOMEN'S MEDICINE, INC., A DIVISION OF THE NATURAL
6 HORMONE INSTITUTE OF AMERICA, a FLORIDA corporation; and DEFENDANT DOES
7 1 through 1,000, inclusive, (collectively "Defendants") to comply with various federal and state
8 laws in the sale of Defendants' respective progesterone and testosterone consumer creams, gels
9 and/or lotion products containing Progesterone, Medroxyprogesterone acetate, Testosterone and
10 its esters, Methyltestosterone, Testosterone cypionate, and/or Testosterone enanthate
11 ("Products"). The Products are strictly regulated as drugs by the U.S. Food and Drug
12 Administration ("US/FDA") under the federal Food, Drug and Cosmetic Law. Progesterone,
13 Medroxyprogesterone acetate, Testosterone and its esters, Methyltestosterone, Testosterone
14 cypionate, and/or Testosterone enanthate (collectively "Regulated Chemicals") are hormones as
15 well as dangerous toxic chemicals known to the State of California to cause cancer and/or
16 reproductive harm. Individuals in California who purchase and use these Products are exposed
17 to these Regulated Chemicals when those individuals use the Products.

18 STATEMENT OF FACTS

19 2. Defendants are manufacturers, distributors and/or sellers of these Products, which
20 are marketed and labeled making health-related claims. These companies know that thousands
21 of their Products are purchased and used by individuals, including pregnant women, women of
22 childbearing age as well as women experiencing menopause, each year in California.

23 3. US/FDA regulates these types of Products as drugs pursuant to Title 21 United
24 States Code § 201(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-The-Counter
25 Topically Applied Hormone Drug Products. This regulation states that any over-the-counter
26 drug product that is labeled, represented, or promoted as a topically applied hormone-containing
27 product for drug use, other than hydrocortisone, is regarded as a new drug. Any such Product
28 making any form of health claim is being sold as a drug. The US/FDA has moved to enforce

1 this regulation against the unlawful sale of these types of Products as recently as November of
2 2005. No Defendant in this matter has filed a New Drug Application or otherwise complied
3 with the US/FDA regulations regarding the sale of the Products at issue in these claims, making
4 each Defendant's Product a misbranded drug pursuant to 21 United States Code §§ 352 and 355.

5 4. Selling a misbranded drug to a consumer in California is also a violation of
6 California Health & Safety Code § 111330 *et seq.*; an unlawful, unfair and fraudulent business
7 practice pursuant to the California Unlawful Competition Law (California Business &
8 Professions Code § 17200 *et seq.*); a violation of the California False Advertising Law
9 (California Business & Professions Code § 17500 *et seq.*); a violation of the California Legal
10 Remedies Act (California Civil Code §§ 1750 and 1770); and constitutes fraud by concealment
11 and misrepresentation pursuant to California Civil Code §§ 1709 and 1710.

12 5. The Products contain the Regulated Chemicals, which are listed pursuant to the
13 Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" – California Health
14 & Safety Code § 25249.5 *et seq.*) as follows: Progesterone (listed as a carcinogen);
15 Medroxyprogesterone acetate (listed as a carcinogen and reproductive toxin); Testosterone and
16 its esters (listed as a carcinogen); Methyltestosterone (listed as a reproductive toxin);
17 Testosterone cypionate (listed as a reproductive toxin); and Testosterone enanthate (listed as a
18 reproductive toxin). The Regulated Chemicals have each been listed for more than twelve
19 months by the Governor of the State of California as being chemicals known by the State of
20 California to cause cancer or reproductive toxicity, or both cancer and reproductive toxicity.
21 Each Defendant has failed to give each individual that purchases a Product a clear and
22 reasonable warning that each Regulated Chemical in a Product is a chemical known to the State
23 of California to be a carcinogen and/or a reproductive toxin in violation of California Health &
24 Safety Code § 25249.6.

25 6. Defendants' Products are distributed to and for the use of California consumers,
26 amongst others. Defendants have each sold and distributed their respective Products in
27 California for times up to continuously over the four years preceding the filing of this action.

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1 to Los Angeles City Attorney Rocky Delgadillo. Her prosecutorial work included creating the
2 Neighborhood Prosecutor Project, a program that places prosecutors in neighborhoods to
3 improve the quality of life in local communities. She also oversaw media and public affairs as
4 City Attorney Delgadillo's Communications Director. Ms. Buckland is a resident of the City
5 and County of Los Angeles, California.

6 14. Ms. Buckland purchased one or more of each Defendant's respective Products for
7 her personal, family or household purposes.

8 15. Since it's founding in 1989, Plaintiff CWLC has served as a unique advocate in
9 California, working in collaboration with others to protect, secure and advance the
10 comprehensive civil rights of women and girls. CWLC prides itself on forging novel approaches
11 to the problems that confront women and girls, proposing unique strategies to implement those
12 approaches, and recasting issues in new terms. CWLC programs are designed to empower
13 individuals to use the law that governs their rights and to address the legal issues that perpetuate
14 women and children's growing poverty. The California Women's Law Center works to ensure,
15 through systemic change, that life opportunities for women and girls are free from unjust social,
16 economic, and political constraints. In this overall policy context, CWLC has recently embarked
17 on a women and girls' health protection program, of which the above-captioned matters
18 represent an integral element. CWLC is based in Los Angeles, and was incorporated under the
19 laws of the State of California in 1989.

20 16. Ms. Buckland is a "consumer" within the meaning of California Civil Code
21 ("Civil Code") § 1761(d), and is a "person" within the meaning of California Business and
22 Professions ("B&P") Code §§ 17201, 17204 and 17506.

23 17. CWLC is a "person" within the meaning of Health & Safety ("H&S") Code
24 § 25249.11(a), and brings this enforcement action in the public interest pursuant to H&S Code
25 § 25249.7(d).

26 18. The term "Plaintiffs" as used herein is defined to be Ms. Buckland and CWLC,
27 and the term "Plaintiff" as used herein may be used to describe either Ms. Buckland or CWLC.

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1 19. Defendant THRESHOLD ENTERPRISES, LTD. (“Threshold”), is a
2 DELEWARE corporation with its principal place of business and/or headquarters located at
3 23 Janis Way, Scotts Valley, CA 95066. Threshold manufactures, distributes, and/or sells its
4 Products across the United States, including in California, through various distributors and retail
5 outlets. Threshold is a person in the course of doing business within the meaning of Civil Code
6 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
7 Code §§ 17201 and 17506.

8 20. Defendant ALLVIA INTEGRATIVE PHARMACEUTICALS, INC. (“Allvia”), is
9 an ARIZONA corporation with its principal place of business and/or headquarters located at
10 11202 North 24th Avenue, Phoenix, AZ 85029. Allvia manufactures, distributes, and/or sells
11 its Products across the United States, including in California, through various distributors and
12 retail outlets. Allvia is a person in the course of doing business within the meaning of Civil
13 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
14 B&P Code §§ 17201 and 17506.

15 21. Defendant AT LAST NATURALS, INC. (“At Last Naturals”), is a NEW YORK
16 corporation with its principal place of business and/or headquarters located at 401 Columbus
17 Avenue, Valhalla, NY 10595. At Last Naturals manufactures, distributes, and/or sells its
18 Products across the United States, including in California, through various distributors and retail
19 outlets. At Last Naturals is a person in the course of doing business within the meaning of Civil
20 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
21 B&P Code §§ 17201 and 17506.

22 22. Defendant BIOCENTRIC LABS, INC. (“Biocentric”), is a COLORADO
23 corporation with its principal place of business and/or headquarters located at 854 Baseline
24 Place, Suite B, Brighton, CO 80603. Biocentric manufactures, distributes, and/or sells its
25 Products across the United States, including in California, through various distributors and retail
26 outlets. Biocentric is a person in the course of doing business within the meaning of Civil Code
27 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
28 Code §§ 17201 and 17506.

1 23. Defendant BIO-HEALTH, A DIVISION OF ZLABS LLC (“Bio-Health”), is a
2 ARIZONA limited liability company with its principal place of business and/or headquarters
3 located at 70 S. Val Vista Drive, Suite A-3, PMB 442, Gilbert, AZ 85296. Bio-Health
4 manufacturers, distributes, and/or sells its Products across the United States, including in
5 California, through various distributors and retail outlets. Bio-Health is a person in the course of
6 doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
7 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

8 24. Defendant BIOTECH INTERNATIONAL CORPORATION (“Biotech”), is a
9 CONNECTICUT corporation with its principal place of business and/or headquarters located at
10 107 Oakwood Drive, Glastonbury, CT 06033. Biotech manufacturers, distributes, and/or sells
11 its Products across the United States, including in California, through various distributors and
12 retail outlets. Biotech is a person in the course of doing business within the meaning of Civil
13 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
14 B&P Code §§ 17201 and 17506.

15 25. Defendant CANNON MEDICAL CLINIC, INC., A DIVISION OF GEORGE L.
16 CANNON, M.D., INC. (“Cannon Medical”), is a ARIZONA professional corporation with its
17 principal place of business and/or headquarters located at 13000 N. 103rd Avenue, Suite 97, Sun
18 City, AZ 85351-3060. Cannon Medical manufacturers, distributes, and/or sells its Products
19 across the United States, including in California, through various distributors and retail outlets.
20 Cannon Medical is a person in the course of doing business within the meaning of Civil Code
21 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
22 Code §§ 17201 and 17506.

23 26. Defendant CANYON GROUP CORPORATION (“Canyon Group”), is a
24 NEVADA corporation with its principal place of business and/or headquarters located at P.O.
25 Box 158, Highway 187, Vanderpool, TX 78885. Canyon Group manufacturers, distributes,
26 and/or sells its Products across the United States, including in California, through various
27 distributors and retail outlets. Canyon Group is a person in the course of doing business within
28

1 the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person
2 within the meaning of B&P Code §§ 17201 and 17506.

3 27. Defendant METABOLIC RESPONSE MODIFIERS, INC. (“MRM”), is a
4 CALIFORNIA corporation with its principal place of business and/or headquarters located at
5 236 Calle Pintoresco, San Clemente, CA 92673. MRM manufactures, distributes, and/or sells
6 its Products across the United States, including in California, through various distributors and
7 retail outlets. MRM is a person in the course of doing business within the meaning of Civil
8 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
9 B&P Code §§ 17201 and 17506.

10 28. Defendant MATOL BOTANICAL INTERNATIONAL LTD., INC. (“Matol”), is
11 a CANADIAN corporation with its principal place of business and/or headquarters located at
12 290 Labrosse Avenue, Pointe-Claire, QC H9R 6R6 CANADA. Matol manufactures,
13 distributes, and/or sells its Products across the United States, including in California, through
14 various distributors and retail outlets. Matol is a person in the course of doing business within
15 the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person
16 within the meaning of B&P Code §§ 17201 and 17506.

17 29. Defendant MAXIMUM LIVING, INC. (“Maximum Living”), is a CALIFORNIA
18 corporation with its principal place of business and/or headquarters located at 20071
19 Soulsbyville Road, Soulsbyville, CA 95372. Maximum Living manufactures, distributes,
20 and/or sells its Products across the United States, including in California, through various
21 distributors and retail outlets. Maximum Living is a person in the course of doing business
22 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
23 person within the meaning of B&P Code §§ 17201 and 17506.

24 30. Defendant MEAD LABS, LLC (“Mead Labs”), is a OREGON limited liability
25 company with its principal place of business and/or headquarters located at 4444 SW Corbett
26 Avenue, Portland, OR 97239. Mead Labs manufactures, distributes, and/or sells its Products
27 across the United States, including in California, through various distributors and retail outlets.
28 Mead Labs is a person in the course of doing business within the meaning of Civil Code

1 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
2 Code §§ 17201 and 17506.

3 31. Defendant NATURE’S LIGHT, INC. (“Nature’s Light”), is a COLORADO
4 corporation with its principal place of business and/or headquarters located at P.O. Box 443, 280
5 Colfax Avenue, Bennett, CO 80102. Nature’s Light manufactures, distributes, and/or sells its
6 Products across the United States, including in California, through various distributors and retail
7 outlets. Nature’s Light is a person in the course of doing business within the meaning of Civil
8 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
9 B&P Code §§ 17201 and 17506.

10 32. Defendant NOW HEALTH GROUP, INC., a ILLINOIS corporation D/B/A NOW
11 FOODS (“NOW”), with its principal place of business and/or headquarters located at 395 Glen
12 Ellyn Road, Bloomingdale, IL 60108. NOW manufactures, distributes, and/or sells its
13 Products across the United States, including in California, through various distributors and retail
14 outlets. NOW is a person in the course of doing business within the meaning of Civil Code
15 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
16 Code §§ 17201 and 17506.

17 33. Defendant PURE ESSENCE LABORATORIES, INC. (“Pure Essence”), is a
18 NEVADA corporation with its principal place of business and/or headquarters located at
19 P.O. Box 95397, 1999 Whitney Mesa Drive, Suite A, Henderson, NV 89014. Pure Essence
20 manufactures, distributes, and/or sells its Products across the United States, including in
21 California, through various distributors and retail outlets. Pure Essence is a person in the course
22 of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
23 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

24 34. Defendant SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC., D/B/A
25 SUPERNUTRITION (“Supernutrition”), is a CALIFORNIA corporation with its principal place
26 of business and/or headquarters located at 100 Santa Rosa Avenue, Pacifica, Ca 94044.
27 Supernutrition manufactures, distributes, and/or sells its Products across the United States,
28 including in California, through various distributors and retail outlets. Supernutrition is a person

1 in the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S
2 Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

3 35. Defendant SWANSON HEALTH PRODUCTS, INC. (“Swanson”), is a NORTH
4 DAKOTA corporation with its principal place of business and/or headquarters located at
5 P.O. Box 2803, 4075 40th Avenue SW, Fargo, ND 58108-2803. Swanson manufacturers,
6 distributes, and/or sells its Products across the United States, including in California, through
7 various distributors and retail outlets. Swanson is a person in the course of doing business
8 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
9 person within the meaning of B&P Code §§ 17201 and 17506.

10 36. Defendant VITAMIN POWER, INCORPORATED (“Vitamin Power”), is a NEW
11 YORK corporation with its principal place of business and/or headquarters located at 199 Union
12 Avenue, Lynbrook, NY 11563; and 39 St. Marys Place, Freeport, NY 11520. Vitamin Power
13 manufacturers, distributes, and/or sells its Products across the United States, including in
14 California, through various distributors and retail outlets. Vitamin Power is a person in the
15 course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
16 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

17 37. Defendant VITAMIN SHOPPE INDUSTRIES, INC. (“Vitamin Shoppe”), is a
18 NEW YORK corporation with its principal place of business and/or headquarters located at
19 2101 - 91st Street, North Bergen, NJ 07047. Vitamin Shoppe manufacturers, distributes, and/or
20 sells its Products across the United States, including in California, through various distributors
21 and retail outlets. Vitamin Shoppe is a person in the course of doing business within the
22 meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within
23 the meaning of B&P Code §§ 17201 and 17506.

24 38. Defendant MADISON PHARMACY ASSOCIATES, INC. (“Madison
25 Pharmacy”), is a WISCONSIN corporation with its principal place of business and/or
26 headquarters located at 1289 Deming Way, Madison, WI 53717-1955. Madison Pharmacy
27 manufacturers, distributes, and/or sells its Products across the United States, including in
28 California, through various distributors and retail outlets. Madison Pharmacy is a person in the

1 course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
2 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

3 39. Defendant WOMEN’S HEALTH AMERICA, INC. (“Women’s Health”), is a
4 WISCONSIN corporation with its principal place of business and/or headquarters located at
5 1289 Deming Way, Madison, WI 53717-1955. Women’s Health manufactures, distributes,
6 and/or sells its Products across the United States, including in California, through various
7 distributors and retail outlets. Women’s Health is a person in the course of doing business
8 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
9 person within the meaning of B&P Code §§ 17201 and 17506.

10 40. Defendant YOUNG AGAIN NUTRITION, LLC, a TEXAS limited liability
11 company D/B/A YOUNG AGAIN NUTRIENTS (“Young Again”), with its principal place of
12 business and/or headquarters located at P.O. Box 8234, Spring, TX 77387; and 1935 Cattle
13 Drive, Magnolia, TX 77354. Young Again manufactures, distributes, and/or sells its Products
14 across the United States, including in California, through various distributors and retail outlets.
15 Young Again is a person in the course of doing business within the meaning of Civil Code
16 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
17 Code §§ 17201 and 17506.

18 41. Defendant CREATIVISION, INC., a COLORADO corporation D/B/A
19 ALTERNATIVE MEDICINE NETWORK (collectively “Creativision”), with its principal place
20 of business and/or headquarters located at 601 - 16th Street, Suite C-105, Golden, CO 80401-
21 4361; and 30520 Rancho California Road, Suite 107-149, Temecula, CA 92591, respectively.
22 Creativision manufactures, distributes, and/or sells its Products across the United States,
23 including in California, through various distributors and retail outlets. Creativision is a person in
24 the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S
25 Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

26 42. Defendant BETTER HEALTH NATURALLY, INC. (“Better Health”), is a
27 CALIFORNIA corporation with its principal place of business and/or headquarters located at
28 419 Narcissus Avenue, Corona Del Mar, Ca 92625-2414. Better Health manufactures,

1 distributes, and/or sells its Products across the United States, including in California, through
2 various distributors and retail outlets. Better Health is a person in the course of doing business
3 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
4 person within the meaning of B&P Code §§ 17201 and 17506.

5 43. Defendant FOUNTAIN OF YOUTH TECHNOLOGIES, INC., a OHIO
6 corporation (“Fountain of Youth”), with its principal place of business and/or headquarters
7 located at P.O. Box 608, 12395 Lancaster Street, Millersport, OH 43046. Fountain of Youth
8 manufacturers, distributes, and/or sells its Products across the United States, including in
9 California, through various distributors and retail outlets. Fountain of Youth is a person in the
10 course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
11 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

12 44. Defendant HELEN PENSANTI, M.D., INC. (“Pensanti”), is a CALIFORNIA
13 corporation with its principal place of business and/or headquarters located at 25 Ambrose,
14 Newport Coast, CA 92657. Pensanti manufacturers, distributes, and/or sells its Products across
15 the United States, including in California, through various distributors and retail outlets.
16 Pensanti is a person in the course of doing business within the meaning of Civil Code §§ 1761(c)
17 and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201
18 and 17506.

19 45. Defendant BOTANICAL LABORATORIES, a WASHINGTON corporation
20 D/B/A ZAND HERBAL FORMULAS (“Botanical Laboratories”), with its principal place of
21 business and/or headquarters located at 1441 W. Smith Road, Ferndale, WA 98248-8933.
22 Botanical Laboratories manufacturers, distributes, and/or sells its Products across the United
23 States, including in California, through various distributors and retail outlets. Botanical
24 Laboratories is a person in the course of doing business within the meaning of Civil Code
25 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
26 Code §§ 17201 and 17506.

27 46. Defendant ELATION THERAPY, INC. (“Elation”), is a GEORGIA corporation
28 with its principal place of business and/or headquarters located at 825 Jamerson Road, Suite 206,

1 Marietta, GA 30066. Elation manufacturers, distributes, and/or sells its Products across the
2 United States, including in California, through various distributors and retail outlets. Elation is a
3 person in the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a),
4 H&S Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

5 47. Defendant KENOGEN, INC. (“Kenogen”), is an OREGON corporation with its
6 principal place of business and/or headquarters located at 1430 Willamette Street, Suite 521,
7 Eugene, OR 97401. Kenogen manufacturers, distributes, and/or sells its Products across the
8 United States, including in California, through various distributors and retail outlets. Kenogen is
9 a person in the course of doing business within the meaning of Civil Code §§ 1761(c) and
10 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and
11 17506.

12 48. Defendant NATURE’S BOUNTY, INC. (“Nature’s Bounty”), is a NEW YORK
13 corporation with its principal place of business and/or headquarters located at 90 Orville Square,
14 Bohemia, NY 11716-2521. Nature’s Bounty manufacturers, distributes, and/or sells its
15 Products across the United States, including in California, through various distributors and retail
16 outlets. Nature’s Bounty is a person in the course of doing business within the meaning of Civil
17 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
18 B&P Code §§ 17201 and 17506.

19 49. Defendant NBTY, INC. (“NBTY”), is a DELAWARE corporation with its
20 principal place of business and/or headquarters located at 90 Orville Square, Bohemia, NY
21 11716-2521. NBTY manufacturers, distributes, and/or sells its Products across the United
22 States, including in California, through various distributors and retail outlets. NBTY is a person
23 in the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S
24 Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

25 50. Defendant NUTRI-COLOGY, INC. (“Nutri-Cology”), is a CALIFORNIA
26 corporation with its principal place of business and/or headquarters located at 30806 Santana
27 Street, Hayward, CA 94544. Nutri-Cology manufacturers, distributes, and/or sells its Products
28 across the United States, including in California, through various distributors and retail outlets.

1 Nutri-Cology is a person in the course of doing business within the meaning of Civil Code
2 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
3 Code §§ 17201 and 17506.

4 51. Defendant OPTIMUM SOLUTIONS, LLC (“Optimum Solutions”), is a
5 LOUISIANA limited liability company with its principal place of business and/or headquarters
6 located at 210 Elmwood Drive, Lafayette, LA 70503-5119. Optimum Solutions manufacturers,
7 distributes, and/or sells its Products across the United States, including in California, through
8 various distributors and retail outlets. Optimum Solutions is a person in the course of doing
9 business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and
10 is a person within the meaning of B&P Code §§ 17201 and 17506.

11 52. Defendant RADIANT LIFE SYSTEMS, LLC (“Radiant Life”), is a NEW
12 MEXICO limited liability company with its principal place of business and/or headquarters
13 located at P.O. Box 20310, 13612 Deer Trail NE, Albuquerque, NM 87154. Radiant Life
14 manufacturers, distributes, and/or sells its Products across the United States, including in
15 California, through various distributors and retail outlets. Radiant Life is a person in the course
16 of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
17 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

18 53. Defendant WOMEN’S MEDICINE, INC., A DIVISION OF THE NATURAL
19 HORMONE INSTITUTE OF AMERICA (“Women’s Medicine”), is a FLORIDA corporation
20 with its principal place of business and/or headquarters located at 1891 Beach Boulevard,
21 Suite 200, Jacksonville, FL 32250. Women’s Medicine manufacturers, distributes, and/or sells
22 its Products across the United States, including in California, through various distributors and
23 retail outlets. Women’s Medicine is a person in the course of doing business within the meaning
24 of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the
25 meaning of B&P Code §§ 17201 and 17506.

26 **PARTIES – “CWLC” DEFENDANTS**

27 54. The following Defendants are identified in this complaint as the “CWLC
28 Defendants” for purposes of stating the causes of action that Plaintiff CWLC brings against each

1 of these Defendants: Threshold Enterprises, Ltd.; Allvia Integrative Pharmaceuticals, Inc.; At
2 Last Naturals, Inc.; Biocentric Labs, Inc.; Bio-Health, a division of ZLABS LLC; Biotech
3 International Corporation; Cannon Medical Clinic, Inc., a division of George L. Cannon, M.D.,
4 Inc.; Canyon Group Corporation; Metabolic Response Modifiers, Inc.; Matol Botanical
5 International Ltd., Inc.; Maximum Living, Inc.; Mead Labs, LLC; Nature's Light, Inc.; NOW
6 Health Group, Inc., d/b/a NOW Foods; Pure Essence Laboratories, Inc.; Supernutrition Life-
7 Extension Research, Inc., d/b/a Supernutrition; Swanson Health Products, Inc.; Vitamin Power,
8 Incorporated; Vitamin Shoppe Industries, Inc.; Madison Pharmacy Associates, Inc.; Women's
9 Health America, Inc.; and Young Again Nutrition, LLC, d/b/a Young Again Nutrients.

10 55. DEFENDANT DOES 501 through 1,000, inclusive, are unknown to Plaintiffs at
11 this time. When their identities are ascertained, the complaint shall be amended to reflect their
12 true names. DEFENDANT DOES 501 through 1,000 are each a person in the course of doing
13 business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11 and a
14 person within the meaning of B&P Code § 17201. DEFENDANT DOES 501 through 1,000
15 manufacture and/or distribute their respective Products for sale and/or use in California.

16 **PARTIES – “BUCKLAND” DEFENDANTS**

17 56. The following Defendants are identified in this complaint as the “Buckland
18 Defendants” for purposes of stating the causes of action that Plaintiff Ms. Buckland brings
19 against each of these Defendants: Threshold Enterprises, Ltd.; Allvia Integrative
20 Pharmaceuticals, Inc.; At Last Naturals, Inc.; Biocentric Labs, Inc.; Bio-Health, a division of
21 ZLABS LLC; Biotech International Corporation; Cannon Medical Clinic, Inc., a division of
22 George L. Cannon, M.D., Inc.; Canyon Group Corporation; Fountain of Youth Technologies,
23 Inc.; Metabolic Response Modifiers, Inc.; Matol Botanical International Ltd., Inc.; Maximum
24 Living, Inc.; Mead Labs, LLC; Nature's Light, Inc.; NOW Health Group, Inc., d/b/a NOW
25 Foods; Nutri-Cology, Inc.; Pure Essence Laboratories, Inc.; Supernutrition Life-Extension
26 Research, Inc., d/b/a Supernutrition; Swanson Health Products, Inc.; Vitamin Power,
27 Incorporated; Vitamin Shoppe Industries, Inc.; Madison Pharmacy Associates, Inc.; Women's
28 Health America, Inc.; Young Again Nutrition, LLC, d/b/a Young Again Nutrients; Creativision,

1 Inc., d/b/a Alternative Medicine Network; Better Health Naturally, Inc.; Helen Pensanti, M.D.,
2 Inc.; Botanical Laboratories, d/b/a Zand Herbal Formulas; Elation Therapy, Inc.; Kenogen, Inc.;
3 Nature's Bounty, Inc.; NBTY, Inc.; Optimum Solutions, LLC; Radiant Life Systems, LLC; and
4 Women's Medicine, Inc., a division of The Natural Hormone Institute of America.

5 57. DEFENDANT DOES 1 through 500, inclusive, are unknown to Plaintiffs at this
6 time. When their identities are ascertained, the complaint shall be amended to reflect their true
7 names. DEFENDANT DOES 1 through 500 are each a person in the course of doing business
8 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11 and a person
9 within the meaning of B&P Code § 17201. DEFENDANT DOES 1 through 500 manufacture
10 and/or distribute their respective Products for sale and/or use in California.

11 **STATUTORY AND REGULATORY BACKGROUND**

12 **FEDERAL FOOD DRUG AND COSMETIC ACT**

13 58. The federal Food Drug and Cosmetic Act ("FDCA") regulates the sale of drugs in
14 the United States pursuant to Title 21 of the United States Code ("USC") at section 321(g).
15 Administering the FDCA, the US/FDA has acted to regulate the Products as "new drugs"
16 pursuant to 21 USC § 201(g) through administrative enactments now codified at Title 21 Code
17 of Federal Regulation ("21 CFR"), Part 310.530, Over-The-Counter ("OTC") Topically Applied
18 Hormone Drug Products.

19 **CALIFORNIA'S SHERMAN FOOD DRUG AND COSMETIC ACT**

20 59. Selling a misbranded drug to a consumer in California is also a violation of the
21 Sherman Food, Drug and Cosmetic Act, H&S Code § 111330 *et seq.*

22 **CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

23 60. On or about October 5, 2005, Ms. Buckland served pursuant to the California
24 Consumer Legal Remedies Act ("CLRA" – Civil Code § 1750 *et seq.*), specifically Civil Code
25 § 1782, each Defendant with a notice letter via certified mail, return receipt requested, stating
26 *inter alia* as follows:

27 These Products have been sold to literally millions of California
28 consumers without any of the noticed companies providing a clear
and reasonable warning prior to their purchase by a consumer that
the Progesterone, Medroxyprogesterone acetate, Testosterone and

1 its esters, Methyltestosterone, Testosterone cypionate, and/or
2 Testosterone enanthate in these Products are chemicals known to be
3 carcinogens and/or reproductive toxins by the State of California.
4 Nor has any of the noticed companies disclosed the potential
5 adverse health effect risks posed by exposure to these chemicals in
6 these Products because Progesterone, Medroxyprogesterone acetate,
7 Testosterone and its esters, Methyltestosterone, Testosterone
8 cypionate, and/or Testosterone enanthate in these Products are
9 chemicals regulated as drugs by the U.S. Food and Drug
10 Administration under the federal Food, Drug and Cosmetic Act.
11 These omissions of material facts constitute deceptive
12 representations and misrepresentations, failure to disclose that the
13 product is a regulated drug, and misbranding in violation of § 1770
14 of the CLRA..

9 61. The CLRA provides, *inter alia*, a statutory remedy for unfair methods of
10 competition as well as unfair or deceptive acts or practices undertaken by any person in a
11 transaction intended to result in, or which results in, the sale or lease of goods or services to any
12 consumer. The declared purposes of the CLRA are to protect consumers against unfair and
13 deceptive business practices and to provide efficient and economical procedures to secure such
14 protection. Remedies under the CLRA include injunctive relief, damages and punitive damages,
15 as well as attorneys' fees and costs. The facts underlying each Defendant's violation of the
16 FDCA and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug Products and/or the
17 violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" –
18 H&S Code § 25249.5 *et seq.*) in the sale of their respective Products constitutes a violation of
19 the CLRA, and the violation of these other laws is a further, independent *per se* violation, of the
20 CLRA.

21 UNLAWFUL COMPETITION LAW

22 62. The Unlawful Competition Law ("UCL" – B&P § 17200 *et seq.*) defines "unfair
23 competition" as any unlawful, unfair or fraudulent business act or practice and unfair, deceptive,
24 untrue or misleading advertising. The UCL works by borrowing violations of other laws and
25 treating those transgressions, when committed as a business activity, as "unlawful business
26 practices." Such unlawful business practices are independently actionable under B&P Code
27 § 17200 *et seq.* and subject to the distinct remedies provided there under.

28 ///

1 63. Each Defendant’s violation of the FDCA and 21 CFR, Part 310.530, OTC
2 Topically Applied Hormone Drug Products and/or the violation of Proposition 65 in the sale of
3 their respective Products constitutes an act of unfair competition that may be enjoined by the
4 Court pursuant to B&P Code § 17203.

5 **FALSE ADVERTISING LAW**

6 64. The False Advertising Law (“FAL” – B&P Code § 17500 *et seq.*) prohibits not
7 only advertising which is false, but also advertising which, although true, is either actually
8 misleading or which has a capacity, likelihood or tendency to deceive or confuse the public;
9 thus, it is necessary only to show that members of the public are likely to be deceived.

10 65. Each Defendant’s violation of the FDCA and 21 CFR, Part 310.530, OTC
11 Topically Applied Hormone Drug Products and/or the violation of Proposition 65 in the sale of
12 their respective Products constitutes an act of unfair competition that may be enjoined by the
13 Court pursuant to B&P Code § 17535.

14 66. Each Defendant’s failure to provide warnings in violation of Proposition 65 also
15 constitutes an act of unfair competition as well as false advertising that may be enjoined by the
16 Court pursuant to B&P Code §§ 17203 and 17535.

17 **CIVIL CODE §§ 1709 AND 1710**

18 67. Under California law, the elements of a claim of fraud by concealment are
19 (1) suppression of a material fact; (2) by one who is bound to disclose it, or who gives
20 information of other facts which are likely to mislead for want of communication of that fact;
21 (3) with intent to deceive a person unaware of the concealed fact and who would not have acted
22 had he known of the fact.”

23 68. All Defendants (1) suppress the material fact that there each Product is regulated
24 under the FDCA and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug Products
25 and under Proposition 65 in the sale of their respective Products; (2) each Defendant has a legal
26 duty to disclose this FDCA and Proposition 65 regulation to purchasers of its product; (3) each
27 Defendant therefore knowingly and intentionally exposes the purchasers of their respective
28 Products to a drug without a clear and reasonable warning, (4) each Defendant knows that the

1 presence of these Regulated Chemicals in these Products triggers application of Proposition 65,
2 and yet each Defendant knowingly and intentionally exposes the purchasers of their respective
3 Products to the Regulated Chemicals without a clear and reasonable warning. These facts meet
4 the pleading requirements of allegations under Civil Code §§ 1709 and 1710.

5 PROPOSITION 65

6 69. The People of the State of California declared, in adopting Proposition 65 in 1986
7 as an initiative statute, their right “[t]o be informed about exposures to chemicals that cause
8 cancer, birth defects and other reproductive harm.” Proposition 65, § 1(b)(uncodified).

9 70. To effectuate this goal, Proposition 65 requires that individuals be provided with a
10 clear and reasonable warning before being exposed to chemicals listed by the State of California
11 as causing cancer or birth defects and other reproductive harm, unless the person (including
12 businesses) responsible for the exposure can prove that such exposure is otherwise lawful, as
13 follows:

14 No person in the course of doing business shall knowingly and
15 intentionally expose any individual to a chemical known to the state
16 to cause cancer or reproductive toxicity without first giving clear
and reasonable warning to such individual....H&S Code § 25249.6

17 71. On January 1, 1988, the State of California officially listed Progesterone as a
18 chemical known to cause cancer. Progesterone became subject to the Proposition 65 “clear and
19 reasonable” carcinogen warning requirement one year later, beginning on January 1, 1989.
20 22 California Code of Regulations (“CCR”) § 12000; H&S Code § 25249.5 *et seq.*¹

21 72. On January 1, 1990, the State of California officially listed Medroxyprogesterone
22 acetate as a chemical known to cause cancer. Medroxyprogesterone acetate became subject to
23 the Proposition 65 “clear and reasonable” carcinogen warning requirement one year later,
24 beginning on January 1, 1991. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

25 73. On April 1, 1988, the State of California officially listed Testosterone and its
26 esters as chemicals known to cause cancer. Testosterone and its esters became subject to the
27
28

¹ All statutory references herein are to California Codes unless otherwise indicated.

1 Proposition 65 “clear and reasonable” carcinogen warning requirement one year later, beginning
2 on April 1, 1989. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

3 74. On April 1, 1990, the State of California officially listed Medroxyprogesterone
4 acetate as a chemical known to cause reproductive toxicity. Medroxyprogesterone acetate
5 became subject to the Proposition 65 “clear and reasonable” reproductive toxicity warning
6 requirement one year later, beginning on April 1, 1991. 22 CCR § 12000; H&S Code
7 § 25249.5 *et seq.*

8 75. On April 1, 1990, the State of California officially listed Methyltestosterone as a
9 chemical known to cause reproductive toxicity. Methyltestosterone became subject to the
10 Proposition 65 “clear and reasonable” reproductive toxicity warning requirement one year later,
11 beginning on April 1, 1991. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

12 76. On October 1, 1991, the State of California officially listed Testosterone
13 cypionate as a chemical known to cause reproductive toxicity. Testosterone cypionate became
14 subject to the Proposition 65 “clear and reasonable” reproductive toxicity warning requirement
15 one year later, beginning on October 1, 1992. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

16 77. On April 1, 1990, the State of California officially listed Testosterone enanthate as
17 a chemical known to cause reproductive toxicity. Testosterone enanthate became subject to the
18 Proposition 65 “clear and reasonable” reproductive toxicity warning requirement one year later,
19 beginning on April 1, 1991. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

20 78. Any person, including CWLC, has standing to enforce violations of
21 Proposition 65, provided that such person has supplied the requisite public enforcers with a
22 Sixty-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
23 within their respective jurisdictions within such time. H&S Code § 25249.7(d). On or about
24 July 28, 2005, the CWLC served a 60-Day “Notice of Violation of Proposition 65” (the
25 “Notice”) on the California Attorney General, the District Attorneys of every county in
26 California, the City Attorneys of every California city with a population greater than 750,000,
27 and on the Defendants, alleging that Defendants was in violation of the Safe Drinking Water and
28 Toxic Enforcement Act of 1986, Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”)

1 for failing to warn purchasers of the Defendant' Products sold in California that use of these
2 Products expose users to one or more of the Regulated Chemicals. No public prosecutor has
3 commenced an action regarding the matters raised in the Notice. The CWLC's Notice was sent
4 at least sixty-days prior to the filing of this Complaint. The CWLC also complied fully and
5 completely with H&S Code § 25249.7 as amended, in that the CWLC provided the required
6 certificates of merit for its Notice sent since January 1, 2002, to each of the alleged violators and
7 to the California Attorney General.

8 **REMEDIES SOUGHT**

9 79. Ms. Buckland seeks from each Defendant restitution and other remedies as
10 provided by B&P Code §§ 17203 and 17535, as well as actual damages according to proof and
11 punitive damages as well as her attorneys' fees and costs as provided by Civil Code §§ 1709,
12 1710, 1780.

13 80. Ms. Buckland seeks injunctive relief to compel each Defendant to cease violating
14 the CLRA, UCL, Civil Code §§ 1709 and 1710 and to provide California purchasers and users
15 of the Products with clear and reasonable warnings regarding the presence and known health
16 hazards of exposure to each of the Regulated Chemicals contained in each of their respective
17 Products, and to refrain from making health-related claims on the labels, advertising or
18 marketing of their respective Products.

19 81. Proposition 65 provides for injunctive relief and civil penalties up to \$2,500 per
20 day for each violation of Proposition 65. An action for injunctive relief, restitution and
21 disgorgement of profits, among other remedies, is also specifically authorized pursuant to
22 B&P Code §§ 17203 and 17535.

23 82. CWLC seeks injunctive relief to compel each Defendant to cease violating
24 Proposition 65 and to provide California purchasers and users of the Products with clear and
25 reasonable warnings regarding the presence and known health hazards of exposure to each of the
26 Regulated Chemicals contained in each of its Products. CWLC also seeks civil penalties against
27 each Defendant for its violations of Proposition 65, as provided for by H&S Code § 25249.7(b).
28

1 **JURISDICTION AND VENUE**

2 83. The Court has jurisdiction over this action pursuant to Civil Code §§ 1709, 1710
3 and 1780; B&P Code §§ 17203, 17204 and 17535; and H&S Code § 25249.7(a), which
4 individually and collectively allow enforcement in any court of competent jurisdiction. The
5 California Superior Court has jurisdiction over this action pursuant to California Constitution
6 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
7 those given by statute to other trial courts.” The statutes under which this action is brought do
8 not grant jurisdiction to any other trial court.

9 84. This Court has jurisdiction over each Defendant because, based on information
10 and belief, each Defendant is a corporation or business entity that has sufficient minimum
11 contacts in California, is a citizen of California, or otherwise intentionally avails itself of the
12 California market either through the distribution or sale of its Products in the State of California
13 or by having a manufacturing, distribution or other facility located in California so as to render
14 the exercise of jurisdiction over it by the California courts consistent with traditional notions of
15 fair play and substantial justice.

16 85. Venue is proper in the Los Angeles Superior Court because numerous violations
17 alleged above have occurred and are occurring in the County of Los Angeles.

18 **FIRST CAUSE OF ACTION**

19 **(Unlawful Acts of Knowingly and Intentionally Exposing Individuals to a Regulated**
20 **Chemical(s) as a Carcinogen in Violation of H&S Code § 25249.6 et seq.,**
21 **By All CWLC Defendants)**

22 86. CWLC realleges and incorporates by reference as if specifically set forth herein
23 Paragraphs 1 through 85 inclusive.

24 87. From December 7, 2004, and continuing to the present, each Defendant has sold
25 its Products in California in the year preceding the filing of this action. Each Defendant has
26 failed, and continues to fail, to provide clear and reasonable warnings regarding the
27 carcinogenicity of one or more of the Regulated Chemicals to consumers and/or users of its
28 Products, as required by Proposition 65.

1 88. By committing the acts alleged above, each Defendant has, since or after
2 December 7, 2004, violated Proposition 65, by knowingly and intentionally exposing individuals
3 to one or more of the Regulated Chemicals without first giving them clear and reasonable
4 warning regarding the carcinogenicity of one or more Regulated Chemicals. On information and
5 belief, CWLC alleges that within the statutory period each Defendant has engaged in multiple
6 sales of its Products in California in violation of the statute. Each of those sales is subject to the
7 statutorily authorized penalty of up to \$2500 per violation.

8 Wherefore, CWLC prays for judgment against each Defendant, as set forth hereafter.

9 **SECOND CAUSE OF ACTION**

10 **(Unlawful Acts of Knowingly and Intentionally Exposing Individuals to Regulated**
11 **Chemical(s) as a Reproductive Toxin in Violation of H&S Code § 25249.6 *et seq.*,**
12 **By All CWLC Defendants)**

13 89. Plaintiff realleges and incorporates by reference as if specifically set forth herein
14 Paragraphs 1 through 88 inclusive.

15 90. From December 7, 2004, and continuing to the present, each Defendant has sold
16 its Products in California in the year preceding the filing of this action. Each Defendant has
17 failed, and continues to fail, to provide clear and reasonable warnings regarding the reproductive
18 toxicity of one or more of the Regulated Chemicals to consumers and/or users of its Products, as
19 required by Proposition 65.

20 91. By committing the acts alleged above, each Defendant has, since or after
21 December 7, 2004, violated Proposition 65, by knowingly and intentionally exposing individuals
22 to one or more of the Regulated Chemicals without first giving them clear and reasonable
23 warning regarding the reproductive toxicity of one or more of the Regulated Chemicals. On
24 information and belief, CWLC alleges that within the statutory period each Defendant has
25 engaged in multiple sales of its Products in California in violation of the statute. Each of those
26 sales is subject to the statutorily authorized penalty of up to \$2500 per violation.

27 92. Wherefore, CWLC prays for judgment against each Defendant, as set forth
28 hereafter.

1 **THIRD CAUSE OF ACTION**

2 **(Violations of B&P Code § 17200 *et seq.* Based on Unlawful Acts of Knowingly and**
3 **Intentionally Exposing Individuals to One of More Regulated Chemicals as A Carcinogen**
4 **in Violation of H&S Code § 25249.6, 21 USC § 201(g) and B&P Code § 17500,**
5 **By All Buckland Defendants)**

6 93. Ms. Buckland realleges and incorporates by reference as if specifically set forth
7 herein Paragraphs 1 through 92 inclusive.

8 94. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
9 violates H&S Code § 25249.6 *et seq.* This conduct includes knowingly and intentionally
10 exposing individuals to one or more of the Regulated Chemicals contained in its Products
11 without first providing such individuals with a clear and reasonable warning regarding the
12 carcinogenicity of one or more of the Regulated Chemicals.

13 95. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
14 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
15 Products. This conduct includes knowingly and intentionally selling one or more of these
16 Products without complying with federal food and drug law.

17 96. By committing the acts alleged above, each Defendant has engaged in unlawful
18 business practices within the meaning of B&P Code § 17200 *et seq.*

19 97. As a result, each Defendant has also committed violations of B&P Code
20 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
21 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
22 B&P Code § 17200 *et seq.*

23 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

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FOURTH CAUSE OF ACTION

(Violations of B&P Code § 17200 *et seq.* Based on Unlawful Acts of Knowingly and Intentionally Exposing Individuals To One or More Regulated Chemicals as a Reproductive Toxin in Violation of H&S Code § 25249.6, 21 USC § 201(g) and B&P Code § 17500, By All Buckland Defendants)

98. Ms. Buckland realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 97 inclusive.

99. Since, or after, December 7, 2001, each Defendant has engaged in conduct that violates H&S Code § 25249.6 *et seq.* This conduct includes knowingly and intentionally exposing individuals to one or more of the Regulated Chemicals contained in its Products without first providing such individuals with a clear and reasonable warning regarding the reproductive toxicity of one or more of the Regulated Chemicals.

100. Since, or after, December 7, 2001, each Defendant has engaged in conduct that violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug Products. This conduct includes knowingly and intentionally selling one or more of these Products without complying with federal food and drug law.

101. By committing the acts alleged above, each Defendant has engaged in unlawful business practices within the meaning of B&P Code § 17200 *et seq.*

102. As a result, each Defendant has also committed violations of B&P Code § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to B&P Code § 17200 *et seq.*

103. Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violations of B&P Code § 17200 *et seq.* Based on Unfair Acts of Knowingly, Intentionally**
3 **and Unnecessarily Exposing Individuals to One or More Regulated Chemicals,**
4 **By All Buckland Defendants)**

5 104. Ms. Buckland realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 103 inclusive.

7 105. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
8 includes knowingly and intentionally exposing individuals to one or more of the Regulated
9 Chemicals contained in its Products without first providing such individuals with a clear and
10 reasonable warning regarding the carcinogenicity and/or reproductive toxicity of one or more of
11 the Regulated Chemicals.

12 106. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
13 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
14 Products. This conduct includes knowingly and intentionally selling one or more of these
15 Products without complying with federal food and drug law.

16 107. By committing the acts alleged above, each Defendant has engaged in unfair
17 business practices within the meaning of B&P Code § 17200 *et seq.*

18 108. As a result, each Defendant has also committed violations of B&P Code
19 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
20 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
21 B&P Code § 17200 *et seq.*

22 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

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1 **SIXTH CAUSE OF ACTION**

2 **(Violations of B&P Code § 17200 *et seq.* Based on Fraudulent Acts of**
3 **Knowingly, Intentionally and Unnecessarily Exposing Individuals to**
4 **One or More Regulated Chemicals,**
5 **By All Buckland Defendants)**

6 109. Ms. Buckland realleges and incorporates by reference as if specifically set forth
7 herein Paragraphs 1 through 108, inclusive.

8 110. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
9 includes knowingly and intentionally exposing individuals to one or more Regulated Chemicals
10 contained in its Products without first providing such individuals with a clear and reasonable
11 warning regarding the carcinogenicity and/or reproductive toxicity of one or more Regulated
12 Chemicals.

13 111. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
14 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
15 Products. This conduct includes knowingly and intentionally selling one or more of these
16 Products without complying with federal food and drug law.

17 112. By committing the acts alleged above, each Defendant has engaged in fraudulent
18 business practices within the meaning of B&P Code § 17200 *et seq.*

19 113. As a result, each Defendant has also committed violations of B&P Code
20 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
21 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
22 B&P Code § 17200 *et seq.*

23 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violations of B&P Code § 17500 *et seq.* Based on Unlawful, Unfair and/or**
3 **Fraudulent Acts of Knowingly, Intentionally and Unnecessarily Exposing**
4 **Individuals to One or More Regulated Chemicals,**
5 **By All Buckland Defendants)**

6 114. Ms. Buckland realleges and incorporates by reference as if specifically set forth
7 herein Paragraphs 1 through 113, inclusive.

8 115. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
9 includes knowingly and intentionally exposing individuals to one or more Regulated Chemicals
10 contained in its Products without first providing such individuals with a clear and reasonable
11 warning regarding the carcinogenicity and/or reproductive toxicity of one or more Regulated
12 Chemicals.

13 116. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
14 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
15 Products. This conduct includes knowingly and intentionally selling one or more of these
16 Products without complying with federal food and drug law.

17 117. As a result, each Defendant has committed violations of B&P Code
18 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
19 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
20 B&P Code § 17200 *et seq.*

21 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

22 **EIGHTH CAUSE OF ACTION**

23 **(Violations of Civil Code §§ 1709 and 1710:**

24 **Fraud by Concealment and Negligent Misrepresentation, By All Buckland Defendants)**

25 118. Ms. Buckland realleges and incorporates by reference as if specifically set forth
26 herein Paragraphs 1 through 117, inclusive.

27 119. Each Defendant's failure to disclose the presence of one or more of the Regulated
28 Chemicals, or the health risks each Regulated Chemical poses, in their Products' packaging,

1 advertising and promotional materials, was and is deceptive, a fraud by concealment and
2 negligent misrepresentation in violation of Civil Code §§ 1709 and 1710.

3 120. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
4 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
5 Products. This conduct includes knowingly and intentionally selling one or more of these
6 Products without complying with federal food and drug law, which constitutes a further
7 violation of Civil Code §§ 1709 and 1710.

8 121. Purchasers, including Ms. Buckland, of each Defendant's respective Product have
9 been damaged by each Defendant's non-disclosure, as well as by each Defendant's effort to
10 portray their respective Products as safe and healthful.

11 Wherefore, Ms. Buckland prays for judgment against each Defendant, as set forth
12 hereafter.

13 **NINTH CAUSE OF ACTION**

14 **(Violations of Civil Code § 1770(5) and/or (7):**

15 **Violation of the Consumer Legal Remedies Act, By All Buckland Defendants)**

16 122. Ms. Buckland realleges and incorporates by reference as if specifically set forth
17 herein Paragraphs 1 through 121, inclusive.

18 123. Each Defendant's failure to disclose the presence of one or more of the Regulated
19 Chemicals, or the health risks each Regulated Chemical poses, in their Products' packaging,
20 advertising and promotional materials, was and is a violation of Civil Code § 1770 (5) and/or
21 (7), including but not limited to the fact that (a) each Product is subject to regulation by the
22 US/FDA and yet each Product is not in fact in compliance with such US/FDA regulation
23 pursuant to 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
24 Products, and (b) because the Products do not carry on their label or in their marketing or
25 advertising materials a clear and reasonable warning as required by Proposition 65. Purchasers,
26 including Ms. Buckland, of each Defendant's respective Product have been damaged by each
27 Defendant's conduct and non-disclosure, as well as by each Defendant's effort to portray their
28 respective Products as safe and healthful.

1 Wherefore, Ms. Buckland prays for judgment against each Defendant, as set forth
2 hereafter.

3 **THE NEED FOR INJUNCTIVE RELIEF**

4 124. Ms. Buckland and CWLC each individually reallege and incorporate by reference
5 as if specifically set forth herein Paragraphs 1 through 123 inclusive.

6 125. By committing the acts alleged herein, each Defendant has caused irreparable
7 harm for which there is no plain, speedy or adequate remedy at law. In the absence of equitable
8 relief, the general public will continue to be involuntarily exposed to one or more of the
9 Regulated Chemicals in these Products, creating substantial risk of irreparable physical injury,
10 without a clear and reasonable warning, creating a clear and present danger to public health and
11 welfare.

12 **PRAYERS FOR RELIEF**

13 Plaintiff CWLC prays for judgment against each Defendant as follows in paragraphs 1
14 and 2 , and 18 through 21, of these Prayers for Relief:

15 **On The First and Second Causes of Action (Proposition 65):**

16 1. That the Court, pursuant to H&S Code § 25249.7(a), preliminarily and
17 permanently enjoin each Defendant from offering its respective Products for sale without
18 disclosing the presence of one or more of the Regulated Chemicals in its respective Products in a
19 manner that complies with the Proposition 65 statutory disclosure requirements, as CWLC shall
20 specify in further application to the Court;

21 **On The First and Second Causes of Action (Proposition 65):**

22 2. That the Court, pursuant to H&S Code § 25249.7(b), assess civil penalties against
23 each Defendant in an amount to be determined by the court for each violation of Proposition 65
24 alleged herein since December 7, 2004.

25 Plaintiff Ms. Buckland prays for judgment against each Defendant in paragraphs 3
26 through 21 of these Prayers for Relief as follows:

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1 **On The Third through Sixth Cause of Action (Unfair Competition Law):**

2 3. That the Court, pursuant to B&P Code § 17203, preliminarily and permanently
3 enjoin each Defendant from offering its respective Products for sale without disclosing the
4 presence of each Regulated Chemical in its respective Products in a manner that complies with
5 these statutory requirements, as Ms. Buckland shall specify in further application to the Court;

6 **On The Seventh Causes of Action (False Advertising Law):**

7 4. That the Court, pursuant to B&P Code § 17535, preliminarily and permanently
8 enjoin each Defendant from offering its respective Products for sale without disclosing the
9 presence of each Regulated Chemical in its respective Products in a manner that complies with
10 these statutory requirements, as Ms. Buckland shall specify in further application to the Court;

11 **On the Ninth Cause of Action (Consumer Legal Remedies Act):**

12 5. That the Court, pursuant to Civil Code § 1780(2), preliminarily and permanently
13 enjoin each Defendant from offering its respective Products for sale without disclosing the
14 presence of each Regulated Chemical in its respective Products in a manner that complies with
15 these statutory requirements, as Ms. Buckland shall specify in further application to the Court;

16 6. That the Court, pursuant to Civil Code § 1780(5), order each Defendant to label,
17 advertise and market each of its Products in a manner that complies with Proposition 65;

18 7. That the Court, pursuant to Civil Code § 1780(5), order each Defendant to refrain
19 from making any health-related claim on the label, advertising or marketing of each of its
20 Products unless the Defendant complies with 21 USC § 201(g) and 21 CFR, Part 310.530, OTC
21 Topically Applied Hormone Drug Products, as Ms. Buckland shall specify in further application
22 to the Court;

23 8. That the Court, pursuant to Civil Code § 1780(5), order each Defendant to label,
24 advertise and market each of its Products in a manner that complies with the Consumer Legal
25 Remedies Act, as Ms. Buckland shall specify in further application to the Court.

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1 **On The Third through Sixth Causes of Action (Unfair Competition Law):**

2 9. That the Court order each Defendant to notify each and every customer of such
3 Defendant who purchased its respective Products since December 7, 2001, and thereby give such
4 customers an opportunity to obtain restitution from each Defendant;

5 10. That the Court order each Defendant to pay restitution and be subject to such other
6 relief as may be necessary to restore to any end user and/or purchaser of its respective Products
7 any money or property, real or personal, which may have been acquired by means of the acts
8 alleged herein that occurred since December 7, 2001;

9 **On The Seventh Cause of Action (False Advertising Law):**

10 11. That the Court order each Defendant to notify each and every customer of such
11 Defendant who purchased its respective Products since December 7, 2001, and thereby give such
12 customers an opportunity to obtain restitution from each Defendant;

13 12. That the Court order each Defendant to pay restitution and be subject to such other
14 relief as may be necessary to restore to any end user and/or purchaser of its respective Products
15 any money or property, real or personal, which may have been acquired by means of the acts
16 alleged herein that occurred since December 7, 2001;

17 **On The Eighth Cause of Action (Civil Code §§ 1709 and 1710):**

18 13. That each Defendant be held liable for damages based upon the amounts paid for
19 their Products, in an amount to be determined at trial.

20 14. That each Defendant be held liable for punitive damages based upon the amounts
21 paid for their Products, in an amount to be determined at trial.

22 **On The Ninth Cause of Action (Consumer Legal Remedies Act):**

23 15. That, pursuant to Civil Code § 1780(1), each Defendant be held liable for actual
24 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

25 16. That, pursuant to Civil Code § 1780(3), the Court order each Defendant to notify
26 each and every customer of such Defendant who purchased its respective Products since
27 December 7, 2002, and thereby give such customers an opportunity to obtain restitution from
28 each Defendant, and that the Court order each Defendant to pay restitution and be subject to

1 such other relief as may be necessary to restore to any end user and/or purchaser of its respective
2 Products any money or property, real or personal, which may have been acquired by means of
3 the acts alleged herein that occurred since December 7, 2002;

4 17. That, pursuant to Civil Code § 1780(4), each Defendant be held liable for punitive
5 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

6 **On All Causes of Action:**

7 Plaintiffs Buckland and CWLC pray for judgment against each Defendant as follows:

8 18. For costs of this action;

9 19. For attorney's fees and costs;

10 20. For interest according to law;

11 21. For such other and further relief as this Court may deem just and proper.

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13 Date: December 7, 2005

Respectfully submitted,

14 THE CARRICK LAW GROUP, P.C.

15
16 By 

17 ROGER LANE CARRICK
Attorneys for Plaintiffs
18 Katherine Lee Buckland and California
19 Women's Law Center
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DEMANDS FOR JURY TRIAL

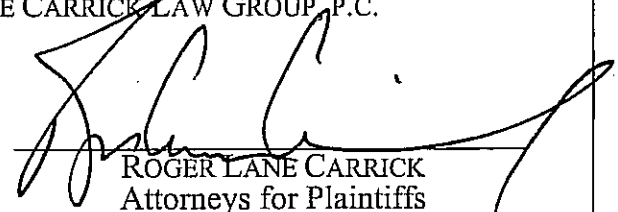
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2 Plaintiff California Women’s Law Center, a non-profit California corporation, hereby
3 demands a trial by jury on the first and second causes of action, while Plaintiff Katherine Lee
4 Buckland hereby demands a trial by jury on the eighth and ninth causes of action.

5
6 Date: December 7, 2005

Respectfully submitted,

7
8 THE CARRICK LAW GROUP, P.C.

9
10 By



11 ROGER LANE CARRICK
12 Attorneys for Plaintiffs
13 Katherine Lee Buckland and California
14 Women’s Law Center
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