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LOS ANGELES  
SUPERIOR COURT

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

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

Case No. BC344046  
[Hon. Robert L. Hess]  
**[PROPOSED] CONSENT  
JUDGMENT ONLY AS TO  
DEFENDANTS WOMEN'S HEALTH  
AMERICA, INC. AND MADISON  
PHARMACY ASSOCIATES, LLC**  
Complaint Filed: December 7, 2005  
1<sup>st</sup> Amended Cmplt.: January 24, 2006  
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 defendants Women's Health America, Inc. ("WHA") and Madison Pharmacy Associates, LLC ("MPA" – collectively with WHA, "Defendants").

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 in California under any  
2 product name or brand, whether a current or new name and/or brand.

3 1.3 Plaintiffs and Defendant will be referred to collectively as the "Parties" or  
4 individually as a "Party."

5 **2. Background.**

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

13 2.2 Ms. Buckland is a "consumer" within the meaning of California Civil Code  
14 ("Civil Code") § 1761(d). Ms. Buckland is also a "person" within the meaning of California  
15 Business and Professions ("B&P") Code §§17201, 17204 and 17506. She brought and settles  
16 this lawsuit on her own behalf and, to the fullest extent permitted by law, on behalf of the  
17 general public. CWLC brings its Proposition 65 causes of action in the public interest.

18 2.3 Defendant Women's Health America, Inc. ("WHA") distributes and sells Products  
19 containing Progesterone directly or indirectly to California consumers. Defendant WHA is a  
20 Wisconsin corporation in good standing.

21 2.4 Defendant Madison Pharmacy Associates, LLC ("MPA") does not manufacture,  
22 distribute or sell non-prescription progesterone-containing products in California. The name  
23 Madison Pharmacy Associates, however, appears on the receipt confirming Defendant WHA's  
24 sale of the Products. Defendant MPA is a Wisconsin corporation in good standing.

25 2.5 Beginning on or about July 28, 2005, CWLC served each Defendant and each of  
26 the appropriate public enforcement agencies with a "60-Day Notice" that provided Defendants  
27 and the public enforcement agencies with a notice alleging that Defendants were in violation of  
28 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the

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

6       **2.6** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served  
7 Defendants with a notice letter (the "CLRA Notice" – with the 60-Day Notice, the "Notices")  
8 via certified mail, return receipt requested, stating *inter alia* as follows:

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

19       **2.7** On December 7, 2005, Plaintiffs filed their initial complaint entitled  
20 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC 344046, in the Los Angeles  
21 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint,  
22 which is the now-operative complaint in this matter (the "First Amended Complaint").  
23 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§ 17200 *et seq.*  
24 and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms. Buckland alleged  
25 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code § 25249.5 *et seq.*) in the  
26 First Amended Complaint." CWLC alleged violations of Proposition 65 (H&S Code § 25249.5  
27 *et seq.*) in the First Amended Complaint.

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1           **2.8** 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 Defendants 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           **2.9** Defendants deny that the Products have been or are in violation of any law, and  
7 further contend that the Products have been and are safe for use as directed. Prior to receiving  
8 any notice from Plaintiffs, Defendant WHA alleges that it provided a clear and reasonable  
9 Proposition 65 warning for the Products it knew or had reason to believe were being offered for  
10 sale in California. After receiving Plaintiffs' 60-Day Notice and October 2, 2005 letter,  
11 Defendant WHA ceased selling the Products to customers in California. However, the Parties  
12 desire to resolve this matter (including the Notices, First Amended First Amended Complaint  
13 and all related matters) without further litigation or cost.

14           **2.10** The Parties enter into this Consent Judgment to settle certain disputed claims as  
15 alleged in the Notices and the First Amended Complaint, to avoid prolonged and costly litigation  
16 and to promote the public interest. By executing and complying with this Consent Judgment, no  
17 Party admits any facts or conclusions of law including, but not limited to, any facts or  
18 conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code  
19 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False  
20 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65  
21 (H&S Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim or  
22 requirement relating to or arising from Defendants' Products. This Consent Judgment shall not  
23 be construed as an admission by Defendants as to any of the allegations in the Notices or the  
24 First Amended Complaint.

25 **3. Injunctive Relief.**

26 **3.1 Defendant Has Exited the Market.**

27 Defendants have voluntarily exited the California market for the Products. No Products  
28 have been shipped for sale in California since approximately October 5, 2005. If Defendants

1 choose to re-enter the California market for these Products, Defendants shall comply with the  
2 terms set forth in the following paragraphs 3.2 and 3.3.

3       **3.2** Pursuant to Civil Code § 1782(d), B&P Code §§ 17203 and 17535, and H&S  
4 Code § 25249.7(a), the sale of a Product directly or indirectly by Defendants into California  
5 shall be accompanied by a warning. This warning shall be provided both by (a) product labeling  
6 pursuant to Paragraph 3.2.1; and (b) warnings for any mail order and Internet sales pursuant to  
7 Paragraph 3.2.2.

8               **3.2.1 Product Label Warnings**

9               At the earliest such time when, in the ordinary course of business, new labels for the  
10 Products are printed on or after January 1, 2006, Defendants shall include (in the same type size  
11 as the surrounding, non-heading text) the following warning on the label of each of its Products  
12 that it manufactures and ships for sale into California, including the specific name or names of  
13 the Regulated Chemicals where shown:

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

19               **3.2.2 Additional Warnings for Mail Order or Internet Sales**

20               If Defendants sell a Product by mail order or over the Internet to a purchaser in the State  
21 of California on or after the date that is 90 days after the entry of this Consent Judgment by the  
22 court, the following additional requirements shall apply:

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

27               **(2)** For such Internet sales, the warning language required under this Consent  
28 Judgment at paragraph 3.2.1 shall be displayed (in the same type size as the surrounding, non-

1 heading text) in one or more of the following ways: (a) on the same page upon which the  
2 Product is displayed or referenced; (b) on the same page as any order form for any Product;  
3 (c) on the same page as the price for the Product is displayed; (d) on one or more pages  
4 displayed to a purchaser over the Internet or via electronic mail during the checkout and order  
5 confirmation process for sale of a Product; or (e) in any manner such that it is likely to be read  
6 and understood by an ordinary individual under customary business conditions prior to the  
7 purchase of the Product.

8       **3.3** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and  
9 effective when, in the ordinary course of business, new labels and advertising, marketing, mail  
10 order catalog or Internet-based descriptions of each of its respective Products are printed or  
11 posted electronically on or after January 1, 2006, Defendants agrees not to make any "health-  
12 related" claims (as that term is used by the U.S. Food and Drug Administration under Title  
13 21 United States Code § 201(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-  
14 The-Counter Topically Applied Hormone Drug Products) for any Products.

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

16       **4.1** In lieu of damages or penalties, Defendants shall pay to the CWLC the sum of  
17 \$6,040.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of  
18 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available  
19 funds. This settlement amount shall be due and payable within five (5) calendar days after the  
20 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed  
21 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

22       **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees  
23 and costs.

24 **5. Claims Covered and Released.**

25       This Consent Judgment includes the resolution of actual and potential claims that were  
26 considered or could have been brought by Plaintiffs regarding the Progesterone in Defendants'  
27 Products. This Consent Judgment is a final and binding resolution between Plaintiffs and  
28 Defendants of any and all alleged violations of the California Consumer Legal Remedies Act,

1 Unlawful Competition Law, False Advertising Law, Civil Code §§ 1709 and 1710,  
2 Proposition 65 (H&S Code § 25249.5 *et seq.*) or any other law that was or could have been  
3 asserted by Plaintiffs arising from or related to Products manufactured, distributed, or sold by  
4 Defendants through the date of entry of this Consent Judgment, including, but not limited to any  
5 claims for attorneys' fees and costs. Plaintiffs hereby release Defendants and Defendants'  
6 predecessors, successors, affiliates and assigns, the officers, directors, employees, shareholders,  
7 and counsel of each of them, from and against the claims described in this paragraph to the  
8 extent such claims do, did, or could arise from or relate to Defendants' Products; however,  
9 Plaintiffs cannot and expressly does not release any other claims, including specifically and  
10 without limitation any personal injury or directly related claims, that could be brought by any  
11 other individual or organization. Defendants hereby release Ms. Buckland and CWLC from and  
12 against any claims arising out of Plaintiffs' filing or prosecution of this action. Each Party  
13 respectively waives any right to appeal or other review of this Consent Judgment, except as  
14 expressly provided in this Consent Judgment.

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

22 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to  
23 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To  
24 enforce this Consent Judgment, any Party must first give written notice of any violation of this  
25 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties  
26 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is  
27 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the  
28 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce

1 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's  
2 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an  
3 enforcement proceeding.

4 **8. Application of Consent Judgment.** Sections 3, 5 and 6 of this Consent Judgment shall  
5 apply to, be binding upon and inure to the benefit of the Parties, their divisions, subdivisions,  
6 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers,  
7 employees, legal counsel, and agents of each of them, as applicable, and will inure to the benefit  
8 of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and contract  
9 manufacturers, and all of their respective directors, officers, employees, legal counsel, and  
10 agents. This Consent Judgment shall have no effect on Products sold by Defendants and shipped  
11 to customers for use outside the State of California; provided that the Products are not sold  
12 directly or indirectly to consumers in California.

13 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be  
14 modified or terminated upon written agreement of the Parties, with approval of the Court, or  
15 upon noticed motion for good cause shown.

16 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in  
17 accordance with, the laws of the State of California.

18 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or  
19 other agreement has been made conferring any benefit upon any party except those contained  
20 herein and that this Consent Judgment contains the entire agreement pertaining to the subject  
21 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,  
22 representations, agreements and understandings of the Parties with respect to such matters,  
23 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or  
24 among the Parties to any term or condition contrary to or in addition to the terms and conditions  
25 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any  
26 promise, representation or warranty, expressed or implied, not contained in this Consent  
27 Judgment except with regard to that certain declaration executed under penalty of perjury by the  
28 Defendants providing information that induced Ms. Buckland and CWLC to enter into the

1 financial terms of this Consent Judgment, which declaration may be used solely as evidence in  
2 any future enforcement proceeding brought pursuant to Section 7 above.

3 **12. Challenges.** Subject to Section 9 hereof, the Parties agree that they, individually or  
4 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any  
5 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that  
6 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each  
7 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has  
8 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other  
9 Party so as to create a fiduciary, agency or confidential relationship.

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

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

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

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

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1 **17. Notices.**

2 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiffs  
3 shall be sent to Ms. Buckland as follows:

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

12 With a copy to:  
13 Roger Lane Carrick, Esq.  
14 The Carrick Law Group, P.C.  
15 350 S. Grand Avenue, Suite 2930  
16 Los Angeles, CA 90071-3406  
17 Tel: (213) 346-7930  
18 Fax: (213) 346-7931  
19 E-mail: roger@carricklawgroup.com

20 **17.2** All correspondence and notices required by this Consent Judgment to Defendants  
21 shall be sent to both Defendants as follows:

22 Ms. Marla Ahlgrimm  
23 Women's Health America, Inc.  
24 Madison Pharmacy Associates, LLC  
25 1289 Deming Way  
26 Madison, WI 53717-1955  
27 Tel.: (608) 833-7046

28 With a copy to:  
Michael J. Stiles  
McKenna Long & Aldridge LLP  
444 South Flower Street, 8th Floor  
Los Angeles, CA 90071  
Tel.: (213) 688-1000  
Fax: (213) 243-6330

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

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

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

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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: February 21, 2006

KATHERINE LEE BUCKLAND

7  
8 By: Katherine L Buckland  
KATHERINE LEE BUCKLAND

9  
10 Date: February 21, 2006

CALIFORNIA WOMEN'S LAW CENTER

11  
12 By: Katherine L Buckland  
KATHERINE LEE BUCKLAND  
Executive Director

13  
14 Date: February \_\_, 2006

WOMEN'S HEALTH AMERICA, INC.

15  
16 By: \_\_\_\_\_  
17 \_\_\_\_\_  
[Print Name/Title]

18  
19 Date: February \_\_, 2006

MADISON PHARMACY ASSOCIATES, LLC

20  
21 By: \_\_\_\_\_  
22 \_\_\_\_\_  
[Print Name/Title]

23  
24 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

25  
26 DATED: \_\_\_\_\_

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

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: February \_\_, 2006

KATHERINE LEE BUCKLAND

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

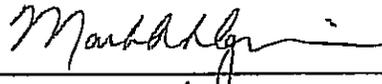
10 Date: February \_\_, 2006

CALIFORNIA WOMEN'S LAW CENTER

11  
12 By: \_\_\_\_\_  
13 KATHERINE LEE BUCKLAND  
Executive Director

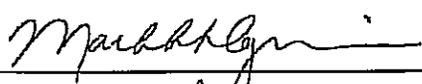
14 Date: February 14, 2006

WOMEN'S HEALTH AMERICA, INC.

15  
16 By:   
17 MARLA AITLGRIMM  
18 [Print Name/Title]

19 Date: February 14, 2006

MADISON PHARMACY ASSOCIATES, LLC

20  
21 By:   
22 MARLA AITLGRIMM  
23 [Print Name/Title]

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

25  
26 DATED: 4-11-2006



27  
28 **ROBERT L. HESS**  
**JUDGE OF THE SUPERIOR COURT**