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OF
MAY 09 2007
SUPERIOR COURT OF CALIFORNIA

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

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

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

**[PROPOSED] CONSENT JUDGMENT
ONLY AS TO DEFENDANT
TAHITIAN NONI INTERNATIONAL,
INC.**

Complaint Filed: December 7, 2005
Location: Dept. 24, Room 314

This Consent Judgment is entered into by and between Katherine Lee Buckland ("Ms. Buckland"), the California Women's Law Center ("CWLC" – collectively with Ms. Buckland, "Plaintiffs"), and defendant TAHITIAN NONI INTERNATIONAL, INC. (hereinafter "Defendant").

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 Progesterone. "Products" shall also include any future Products that are

1 manufactured by or on behalf of Defendant for sale in California under any product name or
2 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 Katherine Lee Buckland is the Executive Director of the California Women's Law
7 Center ("CWLC"), a non-profit California corporation. Since its founding in 1989, CWLC has
8 served as a unique advocate in California, working in collaboration with others to protect, secure
9 and advance the comprehensive civil rights of women and girls. The CWLC works to ensure,
10 through systemic change, that life opportunities for women and girls are free from unjust social,
11 economic, and political constraints.

12 2.2 Ms. Buckland is a "consumer" within the meaning of California Civil Code
13 ("Civil Code") §1761(d), and is also a "person" within the meaning of California Business and
14 Professions ("B&P") Code §§17201, 17204 and 17506. She brought and settles this lawsuit on
15 her own behalf and, to the fullest extent permitted by law, on behalf of the general public.

16 2.3 Defendant is a UTAH corporation with its principal place of business and/or
17 headquarters located at 333 West River Park Drive, Provo, UT 84604. Defendant distributed
18 and/or sold its Products directly or indirectly in California.

19 2.4 Beginning on or about February 9, 2006, CWLC served Defendant and each of the
20 appropriate public enforcement agencies with a "60-Day Notice" that provided Defendant and
21 the public enforcement agencies with a notice alleging that Defendant was in violation of
22 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
23 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
24 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
25 California Code of Regulations §12903. None of the public enforcement agencies has
26 commenced and begun diligently prosecuting an action against Defendant for such alleged
27 violations.

28

1 2.5 On or about February 9, 2007, Ms. Buckland, pursuant to Civil Code §1782
2 served Defendant with a notice letter (the "Notice") via certified mail, return receipt requested,
3 stating *inter alia* as follows:

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

14 2.6 On December 7, 2005, Plaintiffs filed their initial complaint entitled
15 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles County
16 Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint.
17 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§17200 *et seq.*
18 and 17500 *et seq.*, and Civil Code §§1709 and 1710, against Defendant. Ms. Buckland alleged
19 no claim, directly or indirectly, pursuant to Proposition 65 (Health & Safety ("H&S") Code
20 §25249.5 *et seq.*) in the First Amended Complaint. CWLC alleged violations of Proposition 65
21 (H&S Code §25249.5 *et seq.*) in the First Amended Complaint. On August 21, 2006,
22 Ms. Buckland filed a Supplemental Complaint (together with the First Amended Complaint,
23 "Complaints"). On November 6, 2006, Ms. Buckland filed a First Amended Supplemental
24 Complaint, and on November 6, 2006, CWLC filed a Second Amended Complaint (collectively,
25 "Complaints").

26 2.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court
27 has jurisdiction over the allegations of the violations contained in the Notices and the
28 Complaints, and personal jurisdiction over Defendant as to the acts or omissions alleged in the

1 Complaints; that venue is proper in the County of Los Angeles; and that this Court has
2 jurisdiction to enter this Consent Judgment.

3 **2.8** Defendant denies that the Products have been or are in violation of any law, and
4 further contends that all Products have been and are safe for use as directed. However, the
5 Parties desire to resolve this matter (including the Notice, Complaints and all related matters)
6 without further litigation or cost.

7 **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as
8 alleged in the Notice and the Complaints, to avoid prolonged and costly litigation, and to
9 promote the public interest. By executing and complying with this Consent Judgment, no Party
10 admits any facts or conclusions of law including, but not limited to, any facts or conclusions of
11 law regarding any violations of the California Legal Remedies Act (Civil Code §1750 *et seq.*),
12 the Unlawful Competition Law (B&P Code §17200 *et seq.*), the False Advertising Law
13 (B&P Code §17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65 (H&S Code §25249.5
14 *et seq.*) or any other statutory, common law or equitable claim or requirement relating to or
15 arising from Defendant's Products. This Consent Judgment shall not be construed as an
16 admission by Defendant as to any of the allegations in the Notices or the Complaints.

17 **3. Injunctive Relief.**

18 **3.1 Retail Sale of Products Requires a Warning**

19 Pursuant to Civil Code § 1782(d), B&P Code §§ 17203 and 17535, and Health & Safety
20 Code §25249.7(a), the sale of a Product by Defendant directly or indirectly to consumers in
21 California shall be accompanied by a warning. This warning shall be provided both by (a)
22 product labeling pursuant to Paragraph 3.1.1 and 3.1.2; and (b) warnings for any mail order and
23 Internet sales pursuant to Paragraph 3.1.3.

24 **3.1.1 Product Label Warnings**

25 For any Product that is manufactured by or at the direction of Defendant (*i.e.*, private-
26 label products), Defendant shall, at the earliest such time when, in the ordinary course of
27 business, new labels for such Products are printed on or after January 1, 2007, include (in the
28 same type size as the surrounding, non-heading text) the following warning on the label of each

1 of its Products that it manufactures and ships for sale directly or indirectly to consumers in
2 California, including the specific name or names of the Regulated Chemicals where shown:

3 “WARNING: This product contains [Progesterone,
4 Medroxyprogesterone acetate, Testosterone and its esters,
5 Methyltestosterone, Testosterone cypionate, and/or Testosterone
6 enantate], a chemical(s) known to the State of California to cause
7 cancer. Consult with your physician before using this product.”

8 **3.1.2 Notice to Third Parties**

9 For any Product that is sold by Defendant but manufactured by a third party (*i.e.*, non-
10 private-label Products), Defendant shall, within 30 days of entry of this consent judgment by the
11 court, notify the manufacturer or supplier of such Product (sending a copy of each such notice to
12 Plaintiff) that Defendant will not accept shipments of such Product for sale directly or indirectly
13 to consumers in California unless such Product is accompanied by the warning required by
14 paragraph 3.1.1 above or a comparable warning pursuant to the terms of a separate consent
15 judgment applying to such Product.

16 **3.1.3 Additional Warnings for Mail Order or Internet Sales**

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

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

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

1 more pages displayed to a purchaser over the Internet or via electronic mail during the checkout
2 and order confirmation process for sale of a Product; or (e) in any manner such that it is likely to
3 be read and understood by an ordinary individual under customary business conditions prior to
4 the purchase of the Product.

5 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and Health
6 & Safety Code §25249.7(a), effective when, in the ordinary course of business (but no sooner
7 than 90 days after entry of this Consent Judgment), Defendant prints or posts electronically new
8 labels and advertising, marketing, mail order catalog or Internet-based descriptions of each of its
9 respective Products, Defendant agrees to remove any "health-related" claims (as that term is
10 used by the U.S. Food and Drug Administration under Title 21 United States Code § 321(g) and
11 Title 21 Code of Federal Regulation, Part 310.530, Over-The-Counter Topically Applied
12 Hormone Drug Products) made by Defendant for any of the Products.

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

14 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
15 \$50,500.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of
16 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
17 funds. This settlement amount shall be due and payable within five (5) calendar days after the
18 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
19 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

20 **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees
21 and costs.

22 **5. Claims Covered and Released.**

23 This Consent Judgment includes the resolution of all actual and potential claims that were
24 considered or could have been brought by Plaintiffs regarding the Regulated Chemical(s) in
25 Defendant's Products. This Consent Judgment is a final and binding resolution between
26 Plaintiff and Defendants of any and all alleged violations of the CLRA, the Unfair Competition
27 Law, the False Advertising Law, Civil Code §§1709 and 1710, Proposition 65, or any other law
28 that was or could have been asserted by Plaintiff arising from or related to Defendant's Products

1 up through the date of entry of this Consent Judgment, including, but not limited to any claims
2 for attorneys' fees and costs (collectively "Claims"). Plaintiffs hereby release the Defendant's
3 Releasees (as defined below) and waive all rights to institute or participate in, directly or
4 indirectly, any form of legal action seeking any form of relief (whether injunctive,
5 compensatory, punitive, or otherwise) arising from the Claims against Defendants, its officers,
6 directors, employees, agents, attorneys, consultants, representatives, shareholders, parents,
7 subsidiaries, affiliates, divisions, predecessors, successors, subdivisions, downstream
8 distributors, downstream retailers, downstream customers, and upstream suppliers of the raw
9 materials used in the Products (the "Defendant's Releasees"); however, Plaintiffs cannot and
10 expressly do not release any other claims, including specifically and without limitation any
11 personal injury or directly related claims, that could be brought by any other individual or
12 organization. Defendants hereby release each Plaintiff from and against any claims arising out
13 of each Plaintiff's notices and their filing or prosecution of this action. Each Party respectively
14 waives any right to appeal or other review of this Consent Judgment, except as expressly
15 provided in this Consent Judgment.

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

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

1 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce
2 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
3 reasonable attorneys' fees and costs incurred in such an enforcement proceeding.

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

11 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
12 modified or terminated upon written agreement of Defendants and Plaintiffs, with approval of
13 the Court, or upon noticed motion for good cause shown. However, the Parties shall meet and
14 confer in good faith and attempt to mutually agree upon any modification prior to the filing of
15 any motion. The Parties acknowledge that new toxicological information or exposure
16 assessments concerning hazardous substances and testing methodologies are continuously
17 becoming available, and that statutory and regulatory standards applicable to the Products may
18 evolve in the future, either of which may establish good cause for modification of this Consent
19 Judgment. The burden of proof in any such motion shall be on the moving party to establish
20 such good cause. The prevailing Party in any such motion shall be entitled to recover from the
21 other Party the prevailing Party's reasonable attorneys' fees and costs incurred in the preparation
22 and prosecution of such a motion.

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

25 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
26 other agreement has been made conferring any benefit upon any party except those contained
27 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
28 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,

1 representations, agreements and understandings of the Parties with respect to such matters,
2 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
3 among the Parties to any term or condition contrary to or in addition to the terms and conditions
4 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
5 promise, representation or warranty, expressed or implied, not contained in this Consent
6 Judgment.

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

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

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

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

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

3 **17. Notice.**

4 **17.1** All correspondence and Notice required by this Consent Judgment to Plaintiffs
5 shall be sent as follows:

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

With a copy to:

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

11 **17.2** All correspondence and Notice required by this Consent Judgment to Defendant shall be
12 sent to Defendant as follows:

13 H. Michael Drake, Esq.
14 Counsel
15 Tahitian Noni International, Inc.
16 333 West River Park Drive
17 Provo, Utah 84604
18 Tel. (801) 234-3407
19 Fax: (801) 234-1040
20 E-mail: miked@morinda.com

With a copy to:

Irwin B. Feinberg, Esq.
Feinberg, Mindel, Brandt,
Klein & Kline LLP
12400 Wilshire Blvd, Suite 900
Los Angeles, California 90025
Tel: 310-447-8675 x112
Fax: 310-447-8678
E-mail: ifeinberg@fmbklaw.com

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

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

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

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

6 IT IS SO STIPULATED.

7 Date: February 7, 2007
8 March

KATHERINE LEE BUCKLAND

9 By: Katherine Buckland
KATHERINE LEE BUCKLAND

11 Date: February 7, 2007
12 March

CALIFORNIA WOMEN'S LAW CENTER

13 By: Katherine Buckland
14 Executive Director

15 Date: February 22, 2007

TAHITIAN NONI INTERNATIONAL, INC.

16
17 By: Richard C. Rife
18 Richard C. Rife
19 Corporate Secretary

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4 as use their respective best efforts, to secure the Attorney General's approval of this Consent
5 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

6 **IT IS SO STIPULATED.**

7 Date: February __, 2007

KATHERINE LEE BUCKLAND

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By: _____
KATHERINE LEE BUCKLAND

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11 Date: February __, 2007

CALIFORNIA WOMEN'S LAW CENTER

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By: _____
Executive Director

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15 Date: February 22, 2007

TAHITIAN NONI INTERNATIONAL, INC.

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By:  _____
Richard C. Rife
Corporate Secretary

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