

FILED
LOS ANGELES SUPERIOR COURT

MAR 18 2008

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

KATHERINE LEE BUCKLAND, *et al.*,

Plaintiffs,

v.

THRESHOLD ENTERPRISES, LTD., *et al.*

Defendants.

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

~~PROPOSED~~ CONSENT
JUDGMENT ONLY AS TO
DEFENDANT Z-LABS LLC

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 Z-Labs LLC (hereinafter "Defendant"). Plaintiffs and Defendant may be collectively referred to herein as "Parties."

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

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

1.2 "Products" are consumer creams, gels and/or lotion products containing as an ingredient one or more of the Regulated Chemicals. "Products" shall also include any future

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

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

5 **2. Background.**

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

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

20 **2.3** Defendant is an ARIZONA limited liability company with its principal place of
21 business and/or headquarters located at 70 S. Val Vista Drive, Suite A-3, PMB 442, Gilbert, AZ
22 85296. Defendant directly or indirectly sells to California consumers Products, some of which
23 Plaintiffs allege contain a chemical or chemicals listed by the State of California as known to
24 cause cancer and/or reproductive toxicity pursuant to the Safe Drinking Water and Toxic
25 Enforcement Act of 1986, California Health and Safety Code § 25249.5 et seq. (“Proposition
26 65”); Title 22, California Code of Regulations § 12000 et seq. The Parties agree that Defendant
27 has always employed fewer than ten employees and is therefore not subject to the requirements
28 of Proposition 65 pursuant to California Health & Safety Code § 25249.11(b).

1 **2.4** Beginning on or about July 28, 2005, CWLC served Defendant and each of the
2 appropriate public enforcement agencies with a "60-Day Notice" that provided Defendant and
3 the public enforcement agencies with a notice alleging that Defendant was in violation of
4 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
5 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
6 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
7 California Code of Regulations §12903. None of the public enforcement agencies has
8 commenced and begun diligently prosecuting an action against Defendant for such alleged
9 violations.

10 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served
11 Defendant with a notice letter (the "CLRA Notice" -- collectively with the 60-Day Notice,
12 "Notices") via certified mail, return receipt requested, stating *inter alia* as follows:

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

23 **2.6** On December 7, 2005, Ms. Buckland and CWLC filed their initial complaint
24 entitled *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles
25 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended First
26 Amended. Ms. Buckland alleged violations of the CLRA, Business & Professions Code
27 §§ 17200 *et seq.* and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms.
28 Buckland alleged no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code

1 § 25249.5 *et seq.*) in the First Amended Complaint. CWLC alleged violations of Proposition 65
2 (H&S Code § 25249.5 *et seq.*) in the First Amended Complaint against Defendant. On
3 November 6, 2006, CWLC filed a Second Amended Complaint against Defendant
4 (“Complaint”).

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

10 **2.8** Defendant denies that the Products have been or are in violation of any law, and
11 further contends that all Products have been and are safe for use as directed. However, the
12 Parties desire to resolve this matter (including the Notices, First Amended Complaint and all
13 related matters) without further litigation or cost.

14 **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as
15 alleged in the Notice 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, or any other
21 statutory, common law or equitable claim or requirement relating to or arising from Defendant’s
22 Products. This Consent Judgment shall not be construed as an admission by Defendant as to any
23 of the allegations in the 60-Day Notice, the CLRA Notice or the First Amended Complaint.

24 **2.10** On October 10, 2006, the Court entered judgment in favor of Defendant with
25 respect to Ms. Buckland’s claims. Upon entry of this Consent Judgment, the October 10, 2006
26 judgment shall be deemed to be vacated and in its place judgment shall be entered in accordance
27 with the terms set forth herein.

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1 **2.11** Upon entry of this Consent Judgment, the Proposition 65 claims of CWLC against
2 Defendant will be and hereby are dismissed without prejudice because Defendant employs fewer
3 than ten employees and therefore is not a “person in the course of doing business” subject to
4 Proposition 65 (Cal. Health & Safety Code § 25249.11(b)).

5 **3. Injunctive Relief.**

6 **3.1 Future Product Sales Require a Warning.**

7 Pursuant to Civil Code § 1782(d), and B&P Code §§ 17203 and 17535, the sale of a
8 Product by Defendant to consumers in California shall be accompanied by a warning. This
9 warning shall be provided both by (a) product labeling pursuant to Paragraph 3.1.1; and (b)
10 warnings for any mail order and Internet sales pursuant to Paragraph 3.1.2.

11 **3.1.1 Product Label Warnings**

12 At the earliest such time when, in the ordinary course of business, new labels for the
13 Products are printed on or after March 1, 2008, Defendant shall include: on the label of each of
14 its Products that it manufactures and ships for sale into California, (in the same type size as the
15 surrounding, non-heading text), the following warning, including the specific name or names of
16 the Regulated Chemicals where shown:

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

22 **3.1.2 Additional Warnings for Mail Order or Internet Sales**

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

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

3 (2) For such Internet sales, the warning language required under this Consent
4 Judgment at paragraph 3.1.1 shall be displayed (in the same type size as the surrounding, non-
5 heading text) in one or more of the following ways: (a) on the same page upon which the
6 Product is displayed or referenced; (b) on the same page as any order form for any Product; (c)
7 on the same page as the price for the Product is displayed; (d) on one or more pages displayed to
8 a purchaser over the Internet or via electronic mail during the checkout and order confirmation
9 process for sale of a Product; or (e) in any manner such that it is likely to be read and understood
10 by an ordinary individual under customary business conditions prior to the purchase of the
11 Product.

12 3.2 Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and
13 effective when, in the ordinary course of business, new labels and advertising, marketing, mail
14 order catalog or Internet-based descriptions of each of its respective Products are printed or
15 posted electronically on or after March 1, 2008, Defendant agrees to remove any "health-
16 related" claims (as that term is used by the U.S. Food and Drug Administration under Title
17 21 United States Code § 201(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-
18 The-Counter Topically Applied Hormone Drug Products) made by Defendant for any of its
19 respective Products.

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

21 4.1 In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
22 \$1,000.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of
23 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
24 funds. This Settlement Amount shall be due and payable within five (5) calendar days after the
25 date of notice of entry of this Consent Judgment. This Settlement Amount shall be disbursed
26 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **17. Notices.**

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

Katherine Lee Buckland, Esq.
California Women's Law Center
6300 Wilshire Boulevard, Suite 980
Los Angeles, CA 90048
Tel: (323) 951-1041
Fax: (323) 951-9870
katie@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

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

3 **IT IS SO STIPULATED.**

4 Date: ~~January 21~~, 2008
5 *February*

KATHERINE LEE BUCKLAND, an individual

6 By: *Katherine Lee Buckland*
7 KATHERINE LEE BUCKLAND

8 Date: ~~January 21~~, 2008
9 *February*

CALIFORNIA WOMEN'S LAW CENTER

10 By: *Katherine Lee Buckland*
11 Executive Director

12 Date: ~~January 11th~~, 2008
13 *February*

Z-LABS LLC

14 By: *[Signature]*
15 JONATHAN S. WINSTON

16 Title: *Managing Member*

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

20 DATED: *3/18/08*

21 *[Signature]*
22 ROBERT L. HESS
23 JUDGE OF THE SUPERIOR COURT

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

3 **IT IS SO STIPULATED.**

4 Date: January __, 2008 KATHERINE LEE BUCKLAND, an individual
5 *February*

6 By: _____
7 KATHERINE LEE BUCKLAND

8 Date: January __, 2008 CALIFORNIA WOMEN'S LAW CENTER
9 *February*

10 By: _____
11 Executive Director

12 Date: January 11th, 2008 Z-LABS LLC
13 *February*

14 By:  _____
15 JONATHAN S. WINSTON
16 Title: *Managing Member*
17 _____

18
19 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

20
21 DATED: _____

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23 _____
24 ROBERT L. HESS
25 JUDGE OF THE SUPERIOR COURT
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