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ORIGINAL
DEC 18 2006
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 DEFENDANT
GENERAL NUTRITION
CORPORATION**

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

This Consent Judgment is entered into by and between plaintiffs Katherine Lee Buckland ("Ms. Buckland"), the California Women's Law Center ("CWLC" – collectively with Ms. Buckland, "Plaintiffs"), and defendant General Nutrition Corporation (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 **1.2** “Products” are consumer creams, gels and/or lotion products containing as an
2 ingredient Progesterone. “Products” shall also include any future Products that are
3 manufactured by or on behalf of Defendant for sale in California under any product name or
4 brand, whether a current or new name and/or brand.

5 **1.3** Plaintiffs and Defendant will be referred to collectively as the “Parties” or
6 individually as a “Party.”

7 **2. Background.**

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

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

18 **2.3** Defendant is a PENNSYLVANIA corporation with its principal place of business
19 and/or headquarters located at 300 Sixth Avenue, Pittsburgh, PA 15222. Defendant
20 manufactures, distributes, and/or sells its Products across the United States, including in
21 California, through various distributors and retail outlets.

22 **2.4** Beginning on or about July 28, 2005, CWLC served Defendant and each of the
23 appropriate public enforcement agencies with a “60-Day Notice” that provided Defendant and
24 the public enforcement agencies with a notice alleging that Defendant was in violation of
25 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
26 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
27 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
28 California Code of Regulations §12903. None of the public enforcement agencies has

1 commenced and begun diligently prosecuting an action against Defendant for such alleged
2 violations.

3 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code §1782 served
4 Defendant with a notice letter (the "CLRA Notice") via certified mail, return receipt requested,
5 stating *inter alia* as follows:

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

24 **2.6** On December 7, 2005, Plaintiffs filed their initial complaint entitled
25 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC 344046, in the Los Angeles
26 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint.
27 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§17200 *et seq.*
28 and 17500 *et seq.*, and Civil Code §§1709 and 1710, against Defendant. Ms. Buckland alleged
no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code §25249.5 *et seq.*) in the
First Amended Complaint. CWLC alleged violations of Proposition 65 (H&S Code §25249.5
et seq.) in the First Amended Complaint. On August 21, 2006, Ms. Buckland filed a
Supplemental Complaint. On November 6, 2006, CWLC filed a Second Amended Complaint
and Ms. Buckland filed a First Amended Supplemental Complaint (together, "Complaints").

29 **2.7** For purposes of this Consent Judgment only, the Parties stipulate that this Court
30 has jurisdiction over the allegations of the violations contained in the Notices and the
31 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 Notices, 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 Notices 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 (Health & Safety
14 Code §25249.5 *et seq.*) or any other statutory, common law or equitable claim or requirement
15 relating to or arising from Defendant' Products. This Consent Judgment shall not be construed
16 as an 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
22 (a) product labeling pursuant to Paragraph 3.1.1; and (b) warnings for any mail order and
23 Internet sales pursuant to Paragraph 3.1.2.

24 **3.1.1 Product Label Warnings.**

25 At the earliest such time when, in the ordinary course of business, new labels for the
26 Products are printed on or after January 1, 2007, Defendant shall include (in the same type size
27 as the surrounding, non-heading text) the following warning on the label of each of its Products
28

1 that it manufactures and ships for sale directly or indirectly into California, including the specific
2 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 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 Plaintiffs) that Defendant will not accept shipments of such Product for sale directly or indirectly
13 into California unless such Product bears the warning required by paragraph 3.1.1 above or a
14 comparable warning pursuant to the terms of a separate consent judgment applying to such
15 Product.

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

17 If Defendant directly sells a Product by mail order or over the Internet to a purchaser in
18 the state of California on or after the date that is 90 days after the entry of this Consent Judgment
19 by the 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), and effective when, in the ordinary course of business (but no
7 sooner than 90 days after entry of this Consent Judgment), new labels and advertising,
8 marketing, mail order catalog or Internet-based descriptions of each of its respective Products
9 are printed or posted electronically on or after August 1, 2006, Defendant agrees to remove any
10 "health-related" claims (as that term is used by the U.S. Food and Drug Administration under
11 Title 21 United States Code §321(g) and Title 21 Code of Federal Regulation, Part 310.530,
12 Over-The-Counter Topically Applied Hormone Drug Products) made by Defendant for any of its
13 respective Products.

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

15 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
16 \$85,000.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of
17 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
18 funds. This settlement amount shall be due and payable within five (5) calendar days after the
19 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
20 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

23 **5. Claims Covered and Released.**

24 This Consent Judgment includes the resolution of actual and potential claims that were
25 considered or could have been brought by Plaintiffs regarding the Regulated Chemical(s) in
26 Defendant's Products. This Consent Judgment is a final and binding resolution between
27 Plaintiffs and Defendant of any and all alleged violations of the California Legal Remedies Act
28 (Civil Code §1750 *et seq.*), the Unlawful Competition Law (B&P Code §17200 *et seq.*), the

1 False Advertising Law (B&P Code §17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65
2 (Health & Safety Code §25249.5 *et seq.*) or any other law that was or could have been asserted
3 by Plaintiffs arising from or related to Products manufactured, distributed, or sold by Defendant
4 through the date of entry of this Consent Judgment, including, but not limited to any claims for
5 attorneys' fees and costs. Plaintiffs hereby release Defendant and Defendant's predecessors,
6 successors, affiliates and assigns, the officers, directors, employees, shareholders, and counsel of
7 each of them, from and against the claims described in this paragraph to the extent such claims
8 do, did, or could arise from or relate to Defendant's Products; however, Plaintiffs cannot and
9 expressly do not release any other claims, including specifically and without limitation any
10 personal injury or directly related claims, that could be brought by any other individual or
11 organization. Defendant hereby releases Ms. Buckland and CWLC from and against any claims
12 arising out of Plaintiffs' filing or prosecution of this action. Each Party respectively waives any
13 right to appeal or other review of this Consent Judgment, except as expressly provided in this
14 Consent Judgment.

15 **6. Covenant Not To Sue.** Plaintiffs and Defendant 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 Defendant will ever institute a lawsuit or administrative proceedings
18 against the other, nor shall Ms. Buckland, Defendant 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 Defendant 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 by Defendant.

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 Defendant 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 will execute such other documents
21 and take such other actions as may be necessary to further the purposes and fulfill the terms of
22 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. Notice.**

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

| | |
|---|--|
| 4 Katherine Lee Buckland, Esq. Executive Director 5 California Women's Law Center 6300 Wilshire Boulevard, Suite 980 6 Los Angeles, CA 90048 Tel: (323) 951-1041 7 Fax: (323) 951-9870 8 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 |
|---|--|

9 **17.2** All correspondence and Notice required by this Consent Judgment to Defendant shall be
10 sent to Defendant as follows:

| | |
|---|---|
| 11 Christopher C. Eck, Esq. 12 Assistant General Counsel General Nutrition Corporation 13 300 Sixth Avenue Pittsburgh, PA 15222 14 Tel. (412) 338-8805 Fax: (412) 338-8900 15 E-mail: chris-eck@gnc-hq.com | With a copy to: Trenton H. Norris, Esq. Bingham McCutchen LLP Three Embarcadero Center, Suite 2500 San Francisco, CA 94111-4067 Tel: (415) 393-2602 Fax: (415) 393-2286 E-mail: trent.norris@bingham.com |
|---|---|

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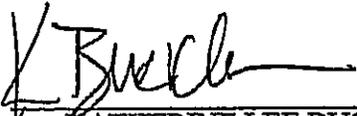
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1 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
2 as use their respective best efforts, to secure the Attorney General's approval of this Consent
3 Judgment, and not to seek his disapproval of any portion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

5 **IT IS SO STIPULATED.**

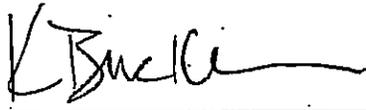
6 Date: November 10, 2006

KATHERINE LEE BUCKLAND

7
8 By: 
KATHERINE LEE BUCKLAND

9
10 Date: November 10, 2006

CALIFORNIA WOMEN'S LAW CENTER

11
12 By: 
KATHERINE LEE BUCKLAND
Executive Director

13
14
15 Date: November __, 2006

GENERAL NUTRITION CORPORATION

16
17 By: _____
MARK L. WEINTRUB
Chief Legal Officer

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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: November __, 2006

KATHERINE LEE BUCKLAND

7
8 By: _____
KATHERINE LEE BUCKLAND

9
10 Date: November __, 2006

CALIFORNIA WOMEN'S LAW CENTER

11
12 By: _____
KATHERINE LEE BUCKLAND
13 Executive Director

14
15 Date: November 8, 2006

GENERAL NUTRITION CORPORATION

16
17 By:  _____
18 MARK L. WEINTRUB
19 SUP / Chief Legal Officer

FINDINGS AND ORDER

1
2 1. The Court finds that the warnings that may be required in Section 3 of the
3 stipulated Consent Judgment in this matter regarding the sale of certain products by defendant
4 GENERAL NUTRITION CORPORATION comply with the provisions of Health & Safety
5 Code §§25249.5-25249.13.

6 2. In the stipulated Consent Judgment in this matter, the Parties' agreement in
7 Section 4 of the Consent Judgment that no civil penalties are warranted is in accord with the
8 criteria set forth in Health & Safety Code §25249.7(b) (2), in that payments totaling \$85,000.00
9 in financial relief in the form of "in lieu of damages or penalties" are to be made by the
10 Defendant to Plaintiff California Women's Law Center ("CWLC"). The Court finds that CWLC
11 has committed to use this financial relief in conformity with Proposition 65's overall goals as
12 well as its own non-profit articles of incorporation to address the litigation's public health issue
13 of protecting women's health through CWLC's programs, which include but are not limited to
14 projects addressing public health, domestic violence, reproductive rights, and physical fitness
15 issues.

16 3. Because each Party to the Consent Judgment is bearing its own attorneys' fees and
17 costs, no finding by the Court is required as to whether those fees and costs are reasonable.

18 4. In light of the findings made above, and based upon the Court's review of the
19 proposed stipulated Consent Judgment executed among the Parties, the Court finds that this
20 Consent Judgment is just, and serves and will serve the public interest

21 5. The Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
22 Court.

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

DEC 18 2008

25 DATED: _____



26
27 _____
28 **ROBERT L. HESS**
JUDGE OF THE SUPERIOR COURT