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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  
DEFENDANTS NATURE'S BOUNTY,  
INC. AND NBTY, INC.**

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

This Consent Judgment is entered into by and between Katherine Lee Buckland, a plaintiff in this matter (hereinafter "Ms. Buckland" or "Plaintiff"), and defendants Nature's Bounty, Inc. and its parent NBTY, Inc. (hereinafter "Defendants").

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

**1.1** "Products" include consumer creams, gels and/or lotion products, manufactured by or on behalf of Defendants for sale in California, containing progesterone as an ingredient. Progesterone is a chemical known to the State of California to cause cancer ("Progesterone").

**1.2** "Products" shall also include any future Products that are manufactured by or on behalf of Defendants for sale in California under any product name or brand, whether a current or new name and/or brand.

**1.3** Plaintiff and Defendants will be referred to collectively as the "Parties" or individually as a "Party."

1 **2. Background.**

2 **2.1** Plaintiff Katherine Lee Buckland is the Executive Director of the California  
3 Women's Law Center ("CWLC"), a non-profit California corporation. Prior to joining the  
4 CWLC as its Executive Director, Ms. Buckland served as a Special Assistant to Los Angeles  
5 City Attorney Rocky Delgadillo. She also oversaw media and public affairs as City Attorney  
6 Delgadillo's Communications Director. Since its founding in 1989, CWLC has served as a  
7 unique advocate in California, working in collaboration with others to protect, secure and  
8 advance the comprehensive civil rights of women and girls. The CWLC works to ensure,  
9 through systemic change, that life opportunities for women and girls are free from unjust social,  
10 economic, and political constraints. CWLC is based in Los Angeles, and was incorporated  
11 under the laws of the State of California in 1989.

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

17 **2.3** Defendants manufacture, distribute and sell topical creams containing  
18 Progesterone. NBTY, Inc. is a Delaware corporation in good standing. Nature's Bounty, Inc. is  
19 a wholly owned subsidiary of NBTY, Inc. Nature's Bounty, Inc. is a New York corporation in  
20 good standing.

21 **2.4** On or about October 5, 2005, Plaintiff, pursuant to Civil Code § 1782 served  
22 Defendants with a notice letter (the "Notice") via certified mail, return receipt requested, stating  
23 *inter alia* as follows:

24 These Products have been sold to literally millions of California  
25 consumers without any of the noticed companies providing a clear  
26 and reasonable warning prior to their purchase by a consumer that  
27 the Progesterone, Medroxyprogesterone acetate, Testosterone and  
28 its esters, Methyltestosterone, Testosterone cypionate, and/or  
Testosterone enanthate in these Products are chemicals known to be  
carcinogens and/or reproductive toxins by the State of California.  
Nor has any of the noticed companies disclosed the potential  
adverse health effect risks posed by exposure to these chemicals in  
these Products because Progesterone, Medroxyprogesterone acetate,



1 **3. Injunctive Relief.**

2 **3.1 Sale of Products Requires a Warning.**

3 Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and effective  
4 when, in the ordinary course of business, new labels for the Products are printed on or after  
5 January 1, 2006, Defendants shall place the following warning prominently on the label of each  
6 of its Products and, at that time, also shall revise accordingly Defendants' advertising,  
7 marketing, catalog or Internet-based descriptions of each of its respective Products:

8 "WARNING: This product contains Progesterone, a chemical  
9 known to the State of California to cause cancer. Consult with your  
10 physician before using this product."

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

12 **4.1** Defendants shall pay to the CWLC the sum of \$11,780.00 ("settlement amount"),  
13 and shall make that payment to the Trust Account of the Carrick Law Group P.C., by wire  
14 transfer, certified or bank check in immediately available funds. This settlement amount shall be  
15 due and payable within five (5) calendar days after the date of notice of entry of this Consent  
16 Judgment. This settlement amount shall be disbursed promptly thereafter by the Carrick Law  
17 Group P.C. to the CWLC.

18 **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees  
19 and costs.

20 **5. Claims Covered and Released.**

21 This Consent Judgment includes the resolution of actual and potential claims that were  
22 considered or could have been brought by Plaintiff regarding the Progesterone in Defendants'  
23 Products. This Consent Judgment is a final and binding resolution between Plaintiff and  
24 Defendants of any and all alleged violations of the California Consumer Legal Remedies Act,  
25 Unlawful Competition Law, False Advertising Law, Civil Code §§ 1709 and 1710, or any other  
26 law that was or could have been asserted by Plaintiff arising from or related to Defendants'  
27 Products up through the date of entry of this Consent Judgment, including, but not limited to any  
28 claims for attorneys' fees and costs. Plaintiff hereby releases Defendants and Defendants'

1 predecessors, successors, affiliates and assigns, the officers, directors, employees, shareholders,  
2 and counsel of each of them, from and against the claims described in this paragraph to the  
3 extent such claims do, did, or could arise from or relate to Defendants' Products; however,  
4 Plaintiff cannot and expressly does not release any other claims, including specifically and  
5 without limitation any personal injury or directly related claims, that could be brought by any  
6 other individual or organization. Defendants hereby release Ms. Buckland and CWLC from and  
7 against any claims arising out of Ms. Buckland's filing or prosecution of this action. Each Party  
8 respectively waives any right to appeal or other review of this Consent Judgment, except as  
9 expressly provided in this Consent Judgment.

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

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

27 **8. Application of Consent Judgment.** Sections 3, 5 and 6 of this Consent Judgment shall  
28 apply to, be binding upon and inure to the benefit of the Parties and the CWLC, their divisions,

1 subdivisions, subsidiaries, affiliates, successors, predecessors and assigns, and the directors,  
2 officers, employees, legal counsel, and agents of each of them, as applicable, and will inure to  
3 the benefit of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and  
4 contract manufacturers, and all of their respective directors, officers, employees, legal counsel,  
5 and agents.

6 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be  
7 modified or terminated upon written agreement of Defendants and Ms. Buckland, with approval  
8 of the Court, or upon noticed motion for good cause shown.

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

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

24 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment  
25 for good cause shown under Section 9 hereof, the Parties agree that they, individually or  
26 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any  
27 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that  
28 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each

1 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has  
2 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other  
3 Party so as to create a fiduciary, agency or confidential relationship.

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

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

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

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

19 **17. Notices.**

20 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiff  
21 shall be sent to Ms. Buckland as follows:

22 Katherine Lee Buckland, Esq.  
23 Executive Director  
24 California Women's Law Center  
25 6300 Wilshire Boulevard, Suite 980  
26 Los Angeles, CA 90048  
Tel: (323) 951-1041  
Fax: (323) 951-9870  
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

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1 17.2 All correspondence and notices required by this Consent Judgment to Defendants  
2 shall be sent to Defendants as follows:

3 Irene Fisher, Esq.  
4 General Counsel  
5 NBTY, Inc.  
6 90 Orville Drive  
7 Bohemia, NY 11716  
8 Tel: (631) 218-7327  
9 Fax: (631) 218-7341

With a copy to:  
Judith M. Praitis, Esq.  
Sidley Austin Brown & Wood LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, CA 90013  
Tel: (213) 896-6000  
Fax: (213) 896-6600  
E-mail: jpraitis@sidley.com

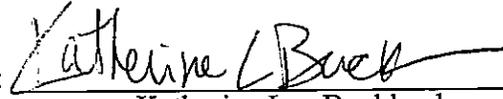
10 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent  
11 Judgment shall be null and void, and without any force or effect, unless fully approved as  
12 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the  
13 execution thereof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

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

17 **IT IS SO STIPULATED.**

18 Date: December 9, 2005

KATHERINE LEE BUCKLAND

19 By:   
Katherine Lee Buckland

20 Date: December 9, 2005

NBTY, Inc. and NBTY, INC. on behalf of its  
wholly owned subsidiary NATURE'S BOUNTY,  
INC.

21 By: \_\_\_\_\_  
22 Irene Fisher, Esq.  
23 General Counsel

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

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

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



