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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.*

Defendant.

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

**[PROPOSED] CONSENT
JUDGMENT ONLY AS TO VITAMIN
SHOPPE INDUSTRIES INC.**

First Amended 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 Vitamin Shoppe Industries 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 one or more of the Regulated Chemicals. "Products" shall also include any future Products that are manufactured by or on behalf of Defendant for sale in California under any product name or brand, whether a current or new name and/or brand.

1 1.3 Plaintiffs and Defendant will be referred to collectively as the “Parties” or
2 individually as a “Party.”

3 **2. Background.**

4 2.1 Plaintiff Katherine Lee Buckland is the Executive Director of the CWLC, a non-
5 profit California corporation. Since its founding in 1989, CWLC has served as a unique
6 advocate in California, working in collaboration with others to protect, secure and advance the
7 comprehensive civil rights of women and girls. The CWLC works to ensure, through systemic
8 change, that life opportunities for women and girls are free from unjust social, economic, and
9 political constraints. CWLC is based in Los Angeles, and was incorporated under the laws of
10 the State of California in 1989.

11 2.2 Ms. Buckland is a “consumer” within the meaning of California Civil Code
12 (“Civil Code”) § 1761(d). Ms. Buckland is also a “person” within the meaning of California
13 Business and Professions (“B&P”) Code §§17201, 17204 and 17506. She brought and settles
14 this lawsuit on her own behalf and, to the fullest extent permitted by law, on behalf of the
15 general public. CWLC brings its Proposition 65 causes of action in the public interest.

16 2.3 Defendant is a New York corporation. Defendant directly or indirectly sells to
17 California consumers Products, all of which Plaintiffs allege contain a Regulated Chemical(s)
18 that is listed by the State of California as known to cause cancer and/or reproductive toxicity
19 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
20 Safety Code § 25249.5 *et seq.* (“Proposition 65”); Title 22, California Code of Regulations
21 § 12000 *et seq.*

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” – with the 60-Day Notice, the “Notices”) via
5 certified mail, return receipt requested, 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 which is the now-operative complaint in this matter (the “First Amended Complaint”).
28 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§ 17200 *et seq.*
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.

2.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court
has jurisdiction over the allegations of the violations contained in the Notices and the First
Amended Complaint, and personal jurisdiction over Defendant as to the acts or omissions

1 alleged in the First Amended Complaint; that venue is proper in the County of Los Angeles; and
2 that this Court has 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, First Amended Complaint and all
6 related matters) 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 First Amended Complaint, to avoid prolonged and costly litigation,
9 and to promote the public interest. By executing and complying with this Consent Judgment, no
10 Party admits any facts or conclusions of law including, but not limited to, any facts or
11 conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code
12 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False
13 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65
14 (H&S Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim or
15 requirement relating to or arising from Defendant' Products. This Consent Judgment shall not
16 be construed as an admission by Defendant as to any of the allegations in the Notice or the First
17 Amended Complaint.

18 **3. Injunctive Relief.**

19 **3.1 Retail Sale of Products Requires a Warning**

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

25 **3.1.1 Product Label Warnings**

26 For any Product that is manufactured by or at the direction of Defendant (i.e., private-
27 label products), Defendant shall, at the earliest such time when, in the ordinary course of
28 business, new labels for such Products are printed on or after April 1, 2006, include (in the same

1 type size as the surrounding, non-heading text) the following warning on the label of each of its
2 Products that it manufactures and ships for sale directly or indirectly to consumers in California,
3 including the specific name or names of the Regulated Chemicals where shown:

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

9 **3.1.2 Notice to Third Parties**

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

17 **3.1.3 Additional Warnings for Mail Order or Internet Sales**

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

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

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

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

6 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and
7 effective when, in the ordinary course of business (but no sooner than 90 days after entry of this
8 Consent Judgment), Defendant prints or posts electronically new labels and advertising,
9 marketing, mail order catalog or Internet-based descriptions of each of its respective Products,
10 Defendant agrees to remove any “health-related” claims (as that term is used by the U.S. Food
11 and Drug Administration under Title 21 United States Code § 201(g) and Title 21 Code of
12 Federal Regulation, Part 310.530, Over-The-Counter Topically Applied Hormone Drug
13 Products) made by Defendant for any of the 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 \$3,640.00 (“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 Chemicals 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 Consumer Legal
28 Remedies Act, Unlawful Competition Law, False Advertising Law, Civil Code §§ 1709 and

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

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

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

1 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
2 enforcement proceeding.

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

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

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

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

1 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
2 representations, agreements and understandings of the Parties with respect to such matters,
3 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
4 among the Parties to any term or condition contrary to or in addition to the terms and conditions
5 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
6 promise, representation or warranty, expressed or implied, not contained in this Consent
7 Judgment except with regard to that certain declaration executed under penalty of perjury by the
8 Defendant providing information that induced Ms. Buckland and CWLC to enter into the
9 financial terms of this Consent Judgment, which declaration may be used solely as evidence in
10 any future enforcement proceeding brought pursuant to Section 7 above.

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

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

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

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

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

6 **17. Notices.**

7 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiffs
8 shall be sent to Ms. Buckland as follows:

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

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

24 **17.2** All correspondence and notices required by this Consent Judgment to Defendant shall be
25 sent to Defendant as follows:

26 General Counsel
27 Vitamin Shoppe Industries Inc.
28 2101 91st Street
North Bergen, NJ 07047
Fax: (201) 868-0727

With a copy to:
Trenton H. Norris
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
Tel: (415) 393-2602
Fax: (415) 393-2286
E-mail: trent.norris@bingham.com

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

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

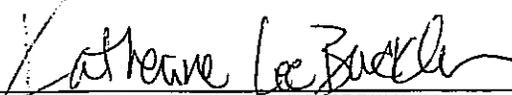
1 20. Compliance with Reporting Requirements. Plaintiffs shall comply with the reporting
2 form requirements referred to in Health and Safety Code section 25249.7(f) and established in
3 Title 11 of the California Code of Regulations sections 3000-3008. Copies of all such reports
4 shall be supplied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

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

8
9 **IT IS SO STIPULATED.**

10 Date: ^{April} ~~March~~ 13, 2006

KATHERINE LEE BUCKLAND

11
12 By: 
KATHERINE LEE BUCKLAND

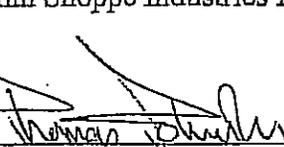
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14 Date: ^{April} ~~March~~ 13, 2006

CALIFORNIA WOMEN'S LAW CENTER

15
16 By: 
Executive Director

17
18 Date: March __, 2006

Vitamin Shoppe Industries Inc.

19
20 By:  ^{RM}

21
22
23
24 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

25
26 DATED: _____

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

1 **20. Compliance with Reporting Requirements.** Plaintiffs shall comply with the reporting
2 form requirements referred to in Health and Safety Code section 25249.7(f) and established in
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8
9 **IT IS SO STIPULATED.**

10 Date: March __, 2006

KATHERINE LEE BUCKLAND

11
12 By: _____
KATHERINE LEE BUCKLAND

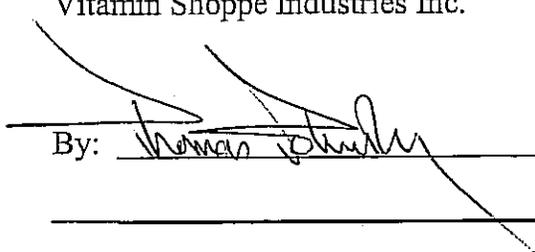
13
14 Date: March __, 2006

CALIFORNIA WOMEN'S LAW CENTER

15
16 By: _____
Executive Director

17
18 Date: March __, 2006

Vitamin Shoppe Industries Inc.

19
20 By:  _____ R.M.
21
22 _____
23

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

25
26 DATED: _____

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