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

KATHERINE LEE BUCKLAND, and
CALIFORNIA WOMEN'S LAW CENTER,

Plaintiffs,

v.

THRESHOLD ENTERPRISES, LTD., *et al.*

Defendants.

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

**[PROPOSED] CONSENT JUDGMENT
ONLY AS TO DEFENDANT
THRESHOLD ENTERPRISES, LTD.**

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 THRESHOLD ENTERPRISES, LTD. (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 cosmetic and other consumer creams, gels and/or lotion products containing Progesterone and/or other Regulated Chemicals. "Products" shall also include any

1 future Products that are manufactured by or on behalf of Defendant for sale in California under
2 any product name or 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 alleges that she is a “consumer” within the meaning of California
13 Civil Code (“Civil Code”) §1761(d), and also alleges that she is a “person” within the meaning
14 of California Business and Professions (“B&P”) Code §§17201, 17204 and 17506. She brought
15 and settles this lawsuit on her own behalf and, to the fullest extent permitted by law, on behalf of
16 the general public.

17 **2.3** Defendant is a DELAWARE corporation with its principal place of business
18 and/or headquarters located at 23 Janis Way, Scotts Valley, CA 95066. Defendant distributed
19 and/or sold its Products directly or indirectly in California.

20 **2.4** Beginning on or about July 28, 2005, CWLC served Defendant and each of the
21 appropriate public enforcement agencies with a “60-Day Notice” that provided Defendant and
22 the public enforcement agencies with a notice alleging that Defendant was in violation of
23 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
24 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
25 of this Consent Judgment only that the 60-Day Notice sent to it is adequate to comply with Title
26 22, California Code of Regulations §12903. None of the public enforcement agencies has
27 commenced and begun diligently prosecuting an action against Defendant for such alleged
28 violations.

1 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code §1782 served
2 Defendant with a notice letter (the “Notice”) via certified mail, return receipt requested.

3 **2.6** On December 7, 2005, Plaintiffs filed their initial complaint entitled
4 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles County
5 Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint.
6 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§17200 *et seq.*
7 and 17500 *et seq.*, and Civil Code §§1709 and 1710, against Defendant. Ms. Buckland alleged
8 no claim, directly or indirectly, pursuant to Proposition 65 (Health & Safety (“H&S”) Code
9 §25249.5 *et seq.*) in the First Amended Complaint. CWLC alleged violations of Proposition 65
10 (H&S Code §25249.5 *et seq.*) in the First Amended Complaint. On August 21, 2006,
11 Ms. Buckland filed a Supplemental Complaint (together with the First Amended Complaint,
12 “Complaints”). On November 6, 2006, Ms. Buckland filed a First Amended Supplemental
13 Complaint, and on November 6, 2006, CWLC filed a Second Amended Complaint (collectively,
14 “Complaints”).

15 **2.7** For purposes of this Consent Judgment only, the Parties stipulate that this Court
16 has jurisdiction over the allegations of the violations contained in the Notices and the
17 Complaints, and personal jurisdiction over Defendant as to the acts or omissions alleged in the
18 Complaints; that venue is proper in the County of Los Angeles; and that this Court has
19 jurisdiction to enter this Consent Judgment.

20 **2.8** Defendant denies that the Products have been or are in violation of any law, and
21 further contends that all Products have been and are safe for use as directed. However, the
22 Parties desire to resolve this matter (including the Notice, Complaints and all related matters)
23 without further litigation or cost.

24 **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as
25 alleged in the Notice and the Complaints, to avoid prolonged and costly litigation, and to
26 promote the public interest. By executing and complying with this Consent Judgment, no Party
27 admits any allegations, facts or conclusions of law including, but not limited to, any facts or
28 conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code

1 §1750 *et seq.*), the Unlawful Competition Law (B&P Code §17200 *et seq.*), the False
2 Advertising Law (B&P Code §17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65
3 (H&S Code §25249.5 *et seq.*), the federal Food, Drug, and Cosmetic Act, as amended
4 (“FDCA”), or any other statutory, common law or equitable claim or requirement relating to or
5 arising from Defendant’ Products. This Consent Judgment shall not be construed as an
6 admission by Defendant as to any of the allegations in the Notices or the Complaints.

7 **3. Injunctive Relief.**

8 **3.1 Retail Sale of Products Requires a Warning**

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

14 **3.1.1 Product Label Warnings**

15 For any Product that is manufactured by or at the direction of Defendant (*i.e.*, private-
16 label products), Defendant shall, at the earliest such time when, in the ordinary course of
17 business, new labels for such Products are printed on or after October 1, 2007, include (in the
18 same type size as the surrounding, non-heading text) the following warning on the label of each
19 of its Products that it manufactures and ships for sale to consumers in California, including only
20 the specific name or names of the Regulated Chemicals in the Products being sold:

21 “WARNING: This product contains [Progesterone,
22 Medroxyprogesterone acetate, Testosterone and its esters,
23 Methyltestosterone, Testosterone cypionate, and/or Testosterone
24 enanthate], a chemical(s) known to the State of California to cause
25 cancer. Consult with (either “your physician” or “your health care
26 practitioner”) before using this product.”

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1 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
2 funds. This settlement amount shall be due and payable within five (5) calendar days after the
3 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
4 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

5 **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees
6 and costs.

7 **5. Claims Covered and Released.**

8 This Consent Judgment includes resolution by Plaintiffs of any and all actual or potential
9 claims prior to the effective date of this agreement that were considered or could have been
10 brought by Plaintiffs regarding the Regulated Chemical(s) in Defendant's Products. This
11 Consent Judgment is a final and binding resolution between Plaintiff and Defendants of any and
12 all alleged violations of the CLRA, the Unfair Competition Law, the False Advertising Law,
13 Civil Code §§1709 and 1710, Proposition 65, or any other law that was or could have been
14 asserted by Plaintiff arising from or related to Defendant's Products up through the date of entry
15 of this Consent Judgment, including, but not limited to any claims for attorneys' fees and costs
16 (collectively "Claims"). Plaintiffs hereby release the Defendant's Releasees (as defined below)
17 and waive all rights to institute or participate in, directly or indirectly, any form of legal action
18 seeking any form of relief (whether injunctive, compensatory, punitive, or otherwise) arising
19 from the Claims against Defendants, its officers, directors, employees, agents, attorneys,
20 consultants, representatives, shareholders, parents, subsidiaries, affiliates, divisions,
21 predecessors, successors, subdivisions, downstream distributors, downstream retailers,
22 downstream customers, and upstream suppliers of the raw materials used in the Products (the
23 "Defendant's Releasees"); however, Plaintiffs cannot and expressly do not release any other
24 claims, or any personal injury or directly related claims, that could be brought by any other
25 individual or organization. Defendants hereby release each Plaintiff from and against any claims
26 arising out of each Plaintiff's notices and their filing or prosecution of this action. Each Party
27 respectively waives any right to appeal or other review of this Consent Judgment, except as
28 expressly provided in this Consent Judgment.

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

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

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

24 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
25 modified or terminated upon written agreement of Defendants and Plaintiffs, with approval of
26 the Court, or upon noticed motion for good cause shown. However, the Parties shall meet and
27 confer in good faith and attempt to mutually agree upon any modification prior to the filing of
28 any motion. The Parties acknowledge that new toxicological information or exposure

1 assessments concerning hazardous substances and testing methodologies are continuously
2 becoming available, and that statutory and regulatory standards applicable to the Products may
3 evolve in the future, either of which may establish good cause for modification of this Consent
4 Judgment. The burden of proof in any such motion shall be on the moving party to establish
5 such good cause. The prevailing Party in any such motion shall be entitled to recover from the
6 other Party the prevailing Party's reasonable attorneys' fees and costs incurred in the preparation
7 and prosecution of such a motion.

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

10 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
11 other agreement has been made conferring any benefit upon any party except those contained
12 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
13 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
14 representations, agreements and understandings of the Parties with respect to such matters,
15 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
16 among the Parties to any term or condition contrary to or in addition to the terms and conditions
17 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
18 promise, representation or warranty, expressed or implied, not contained in this Consent
19 Judgment.

20 **12. Challenges.** Except for the Parties' rights to apply for a modification of this Consent
21 Judgment for good cause shown, permitted under Paragraph 9 hereof, the Parties agree that they,
22 individually or collectively, will not seek to challenge or to have determined invalid, void or
23 unenforceable any provision of this Consent Judgment or this Consent Judgment itself. The
24 Parties understand that this Consent Judgment contains the relinquishment of legal rights and
25 each Party has, as each has deemed appropriate, sought the advice of competent legal counsel,
26 which each of the Parties has encouraged the other to seek, and that such counsel (who are
27 counsel of record in this action) have reviewed and approved this agreement as to form on behalf
28 of their respective client(s). Further, no Party has reposed trust or confidence in any other Party

1 so as to create a fiduciary, agency or confidential relationship. Nothing in this paragraph is
2 meant to waive, alter, or modify the attorney-client privilege and/or confidential relationship.

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

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

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

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

18 **17. Notice.**

19 17.1 All correspondence and Notice required by this Consent Judgment to Plaintiffs
20 shall be sent as follows:

21 Katherine Lee Buckland, Esq.
22 Executive Director
23 California Women's Law Center
24 6300 Wilshire Boulevard, Suite 980
25 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 Notice required by this Consent Judgment to Defendant shall be
2 sent to Defendant as follows:

3 Ira L. Goldberg
4 President
5 Threshold Enterprises, Ltd.
6 23 Janis Way
7 Scotts Valley, CA 95066
8 Tel. (831) 461-6325
9 Fax: (831) 438-4387
10 E-mail: NickM@thresholdent.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: (213) 393-2286
E-mail: trent.norris@bingham.com

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

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

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

22 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
23 as use their respective best efforts, to secure the Attorney General's approval of this Consent
24 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.
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1 **IT IS SO STIPULATED.**

2 Date: July 31, 2007

KATHERINE LEE BUCKLAND

3
4 By: Katherine Buckland
5 KATHERINE LEE BUCKLAND

6 Date: July 31, 2007

CALIFORNIA WOMEN'S LAW CENTER

7
8 By: Katherine Buckland
9 Executive Director

10 Date: July 26, 2007

THRESHOLD ENTERPRISES, LTD.

11
12 By: Ira L. Goldberg
13 Ira L. Goldberg
14 President

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1 **IT IS SO STIPULATED.**

2 Date: July __, 2007

KATHERINE LEE BUCKLAND

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By: _____
KATHERINE LEE BUCKLAND

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6 Date: July __, 2007

CALIFORNIA WOMEN'S LAW CENTER

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By: _____
Executive Director

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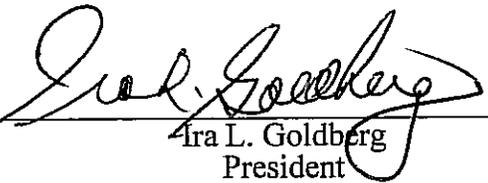
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Date: July 26, 2007

THRESHOLD ENTERPRISES, LTD.

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By: 
Ira L. Goldberg
President

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