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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
DEFENDANTS WOMEN'S HEALTH
AMERICA, INC. AND MADISON
PHARMACY ASSOCIATES, LLC**

Complaint Filed: December 7, 2005
1st Amended Cmplt.: January 24, 2006
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 defendants Women's Health America, Inc. ("WHA") and Madison Pharmacy Associates, LLC ("MPA" – collectively with WHA, "Defendants").

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

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

18 **2.3** Defendant Women’s Health America, Inc. (“WHA”) distributes and sells Products
19 containing Progesterone directly or indirectly to California consumers. Defendant WHA is a
20 Wisconsin corporation in good standing.

21 **2.4** Defendant Madison Pharmacy Associates, LLC (“MPA”) does not manufacture,
22 distribute or sell non-prescription progesterone-containing products in California. The name
23 Madison Pharmacy Associates, however, appears on the receipt confirming Defendant WHA’s
24 sale of the Products. Defendant MPA is a Wisconsin corporation in good standing.

25 **2.5** Beginning on or about July 28, 2005, CWLC served each Defendant and each of
26 the appropriate public enforcement agencies with a “60-Day Notice” that provided Defendants
27 and the public enforcement agencies with a notice alleging that Defendants were in violation of
28 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the

1 use of the Products exposes them to Regulated Chemicals. Defendants stipulate for the purpose
2 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
3 California Code of Regulations § 12903. None of the public enforcement agencies has
4 commenced and begun diligently prosecuting an action against either Defendant for such alleged
5 violations.

6 **2.6** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served
7 Defendants with a notice letter (the “CLRA Notice” – with the 60-Day Notice, the “Notices”)
8 via certified mail, return receipt requested, stating *inter alia* as follows:

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

19 **2.7** On December 7, 2005, Plaintiffs filed their initial complaint entitled
20 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC 344046, in the Los Angeles
21 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint,
22 which is the now-operative complaint in this matter (the “First Amended Complaint”).
23 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§ 17200 *et seq.*
24 and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms. Buckland alleged
25 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code § 25249.5 *et seq.*) in the
26 First Amended Complaint.” CWLC alleged violations of Proposition 65 (H&S Code § 25249.5
27 *et seq.*) in the First Amended Complaint.

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1 **2.8** For purposes of this Consent Judgment only, the Parties stipulate that this Court
2 has jurisdiction over the allegations of the violations contained in the Notices and the First
3 Amended Complaint, and personal jurisdiction over Defendants as to the acts or omissions
4 alleged in the First Amended Complaint; that venue is proper in the County of Los Angeles; and
5 that this Court has jurisdiction to enter this Consent Judgment.

6 **2.9** Defendants deny that the Products have been or are in violation of any law, and
7 further contend that the Products have been and are safe for use as directed. Prior to receiving
8 any notice from Plaintiffs, Defendant WHA alleges that it provided a clear and reasonable
9 Proposition 65 warning for the Products it knew or had reason to believe were being offered for
10 sale in California. After receiving Plaintiffs' 60-Day Notice and October 2, 2005 letter,
11 Defendant WHA ceased selling the Products to customers in California. However, the Parties
12 desire to resolve this matter (including the Notices, First Amended First Amended Complaint
13 and all related matters) without further litigation or cost.

14 **2.10** The Parties enter into this Consent Judgment to settle certain disputed claims as
15 alleged in the Notices 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, Proposition 65
21 (H&S Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim or
22 requirement relating to or arising from Defendants' Products. This Consent Judgment shall not
23 be construed as an admission by Defendants as to any of the allegations in the Notices or the
24 First Amended Complaint.

25 **3. Injunctive Relief.**

26 **3.1 Defendant Has Exited the Market.**

27 Defendants have voluntarily exited the California market for the Products. No Products
28 have been shipped for sale in California since approximately October 5, 2005. If Defendants

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

8 **3.3** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and
9 effective when, in the ordinary course of business, new labels and advertising, marketing, mail
10 order catalog or Internet-based descriptions of each of its respective Products are printed or
11 posted electronically on or after January 1, 2006, Defendants agrees not to make any “health-
12 related” claims (as that term is used by the U.S. Food and Drug Administration under Title
13 21 United States Code § 201(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-
14 The-Counter Topically Applied Hormone Drug Products) for any Products.

15 **4. Financial Settlement and Attorneys’ Fee Payments.**

16 **4.1** In lieu of damages or penalties, Defendants shall pay to the CWLC the sum of
17 \$6,040.00 (“Settlement Amount”), and shall make that payment to the Client Trust Account of
18 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
19 funds. This settlement amount shall be due and payable within five (5) calendar days after the
20 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
21 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

24 **5. Claims Covered and Released.**

25 This Consent Judgment includes the resolution of actual and potential claims that were
26 considered or could have been brought by Plaintiffs regarding the Progesterone in Defendants’
27 Products. This Consent Judgment is a final and binding resolution between Plaintiffs and
28 Defendants of any and all alleged violations of the California Consumer Legal Remedies Act,

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

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

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

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

4 Katherine Lee Buckland, Esq. 5 Executive Director 6 California Women's Law Center 7 6300 Wilshire Boulevard, Suite 980 8 Los Angeles, CA 90048 9 Tel: (323) 951-1041 10 Fax: (323) 951-9870 11 E-mail: katie.buckland@cwlc.org	12 With a copy to: 13 Roger Lane Carrick, Esq. 14 The Carrick Law Group, P.C. 15 350 S. Grand Avenue, Suite 2930 16 Los Angeles, CA 90071-3406 17 Tel: (213) 346-7930 18 Fax: (213) 346-7931 19 E-mail: roger@carricklawgroup.com
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9 **17.2** All correspondence and notices required by this Consent Judgment to Defendants
10 shall be sent to both Defendants as follows:

11 Ms. Marla Ahlgrimm 12 Women's Health America, Inc. 13 Madison Pharmacy Associates, LLC 14 1289 Deming Way 15 Madison, WI 53717-1955 16 Tel.: (608) 833-7046	17 With a copy to: 18 Michael J. Stiles 19 McKenna Long & Aldridge LLP 20 444 South Flower Street, 8th Floor 21 Los Angeles, CA 90071 22 Tel.: (213) 688-1000 23 Fax: (213) 243-6330
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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 Defendants, Ms. Buckland or CWLC shall not be construed as an
20 admission by Defendants, Ms. Buckland or CWLC 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.** Plaintiffs 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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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: February 21, 2006

KATHERINE LEE BUCKLAND

7
8 By: Katherine L Buckland
KATHERINE LEE BUCKLAND

9
10 Date: February 21, 2006

CALIFORNIA WOMEN'S LAW CENTER

11
12 By: Katherine L Buckland
KATHERINE LEE BUCKLAND
Executive Director

13
14 Date: February __, 2006

WOMEN'S HEALTH AMERICA, INC.

15
16 By: _____
17
[Print Name/Title]

18
19 Date: February __, 2006

MADISON PHARMACY ASSOCIATES, LLC

20
21 By: _____
22
[Print Name/Title]

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

25
26 DATED: _____

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

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: February __, 2006

KATHERINE LEE BUCKLAND

7
8 By: _____
KATHERINE LEE BUCKLAND

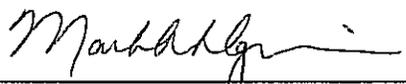
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10 Date: February __, 2006

CALIFORNIA WOMEN'S LAW CENTER

11
12 By: _____
KATHERINE LEE BUCKLAND
Executive Director

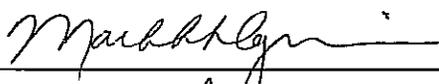
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14 Date: February 14, 2006

WOMEN'S HEALTH AMERICA, INC.

15
16 By: 
17 MARLA A. LIGRIM
[Print Name/Title]

18
19 Date: February 14, 2006

MADISON PHARMACY ASSOCIATES, LLC

20
21 By: 
22 MARLA A. LIGRIM
[Print Name/Title]

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

25
26 DATED: _____

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