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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
DEFENDANT CANYON GROUP
CORPORATION**

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 Canyon Group Corporation (hereinafter “Canyon Group” or “Defendant”). Plaintiffs and Defendant may be collectively referred to herein as “Parties.”

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 to consumers in California
2 under any product name or brand, whether a current or new name and/or brand.

3 **1.3** Plaintiff and Defendant will be referred to collectively as the “Parties” or
4 individually as a “Party.”

5 **2. Background.**

6 **2.1** Ms. Buckland is the Executive Director of the California Women’s Law Center
7 (“CWLC”), a non-profit California corporation. Since its founding in 1989, CWLC has served
8 as a unique advocate in California, working in collaboration with others to protect, secure and
9 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. CWLC is based in Los Angeles, and was incorporated
12 under the laws of the State of California in 1989.

13 **2.2** Ms. Buckland is a “consumer” within the meaning of the California Consumer
14 Legal Remedies Act (“CLRA”), California Civil Code (“Civil Code”) § 1761(d). Ms. Buckland
15 is also a “person” within the meaning of California Business and Professions (“B&P”) Code
16 §§ 17201, 17204 and 17506. She brought and settles this lawsuit on her own behalf and, to the
17 fullest extent permitted by law, on behalf of the general public. CWLC is a “person” within the
18 meaning of Health & Safety Code §§25249.7(d) and 25249.11(a). CWLC brings its
19 Proposition 65 cause of action in the public interest.

20 **2.3** Defendant is a Nevada corporation with its principal place of business and/or
21 headquarters located at P.O. Box 158, Highway 187, Vanderpool, TX 78885. Defendant directly
22 or indirectly sold to California consumers Products, all of which Plaintiffs allege contain a
23 chemical or chemicals listed by the State of California as known to cause cancer and/or
24 reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,
25 California Health and Safety Code § 25249.5 et seq. (“Proposition 65”); Title 22, California
26 Code of Regulations § 12000 *et seq.*

27 **2.4** Beginning on or about July 28, 2005, CWLC served Defendant and each of the
28 appropriate public enforcement agencies with a “60-Day Notice” that provided Defendant and

1 the public enforcement agencies with a notice alleging that Defendant was in violation of
2 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
3 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
4 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
5 California Code of Regulations §12903. None of the public enforcement agencies has
6 commenced and begun diligently prosecuting an action against Defendant for such alleged
7 violations.

8 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served
9 Defendant with a notice letter (the "CLRA Notice" -- collectively with the 60-Day Notice,
10 "Notices") via certified mail, return receipt requested, stating *inter alia* as follows:

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

21 **2.6** On December 7, 2005, Ms. Buckland and CWLC filed their initial complaint
22 entitled *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles
23 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint,
24 which is the now-operative complaint in this matter (the "First Amended Complaint"). CWLC
25 alleged violations of Proposition 65 against Defendant, while Ms. Buckland alleged violations of
26 the CLRA, Business & Professions Code §§ 17200 *et seq.* and 17500 *et seq.*, and Civil Code
27 §§1709 and 1710, against Defendant, respectively.

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1 **2.7** 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 Defendant 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 **2.8** Defendant denies that the Products have been or are in violation of any law, and
7 further contends that all Products have been and are safe for use as directed. However, the
8 Parties desire to resolve this matter (including the Notices, First Amended Complaint and all
9 related matters) without further litigation or cost.

10 **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as
11 alleged in the Notices and the First Amended Complaint, to avoid prolonged and costly
12 litigation, and to promote the public interest. By executing and complying with this Consent
13 Judgment, no Party admits any facts or conclusions of law including, but not limited to, any facts
14 or conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code
15 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False
16 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65
17 (Health & Safety Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim
18 or requirement relating to or arising from Defendant's Products. This Consent Judgment shall
19 not be construed as an admission by Defendant as to any of the allegations in the 60-Day Notice,
20 the CLRA Notice or the First Amended Complaint.

21 **3. Injunctive Relief.**

22 **3.1 Defendant Has Exited the Market.**

23 Defendant has voluntarily exited the California market for the Products. If Defendant
24 chooses to re-enter the California market for these Products, Defendant shall comply with the
25 terms set forth in the following paragraphs 3.2 and 3.3.

26 **3.2 Future Product Sales Require a Warning.**

27 Pursuant to Civil Code § 1782(d), and B&P Code §§ 17203 and 17535, the sale of a
28 Product by Defendant shall be accompanied by a warning. This warning shall be provided both

1 by (a) product labeling pursuant to Paragraph 3.2.1; and (b) warnings for any mail order and
2 Internet sales pursuant to Paragraph 3.2.2.

3 **3.2.1 Product Label Warnings.**

4 At the earliest such time when, in the ordinary course of business, new labels for the
5 Products are printed on or after January 1, 2006, Defendant shall include (in the same type size
6 as the surrounding, non-heading text) the following warning on the label of each of its Products
7 that it manufactures and ships for sale directly or indirectly to consumers in California, including
8 the specific name or names of the Regulated Chemicals present in the Product:

9 "WARNING: This product contains [Progesterone,
10 Medroxyprogesterone acetate, Testosterone and its esters,
11 Methyltestosterone, Testosterone cypionate, and/or Testosterone
12 enanthate], a chemical(s) known to the State of California to cause
13 cancer. Consult with your physician before using this product."

14 **3.2.2 Additional Warnings for Mail Order or Internet Sales.**

15 If Defendant sells a Product by mail order or over the Internet directly or indirectly to
16 consumers in the state of California on or after the date that is 90 days after the entry of this
17 Consent Judgment by the court, the following additional requirements shall apply:

18 (1) For such mail order sales, the warning language required under this Consent
19 Judgment at paragraph 3.2.1 shall be included in the mail order catalogue, either on the same
20 page as any order form, or on the same page(s) upon which the Product's price is listed, in the
21 same type size as the surrounding, non-heading text.

22 (2) For such Internet sales, the warning language required under this Consent
23 Judgment at paragraph 3.2.1 shall be displayed (in the same type size as the surrounding, non-
24 heading text) in one or more of the following ways: (a) on the same page upon which the
25 Product is displayed or referenced; (b) on the same page as any order form for any Product;
26 (c) on the same page as the price for the Product is displayed; (d) on one or more pages
27 displayed to a purchaser over the Internet or via electronic mail during the checkout and order
28 confirmation process for sale of a Product; or (e) in any manner such that it is likely to be read

1 and understood by an ordinary individual under customary business conditions prior to the
2 purchase of the Product.

3 **3.3 Compliance with Federal Law.**

4 Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and effective
5 when, in the ordinary course of business, new labels and advertising, marketing, mail order
6 catalog or Internet-based descriptions of each of its respective Products are printed or posted
7 electronically on or after January 1, 2006, Defendant agrees to remove any “health-related”
8 claims (as that term is used by the U.S. Food and Drug Administration under Title 21 United
9 States Code § 321(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-The-Counter
10 Topically Applied Hormone Drug Products) made by Defendant for any of its respective
11 Products.

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

13 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
14 \$1,120.00 (“settlement amount”), and shall make that payment to the Client Trust Account of the
15 Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
16 funds. This settlement amount shall be due and payable within five (5) calendar days after the
17 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
18 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

21 **5. Claims Covered and Released.**

22 This Consent Judgment includes the resolution of all actual and potential claims that were
23 considered or could have been brought by Plaintiffs regarding the Regulated Chemical(s) in
24 Defendant’s Products. This Consent Judgment is a final and binding resolution between
25 Plaintiff and Defendant of any and all alleged violations of Proposition 65, the CLRA, the Unfair
26 Competition Law, the False Advertising Law, Civil Code §§ 1709 and 1710, or any other law
27 that was or could have been asserted by Plaintiff arising from or related to Defendant’s Products
28 up through the date of entry of this Consent Judgment, including, but not limited to any claims

1 for attorneys' fees and costs (collectively "Claims"). Plaintiffs hereby release the Defendant
2 Releasees (as defined below) and waive all rights to institute or participate in, directly or
3 indirectly, any form of legal action seeking any form of relief (whether injunctive,
4 compensatory, punitive, or otherwise) arising from the Claims against Defendant, its officers,
5 directors, employees, agents, attorneys, consultants, representatives, shareholders, parents,
6 subsidiaries, affiliates, divisions, predecessors, successors, subdivisions, downstream
7 distributors, downstream retailers, downstream customers, and upstream suppliers of the raw
8 materials used in the Products (the "Defendant Releasees"); 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 each Plaintiff from and against any claims arising out
12 of each Plaintiff's notices and their filing or prosecution of this action. Each Party respectively
13 waives any right to appeal or other review of this Consent Judgment, except as expressly
14 provided in this Consent Judgment.

15 **6. Covenant Not To Sue.** The Parties covenant and agree that with regard to those matters
16 that the Parties have herein released and that are described above, neither Plaintiffs nor
17 Defendant will ever institute a lawsuit or administrative proceedings against the other, nor shall
18 Plaintiffs or Defendant assert any claim of any nature against any person or entity hereby
19 released with regard to any such matters which have been released. However, nothing in this
20 paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to
21 paragraph 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.** Paragraphs 3, 5 and 6 of this Consent Judgment
5 shall apply to, be binding upon and inure to the benefit of the Parties, Ms. Buckland and the
6 CWLC, their divisions, subdivisions, subsidiaries, affiliates, successors, predecessors and
7 assigns, and the directors, officers, employees, legal counsel, and agents of each of them, as
8 applicable, and will inure to the benefit of the Parties' parent companies, all suppliers,
9 distributors, wholesalers, retailers and contract manufacturers, and all of their respective
10 directors, officers, employees, legal counsel, and agents. This Consent Judgment shall have no
11 effect on products sold by Defendant and shipped to customers for use outside the State of
12 California; provided that the products are not sold directly or indirectly to consumers in
13 California.

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

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

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

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

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

25 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
26 represents and warrants that each signatory has all requisite power, authority and legal right
27 necessary to execute and deliver this Consent Judgment and to perform and carry out the
28 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment

1 represents that each has been duly authorized to execute this Consent Judgment. No other or
2 further authorization or approval from any person will be required for the validity and
3 enforceability of the provisions of this Consent Judgment, except entry by the Court.

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

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

9 **17. Notices.**

10 **17.1** All correspondence and notices required by this Consent Judgment to Ms.
11 Buckland shall be sent to:

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

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

17 **17.2** All correspondence and notices required by this Consent Judgment to CWLC shall
18 be sent to:

19 Katherine Lee Buckland
20 Executive Director
21 California Women's Law Center
22 6300 Wilshire Boulevard, Suite 980
23 Los Angeles, CA 90048
24 Tel: (323) 951-1041
25 Fax: (323) 951-9870
26 E-mail: katie@cwlc.org

With a copy to:
27 Roger Lane Carrick
28 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 **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 **IT IS SO STIPULATED.**

5 Date: July __, 2006 KATHERINE LEE BUCKLAND, an individual

6
7 By: _____
8 KATHERINE LEE BUCKLAND

9 Date: July __, 2006 CALIFORNIA WOMEN'S LAW CENTER

10
11 By: _____
12 Executive Director

13 Date: July 26, 2006 CANYON GROUP CORPORATION

14
15 By:  _____
16 Ardell Nelson
17 President

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 **IT IS SO STIPULATED.**

5 Date: July __, 2006

KATHERINE LEE BUCKLAND, an individual

6 August 8

7 By: 
 KATHERINE LEE BUCKLAND

8
 9 Date: July __, 2006

CALIFORNIA WOMEN'S LAW CENTER

10 August 18

11 By: 
 Executive Director

12
 13 Date: July 26, 2006

CANYON GROUP CORPORATION

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By: 
 Ardeil Nelson
 President