

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 DEFENDANT
MAXIMUM LIVING, INC.**

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

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

22 2.5 On December 7, 2005, Plaintiffs filed their initial complaint entitled *Buckland, et*
23 *al. v. Threshold Enterprises, Ltd., et al.*, No. BC 344046, in the Los Angeles County Superior
24 Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint, which is the now-
25 operative complaint in this matter (the "First Amended Complaint"). Ms. Buckland alleged
26 violations of the CLRA, Business & Professions Code §§ 17200 *et seq.* and 17500 *et seq.*, and
27 Civil Code §§ 1709 and 1710, against Defendant. Ms. Buckland alleged no claim, directly or
28 indirectly, pursuant to Proposition 65 (Health & Safety Code § 25249.5 *et seq.*) in the First
Amended Complaint." CWLC alleged violations of Proposition 65 (Health & Safety Code
§ 25249.5 *et seq.*) in the First Amended Complaint.

2.6 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
alleged in the First Amended Complaint; that venue is proper in the County of Los Angeles; and
that this Court has jurisdiction to enter this Consent Judgment.

///

1 2.7 Defendant denies that the Products have been or are in violation of any law, and
2 further contends that all Products have been and are safe for use as directed. Prior to receiving
3 any notice from Plaintiffs, Defendant alleges that it provided a clear and reasonable
4 Proposition 65 warning for the Products it knew or had reason to believe were being offered for
5 sale in California. After receiving Plaintiffs' 60-Day Notice and October 5, 2005 letter,
6 Defendant ceased selling the Products to customers in California and elsewhere. However, the
7 Parties desire to resolve this matter (including the Notices, First Amended Complaint and all
8 related matters) without further litigation or cost.

9 2.8 The Parties enter into this Consent Judgment to settle certain disputed claims as
10 alleged in the Notices and the First Amended Complaint, to avoid prolonged and costly
11 litigation, and to promote the public interest. By executing and complying with this Consent
12 Judgment, no Party admits any facts or conclusions of law including, but not limited to, any facts
13 or conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code
14 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False
15 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§ 1709 and 1710, Proposition 65
16 (Health & Safety Code § 25249.5 *et seq.*) or any other statutory, common law or equitable claim
17 or requirement relating to or arising from Defendant' Products. This Consent Judgment shall not
18 be construed as an admission by Defendant as to any of the allegations in the Notices or the First
19 Amended Complaint.

20 **3. Injunctive Relief.**

21 **3.1 Defendant Has Exited the Market.**

22 Defendant has voluntarily exited the market for the Products. No Products have been
23 shipped for sale in California since approximately October 5, 2005. If Defendant chooses to re-
24 enter the California market for these Products, Defendant shall comply with the terms set forth in
25 the following paragraphs 3.2 and 3.3.

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

27 Pursuant to Civil Code § 1782(d), B&P Code §§ 17203 and 17535, and Health & Safety
28 Code § 25249.7(a), and specifically amending the injunctive relief previously specified in

1 *Consumer Cause, Inc. v. Products of Nature, Inc., et al* (LA Sup. Ct. Case No. BC 250318:
2 2001), the sale of a Product by Defendant shall be accompanied by a warning. This warning
3 shall be provided both by (a) product labeling pursuant to Paragraph 3.2.1; and (b) warnings for
4 any mail order and Internet sales pursuant to Paragraph 3.2.2.

5 **3.2.1 Product Label Warnings.**

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

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

16 **3.2.2 Additional Warnings for Mail Order or Internet Sales.**

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

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

24 (2) For such Internet sales, the warning language required under this Consent
25 Judgment at paragraph 3.2.1 shall be displayed (in the same type size as the surrounding, non-
26 heading text) in one or more of the following ways: (a) on the same page upon which the
27 Product is displayed or referenced; (b) on the same page as any order form for any Product;
28 (c) on the same page as the price for the Product is displayed; (d) on one or more pages

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

5 **3.3 Compliance with Federal Law.**

6 Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and specifically
7 amending the injunctive relief previously specified pursuant to Health & Safety Code §
8 25249.7(a) in *Consumer Cause, Inc. v. Products of Nature, Inc., et al* (LA Sup. Case No. BC
9 250318: 2001), and effective when, in the ordinary course of business, new labels and
10 advertising, marketing, mail order catalog or Internet-based descriptions of each of its respective
11 Products are printed or posted electronically on or after January 1, 2006, Defendant agrees to
12 remove any "health-related" claims (as that term is used by the U.S. Food and Drug
13 Administration under Title 21 United States Code § 201(g) and Title 21 Code of Federal
14 Regulation, Part 310.530, Over-The-Counter Topically Applied Hormone Drug Products) made
15 by Defendant for any of its respective Products.

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

17 **4.1** In resolution of Ms. Buckland's claims, Defendant shall pay to the CWLC the
18 sum of \$1,200.00 ("Settlement Amount"), and shall make that payment to the Client Trust
19 Account of the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately
20 available funds. This settlement amount shall be due and payable within five (5) calendar days
21 after the date of notice of entry of this Consent Judgment. This settlement amount shall be
22 disbursed promptly thereafter by the Carrick Law Group P.C. to the CWLC.

23 **4.2** In resolution of CWLC's claims, Defendant shall pay \$5,000.00 in penalties
24 pursuant to Health & Safety Code § 25249.7 (b), payable as follows: \$3,750.00 to the Treasury
25 of the State of California for deposit into the Safe Drinking Water and Toxic Enforcement Fund,
26 and \$1,250 to the CWLC, making the respective payments to the State via payment to the
27 Treasurer of the State of California, and to CWLC via payment to the Client Trust Account of
28 the Carrick Law Group P.C., in each instance by wire transfer, certified or bank check in

1 immediately available funds. These penalty amounts shall be due and payable within five (5)
2 calendar days after the date of notice of entry of this Consent Judgment.

3 **4.3 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees
4 and costs.

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

6 This Consent Judgment includes the resolution of actual and potential claims that were
7 considered or could have been brought by Plaintiffs regarding the Progesterone in Defendant's
8 Products. This Consent Judgment is a final and binding resolution between Plaintiffs and
9 Defendant of any and all alleged violations of the California Consumer Legal Remedies Act,
10 Unlawful Competition Law, False Advertising Law, Civil Code §§ 1709 and 1710, Civil Code
11 §§ 1709 and 1710, Proposition 65 (Health & Safety Code § 25249.5 *et seq.*) or any other law
12 that was or could have been asserted by Plaintiffs arising from or related to Products
13 manufactured, distributed, or sold by Defendant through the date of entry of this Consent
14 Judgment, including, but not limited to any claims for attorneys' fees and costs. Plaintiffs
15 hereby release Defendant and Defendant's predecessors, successors, affiliates and assigns, the
16 officers, directors, employees, shareholders, and counsel of each of them, from and against the
17 claims described in this paragraph to the extent such claims do, did, or could arise from or relate
18 to Defendant's Products; however, Plaintiffs cannot and expressly does not release any other
19 claims, including specifically and without limitation any personal injury or directly related
20 claims, that could be brought by any other individual or organization. Defendant hereby releases
21 Ms. Buckland and CWLC from and against any claims arising out of Plaintiffs' filing or
22 prosecution of this action. Each Party respectively waives any right to appeal or other review of
23 this Consent Judgment, except as expressly provided in this Consent Judgment.

24 **6. Covenant Not To Sue.** Plaintiffs and Defendant covenant and agree that with regard to
25 those matters that Plaintiffs have herein released and that are described above, neither
26 Ms. Buckland, CWLC nor Defendant will ever institute a lawsuit or administrative proceedings
27 against the other, nor shall Ms. Buckland, Defendant or CWLC assert any claim of any nature
28 against any person or entity hereby released with regard to any such matters which have been

1 released. However, nothing in this paragraph shall be interpreted to preclude enforcement of this
2 Consent Judgment pursuant to Section 7 below.

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

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

22 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
23 modified or terminated upon written agreement of the Parties, with approval of the Court, or
24 upon noticed motion for good cause shown.

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

27 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
28 other agreement has been made conferring any benefit upon any party except those contained

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

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

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

22 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
23 represents and warrants that each signatory has all requisite power, authority and legal right
24 necessary to execute and deliver this Consent Judgment and to perform and carry out the
25 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment
26 represents that each has been duly authorized to execute this Consent Judgment. No other or
27 further authorization or approval from any person will be required for the validity and
28 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

14 **17.2** All correspondence and notices required by this Consent Judgment to Defendant
15 shall be sent to Defendant as follows:

16 Jerry W. Roberts
17 Chief Financial Officer
18 Maximum Living, Inc.
19 20071 Soulsbyville Road
20 Soulsbyville, CA 95372-9748
21 Tel: (408) 907-2152
22 Fax: (209) 536-9375

With a copy to:
23 Jeffrey B. Margulies, Esq.
24 Fulbright & Jaworski L.L.P.
25 555 S. Flower Street, 41st Floor
26 Los Angeles, California 90071
27 Tel: (213) 892-8986
28 Fax: (213) 892-9494
E-mail: jmargulies@fulbright.com

21 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
22 Judgment shall be null and void, and without any force or effect, unless fully approved as
23 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
24 execution thereof by Defendant or Ms. Buckland shall not be construed as an admission by
25 Defendant or Ms. Buckland of any fact, issue of law or violation of law.

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

28 ///

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 17.2.

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: February 4, 2006

KATHERINE LEE BUCKLAND

11
12 By: Katherine L Buckland
KATHERINE LEE BUCKLAND

13
14 Date: February 4, 2006

CALIFORNIA WOMEN'S LAW CENTER

15
16 By: Katherine L Buckland
KATHERINE LEE BUCKLAND
Executive Director

17
18 Date: February __, 2006

MAXIMUM LIVING, INC.

19
20 By: _____
Jerry Roberts
Chief Financial Officer

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

25 DATED: _____

26
27 _____
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
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 17.2.

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: February __, 2006

KATHERINE LEE BUCKLAND

11
12 By: _____
KATHERINE LEE BUCKLAND

13
14 Date: February __, 2006

CALIFORNIA WOMEN'S LAW CENTER

15
16 By: _____
KATHERINE LEE BUCKLAND
Executive Director

17
18 Date: February 15, 2006

MAXIMUM LIVING, INC.

19
20 By:  _____
Jerry Roberts
Chief Financial Officer

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

25 DATED: _____

26
27 _____
ROBERT L. HESS
JUDGE OF THE SUPERIOR COURT