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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
NOW HEALTH GROUP, INC.**
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 NOW Health Group, Inc. (hereinafter “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. Each Regulated Chemical is a chemical known to the State of California to cause cancer and/or reproductive toxicity pursuant to Cal. Health & Safety Code § 25249.5 *et seq.*

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1 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §
2 25249.5 *et seq.* (“Proposition 65”); Title 22, California Code of Regulations § 12000 *et seq.*

3 **2.4** On July 28, 2005, CWLC served Defendant and each of the appropriate public
4 enforcement agencies with a “60-Day Notice” that provided Defendant and the public
5 enforcement agencies with a notice alleging that Defendant was in violation of Proposition 65
6 for failing to warn the purchasers of, and individuals using, the Products that the use of the
7 Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose of this
8 Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
9 California Code of Regulations §12903. None of the public enforcement agencies has
10 commenced and begun diligently prosecuting an action against Defendant for such alleged
11 violations.

12 **2.5** On October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served
13 Defendant with a notice letter (the “CLRA Notice” -- collectively with the 60-Day Notice,
14 “Notices”) via certified mail, return receipt requested, stating *inter alia* as follows:

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

25 **2.6** On December 7, 2005, Ms. Buckland and CWLC filed their initial complaint
26 entitled *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles

1 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint.
2 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§ 17200 *et seq.*
3 and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms. Buckland alleged
4 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code § 25249.5 *et seq.*) in the
5 First Amended Complaint. CWLC alleged violations of Proposition 65 (H&S Code § 25249.5 *et*
6 *seq.*) in the First Amended Complaint against Defendant. On August 21, 2006, Ms. Buckland
7 filed a Supplemental Complaint. On November 6, 2006, CWLC filed a Second Amended
8 Complaint and Ms. Buckland filed a First Amended Supplemental Complaint (collectively
9 “Complaints”).

10 **2.7** For purposes of this Consent Judgment only, the Parties stipulate that this Court
11 has jurisdiction over the allegations of the violations contained in the Notices and the
12 Complaints, and personal jurisdiction over Defendant as to the acts or omissions alleged in the
13 Complaints; that venue is proper in the County of Los Angeles; and that this Court has
14 jurisdiction to enter this Consent Judgment.

15 **2.8** Defendant denies that the Products have been or are in violation of any law, and
16 further contend that all Products have been and are safe for use as directed. However, the Parties
17 desire to resolve this matter (including the Notices, Complaints and all related matters) without
18 further litigation or cost.

19 **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as
20 alleged in the Notice and the Complaints, to avoid prolonged and costly litigation, and to
21 promote the public interest. By executing and complying with this Consent Judgment, no Party
22 admits any allegations, facts or conclusions of law including, but not limited to, any facts or
23 conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code
24 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False
25 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§ 1709 and 1710, Proposition 65
26 (Health & Safety Code § 25249.5 *et seq.*) the United States Food, Drug and Cosmetic Act, or any

1 other statutory, common law or equitable claim or requirement relating to or arising from
2 Defendant's Products. This Consent Judgment shall not be construed as an admission by
3 Defendant as to any of the allegations in the 60-Day Notice, the CLRA Notice, or the
4 Complaints.

5 **3. Injunctive Relief.**

6 **3.1 Future Product Sales Require a Warning.**

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

12 **3.1.1 Product Label Warnings**

13 At the earliest such time when, in the ordinary course of business, new labels for the
14 Products are printed on or after December 1, 2007, Defendant shall include: on the label of each
15 of its Products that it manufactures and ships for sale into California, (in the same type size as
16 the surrounding, non-heading text), the following warning, including the specific name or names
17 of the Regulated Chemicals where shown:

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

23 **3.1.2 Additional Warnings for Mail Order or Internet Sales**

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

1 (1) For such mail order sales, the warning language required under this Consent
2 Judgment at paragraph 3.1.1 shall be included in the mail order catalogue, either on the same
3 page as any order form, or on the same page(s) upon which the Product's price is listed, in the
4 same type size as the surrounding, non-heading text.

5 (2) For such Internet sales, the warning language required under this Consent
6 Judgment at paragraph 3.1.1 shall be displayed (in the same type size as the surrounding, non-
7 heading text) in one or more of the following ways: (a) on the same page upon which the
8 Product is displayed or referenced; (b) on the same page as any order form for any Product; (c)
9 on the same page as the price for the Product is displayed; (d) on one or more pages displayed to
10 a purchaser over the Internet or via electronic mail during the checkout and order confirmation
11 process for sale of a Product; or (e) in any manner such that it is likely to be read and understood
12 by an ordinary individual under customary business conditions prior to the purchase of the
13 Product.

14 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and Health
15 & Safety Code §25249.7(a), and effective when, in the ordinary course of business, new labels
16 and advertising, marketing, mail order catalog or Internet-based descriptions of each of its
17 respective Products are printed or posted electronically on or after December 1, 2007, Defendant
18 agrees to remove any claims prohibited by the U.S. Food and Drug Administration under Title
19 21 United States Code § 321(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-
20 The-Counter Topically Applied Hormone Drug Products made by Defendant for any of its
21 respective Products.

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

23 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
24 \$50,000 ("Settlement Amount"), and shall make that payment to the Client Trust Account of the
25 Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
26 funds. This Settlement Amount shall be due and payable within five (5) calendar days after the

1 date of notice of entry of this Consent Judgment. This Settlement Amount shall be disbursed
2 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

4 This Consent Judgment includes the resolution by Plaintiffs of any and all actual and
5 potential claims prior to the effective date of this Consent Judgment that were considered or
6 could have been brought by Plaintiffs regarding the Regulated Chemical(s) in Defendant's
7 Products. This Consent Judgment is a final and binding resolution between Plaintiffs and
8 Defendant of any and all alleged violations of the CLRA, the Unfair Competition Law, the False
9 Advertising Law, Civil Code §§1709 and 1710, Proposition 65, or any other law that was or
10 could have been asserted by Plaintiffs arising from or related to Defendant's Products up through
11 the date of entry of this Consent Judgment, including, but not limited to any claims for
12 attorneys' fees and costs (collectively "Claims"). Plaintiffs hereby release Defendant and
13 Defendant's Releasees (as defined below) and waive all rights to institute or participate in,
14 directly or indirectly, any form of legal action seeking any form of relief (whether injunctive,
15 compensatory, punitive, or otherwise) arising from the Claims against Defendant, its officers,
16 directors, employees, agents, attorneys, consultants, representatives, shareholders, parents,
17 subsidiaries, affiliates, divisions, predecessors, successors, subdivisions, downstream
18 distributors, downstream retailers, downstream customers, and upstream suppliers of the raw
19 materials used in the Products (the "Defendant's Releasees"); however, Plaintiffs cannot and
20 expressly do not release any other claims, including specifically and without limitation any
21 personal injury or directly related claims, that could be brought by any other individual or
22 organization. Defendant hereby releases each Plaintiff from and against any claims arising out
23 of each Plaintiff's notices and their filing or prosecution of this action. Each Party respectively
24 waives any right to appeal or other review of this Consent Judgment, except as expressly
25 provided in this Consent Judgment, and Plaintiff Buckland expressly agrees that she will dismiss
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1 the pending appeal as to the Defendant, which was initiated by notice of appeal filed on August
2 17, 2006.

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

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

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

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

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

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

25 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment
26 for good cause shown under Paragraph 9 hereof, the Parties agree that they, individually or

1 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any
2 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that
3 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each
4 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has
5 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other
6 Party so as to create a fiduciary, agency or confidential relationship.

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

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

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

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

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25 **17. Notices.**

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1 execution thereof by Defendant or Plaintiffs shall not be construed as an admission by Defendant
2 or Plaintiffs of any fact, issue of law or violation of law.

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

5 **20. Compliance with Reporting Requirements.** CWLC shall comply with the reporting
6 form requirements referred to in Health and Safety Code section 25249.7(f) and established in
7 Title 11 of the California Code of Regulations sections 3000-3008. Copies of all such reports
8 shall be supplied as provided in Paragraph 17.

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

12 **IT IS SO STIPULATED.**

13 Date: September 16, 2007

KATHERINE LEE BUCKLAND, an individual

14
15 By: K Buckland
KATHERINE LEE BUCKLAND

16
17 Date: September 16, 2007

CALIFORNIA WOMEN'S LAW CENTER

18
19 By: K Buckland
Executive Director

20
21 Date: September __, 2007

NOW HEALTH GROUP, INC.

22
23
24 By: _____
Al Powers
President

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12 **IT IS SO STIPULATED.**

13 Date: September __, 2007

KATHERINE LEE BUCKLAND, an individual

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15 By: _____
KATHERINE LEE BUCKLAND

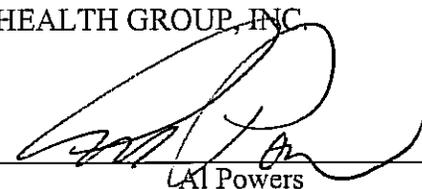
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17 Date: September __, 2007

CALIFORNIA WOMEN'S LAW CENTER

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19 By: _____
Executive Director

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21 Date: September 10, 2007

NOW HEALTH GROUP, INC.

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24 By:  _____
LAI Powers
President

1 **FINDINGS AND ORDER**

2 1. In light of the findings below, and based upon the Court’s review of the proposed
3 stipulated Consent Judgment executed by the Plaintiffs and Defendant, and the papers filed in
4 support of this Motion to Enter the stipulated Consent Judgment, in a manner consistent with
5 Code of Civil Procedure §664.6, the Court finds that this Consent Judgment is just, and serves
6 and will serve the public interest.

7 2. The Court finds that the warnings that are or may be required in Paragraph 3 of
8 the stipulated Consent Judgment in this matter regarding the sale of certain products by
9 Defendant complies with the provisions of Health & Safety Code §§25249.6 and
10 25249.7(f)(4)(A).

11 3. In the stipulated Consent Judgment in this matter, the Parties’ agreement in
12 Paragraph 4 of the Consent Judgment that no civil penalties are warranted is in accord with the
13 criteria set forth in Health & Safety Code §25249.7(b) (2) and (f) (4) (C), in that payments
14 totaling \$50,000 in the form of “in lieu of damages or penalties” are to be made by the
15 Defendant to Plaintiff California Women’s Law Center (“CWLC”). The Court finds that CWLC
16 has committed to use this financial relief in conformity with Proposition 65’s overall goals as
17 well as its own non-profit articles of incorporation to address the litigation’s public health issue
18 of protecting women’s health through CWLC’s programs, which include but are not limited to
19 projects addressing public health, domestic violence, reproductive rights, and physical fitness
20 issues.

21 4. The Court finds that the plaintiff California Women’s Law Center will
22 compensate its attorney of record, Carrick Law Group., P.C., in the aggregate amount of \$20,000
23 in attorneys’ fees, based upon a written contingent fee contract between those entities. The
24 Court finds, pursuant to Health & Safety Code §25249.7(f)(4)(B), that these attorneys’ fees are
25 reasonable under California law.

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5. The Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

ROBERT L. HESS
JUDGE OF THE SUPERIOR COURT

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