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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
DRUGSTORE.COM, 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 Drugstore.com, 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 as an ingredient. 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.

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

21 **2.3** Defendant is a corporation that directly or indirectly sells Products to California
22 consumers, which Products Plaintiffs allege contain a chemical or chemicals listed by the State
23 of California as known to cause cancer and/or reproductive toxicity pursuant to the Safe
24 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §
25 25249.5 et seq. (“Proposition 65”); Title 22, California Code of Regulations § 12000 et seq.

26 **2.4** On or about February 9, 2006, CWLC served Defendant and each of the
27 appropriate public enforcement agencies with a “60-Day Notice” that provided Defendant and
28 the public enforcement agencies with a notice alleging that Defendant was in violation of

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

7 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served
8 Defendant with a notice letter (the “CLRA Notice” -- collectively with the 60-Day Notice,
9 “Notices”) via certified mail, return receipt requested, stating *inter alia* as follows:

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

20 **2.6** On December 7, 2005, Ms. Buckland and CWLC filed their initial complaint
21 entitled *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles
22 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended First
23 Amended. Ms. Buckland alleged violations of the CLRA, Business & Professions Code
24 §§ 17200 *et seq.* and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms.
25 Buckland alleged no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code
26 § 25249.5 *et seq.*) in the First Amended Complaint. CWLC alleged violations of Proposition 65
27 (H&S Code § 25249.5 *et seq.*) in the First Amended Complaint against Defendant. On August
28 21, 2006, Ms. Buckland filed a Supplemental Complaint. On November 6, 2006, CWLC filed a

1 Second Amended Complaint and Ms. Buckland filed a First Amended Supplemental Complaint
2 (collectively “Complaints”).

3 **2.7** For purposes of this Consent Judgment only, the Parties stipulate that this Court
4 has jurisdiction over the allegations of the violations contained in the Notices and the
5 Complaints, and personal jurisdiction over Defendant as to the acts or omissions alleged in the
6 Complaints; that venue is proper in the County of Los Angeles; and that this Court has
7 jurisdiction to enter this Consent Judgment.

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

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

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1 **3. Injunctive Relief.**

2 **3.1 Future Product Sales Require a Warning.**

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

8 **3.1.1 Product Label Warnings**

9 At the earliest such time when, in the ordinary course of business, new labels for the
10 Products are printed on or after March 30, 2007, Defendant shall include: on the label of each of
11 its Products that it manufactures and ships for sale into California, (in the same type size as the
12 surrounding, non-heading text), the following warning, including the specific name or names of
13 the Regulated Chemicals where shown:

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

19 **3.1.2 Additional Warnings for Mail Order or Internet Sales**

20 If Defendant sells a Product by mail order or over the Internet to a consumer in the State
21 of California on or after the date that is 90 days after the entry of this consent judgment by the
22 court, the following additional requirements shall apply:

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

27 (2) For such Internet sales, the warning language required under this Consent
28 Judgment at paragraph 3.1.1 shall be displayed (in the same type size as the surrounding, non-

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

8 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and Health
9 & Safety Code §25249.7(a), and effective when, in the ordinary course of business, new labels
10 and advertising, marketing, mail order catalog or Internet-based descriptions of each of its
11 respective Products are printed or posted electronically on or after March 30, 2007, Defendant
12 agrees to remove any “therapeutic” claims (as that term is used by the U.S. Food and Drug
13 Administration under Title 21 United States Code § 321(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 lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
18 \$10,000 (“Settlement Amount”), and shall make that payment to the Client Trust Account of the
19 Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
20 funds. This Settlement Amount shall be due and payable within five (5) calendar days after the
21 date of notice of entry of this Consent Judgment. This Settlement Amount shall be disbursed
22 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

24 This Consent Judgment includes the resolution of all actual and potential claims that were
25 considered or could have been brought by Plaintiffs regarding the Regulated Chemical(s) in
26 Defendant’s Products. This Consent Judgment is a final and binding resolution between
27 Plaintiff and Defendant of any and all alleged violations of the CLRA, the Unfair Competition
28 Law, the False Advertising Law, Civil Code §§1709 and 1710, Proposition 65, or any other law

1 that was or could have been asserted by Plaintiff arising from or related to Defendant's Products
2 up through the date of entry of this Consent Judgment, including, but not limited to any claims
3 for attorneys' fees and costs (collectively "Claims"). Plaintiffs hereby release the Defendant's
4 Releasees (as defined below) and waive all rights to institute or participate in, directly or
5 indirectly, any form of legal action seeking any form of relief (whether injunctive,
6 compensatory, punitive, or otherwise) arising from the Claims against Defendant, its officers,
7 directors, employees, agents, attorneys, consultants, representatives, shareholders, parents,
8 subsidiaries, affiliates, divisions, predecessors, successors, subdivisions, downstream
9 distributors, downstream retailers, downstream customers, and upstream suppliers of the raw
10 materials used in the Products (the "Defendant's Releasees"); however, Plaintiffs cannot and
11 expressly do not release any other claims, including specifically and without limitation any
12 personal injury or directly related claims, that could be brought by any other individual or
13 organization. Defendant hereby release each Plaintiff from and against any claims arising out of
14 each Plaintiff's notices and their filing or prosecution of this action. Each Party respectively
15 waives any right to appeal or other review of this Consent Judgment, except as expressly
16 provided in this Consent Judgment, and Plaintiff Buckland expressly agrees that she will dismiss
17 the pending appeal as to the Defendant, which was initiated by notice of appeal filed on August
18 17, 2006.

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

26 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to
27 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To
28 enforce this Consent Judgment, any Party must first give written notice of any violation of this

1 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties
2 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is
3 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the
4 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce
5 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
6 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
7 enforcement proceeding.

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

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

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

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 will execute such other documents
5 and take such other actions as may be necessary to further the purposes and fulfill the terms of
6 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 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

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

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

With a copy to:
28 Roger Lane Carrick
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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2 21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well
3 as use their respective best efforts, to secure the Attorney General's approval of this Consent
4 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

5 **IT IS SO STIPULATED.**

6 Date: February 5, 2007
7 *MARCH*

KATHERINE LEE BUCKLAND, an individual

8 By: *K Buckland*
9 KATHERINE LEE BUCKLAND

10 Date: February 5, 2007
11 *MARCH*

CALIFORNIA WOMEN'S LAW CENTER

12 By: *K Buckland*
13 Executive Director

14 Date: February 22 2007

DRUGSTORE.COM

16 By: *Nathan Garnett*
17 Nathan Garnett
18 Associate General Counsel and
19 Assistant Secretary

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

5 **IT IS SO STIPULATED.**

6 Date: February __, 2007

KATHERINE LEE BUCKLAND, an individual

7

8 By: _____
KATHERINE LEE BUCKLAND

9

10 Date: February __, 2007

CALIFORNIA WOMEN'S LAW CENTER

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12 By: _____
Executive Director

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14 Date: February 22 2007

DRUGSTORE.COM

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16 By:  _____
Nathan Garnett
Associate General Counsel and
Assistant Secretary

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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 Section 3 of the
8 stipulated Consent Judgment in this matter regarding the sale of certain products by Defendant
9 comply with the provisions of Health & Safety Code §§25249.6 and 25249.7(f)(4)(A).

10 3. In the stipulated Consent Judgment in this matter, the Parties’ agreement in
11 Section 4 of the Consent Judgment that no civil penalties are warranted is in accord with the
12 criteria set forth in Health & Safety Code §25249.7(b) (2) and (f) (4) (C), in that payments
13 totaling \$10,000 in the form of “in lieu of damages or penalties” are to be made by the
14 Defendant to Plaintiff California Women’s Law Center (“CWLC”). The Court finds that CWLC
15 has committed to use this financial relief in conformity with Proposition 65’s overall goals as
16 well as its own non-profit articles of incorporation to address the litigation’s public health issue
17 of protecting women’s health through CWLC’s programs, which include but are not limited to
18 projects addressing public health, domestic violence, reproductive rights, and physical fitness
19 issues.

20 4. The Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
21 Court.

22 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

23 DATED: _____

24
25 _____
26 **ROBERT L. HESS**
27 **JUDGE OF THE SUPERIOR COURT**
28