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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
TRANSITIONS FOR HEALTH, 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 Transitions For Health, Inc. d/b/a Emerita (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.*

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** Plaintiffs 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 alleges that she is a
14 “consumer” within the meaning of the California Consumer Legal Remedies Act (“CLRA”),
15 California Civil Code (“Civil Code”) § 1761(d), and also alleges that she is a “person” within the
16 meaning of California Business and Professions (“B&P”) Code §§17201, 17204 and 17506. She
17 brought and settles this lawsuit on her own behalf and, to the fullest extent permitted by law, on
18 behalf of the general public. CWLC alleges that it is a “person” within the meaning of Health &
19 Safety Code §§25249.7(d) and 25249.11(a). CWLC brings its Proposition 65 cause of action in
20 the public 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 February 9, 2006, CWLC served Defendant and each of the appropriate public
27 enforcement agencies with a “60-Day Notice” that provided Defendant and the public

1 enforcement agencies with a notice alleging that Defendant was in violation of Proposition 65
2 for failing to warn the purchasers of, and individuals using, the Products that the use of the
3 Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose of this
4 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 February 9, 2006,, 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 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§ 17200 *et seq.*
25 and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms. Buckland alleged
26 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code § 25249.5 *et seq.*) in the
27 First Amended Complaint. CWLC alleged violations of Proposition 65 (H&S Code § 25249.5 *et*

1 *seq.*) in the First Amended Complaint against Defendant. On August 21, 2006, Ms. Buckland
2 filed a Supplemental Complaint. On November 6, 2006, CWLC filed a Second Amended
3 Complaint and Ms. Buckland filed a First Amended Supplemental Complaint (collectively
4 “Complaints”).

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

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

14 2.9 The Parties enter into this Consent Judgment to settle certain disputed claims as
15 alleged in the Notice and the Complaints, to avoid prolonged and costly litigation, and to
16 promote the public interest. By executing and complying with this Consent Judgment, no Party
17 admits any allegations, facts or conclusions of law including, but not limited to, any facts or
18 conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code
19 § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False
20 Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65
21 (Health & Safety Code §25249.5 *et seq.*) the United States Food, Drug and Cosmetic Act, or any
22 other statutory, common law or equitable claim or requirement relating to or arising from
23 Defendant’s Products. This Consent Judgment shall not be construed as an admission by
24 Defendant as to any of the allegations in the 60-Day Notice, the CLRA Notice, or the
25 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 directly or indirectly to consumers
5 in California shall be accompanied by a warning. This warning shall be provided both by (a)
6 product labeling pursuant to Paragraph 3.1.1; and (b) warnings for any mail order and Internet
7 sales pursuant to 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 December 1, 2007, Defendant shall include: on the label of each
11 of its Products that it manufactures and ships for sale into California, (in the same type size as
12 the surrounding, non-heading text), the following warning, including the specific name or names
13 of 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.

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

10 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and Health
11 & Safety Code §25249.7(a), and effective when, in the ordinary course of business, new labels
12 and advertising, marketing, mail order catalog or Internet-based descriptions of each of its
13 respective Products are printed or posted electronically on or after December 1, 2007, Defendant
14 agrees to remove any claims prohibited by the U.S. Food and Drug Administration under Title
15 21 United States Code § 321(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-
16 The-Counter Topically Applied Hormone Drug Products made by Defendant for any of its
17 respective Products.

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

19 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
20 \$50,000 ("Settlement Amount"), and shall make that payment to the Client Trust Account of the
21 Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
22 funds. This Settlement Amount shall be due and payable within five (5) calendar days after the
23 date of notice of entry of this Consent Judgment. This Settlement Amount shall be disbursed
24 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

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

23 **6. Covenant Not To Sue.** The Parties covenant and agree that with regard to those matters
24 that the Parties have herein released and that are described above, neither Plaintiffs nor
25 Defendant will ever institute a lawsuit or administrative proceedings against the other, nor shall
26 Plaintiffs or Defendant assert any claim of any nature against any person or entity hereby
27 released with regard to any such matters which have been released. However, nothing in this
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1 paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to
2 paragraph 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.** Paragraphs 3, 5 and 6 of this Consent Judgment
14 shall apply to, be binding upon and inure to the benefit of the Parties, Ms. Buckland and the
15 CWLC, their divisions, subdivisions, subsidiaries, affiliates, successors, predecessors and
16 assigns, and the directors, officers, employees, legal counsel, consultants and agents of each of
17 them, as applicable, and will inure to the benefit of the Parties' parent companies, subsidiaries
18 and affiliates, all suppliers, distributors, wholesalers, retailers and contract manufacturers, and all
19 of their respective directors, officers, employees, legal counsel, consultants and agents.

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

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

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

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

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

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

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

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

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16 **17. Notices.**

17 **17.1** All correspondence and notices required by this Consent Judgment to Ms.
18 Buckland shall be sent to:

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

With a copy to:
26 Roger Lane Carrick, Esq.
27 The Carrick Law Group, P.C.
28 350 S. Grand Avenue, Suite 2930
Los Angeles, CA 90071-3406
Tel: (213) 346-7930
Fax: (213) 346-7931
E-mail: roger@carricklawgroup.com

25 **17.2** All correspondence and notices required by this Consent Judgment to CWLC shall
26 be sent to:
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1 Katherine Lee Buckland
2 Executive Director
3 California Women's Law Center
4 6300 Wilshire Boulevard, Suite 980
5 Los Angeles, CA 90048
6 Tel: (323) 951-1041
7 Fax: (323) 951-9870
8 katie@cwlc.org

With a copy to:
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

7 **17.3** All correspondence and notices required by this Consent Judgment to Defendant
8 shall be sent as follows:

9 Ms. Sharon MacFarland
10 President and CEO
11 Emerita
12 13339 NE Airport Way, Suite 200
13 Portland, OR 97230
14 Tel: (503) 781-4811
15 Fax: (503) 226-5455

With a copy to:
Trenton H. Norris, Esq.
Bingham McCutchen LLP
Three Embarcadero Center, Suite 2500
San Francisco, CA 94111-4067
Tel: (415) 393-2602
Fax: (213) 393-2286
E-mail: trent.norris@bingham.com

14 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
15 Judgment shall be null and void, and without any force or effect, unless fully approved as
16 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
17 execution thereof by Defendant or Plaintiffs shall not be construed as an admission by Defendant
18 or Plaintiffs of any fact, issue of law or violation of law.

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

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

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

1 IT IS SO STIPULATED.

2 Date: September 16, 2007

KATHERINE LEE BUCKLAND, an individual

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4 By: K Buckland
KATHERINE LEE BUCKLAND

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6 Date: September 16, 2007

CALIFORNIA WOMEN'S LAW CENTER

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8 By: K Buckland
Executive Director

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10 Date: September __, 2007

TRANSITIONS FOR HEALTH, INC.

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13 By: _____
Sharon MacFarland
President & CEO

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1 **IT IS SO STIPULATED.**

2 Date: September __, 2007

KATHERINE LEE BUCKLAND, an individual

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By: _____
KATHERINE LEE BUCKLAND

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6 Date: September __, 2007

CALIFORNIA WOMEN'S LAW CENTER

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By: _____
Executive Director

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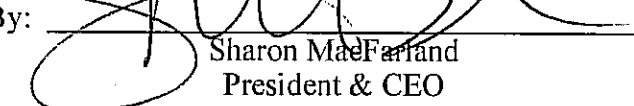
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Date: September __, 2007

TRANSITIONS FOR HEALTH, INC.

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By:  _____
Sharon Mae Farland
President & CEO

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

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

4 DATED: _____
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8 ROBERT L. HESS
9 JUDGE OF THE SUPERIOR COURT
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