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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 ONE-LIFE USA, 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 One-Life USA, 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.*

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
28 enforcement agencies with a notice alleging that Defendant was in violation of Proposition 65

1 for failing to warn the purchasers of, and individuals using, the Products that the use of the
2 Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose of this
3 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 February 9, 2006, 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 Complaint.
23 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§17200 *et seq.*
24 and 17500 *et seq.*, and Civil Code §§1709 and 1710, against Defendant. Ms. Buckland alleged
25 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code §25249.5 *et seq.*) in the
26 First Amended Complaint. CWLC alleged violations of Proposition 65 (H&S Code
27 §25249.5 *et seq.*) in the First Amended Complaint against Defendant. On August 21, 2006,
28 Ms. Buckland filed a Supplemental Complaint. On November 6, 2006, CWLC filed a Second

1 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 allegations, facts or conclusions of law including, but not limited to, any facts or
16 conclusions of law regarding any violations of the California Legal Remedies Act (Civil Code
17 §1750 *et seq.*), the Unlawful Competition Law (B&P Code §17200 *et seq.*), the False
18 Advertising Law (B&P Code §17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65
19 (Health & Safety Code §25249.5 *et seq.*) the United States Food, Drug and Cosmetic Act, or any
20 other statutory, common law or equitable claim or requirement relating to or arising from
21 Defendant's Products. This Consent Judgment shall not be construed as an admission by
22 Defendant as to any of the allegations in the 60-Day Notice, the CLRA Notice, or the
23 Complaints.

24 **3. Injunctive Relief.**

25 **3.1 Future Product Sales Require a Warning.**

26 Pursuant to Civil Code §1782(d), and B&P Code §§17203 and 17535, and Health &
27 Safety Code §25249.7(a), the sale of a Product by Defendant directly or indirectly to consumers
28 in California shall be accompanied by a warning. This warning shall be provided both by

1 (a) product labeling pursuant to Paragraph 3.1.1; and (b) warnings for any mail order and
2 Internet sales pursuant to Paragraph 3.1.2.

3 **3.1.1 Product Label Warnings**

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

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

14 **3.1.2 Additional Warnings for Mail Order or Internet Sales**

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

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

22 (2) For such Internet sales, the warning language required under this Consent
23 Judgment at paragraph 3.1.1 shall be displayed (in the same type size as the surrounding, non-
24 heading text) in one or more of the following ways: (a) on the same page upon which the
25 Product is displayed or referenced; (b) on the same page as any order form for any Product;
26 (c) on the same page as the price for the Product is displayed; (d) on one or more pages
27 displayed to a purchaser over the Internet or via electronic mail during the checkout and order
28 confirmation process for sale of a Product; or (e) in any manner such that it is likely to be read

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

3 **3.2** Pursuant to Civil Code §1782(d) and B&P Code §§17203 and 17535, and Health
4 & Safety Code §25249.7(a), and effective when, in the ordinary course of business, new labels
5 and advertising, marketing, mail order catalog or Internet-based descriptions of each of its
6 respective Products are printed or posted electronically on or after December 1, 2007, Defendant
7 agrees to remove any claims prohibited by the U.S. Food and Drug Administration under Title
8 21 United States Code §321(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-
9 The-Counter Topically Applied Hormone Drug Products made by Defendant for any of its
10 respective Products.

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

12 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
13 \$5,000.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of
14 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
15 funds. This Settlement Amount shall be due and payable within five (5) calendar days after the
16 date of notice of entry of this Consent Judgment. This Settlement Amount shall be disbursed
17 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

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

19 This Consent Judgment includes the resolution by Plaintiffs of any and all actual and
20 potential claims prior to the effective date of this Consent Judgment that were considered or
21 could have been brought by Plaintiffs regarding the Regulated Chemical(s) in Defendant's
22 Products. This Consent Judgment is a final and binding resolution between Plaintiffs and
23 Defendant of any and all alleged violations of the CLRA, the Unfair Competition Law, the False
24 Advertising Law, Civil Code §§1709 and 1710, Proposition 65, or any other law that was or
25 could have been asserted by Plaintiffs arising from or related to Defendant's Products up through
26 the date of entry of this Consent Judgment, including, but not limited to any claims for
27 attorneys' fees and costs (collectively "Claims"). Plaintiffs hereby release Defendant and
28 Defendant's Releasees (as defined below) and waive all rights to institute or participate in,

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

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

22 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to
23 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To
24 enforce this Consent Judgment, any Party must first give written notice of any violation of this
25 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties
26 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is
27 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the
28 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce

1 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
2 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
3 enforcement proceeding.

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

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

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

25 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
26 other agreement has been made conferring any benefit upon any party except those contained
27 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
28 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,

1 representations, agreements and understandings of the Parties with respect to such matters,
2 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
3 among the Parties to any term or condition contrary to or in addition to the terms and conditions
4 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
5 promise, representation or warranty, expressed or implied, not contained in this Consent
6 Judgment.

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

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

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

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

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

3 **17. Notices.**

4 **17.1** All correspondence and notices required by this Consent Judgment to
5 Ms. Buckland shall be sent to:

6 Katherine Lee Buckland
7 Executive Director
8 California Women's Law Center
9 6300 Wilshire Boulevard, Suite 980
10 Los Angeles, CA 90048
11 Tel: (323) 951-1041
12 Fax: (323) 951-9870
13 E-mail: katie.buckland@cwlc.org

With a copy to:
14 Roger Lane Carrick, Esq.
15 The Carrick Law Group, P.C.
16 350 S. Grand Avenue, Suite 2930
17 Los Angeles, CA 90071-3406
18 Tel: (213) 346-7930
19 Fax: (213) 346-7931
20 E-mail: roger@carricklawgroup.com

21 **17.2** All correspondence and notices required by this Consent Judgment to CWLC shall
22 be sent to:

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

With a copy to:
29 Roger Lane Carrick
30 The Carrick Law Group, P.C.
31 350 S. Grand Avenue, Suite 2930
32 Los Angeles, CA 90071-3406
33 Tel: (213) 346-7930
34 Fax: (213) 346-7931
35 E-mail: roger@carricklawgroup.com

36 **17.3** All correspondence and notices required by this Consent Judgment to Defendant
37 shall be sent as follows:

38 Kimberley Puffenbarger
39 President
40 One Life USA, Inc.
41 2749 Exchange Court, Suite D
42 West Palm Beach, FL 33409-4038

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

49 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
50 Judgment shall be null and void, and without any force or effect, unless fully approved as
51 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
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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.**

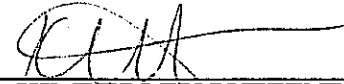
13 Date: October __, 2007 KATHERINE LEE BUCKLAND, an individual

14
15 By: _____
16 KATHERINE LEE BUCKLAND

17 Date: October __, 2007 CALIFORNIA WOMEN'S LAW CENTER

18
19 By: _____
20 KATHERINE LEE BUCKLAND
Executive Director

21 Date: October 31, 2007 ONE-LIFE USA, INC.

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23
24 By:  _____
25 KIMBERLEY PUFFENBARGER
26 President
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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 \$5,000.00 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
23 \$2,000.00 in attorneys’ fees, based upon a written contingent fee contract between those entities.
24 The Court finds, pursuant to Health & Safety Code §25249.7(f)(4)(B), that these attorneys’ fees
25 are 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