

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KATHERINE LEE BUCKLAND, *et al.*,
Plaintiffs,
v.
THRESHOLD ENTERPRISES, LTD., *et al.*
Defendant.

Case No. BC344046
[Hon. Robert L. Hess]

**[PROPOSED] CONSENT JUDGMENT
ONLY AS TO DEFENDANT DIXIE
HEALTH, INC.**

Complaint Filed: December 7, 2005
Location: Dept. 24, Room 314

This Consent Judgment is entered into by and between plaintiff the California Women’s Law Center (hereinafter “CWLC” or “Plaintiff”), and defendant Dixie Health, Inc. (hereinafter “Defendant”).

1. Definitions. As used in this Consent Judgment, the following definitions shall apply:

1.1 “Regulated Chemicals” are: Progesterone, Medroxyprogesterone acetate, Testosterone and its esters, Methyltestosterone, Testosterone cypionate, and/or Testosterone enanthate as an ingredient. Each Regulated Chemical is a chemical known to the State of California to cause cancer and/or reproductive toxicity.

1.2 “Products” are consumer creams, gels and/or lotion products containing as an ingredient Progesterone. “Products” shall also include any future Products that are

1 manufactured by or on behalf of Defendant for sale in California under any product name or
2 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** California Women’s Law Center is a non-profit California corporation. Since its
7 founding in 1989, CWLC has served as a unique advocate in California, working in
8 collaboration with others to protect, secure and advance the comprehensive civil rights of
9 women and girls. The CWLC works to ensure, through systemic change, that life opportunities
10 for women and girls are free from unjust social, economic, and political constraints.

11 **2.2** Defendant Dixie Health, Inc. (previously sued as DEFENDANT DOE 504) is a
12 GEORGIA corporation with its principal place of business and/or headquarters located at 2161
13 New Market Parkway, Suite 222, Marietta, GA 30067-8768. Dixie manufactures, distributes,
14 and/or sells its Products across the United States, including in California, through various
15 distributors and retail outlets. Dixie is a person in the course of doing business within the
16 meaning of Health & Safety (“H&S”) Code § 25249.11.

17 **2.3** Beginning on or about February 9, 2006, CWLC served Defendant and each of the
18 appropriate public enforcement agencies with a “60-Day Notice” that provided Defendant and
19 the public enforcement agencies with a notice alleging that Defendant was in violation of
20 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
21 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
22 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
23 California Code of Regulations §12903. None of the public enforcement agencies has
24 commenced and begun diligently prosecuting an action against Defendant for such alleged
25 violations.

26 **2.4** On December 7, 2005, Plaintiffs filed their initial complaint entitled
27 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC344046, in the Los Angeles County
28 Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint.

1 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§17200 *et seq.*
2 and 17500 *et seq.*, and Civil Code §§1709 and 1710, against Defendant. Ms. Buckland alleged
3 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code §25249.5 *et seq.*) in the
4 First Amended Complaint. CWLC alleged violations of Proposition 65 (H&S Code §25249.5 *et*
5 *seq.*) in the First Amended Complaint. On November 6, 2006, Plaintiff filed a Second Amended
6 Complaint (“2nd Amended Complaint”).

7 **2.5** For purposes of this Consent Judgment only, the Parties stipulate that this Court
8 has jurisdiction over the allegations of the violations contained in the 60-Day Notice and the
9 2nd Amended Complaint, and personal jurisdiction over Defendant as to the acts or omissions
10 alleged in the 2nd Amended Complaint; that venue is proper in the County of Los Angeles; and
11 that this Court has jurisdiction to enter this Consent Judgment.

12 **2.6** Defendant denies that the Products have been or are in violation of any law, and
13 further contends that all Products have been and are safe for use as directed. However, the
14 Parties desire to resolve this matter (including the 60-Day Notice, 2nd Amended Complaint and
15 all related matters) without further litigation or cost.

16 **2.7** The Parties enter into this Consent Judgment to settle certain disputed claims as
17 alleged in the 60-Day Notice and the 2nd Amended Complaint, to avoid prolonged and costly
18 litigation, and to promote the public interest. By executing and complying with this Consent
19 Judgment, no Party admits any facts or conclusions of law including, but not limited to, any facts
20 or conclusions of law regarding any violations of Proposition 65 (H&S Code §25249.5 *et seq.*)
21 or any other statutory, common law or equitable claim or requirement relating to or arising from
22 Defendant’ Products. This Consent Judgment shall not be construed as an admission by
23 Defendant as to any of the allegations in the 60-Day Notice or the 2nd Amended Complaint.

24 **3. Injunctive Relief.**

25 **3.1 Defendant Has Exited the Market.**

26 Defendant has voluntarily exited the California market for the Products. If Defendant
27 chooses to re-enter the California market for these Products, Defendant shall comply with the
28 terms set forth in the following paragraphs 3.2 and 3.3.

1 **3.2 Retail Sale of Products Requires a Warning.**

2 Pursuant to Civil Code §1782(d), B&P Code §§ 17203 and 17535, and H&S Code
3 §25249.7(a), the sale of a Product by Defendant directly or indirectly to consumers in California
4 shall be accompanied by a warning. This warning shall be provided both by (a) product labeling
5 pursuant to Paragraph 3.2.1; and (b) warnings for any mail order and Internet sales pursuant to
6 Paragraph 3.2.2.

7 **3.2.1 Product Label Warnings.**

8 At the earliest such time when, in the ordinary course of business, new labels for the
9 Products are printed on or after January 1, 2008, Defendant shall include (in the same type size
10 as the surrounding, non-heading text) the following warning on the label of each of its Products
11 that it manufactures and ships for sale directly or indirectly into California, including the specific
12 name or names of the Regulated Chemicals where shown:

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

18 **3.2.2 Notice to Third Parties.**

19 For any Product that is sold by Defendant but manufactured by a third party (*i.e.*, non-
20 private-label Products), Defendant shall, within 30 days of entry of this consent judgment by the
21 court, notify the manufacturer or supplier of such Product (sending a copy of each such notice to
22 Plaintiff) that Defendant will not accept shipments of such Product for sale directly or indirectly
23 into California unless such Product bears the warning required by paragraph 3.1.1 above or a
24 comparable warning pursuant to the terms of a separate consent judgment applying to such
25 Product.

26
27
28

1 **3.2.3 Additional Warnings for Mail Order or Internet Sales.**

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

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

9 (2) For such Internet sales sent to customers in California, the warning language
10 required under this Consent Judgment at paragraph 3.2.1 shall be displayed (in the same type
11 size as the surrounding, non-heading text) in one or more of the following ways: (a) on the same
12 page upon which the Product is displayed or referenced; (b) on the same page as any order form
13 for any Product; (c) on the same page as the price for the Product is displayed; (d) on one or
14 more pages displayed to a purchaser over the Internet or via electronic mail during the checkout
15 and order confirmation process for sale of a Product; or (e) in any manner such that it is likely to
16 be read and understood by an ordinary individual under customary business conditions prior to
17 the purchase of the Product.

18 **3.2** Pursuant to Civil Code §1782(d) and B&P Code §§17203 and 17535, and
19 H&S Code §25249.7(a), and effective when, in the ordinary course of business (but no sooner
20 than 90 days after entry of this Consent Judgment), new labels and advertising, marketing, mail
21 order catalog or Internet-based descriptions of each of its respective Products are printed or
22 posted electronically on or after January 1, 2008, Defendant agrees to remove any claims for the
23 Product that are prohibited by the U.S. Food and Drug Administration under Title 21 United
24 States Code § 321(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-The-Counter
25 Topically Applied Hormone Drug Products).

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

27 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
28 \$1,000.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of

1 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
2 funds. This settlement amount shall be due and payable within five (5) calendar days after the
3 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
4 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

5 **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees
6 and costs.

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

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

24 **6. Covenant Not To Sue.** Plaintiff and Defendant covenant and agree that with regard to
25 those matters that Plaintiff have herein released and that are described above, neither CWLC nor
26 Defendant will ever institute a lawsuit or administrative proceedings against the other, nor shall
27 Defendant or CWLC assert any claim of any nature against any person or entity hereby released
28 with regard to any such matters which have been released. However, nothing in this paragraph

1 shall be interpreted to preclude enforcement of this Consent Judgment pursuant to Section 7
2 below.

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

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

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

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

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

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

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

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

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

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

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

6 **17. Notice.**

7 **17.1** All correspondence and Notice required by this Consent Judgment to Plaintiff
8 shall be sent as follows:

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

With a copy to:

Roger Lane Carrick, Esq.
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

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

16 Mr. Ole Krarup
Dixie Health, Inc.
17 91 West Paces Ferry Road
Atlanta, GA 30305
18 Tel. (404) 365-9216
Fax: (770) 951-9249

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

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

27 **20. Compliance with Reporting Requirements.** CWLC shall comply with the reporting
28 form requirements referred to in Health and Safety Code section 25249.7(f) and established in

1 Title 11 of the California Code of Regulations sections 3000-3008. Copies of all such reports
2 shall be supplied as provided in Paragraph 18.2.

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

6
7 **IT IS SO STIPULATED.**

8 Date: ~~September 2~~, 2007
9 OCTOBER

CALIFORNIA WOMEN'S LAW CENTER

10 By: 
11 KATHERINE LEE BUCKLAND
12 Executive Director

13 Date: September 27, 2007

DIXIE HEALTH, INC.

14
15 By: 
16 OLE KLARP
17 Owner

18
19
20
21
22
23
24
25
26
27
28

1 Title 11 of the California Code of Regulations sections 3000-3008. Copies of all such reports
2 shall be supplied as provided in Paragraph 18.2.

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

6
7 **IT IS SO STIPULATED.**

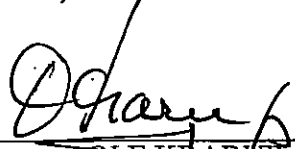
8 Date: September __, 2007

CALIFORNIA WOMEN'S LAW CENTER

9
10 By: _____
11 KATHERINE LEE BUCKLAND
12 Executive Director

13 Date: September 27, 2007

DIXIE HEALTH, INC.

14
15 By: _____
16 
17 OLE KLARUP
18 Owner

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 Plaintiff and Defendant Dixie Health, Inc., and the
4 papers filed in support of this Motion to Enter the stipulated Consent Judgment, in a manner
5 consistent with Code of Civil Procedure §664.6, the Court finds that this Consent Judgment is
6 just, and serves 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 \$1,000.00 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 amount of \$400.00 in
23 attorneys’ fees, based upon a written contingent fee contract between those entities. The Court
24 finds, pursuant to Health & Safety Code §25249.7(f)(4)(B), that these attorneys’ fees are
25 reasonable under California law.

26 ///

27 ///

28 ///

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

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