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6 WOMEN'S LAW CENTER

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11 KATHERINE LEE BUCKLAND, an individual,
AND CALIFORNIA WOMEN'S LAW CENTER,
12 a CALIFORNIA non-profit corporation,

13 Plaintiffs,

14 v.

15 THRESHOLD ENTERPRISES, LTD., a
DELAWARE corporation; ALLVIA
16 INTEGRATIVE PHARMACEUTICALS, INC., a
ARIZONA corporation; AT LAST NATURALS,
17 INC., a NEW YORK corporation; BIOCENTRIC
LABS, INC., a COLORADO corporation; BIO-
18 HEALTH, A DIVISION OF ZLABS LLC, a
ARIZONA limited liability company; BIOTECH
19 INTERNATIONAL CORPORATION, a
CONNECTICUT corporation; CANNON
20 MEDICAL CLINIC, INC., A DIVISION OF
GEORGE L. CANNON, M.D., INC., a ARIZONA
21 professional corporation; CANYON GROUP
CORPORATION, a NEVADA corporation;
22 METABOLIC RESPONSE MODIFIERS, INC., a
CALIFORNIA corporation; MATOL
23 BOTANICAL INTERNATIONAL LTD., INC., a
CANADIAN corporation; MAXIMUM LIVING,
24 INC., a CALIFORNIA corporation; MEAD LABS,
LLC, a OREGON limited liability company;
25 NATURE'S LIGHT, INC., a COLORADO
corporation; NOW HEALTH GROUP, INC., a
26 ILLINOIS corporation D/B/A NOW FOODS;

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, CIVIL
PENALTIES, DAMAGES AND
PUNITIVE DAMAGES; DEMANDS
FOR JURY TRIAL**

Bus. & Prof. Code § 17200 *et seq.*;
Bus. & Prof. Code § 17500 *et seq.*;
Civil Code § 1709;
Civil Code § 1710;
Civil Code 1750 *et seq.*; and
Health & Safety Code § 25249.6 *et seq.*

Environmental/Toxic Tort (30)

27
28 *CAPTION CONTINUES ON NEXT PAGE*

1 PURE ESSENCE LABORATORIES, INC., a
NEVADA corporation; SUPERNUTRITION
2 LIFE-EXTENSION RESEARCH, INC., D/B/A
SUPERNUTRITION, a CALIFORNIA
3 corporation; SWANSON HEALTH PRODUCTS,
INC., a NORTH DAKOTA corporation;
4 VITAMIN POWER, INCORPORATED, a NEW
YORK corporation; VITAMIN SHOPPE
5 INDUSTRIES, INC., a NEW YORK corporation;
MADISON PHARMACY ASSOCIATES, INC., a
6 WISCONSIN corporation; WOMEN'S HEALTH
AMERICA, INC., a WISCONSIN corporation;
7 YOUNG AGAIN NUTRITION, LLC, a TEXAS
limited liability company D/B/A YOUNG AGAIN
8 NUTRIENTS; CREATIVISION, INC., a
COLORADO corporation D/B/A ALTERNATIVE
9 MEDICINE NETWORK; BETTER HEALTH
NATURALLY, INC., a CALIFORNIA
10 corporation; HELEN PENSANTI, M.D., INC., a
CALIFORNIA corporation; BOTANICAL
11 LABORATORIES, a WASHINGTON corporation
D/B/A ZAND HERBAL FORMULAS; ELATION
12 THERAPY, INC., a GEORGIA corporation;
KENOGEN, INC., a OREGON corporation;
13 NATURE'S BOUNTY, INC., a NEW YORK
corporation; NBTY, INC., a DELAWARE
14 corporation; NUTRI-COLOGY, INC., a
CALIFORNIA corporation; OPTIMUM
15 SOLUTIONS, LLC, a LOUISIANA limited
liability company; RADIANT LIFE SYSTEMS,
16 LLC, a NEW MEXICO limited liability company;
WOMEN'S MEDICINE, INC., A DIVISION OF
17 THE NATURAL HORMONE INSTITUTE OF
AMERICA, a FLORIDA corporation; and
18 DEFENDANT DOES 1 through 1,000, inclusive,

19 Defendants.

1 Plaintiffs, by and through their counsel, hereby allege the following on information and
2 belief:

3 INTRODUCTION

4 1. This complaint seeks to remedy the continuing failure of THRESHOLD
5 ENTERPRISES, LTD., a DELAWARE corporation; ALLVIA INTEGRATIVE
6 PHARMACEUTICALS, INC., a ARIZONA corporation; AT LAST NATURALS, INC., a
7 NEW YORK corporation; BIOCENTRIC LABS, INC., a COLORADO corporation; BIO-
8 HEALTH, A DIVISION OF ZLABS LLC, a ARIZONA limited liability company; BIOTECH
9 INTERNATIONAL CORPORATION, a CONNECTICUT corporation; CANNON MEDICAL
10 CLINIC, INC., A DIVISION OF GEORGE L. CANNON, M.D., INC., a ARIZONA
11 professional corporation; CANYON GROUP CORPORATION, a NEVADA corporation;
12 METABOLIC RESPONSE MODIFIERS, INC., a CALIFORNIA corporation; MATOL
13 BOTANICAL INTERNATIONAL LTD., INC., a CANADIAN corporation; MAXIMUM
14 LIVING, INC., a CALIFORNIA corporation; MEAD LABS, LLC, a OREGON limited liability
15 company; NATURE'S LIGHT, INC., a COLORADO corporation; NOW HEALTH GROUP,
16 INC., a ILLINOIS corporation D/B/A NOW FOODS; PURE ESSENCE LABORATORIES,
17 INC., a NEVADA corporation; SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC.,
18 D/B/A SUPERNUTRITION, a CALIFORNIA corporation; SWANSON HEALTH
19 PRODUCTS, INC., a NORTH DAKOTA corporation; VITAMIN POWER, INCORPORATED,
20 a NEW YORK corporation; VITAMIN SHOPPE INDUSTRIES, INC., a NEW YORK
21 corporation; MADISON PHARMACY ASSOCIATES, INC., a WISCONSIN corporation;
22 WOMEN'S HEALTH AMERICA, INC., a WISCONSIN corporation; YOUNG AGAIN
23 NUTRITION, LLC, a TEXAS limited liability company D/B/A YOUNG AGAIN
24 NUTRIENTS; CREATIVISION, INC., a COLORADO corporation D/B/A ALTERNATIVE
25 MEDICINE NETWORK; BETTER HEALTH NATURALLY, INC., a CALIFORNIA
26 corporation; HELEN PENSANTI, M.D., INC., a CALIFORNIA corporation; BOTANICAL
27 LABORATORIES, a WASHINGTON corporation D/B/A ZAND HERBAL FORMULAS;
28 ELATION THERAPY, INC., a GEORGIA corporation; KENOGEN, INC., a OREGON

1 corporation; NATURE'S BOUNTY, INC., a NEW YORK corporation; NBTY, INC., a
2 DELAWARE corporation; NUTRI-COLOGY, INC., a CALIFORNIA corporation; OPTIMUM
3 SOLUTIONS, LLC, a LOUISIANA limited liability company; RADIANT LIFE SYSTEMS,
4 LLC, a NEW MEXICO limited liability company; WOMEN'S MEDICINE, INC., A DIVISION
5 OF THE NATURAL HORMONE INSTITUTE OF AMERICA, a FLORIDA corporation; and
6 DEFENDANT DOES 1 through 1,000, inclusive, (collectively "Defendants") to comply with
7 various federal and state laws in the sale of Defendants' respective progesterone and testosterone
8 consumer creams, gels and/or lotion products containing Progesterone, Medroxyprogesterone
9 acetate, Testosterone and its esters, Methyltestosterone, Testosterone cypionate, and/or
10 Testosterone enanthate ("Products"). The Products are strictly regulated as drugs by the U.S.
11 Food and Drug Administration ("US/FDA") under the federal Food, Drug and Cosmetic Law.
12 Progesterone, Medroxyprogesterone acetate, Testosterone and its esters, Methyltestosterone,
13 Testosterone cypionate, and/or Testosterone enanthate (collectively "Regulated Chemicals") are
14 hormones as well as dangerous toxic chemicals known to the State of California to cause cancer
15 and/or reproductive harm. Individuals in California who purchase and use these Products are
16 exposed to these Regulated Chemicals when those individuals use the Products.

17 STATEMENT OF FACTS

18 2. Defendants are manufacturers, distributors and/or sellers of these Products, which
19 are marketed and labeled making health-related claims. These companies know that thousands
20 of their Products are purchased and used by individuals, including pregnant women, women of
21 childbearing age as well as women experiencing menopause, each year in California.

22 3. US/FDA regulates these types of Products as drugs pursuant to Title 21 United
23 States Code § 201(g) and Title 21 Code of Federal Regulation, Part 310.530, Over-The-Counter
24 Topically Applied Hormone Drug Products. This regulation states that any over-the-counter
25 drug product that is labeled, represented, or promoted as a topically applied hormone-containing
26 product for drug use, other than hydrocortisone, is regarded as a new drug. Any such Product
27 making any form of health claim is being sold as a drug. The US/FDA has moved to enforce
28 this regulation against the unlawful sale of these types of Products as recently as November of

1 2005. No Defendant in this matter has filed a New Drug Application or otherwise complied
2 with the US/FDA regulations regarding the sale of the Products at issue in these claims, making
3 each Defendant's Product a misbranded drug pursuant to 21 United States Code §§ 352 and 355.

4 4. Selling a misbranded drug to a consumer in California is also a violation of
5 California Health & Safety Code § 111330 *et seq.*; an unlawful, unfair and fraudulent business
6 practice pursuant to the California Unlawful Competition Law (California Business &
7 Professions Code § 17200 *et seq.*); a violation of the California False Advertising Law
8 (California Business & Professions Code § 17500 *et seq.*); a violation of the California Legal
9 Remedies Act (California Civil Code §§ 1750 and 1770); and constitutes fraud by concealment
10 and misrepresentation pursuant to California Civil Code §§ 1709 and 1710.

11 5. The Products contain the Regulated Chemicals, which are listed pursuant to the
12 Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" – California Health
13 & Safety Code § 25249.5 *et seq.*) as follows: Progesterone (listed as a carcinogen);
14 Medroxyprogesterone acetate (listed as a carcinogen and reproductive toxin); Testosterone and
15 its esters (listed as a carcinogen); Methyltestosterone (listed as a reproductive toxin);
16 Testosterone cypionate (listed as a reproductive toxin); and Testosterone enanthate (listed as a
17 reproductive toxin). The Regulated Chemicals have each been listed for more than twelve
18 months by the Governor of the State of California as being chemicals known by the State of
19 California to cause cancer or reproductive toxicity, or both cancer and reproductive toxicity.
20 Each Defendant has failed to give each individual that purchases a Product a clear and
21 reasonable warning that each Regulated Chemical in a Product is a chemical known to the State
22 of Chemical to be a carcinogen and/or a reproductive toxin in violation of California Health &
23 Safety Code § 25249.6.

24 6. Defendants' Products are distributed to and for the use of California consumers,
25 amongst others. Defendants have each sold and distributed their respective Products in
26 California for times up to continuously over the four years preceding the filing of this action.

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1 to Los Angeles City Attorney Rocky Delgadillo. Her prosecutorial work included creating the
2 Neighborhood Prosecutor Project, a program that places prosecutors in neighborhoods to
3 improve the quality of life in local communities. She also oversaw media and public affairs as
4 City Attorney Delgadillo's Communications Director. Ms. Buckland is a resident of the City
5 and County of Los Angeles, California.

6 14. Ms. Buckland purchased one or more of each Defendant's respective Products for
7 her personal, family or household purposes.

8 15. Since it's founding in 1989, Plaintiff CWLC has served as a unique advocate in
9 California, working in collaboration with others to protect, secure and advance the
10 comprehensive civil rights of women and girls. CWLC prides itself on forging novel approaches
11 to the problems that confront women and girls, proposing unique strategies to implement those
12 approaches, and recasting issues in new terms. CWLC programs are designed to empower
13 individuals to use the law that governs their rights and to address the legal issues that perpetuate
14 women and children's growing poverty. The California Women's Law Center works to ensure,
15 through systemic change, that life opportunities for women and girls are free from unjust social,
16 economic, and political constraints. In this overall policy context, CWLC has recently embarked
17 on a women and girls' health protection program, of which the above-captioned matters
18 represent an integral element. CWLC is based in Los Angeles, and was incorporated under the
19 laws of the State of California in 1989.

20 16. Ms. Buckland is a "consumer" within the meaning of California Civil Code
21 ("Civil Code") § 1761(d), and is a "person" within the meaning of California Business and
22 Professions ("B&P") Code §§ 17201, 17204 and 17506.

23 17. CWLC is a "person" within the meaning of Health & Safety ("H&S") Code
24 § 25249.11(a), and brings this enforcement action in the public interest pursuant to H&S Code
25 § 25249.7(d).

26 18. The term "Plaintiffs" as used herein is defined to be Ms. Buckland and CWLC,
27 and the term "Plaintiff" as used herein may be used to describe either Ms. Buckland or CWLC.

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1 19. Defendant THRESHOLD ENTERPRISES, LTD. (“Threshold”), is a
2 DELEWARE corporation with its principal place of business and/or headquarters located at
3 23 Janis Way, Scotts Valley, CA 95066. Threshold manufactures, distributes, and/or sells its
4 Products across the United States, including in California, through various distributors and retail
5 outlets. Threshold is a person in the course of doing business within the meaning of Civil Code
6 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
7 Code §§ 17201 and 17506.

8 20. Defendant ALLVIA INTEGRATIVE PHARMACEUTICALS, INC. (“Allvia”), is
9 an ARIZONA corporation with its principal place of business and/or headquarters located at
10 11202 North 24th Avenue, Phoenix, AZ 85029. Allvia manufactures, distributes, and/or sells
11 its Products across the United States, including in California, through various distributors and
12 retail outlets. Allvia is a person in the course of doing business within the meaning of Civil
13 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
14 B&P Code §§ 17201 and 17506.

15 21. Defendant AT LAST NATURALS, INC. (“At Last Naturals”), is a NEW YORK
16 corporation with its principal place of business and/or headquarters located at 401 Columbus
17 Avenue, Valhalla, NY 10595. At Last Naturals manufactures, distributes, and/or sells its
18 Products across the United States, including in California, through various distributors and retail
19 outlets. At Last Naturals is a person in the course of doing business within the meaning of Civil
20 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
21 B&P Code §§ 17201 and 17506.

22 22. Defendant BIOCENTRIC LABS, INC. (“Biocentric”), is a COLORADO
23 corporation with its principal place of business and/or headquarters located at 854 Baseline
24 Place, Suite B, Brighton, CO 80603. Biocentric manufactures, distributes, and/or sells its
25 Products across the United States, including in California, through various distributors and retail
26 outlets. Biocentric is a person in the course of doing business within the meaning of Civil Code
27 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
28 Code §§ 17201 and 17506.

1 23. Defendant BIO-HEALTH, A DIVISION OF ZLABS LLC (“Bio-Health”), is a
2 ARIZONA limited liability company with its principal place of business and/or headquarters
3 located at 70 S. Val Vista Drive, Suite A-3, PMB 442, Gilbert, AZ 85296. Bio-Health
4 manufacturers, distributes, and/or sells its Products across the United States, including in
5 California, through various distributors and retail outlets. Bio-Health is a person in the course of
6 doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
7 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

8 24. Defendant BIOTECH INTERNATIONAL CORPORATION (“Biotech”), is a
9 CONNECTICUT corporation with its principal place of business and/or headquarters located at
10 107 Oakwood Drive, Glastonbury, CT 06033. Biotech manufacturers, distributes, and/or sells
11 its Products across the United States, including in California, through various distributors and
12 retail outlets. Biotech is a person in the course of doing business within the meaning of Civil
13 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
14 B&P Code §§ 17201 and 17506.

15 25. Defendant CANNON MEDICAL CLINIC, INC., A DIVISION OF GEORGE L.
16 CANNON, M.D., INC. (“Cannon Medical”), is a ARIZONA professional corporation with its
17 principal place of business and/or headquarters located at 13000 N. 103rd Avenue, Suite 97, Sun
18 City, AZ 85351-3060. Cannon Medical manufacturers, distributes, and/or sells its Products
19 across the United States, including in California, through various distributors and retail outlets.
20 Cannon Medical is a person in the course of doing business within the meaning of Civil Code
21 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
22 Code §§ 17201 and 17506.

23 26. Defendant CANYON GROUP CORPORATION (“Canyon Group”), is a
24 NEVADA corporation with its principal place of business and/or headquarters located at P.O.
25 Box 158, Highway 187, Vanderpool, TX 78885. Canyon Group manufacturers, distributes,
26 and/or sells its Products across the United States, including in California, through various
27 distributors and retail outlets. Canyon Group is a person in the course of doing business within
28

1 the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person
2 within the meaning of B&P Code §§ 17201 and 17506.

3 27. Defendant METABOLIC RESPONSE MODIFIERS, INC. (“MRM”), is a
4 CALIFORNIA corporation with its principal place of business and/or headquarters located at
5 236 Calle Pintesco, San Clemente, CA 92673. MRM manufactures, distributes, and/or sells
6 its Products across the United States, including in California, through various distributors and
7 retail outlets. MRM is a person in the course of doing business within the meaning of Civil
8 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
9 B&P Code §§ 17201 and 17506.

10 28. Defendant MATOL BOTANICAL INTERNATIONAL LTD., INC. (“Matol”), is
11 a CANADIAN corporation with its principal place of business and/or headquarters located at
12 290 Labrosse Avenue, Pointe-Claire, QC H9R 6R6 CANADA. Matol manufactures,
13 distributes, and/or sells its Products across the United States, including in California, through
14 various distributors and retail outlets. Matol is a person in the course of doing business within
15 the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person
16 within the meaning of B&P Code §§ 17201 and 17506.

17 29. Defendant MAXIMUM LIVING, INC. (“Maximum Living”), is a CALIFORNIA
18 corporation with its principal place of business and/or headquarters located at 20071
19 Soulsbyville Road, Soulsbyville, CA 95372. Maximum Living manufactures, distributes,
20 and/or sells its Products across the United States, including in California, through various
21 distributors and retail outlets. Maximum Living is a person in the course of doing business
22 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
23 person within the meaning of B&P Code §§ 17201 and 17506.

24 30. Defendant MEAD LABS, LLC (“Mead Labs”), is a OREGON limited liability
25 company with its principal place of business and/or headquarters located at 4444 SW Corbett
26 Avenue, Portland, OR 97239. Mead Labs manufactures, distributes, and/or sells its Products
27 across the United States, including in California, through various distributors and retail outlets.
28 Mead Labs is a person in the course of doing business within the meaning of Civil Code

1 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
2 Code §§ 17201 and 17506.

3 31. Defendant NATURE'S LIGHT, INC. ("Nature's Light"), is a COLORADO
4 corporation with its principal place of business and/or headquarters located at P.O. Box 443, 280
5 Colfax Avenue, Bennett, CO 80102. Nature's Light manufactures, distributes, and/or sells its
6 Products across the United States, including in California, through various distributors and retail
7 outlets. Nature's Light is a person in the course of doing business within the meaning of Civil
8 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
9 B&P Code §§ 17201 and 17506.

10 32. Defendant NOW HEALTH GROUP, INC., a ILLINOIS corporation D/B/A NOW
11 FOODS ("NOW"), with its principal place of business and/or headquarters located at 395 Glen
12 Ellyn Road, Bloomingdale, IL 60108. NOW manufactures, distributes, and/or sells its
13 Products across the United States, including in California, through various distributors and retail
14 outlets. NOW is a person in the course of doing business within the meaning of Civil Code
15 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
16 Code §§ 17201 and 17506.

17 33. Defendant PURE ESSENCE LABORATORIES, INC. ("Pure Essence"), is a
18 NEVADA corporation with its principal place of business and/or headquarters located at
19 P.O. Box 95397, 1999 Whitney Mesa Drive, Suite A, Henderson, NV 89014. Pure Essence
20 manufactures, distributes, and/or sells its Products across the United States, including in
21 California, through various distributors and retail outlets. Pure Essence is a person in the course
22 of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
23 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

24 34. Defendant SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC., D/B/A
25 SUPERNUTRITION ("Supernutrition"), is a CALIFORNIA corporation with its principal place
26 of business and/or headquarters located at 100 Santa Rosa Avenue, Pacifica, Ca 94044.
27 Supernutrition manufactures, distributes, and/or sells its Products across the United States,
28 including in California, through various distributors and retail outlets. Supernutrition is a person

1 in the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S
2 Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

3 35. Defendant SWANSON HEALTH PRODUCTS, INC. ("Swanson"), is a NORTH
4 DAKOTA corporation with its principal place of business and/or headquarters located at
5 P.O. Box 2803, 4075 40th Avenue SW, Fargo, ND 58108-2803. Swanson manufactures,
6 distributes, and/or sells its Products across the United States, including in California, through
7 various distributors and retail outlets. Swanson is a person in the course of doing business
8 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
9 person within the meaning of B&P Code §§ 17201 and 17506.

10 36. Defendant VITAMIN POWER, INCORPORATED ("Vitamin Power"), is a NEW
11 YORK corporation with its principal place of business and/or headquarters located at 199 Union
12 Avenue, Lynbrook, NY 11563; and 39 St. Marys Place, Freeport, NY 11520. Vitamin Power
13 manufactures, distributes, and/or sells its Products across the United States, including in
14 California, through various distributors and retail outlets. Vitamin Power is a person in the
15 course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
16 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

17 37. Defendant VITAMIN SHOPPE INDUSTRIES, INC. ("Vitamin Shoppe"), is a
18 NEW YORK corporation with its principal place of business and/or headquarters located at
19 2101 - 91st Street, North Bergen, NJ 07047. Vitamin Shoppe manufactures, distributes, and/or
20 sells its Products across the United States, including in California, through various distributors
21 and retail outlets. Vitamin Shoppe is a person in the course of doing business within the
22 meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within
23 the meaning of B&P Code §§ 17201 and 17506.

24 38. Defendant MADISON PHARMACY ASSOCIATES, INC. ("Madison
25 Pharmacy"), is a WISCONSIN corporation with its principal place of business and/or
26 headquarters located at 1289 Deming Way, Madison, WI 53717-1955. Madison Pharmacy
27 manufactures, distributes, and/or sells its Products across the United States, including in
28 California, through various distributors and retail outlets. Madison Pharmacy is a person in the

1 course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
2 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

3 39. Defendant WOMEN'S HEALTH AMERICA, INC. ("Women's Health"), is a
4 WISCONSIN corporation with its principal place of business and/or headquarters located at
5 1289 Deming Way, Madison, WI 53717-1955. Women's Health manufactures, distributes,
6 and/or sells its Products across the United States, including in California, through various
7 distributors and retail outlets. Women's Health is a person in the course of doing business
8 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
9 person within the meaning of B&P Code §§ 17201 and 17506.

10 40. Defendant YOUNG AGAIN NUTRITION, LLC, a TEXAS limited liability
11 company D/B/A YOUNG AGAIN NUTRIENTS ("Young Again"), with its principal place of
12 business and/or headquarters located at P.O. Box 8234, Spring, TX 77387; and 1935 Cattle
13 Drive, Magnolia, TX 77354. Young Again manufactures, distributes, and/or sells its Products
14 across the United States, including in California, through various distributors and retail outlets.
15 Young Again is a person in the course of doing business within the meaning of Civil Code
16 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
17 Code §§ 17201 and 17506.

18 41. Defendant CREATIVISION, INC., a COLORADO corporation D/B/A
19 ALTERNATIVE MEDICINE NETWORK (collectively "Creativision"), with its principal place
20 of business and/or headquarters located at 601 - 16th Street, Suite C-105, Golden, CO 80401-
21 4361; and 30520 Rancho California Road, Suite 107-149, Temecula, CA 92591, respectively.
22 Creativision manufactures, distributes, and/or sells its Products across the United States,
23 including in California, through various distributors and retail outlets. Creativision is a person in
24 the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S
25 Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

26 42. Defendant BETTER HEALTH NATURALLY, INC. ("Better Health"), is a
27 CALIFORNIA corporation with its principal place of business and/or headquarters located at
28 419 Narcissus Avenue, Corona Del Mar, Ca 92625-2414. Better Health manufactures,

1 distributes, and/or sells its Products across the United States, including in California, through
2 various distributors and retail outlets. Better Health is a person in the course of doing business
3 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a
4 person within the meaning of B&P Code §§ 17201 and 17506.

5 43. Defendant HELEN PENSANTI, M.D., INC. (“Pensanti”), is a CALIFORNIA
6 corporation with its principal place of business and/or headquarters located at 25 Ambroise,
7 Newport Coast, CA 92657. Pensanti manufactures, distributes, and/or sells its Products across
8 the United States, including in California, through various distributors and retail outlets.
9 Pensanti is a person in the course of doing business within the meaning of Civil Code §§ 1761(c)
10 and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201
11 and 17506.

12 44. Defendant BOTANICAL LABORATORIES, a WASHINGTON corporation
13 D/B/A ZAND HERBAL FORMULAS (“Botanical Laboratories”), with its principal place of
14 business and/or headquarters located at 1441 W. Smith Road, Ferndale, WA 98248-8933.
15 Botanical Laboratories manufactures, distributes, and/or sells its Products across the United
16 States, including in California, through various distributors and retail outlets. Botanical
17 Laboratories is a person in the course of doing business within the meaning of Civil Code
18 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
19 Code §§ 17201 and 17506.

20 45. Defendant ELATION THERAPY, INC. (“Elation”), is a GEORGIA corporation
21 with its principal place of business and/or headquarters located at 825 Jamerson Road, Suite 206,
22 Marietta, GA 30066. Elation manufactures, distributes, and/or sells its Products across the
23 United States, including in California, through various distributors and retail outlets. Elation is a
24 person in the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a),
25 H&S Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

26 46. Defendant KENOGEN, INC. (“Kenogen”), is an OREGON corporation with its
27 principal place of business and/or headquarters located at 1430 Willamette Street, Suite 521,
28 Eugene, OR 97401. Kenogen manufactures, distributes, and/or sells its Products across the

1 United States, including in California, through various distributors and retail outlets. Kenogen is
2 a person in the course of doing business within the meaning of Civil Code §§ 1761(c) and
3 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and
4 17506.

5 47. Defendant NATURE'S BOUNTY, INC. ("Nature's Bounty"), is a NEW YORK
6 corporation with its principal place of business and/or headquarters located at 90 Orville Square,
7 Bohemia, NY 11716-2521. Nature's Bounty manufactures, distributes, and/or sells its
8 Products across the United States, including in California, through various distributors and retail
9 outlets. Nature's Bounty is a person in the course of doing business within the meaning of Civil
10 Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of
11 B&P Code §§ 17201 and 17506.

12 48. Defendant NBTY, INC. ("NBTY"), is a DELAWARE corporation with its
13 principal place of business and/or headquarters located at 90 Orville Square, Bohemia, NY
14 11716-2521. NBTY manufactures, distributes, and/or sells its Products across the United
15 States, including in California, through various distributors and retail outlets. NBTY is a person
16 in the course of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S
17 Code § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

18 49. Defendant NUTRI-COLOGY, INC. ("Nutri-Cology"), is a CALIFORNIA
19 corporation with its principal place of business and/or headquarters located at 30806 Santana
20 Street, Hayward, CA 94544. Nutri-Cology manufactures, distributes, and/or sells its Products
21 across the United States, including in California, through various distributors and retail outlets.
22 Nutri-Cology is a person in the course of doing business within the meaning of Civil Code
23 §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the meaning of B&P
24 Code §§ 17201 and 17506.

25 50. Defendant OPTIMUM SOLUTIONS, LLC ("Optimum Solutions"), is a
26 LOUISIANA limited liability company with its principal place of business and/or headquarters
27 located at 210 Elmwood Drive, Lafayette, LA 70503-5119. Optimum Solutions manufactures,
28 distributes, and/or sells its Products across the United States, including in California, through

1 various distributors and retail outlets. Optimum Solutions is a person in the course of doing
2 business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and
3 is a person within the meaning of B&P Code §§ 17201 and 17506.

4 51. Defendant RADIANT LIFE SYSTEMS, LLC (“Radiant Life”), is a NEW
5 MEXICO limited liability company with its principal place of business and/or headquarters
6 located at P.O. Box 20310, 13612 Deer Trail NE, Albuquerque, NM 87154. Radiant Life
7 manufacturers, distributes, and/or sells its Products across the United States, including in
8 California, through various distributors and retail outlets. Radiant Life is a person in the course
9 of doing business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code
10 § 25249.11, and is a person within the meaning of B&P Code §§ 17201 and 17506.

11 52. Defendant WOMEN’S MEDICINE, INC., A DIVISION OF THE NATURAL
12 HORMONE INSTITUTE OF AMERICA (“Women’s Medicine”), is a FLORIDA corporation
13 with its principal place of business and/or headquarters located at 1891 Beach Boulevard,
14 Suite 200, Jacksonville, FL 32250. Women’s Medicine manufacturers, distributes, and/or sells
15 its Products across the United States, including in California, through various distributors and
16 retail outlets. Women’s Medicine is a person in the course of doing business within the meaning
17 of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11, and is a person within the
18 meaning of B&P Code §§ 17201 and 17506.

19 **PARTIES – “CWLC” DEFENDANTS**

20 53. The following Defendants are identified in this complaint as the “CWLC
21 Defendants” for purposes of stating the causes of action that Plaintiff CWLC brings against each
22 of these Defendants: Threshold Enterprises, Ltd.; Allvia Integrative Pharmaceuticals, Inc.; At
23 Last Naturals, Inc.; Biocentric Labs, Inc.; Bio-Health, a division of ZLABS LLC; Biotech
24 International Corporation; Cannon Medical Clinic, Inc., a division of George L. Cannon, M.D.,
25 Inc.; Canyon Group Corporation; Metabolic Response Modifiers, Inc.; Matol Botanical
26 International Ltd., Inc.; Maximum Living, Inc.; Mead Labs, LLC; Nature’s Light, Inc.; NOW
27 Health Group, Inc., d/b/a NOW Foods; Pure Essence Laboratories, Inc.; Supernutrition Life-
28 Extension Research, Inc., d/b/a Supernutrition; Swanson Health Products, Inc.; Vitamin Power,

1 Incorporated; Vitamin Shoppe Industries, Inc.; Madison Pharmacy Associates, Inc.; Women's
2 Health America, Inc.; and Young Again Nutrition, LLC, d/b/a Young Again Nutrients.

3 54. DEFENDANT DOES 501 through 1,000, inclusive, are unknown to Plaintiffs at
4 this time. When their identities are ascertained, the complaint shall be amended to reflect their
5 true names. DEFENDANT DOES 501 through 1,000 are each a person in the course of doing
6 business within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11 and a
7 person within the meaning of B&P Code § 17201. DEFENDANT DOES 501 through 1,000
8 manufacture and/or distribute their respective Products for sale and/or use in California.

9 **PARTIES – “BUCKLAND” DEFENDANTS**

10 55. The following Defendants are identified in this complaint as the “Buckland
11 Defendants” for purposes of stating the causes of action that Plaintiff Ms. Buckland brings
12 against each of these Defendants: Threshold Enterprises, Ltd.; Allvia Integrative
13 Pharmaceuticals, Inc.; At Last Naturals, Inc.; Biocentric Labs, Inc.; Bio-Health, a division of
14 ZLABS LLC; Biotech International Corporation; Cannon Medical Clinic, Inc., a division of
15 George L. Cannon, M.D., Inc.; Canyon Group Corporation; Metabolic Response Modifiers, Inc.;
16 Matol Botanical International Ltd., Inc.; Maximum Living, Inc.; Mead Labs, LLC; Nature's
17 Light, Inc.; NOW Health Group, Inc., d/b/a NOW Foods; Nutri-Cology, Inc.; Pure Essence
18 Laboratories, Inc.; Supernutrition Life-Extension Research, Inc., d/b/a Supernutrition; Swanson
19 Health Products, Inc.; Vitamin Power, Incorporated; Vitamin Shoppe Industries, Inc.; Madison
20 Pharmacy Associates, Inc.; Women's Health America, Inc.; Young Again Nutrition, LLC, d/b/a
21 Young Again Nutrients; Creativision, Inc., d/b/a Alternative Medicine Network; Better Health
22 Naturally, Inc.; Helen Pensanti, M.D., Inc.; Botanical Laboratories, d/b/a Zand Herbal Formulas;
23 Elation Therapy, Inc.; Kenogen, Inc.; Nature's Bounty, Inc.; NBTY, Inc.; Optimum Solutions,
24 LLC; Radiant Life Systems, LLC; and Women's Medicine, Inc., a division of The Natural
25 Hormone Institute of America.

26 56. DEFENDANT DOES 1 through 500, inclusive, are unknown to Plaintiffs at this
27 time. When their identities are ascertained, the complaint shall be amended to reflect their true
28 names. DEFENDANT DOES 1 through 500 are each a person in the course of doing business

1 within the meaning of Civil Code §§ 1761(c) and 1780(a), H&S Code § 25249.11 and a person
2 within the meaning of B&P Code § 17201. DEFENDANT DOES 1 through 500 manufacture
3 and/or distribute their respective Products for sale and/or use in California.

4 **STATUTORY AND REGULATORY BACKGROUND**

5 **FEDERAL FOOD DRUG AND COSMETIC ACT**

6 57. The federal Food Drug and Cosmetic Act ("FDCA") regulates the sale of drugs in
7 the United States pursuant to Title 21 of the United States Code ("USC") at section 321(g).
8 Administering the FDCA, the US/FDA has acted to regulate the Products as "new drugs"
9 pursuant to 21 USC § 201(g) through administrative enactments now codified at Title 21 Code
10 of Federal Regulation ("21 CFR"), Part 310.530, Over-The-Counter ("OTC") Topically Applied
11 Hormone Drug Products.

12 **CALIFORNIA'S SHERMAN FOOD DRUG AND COSMETIC ACT**

13 58. Selling a misbranded drug to a consumer in California is also a violation of the
14 Sherman Food, Drug and Cosmetic Act, H&S Code § 111330 *et seq.*

15 **CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

16 59. On or about October 5, 2005, Ms. Buckland served pursuant to the California
17 Consumer Legal Remedies Act ("CLRA" – Civil Code § 1750 *et seq.*), specifically Civil Code
18 § 1782, each Defendant with a notice letter via certified mail, return receipt requested, stating
19 *inter alia* as follows:

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

1 69. To effectuate this goal, Proposition 65 requires that individuals be provided with a
2 clear and reasonable warning before being exposed to chemicals listed by the State of California
3 as causing cancer or birth defects and other reproductive harm, unless the person (including
4 businesses) responsible for the exposure can prove that such exposure is otherwise lawful, as
5 follows:

6 No person in the course of doing business shall knowingly and
7 intentionally expose any individual to a chemical known to the state
8 to cause cancer or reproductive toxicity without first giving clear
9 and reasonable warning to such individual....H&S Code § 25249.6

10 70. On January 1, 1988, the State of California officially listed Progesterone as a
11 chemical known to cause cancer. Progesterone became subject to the Proposition 65 “clear and
12 reasonable” carcinogen warning requirement one year later, beginning on January 1, 1989.
13 22 California Code of Regulations (“CCR”) § 12000; H&S Code § 25249.5 *et seq.*¹

14 71. On January 1, 1990, the State of California officially listed Medroxyprogesterone
15 acetate as a chemical known to cause cancer. Medroxyprogesterone acetate became subject to
16 the Proposition 65 “clear and reasonable” carcinogen warning requirement one year later,
17 beginning on January 1, 1991. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

18 72. On April 1, 1988, the State of California officially listed Testosterone and its
19 esters as chemicals known to cause cancer. Testosterone and its esters became subject to the
20 Proposition 65 “clear and reasonable” carcinogen warning requirement one year later, beginning
21 on April 1, 1989. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

22 73. On April 1, 1990, the State of California officially listed Medroxyprogesterone
23 acetate as a chemical known to cause reproductive toxicity. Medroxyprogesterone acetate
24 became subject to the Proposition 65 “clear and reasonable” reproductive toxicity warning
25 requirement one year later, beginning on April 1, 1991. 22 CCR § 12000; H&S Code
26 § 25249.5 *et seq.*

27 74. On April 1, 1990, the State of California officially listed Methyltestosterone as a
28 chemical known to cause reproductive toxicity. Methyltestosterone became subject to the

¹ All statutory references herein are to California Codes unless otherwise indicated.

1 Proposition 65 “clear and reasonable” reproductive toxicity warning requirement one year later,
2 beginning on April 1, 1991. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

3 75. On October 1, 1991, the State of California officially listed Testosterone
4 cypionate as a chemical known to cause reproductive toxicity. Testosterone cypionate became
5 subject to the Proposition 65 “clear and reasonable” reproductive toxicity warning requirement
6 one year later, beginning on October 1, 1992. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

7 76. On April 1, 1990, the State of California officially listed Testosterone enanthate as
8 a chemical known to cause reproductive toxicity. Testosterone enanthate became subject to the
9 Proposition 65 “clear and reasonable” reproductive toxicity warning requirement one year later,
10 beginning on April 1, 1991. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

11 77. Any person, including CWLC, has standing to enforce violations of
12 Proposition 65, provided that such person has supplied the requisite public enforcers with a
13 Sixty-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
14 within their respective jurisdictions within such time. H&S Code § 25249.7(d). On or about
15 July 28, 2005, the CWLC served a 60-Day “Notice of Violation of Proposition 65” (the
16 “Notice”) on the California Attorney General, the District Attorneys of every county in
17 California, the City Attorneys of every California city with a population greater than 750,000,
18 and on the Defendants, alleging that Defendants was in violation of the Safe Drinking Water and
19 Toxic Enforcement Act of 1986, Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”)
20 for failing to warn purchasers of the Defendant’ Products sold in California that use of these
21 Products expose users to one or more of the Regulated Chemicals. No public prosecutor has
22 commenced an action regarding the matters raised in the Notice. The CWLC’s Notice was sent
23 at least sixty-days prior to the filing of this Complaint. The CWLC also complied fully and
24 completely with H&S Code § 25249.7 as amended, in that the CWLC provided the required
25 certificates of merit for its Notice sent since January 1, 2002, to each of the alleged violators and
26 to the California Attorney General.

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28 ///

1 **REMEDIES SOUGHT**

2 78. Ms. Buckland seeks from each Defendant restitution and other remedies as
3 provided by B&P Code §§ 17203 and 17535, as well as actual damages according to proof and
4 punitive damages as well as her attorneys' fees and costs as provided by Civil Code §§ 1709,
5 1710, 1780.

6 79. Ms. Buckland seeks injunctive relief to compel each Defendant to cease violating
7 the CLRA, UCL, Civil Code §§ 1709 and 1710 and to provide California purchasers and users
8 of the Products with clear and reasonable warnings regarding the presence and known health
9 hazards of exposure to each of the Regulated Chemicals contained in each of their respective
10 Products, and to refrain from making health-related claims on the labels, advertising or
11 marketing of their respective Products.

12 80. Proposition 65 provides for injunctive relief and civil penalties up to \$2,500 per
13 day for each violation of Proposition 65. An action for injunctive relief, restitution and
14 disgorgement of profits, among other remedies, is also specifically authorized pursuant to
15 B&P Code §§ 17203 and 17535.

16 81. CWLC seeks injunctive relief to compel each Defendant to cease violating
17 Proposition 65 and to provide California purchasers and users of the Products with clear and
18 reasonable warnings regarding the presence and known health hazards of exposure to each of the
19 Regulated Chemicals contained in each of its Products. CWLC also seeks civil penalties against
20 each Defendant for its violations of Proposition 65, as provided for by H&S Code § 25249.7(b).

21 **JURISDICTION AND VENUE**

22 82. The Court has jurisdiction over this action pursuant to Civil Code §§ 1709, 1710
23 and 1780; B&P Code §§ 17203, 17204 and 17535; and H&S Code § 25249.7(a), which
24 individually and collectively allow enforcement in any court of competent jurisdiction. The
25 California Superior Court has jurisdiction over this action pursuant to California Constitution
26 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except
27 those given by statute to other trial courts." The statutes under which this action is brought do
28 not grant jurisdiction to any other trial court.

1 93. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
2 violates H&S Code § 25249.6 *et seq.* This conduct includes knowingly and intentionally
3 exposing individuals to one or more of the Regulated Chemicals contained in its Products
4 without first providing such individuals with a clear and reasonable warning regarding the
5 carcinogenicity of one or more of the Regulated Chemicals.

6 94. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
7 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
8 Products. This conduct includes knowingly and intentionally selling one or more of these
9 Products without complying with federal food and drug law.

10 95. By committing the acts alleged above, each Defendant has engaged in unlawful
11 business practices within the meaning of B&P Code § 17200 *et seq.*

12 96. As a result, each Defendant has also committed violations of B&P Code
13 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
14 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
15 B&P Code § 17200 *et seq.*

16 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

17 **FOURTH CAUSE OF ACTION**

18 **(Violations of B&P Code § 17200 *et seq.* Based on Unlawful Acts of Knowingly**
19 **and Intentionally Exposing Individuals To One or More Regulated Chemicals**
20 **as a Reproductive Toxin in Violation of H&S Code § 25249.6, 21 USC § 201(g)**

21 **and B&P Code § 17500,**

22 **By All Buckland Defendants)**

23 97. Ms. Buckland realleges and incorporates by reference as if specifically set forth
24 herein Paragraphs 1 through 96 inclusive.

25 98. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
26 violates H&S Code § 25249.6 *et seq.* This conduct includes knowingly and intentionally
27 exposing individuals to one or more of the Regulated Chemicals contained in its Products
28

1 without first providing such individuals with a clear and reasonable warning regarding the
2 reproductive toxicity of one or more of the Regulated Chemicals.

3 99. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
4 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
5 Products. This conduct includes knowingly and intentionally selling one or more of these
6 Products without complying with federal food and drug law.

7 100. By committing the acts alleged above, each Defendant has engaged in unlawful
8 business practices within the meaning of B&P Code § 17200 *et seq.*

9 101. As a result, each Defendant has also committed violations of B&P Code
10 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
11 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
12 B&P Code § 17200 *et seq.*

13 102. Wherefore Ms. Buckland prays judgment against each Defendant, as set forth
14 hereafter.

15 **FIFTH CAUSE OF ACTION**

16 **(Violations of B&P Code § 17200 *et seq.* Based on Unfair Acts of Knowingly, Intentionally**
17 **and Unnecessarily Exposing Individuals to One or More Regulated Chemicals,**
18 **By All Buckland Defendants)**

19 103. Ms. Buckland realleges and incorporates by reference as if specifically set forth
20 herein Paragraphs 1 through 102 inclusive.

21 104. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
22 includes knowingly and intentionally exposing individuals to one or more of the Regulated
23 Chemicals contained in its Products without first providing such individuals with a clear and
24 reasonable warning regarding the carcinogenicity and/or reproductive toxicity of one or more of
25 the Regulated Chemicals.

26 105. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
27 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
28

1 Products. This conduct includes knowingly and intentionally selling one or more of these
2 Products without complying with federal food and drug law.

3 106. By committing the acts alleged above, each Defendant has engaged in unfair
4 business practices within the meaning of B&P Code § 17200 *et seq.*

5 107. As a result, each Defendant has also committed violations of B&P Code
6 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
7 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
8 B&P Code § 17200 *et seq.*

9 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

10 **SIXTH CAUSE OF ACTION**

11 **(Violations of B&P Code § 17200 *et seq.* Based on Fraudulent Acts of**
12 **Knowingly, Intentionally and Unnecessarily Exposing Individuals to**
13 **One or More Regulated Chemicals,**
14 **By All Buckland Defendants)**

15 108. Ms. Buckland realleges and incorporates by reference as if specifically set forth
16 herein Paragraphs 1 through 107, inclusive.

17 109. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
18 includes knowingly and intentionally exposing individuals to one or more Regulated Chemicals
19 contained in its Products without first providing such individuals with a clear and reasonable
20 warning regarding the carcinogenicity and/or reproductive toxicity of one or more Regulated
21 Chemicals.

22 110. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
23 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
24 Products. This conduct includes knowingly and intentionally selling one or more of these
25 Products without complying with federal food and drug law.

26 111. By committing the acts alleged above, each Defendant has engaged in fraudulent
27 business practices within the meaning of B&P Code § 17200 *et seq.*

28 ///

1 112. As a result, each Defendant has also committed violations of B&P Code
2 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
3 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
4 B&P Code § 17200 *et seq.*

5 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

6 **SEVENTH CAUSE OF ACTION**

7 **(Violations of B&P Code § 17500 *et seq.* Based on Unlawful, Unfair and/or**
8 **Fraudulent Acts of Knowingly, Intentionally and Unnecessarily Exposing**
9 **Individuals to One or More Regulated Chemicals,**
10 **By All Buckland Defendants)**

11 113. Ms. Buckland realleges and incorporates by reference as if specifically set forth
12 herein Paragraphs 1 through 112, inclusive.

13 114. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
14 includes knowingly and intentionally exposing individuals to one or more Regulated Chemicals
15 contained in its Products without first providing such individuals with a clear and reasonable
16 warning regarding the carcinogenicity and/or reproductive toxicity of one or more Regulated
17 Chemicals.

18 115. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
19 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
20 Products. This conduct includes knowingly and intentionally selling one or more of these
21 Products without complying with federal food and drug law.

22 116. As a result, each Defendant has committed violations of B&P Code
23 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
24 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
25 B&P Code § 17200 *et seq.*

26 Wherefore Ms. Buckland prays judgment against each Defendant, as set forth hereafter.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **(Violations of Civil Code §§ 1709 and 1710:**

3 **Fraud by Concealment and Negligent Misrepresentation, By All Buckland Defendants)**

4 117. Ms. Buckland realleges and incorporates by reference as if specifically set forth
5 herein Paragraphs 1 through 116, inclusive.

6 118. Each Defendant's failure to disclose the presence of one or more of the Regulated
7 Chemicals, or the health risks each Regulated Chemical poses, in their Products' packaging,
8 advertising and promotional materials, was and is deceptive, a fraud by concealment and
9 negligent misrepresentation in violation of Civil Code §§ 1709 and 1710.

10 119. Since, or after, December 7, 2001, each Defendant has engaged in conduct that
11 violates 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
12 Products. This conduct includes knowingly and intentionally selling one or more of these
13 Products without complying with federal food and drug law, which constitutes a further
14 violation of Civil Code §§ 1709 and 1710.

15 120. Purchasers, including Ms. Buckland, of each Defendant's respective Product have
16 been damaged by each Defendant's non-disclosure, as well as by each Defendant's effort to
17 portray their respective Products as safe and healthful.

18 Wherefore, Ms. Buckland prays for judgment against each Defendant, as set forth
19 hereafter.

20 **NINTH CAUSE OF ACTION**

21 **(Violations of Civil Code § 1770(5) and/or (7):**

22 **Violation of the Consumer Legal Remedies Act, By All Buckland Defendants)**

23 121. Ms. Buckland realleges and incorporates by reference as if specifically set forth
24 herein Paragraphs 1 through 120, inclusive.

25 122. Each Defendant's failure to disclose the presence of one or more of the Regulated
26 Chemicals, or the health risks each Regulated Chemical poses, in their Products' packaging,
27 advertising and promotional materials, was and is a violation of Civil Code § 1770 (5) and/or
28 (7), including but not limited to the fact that (a) each Product is subject to regulation by the

1 US/FDA and yet each Product is not in fact in compliance with such US/FDA regulation
2 pursuant to 21 USC § 201(g) and 21 CFR, Part 310.530, OTC Topically Applied Hormone Drug
3 Products, and (b) because the Products do not carry on their label or in their marketing or
4 advertising materials a clear and reasonable warning as required by Proposition 65. Purchasers,
5 including Ms. Buckland, of each Defendant's respective Product have been damaged by each
6 Defendant's conduct and non-disclosure, as well as by each Defendant's effort to portray their
7 respective Products as safe and healthful.

8 Wherefore, Ms. Buckland prays for judgment against each Defendant, as set forth
9 hereafter.

10 THE NEED FOR INJUNCTIVE RELIEF

11 123. Ms. Buckland and CWLC each individually reallege and incorporate by reference
12 as if specifically set forth herein Paragraphs 1 through 122 inclusive.

13 124. By committing the acts alleged herein, each Defendant has caused irreparable
14 harm for which there is no plain, speedy or adequate remedy at law. In the absence of equitable
15 relief, the general public will continue to be involuntarily exposed to one or more of the
16 Regulated Chemicals in these Products, creating substantial risk of irreparable physical injury,
17 without a clear and reasonable warning, creating a clear and present danger to public health and
18 welfare.

19 PRAYERS FOR RELIEF

20 Plaintiff CWLC prays for judgment against each Defendant as follows in paragraphs 1
21 and 2 , and 18 through 21, of these Prayers for Relief:

22 On The First and Second Causes of Action (Proposition 65):

23 1. That the Court, pursuant to H&S Code § 25249.7(a), preliminarily and
24 permanently enjoin each Defendant from offering its respective Products for sale without
25 disclosing the presence of one or more of the Regulated Chemicals in its respective Products in a
26 manner that complies with the Proposition 65 statutory disclosure requirements, as CWLC shall
27 specify in further application to the Court;

28 ///

1 **On The First and Second Causes of Action (Proposition 65):**

2 2. That the Court, pursuant to H&S Code § 25249.7(b), assess civil penalties against
3 each Defendant in an amount to be determined by the court for each violation of Proposition 65
4 alleged herein since December 7, 2004.

5 Plaintiff Ms. Buckland prays for judgment against each Defendant in paragraphs 3
6 through 21 of these Prayers for Relief as follows:

7 **On The Third through Sixth Cause of Action (Unfair Competition Law):**

8 3. That the Court, pursuant to B&P Code § 17203, preliminarily and permanently
9 enjoin each Defendant from offering its respective Products for sale without disclosing the
10 presence of each Regulated Chemical in its respective Products in a manner that complies with
11 these statutory requirements, as Ms. Buckland shall specify in further application to the Court;

12 **On The Seventh Causes of Action (False Advertising Law):**

13 4. That the Court, pursuant to B&P Code § 17535, preliminarily and permanently
14 enjoin each Defendant from offering its respective Products for sale without disclosing the
15 presence of each Regulated Chemical in its respective Products in a manner that complies with
16 these statutory requirements, as Ms. Buckland shall specify in further application to the Court;

17 **On the Ninth Cause of Action (Consumer Legal Remedies Act):**

18 5. That the Court, pursuant to Civil Code § 1780(2), preliminarily and permanently
19 enjoin each Defendant from offering its respective Products for sale without disclosing the
20 presence of each Regulated Chemical in its respective Products in a manner that complies with
21 these statutory requirements, as Ms. Buckland shall specify in further application to the Court;

22 6. That the Court, pursuant to Civil Code § 1780(5), order each Defendant to label,
23 advertise and market each of its Products in a manner that complies with Proposition 65;

24 7. That the Court, pursuant to Civil Code § 1780(5), order each Defendant to refrain
25 from making any health-related claim on the label, advertising or marketing of each of its
26 Products unless the Defendant complies with 21 USC § 201(g) and 21 CFR, Part 310.530, OTC
27 Topically Applied Hormone Drug Products, as Ms. Buckland shall specify in further application
28 to the Court;

1 8. That the Court, pursuant to Civil Code § 1780(5), order each Defendant to label,
2 advertise and market each of its Products in a manner that complies with the Consumer Legal
3 Remedies Act, as Ms. Buckland shall specify in further application to the Court.

4 **On The Third through Sixth Causes of Action (Unfair Competition Law):**

5 9. That the Court order each Defendant to notify each and every customer of such
6 Defendant who purchased its respective Products since December 7, 2001, and thereby give such
7 customers an opportunity to obtain restitution from each Defendant;

8 10. That the Court order each Defendant to pay restitution and be subject to such other
9 relief as may be necessary to restore to any end user and/or purchaser of its respective Products
10 any money or property, real or personal, which may have been acquired by means of the acts
11 alleged herein that occurred since December 7, 2001;

12 **On The Seventh Cause of Action (False Advertising Law):**

13 11. That the Court order each Defendant to notify each and every customer of such
14 Defendant who purchased its respective Products since December 7, 2001, and thereby give such
15 customers an opportunity to obtain restitution from each Defendant;

16 12. That the Court order each Defendant to pay restitution and be subject to such other
17 relief as may be necessary to restore to any end user and/or purchaser of its respective Products
18 any money or property, real or personal, which may have been acquired by means of the acts
19 alleged herein that occurred since December 7, 2001;

20 **On The Eighth Cause of Action (Civil Code §§ 1709 and 1710):**

21 13. That each Defendant be held liable for damages based upon the amounts paid for
22 their Products, in an amount to be determined at trial.

23 14. That each Defendant be held liable for punitive damages based upon the amounts
24 paid for their Products, in an amount to be determined at trial.

25 **On The Ninth Cause of Action (Consumer Legal Remedies Act):**

26 15. That, pursuant to Civil Code § 1780(1), each Defendant be held liable for actual
27 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

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1 16. That, pursuant to Civil Code § 1780(3), the Court order each Defendant to notify
2 each and every customer of such Defendant who purchased its respective Products since
3 December 7, 2002, and thereby give such customers an opportunity to obtain restitution from
4 each Defendant, and that the Court order each Defendant to pay restitution and be subject to
5 such other relief as may be necessary to restore to any end user and/or purchaser of its respective
6 Products any money or property, real or personal, which may have been acquired by means of
7 the acts alleged herein that occurred since December 7, 2002;

8 17. That, pursuant to Civil Code § 1780(4), each Defendant be held liable for punitive
9 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

10 **On All Causes of Action:**

11 Plaintiffs Buckland and CWLC pray for judgment against each Defendant as follows:

12 18. For costs of this action;

13 19. For attorney's fees and costs;

14 20. For interest according to law;


15 21. For such other and further relief as this Court may deem just and proper.

16
17 Date: December 7, 2005

Respectfully submitted,

18 THE CARRICK LAW GROUP, P.C.

19
20 By


21 ROGER LANE CARRICK
22 Attorneys for Plaintiffs
23 Katherine Lee Buckland and California
24 Women's Law Center

DEMANDS FOR JURY TRIAL

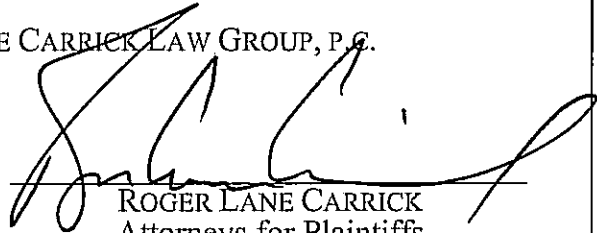
Plaintiff California Women's Law Center, a non-profit California corporation, hereby demands a trial by jury on the first and second causes of action, while Plaintiff Katherine Lee Buckland hereby demands a trial by jury on the eighth and ninth causes of action.

Date: December 7, 2005

Respectfully submitted,

THE CARRICK LAW GROUP, P.C.

By



ROGER LANE CARRICK
Attorneys for Plaintiffs
Katherine Lee Buckland and California
Women's Law Center

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