

1 **BOHM WILDISH & MATSEN, LLP**  
 2 James G. Bohm (SBN 132430)  
 3 jbohm@bohmwildish.com  
 4 Klaus Heisze (SBN 279634)  
 5 kHeisze@bohmwildish.com  
 6 Christopher J. Green (SBN 295874)  
 7 cgreen@bohmwildish.com  
 8 695 Town Center Drive, Suite 700  
 9 Costa Mesa, California 92626  
 10 Telephone: (714) 384-6500  
 11 Facsimile: (714) 384-6501

12 Attorneys for Plaintiffs,  
 13 **MARK SMITH & TAMMY SMITH**

14 **UNITED DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

16 **MARK SMITH, an individual; TAMMY SMITH, an individual;**  
 17 **Plaintiffs,**

18 **v.**

19 **NERIUM INTERNATIONAL, LLC, a limited liability company; JO PRODUCTS, LLC, a limited liability company; JEFF OLSON, an individual; DEBORAH K. HEISZ an individual, BO SHORT, an individual, and DOES 1 through 10, inclusive**

20 **Defendants.**

Case No. 8:18-cv-01088-JVS-PLA

**SECOND AMENDED COMPLAINT FOR:**

- 21 **(1) FRAUD;**
- 22 **(2) BREACH OF ORAL CONTRACT;**
- 23 **(3) BREACH OF PARTIALLY ORAL AND WRITTEN CONTRACT;**
- 24 **(4) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (ORAL CONTRACT);**
- 25 **(5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**

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- DEALING (PARTIALLY WRITTEN CONTRACT);**
- (6) BREACH OF FIDUCIARY DUTY;**
- (7) DEFAMATION;**
- (8) CIVIL CONSPIRACY;**
- (9) CONVERSION;**
- (10) ACCOUNTING;**
- (11) BREACH OF IMPLIED IN FACT CONTRACTS;**
- (12) VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200;**
- (13) CONSTRUCTIVE TRUST;**
- (14) DECLARATORY RELIEF (ORAL CONTRACT);**
- (15) DECLARATORY RELIEF (PARTIALLY ORAL AND WRITTEN CONTRACT);**
- (16) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
- (17) FAILURE TO TIMELY AND ACCURATELY PAY / ADMINISTER WAGES;**
- (18) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS / FAILURE TO KEEP RECORDS;**
- (19) FAILURE TO PAY OVERTIME WAGES;**
- (20) FAILURE TO PROVIDE REST AND MEAL PERIODS;**

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- (21) UNFAIR WAGE/HOUR BUSINESS PRACTICES PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.;
- (22) CONVERSION OF WAGES;
- (23) CLAIM FOR VIOLATION OF CIVIL CODE SECTION 52.1
- (24) INVASION OF PRIVACY;
- (25) HARASSMENT (FEHA);
- (26) RETALIATION (FEHA);
- (27) HOSTILE WORK ENVIRONMENT;
- (28) CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY; AND

**DEMAND FOR JURY TRIAL**

Plaintiffs Mark Smith and Tammy Smith (“Plaintiffs” or the “Smiths”) complain and allege as follows against Defendants Nerium International, LLC (“Nerium International”), JO Products, LLC (“JOP”), Jeff Olson (“Olson”), Deborah Heisz (“Heisz”), Bo Short (“Short”), and DOES 1 through 10 (collectively, “Defendants”).

**THE PARTIES**

1. Defendant Nerium International is a limited liability company with a principal place of business in Texas, and doing business in the State of California, County of Orange.

1           2. Defendant JOP is a limited liability company with a principal place of  
2 business in Texas, and doing business in the State of California, County of Orange.  
3 JOP is a member in Nerium International.

4           3. Defendant Olson is the Manager of JOP, and the Founder and Chief  
5 Executive Officer of Nerium International.

6           4. Defendant Bo Short is the President of Nerium International.

7           5. Defendant Deborah Heisz is the Co-Chief Executive Officer of Nerium  
8 International.

9           6. Plaintiff Mark Smith was the Master Distributor, Diamond International  
10 Marketing Director, Co-Founder, and Chief Field Officer at Nerium International.

11           7. Plaintiff Tammy Smith was the Master Distributor, Diamond International  
12 Marketing Director, Co-Founder, and Chief Field Officer at Nerium International.

13           8. Plaintiffs do not know the true names and capacities, whether individual,  
14 corporate, associate, representative, partnership or otherwise, of Defendants named  
15 herein as DOES 1 through 10, inclusive, and thus sues these Defendants under fictitious  
16 names and capacities. Plaintiffs will amend this Second Amended Complaint (“SAC”)  
17 to allege the true names and capacities of these Defendants when they have been  
18 ascertained.

19           9. Plaintiffs are informed and believe, and thereon allege, that at all times  
20 relevant herein, Defendants, including DOES 1 through 10, and each of them, were  
21 agents, servants, employees, or affiliates of other Defendants and in doing the things  
22 alleged herein were acting in the course and scope of the authority of such agency,  
23 service, employment, affiliation, or with the permission, knowledge, approval and  
24 consent of the other Defendants in that each and every act of each said Defendant was  
25 ratified by the others. Plaintiffs are informed and believe, and thereon allege, that each  
26 of the DOE Defendants is responsible in some manner for the unlawful actions,  
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1 policies, practices, wrongs, injuries and harms alleged in this FAC, and that Plaintiffs’  
2 damages were legally caused by those Defendants, among others.

3 **ALTER EGO ALLEGATIONS**

4 10. Plaintiffs are informed and believe and herein allege that some of the  
5 corporations, limited liability companies, and entities named as Defendants herein,  
6 including but not limited to Nerium International, JOP, and DOES 1 through 10  
7 (collectively, “Alter Ego LLCs”), and each of them, were at all times relevant the alter  
8 ego LLCs of Olson by reason of the following:

- 9 a. Plaintiffs are informed and believe and herein allege that, Olson, at all  
10 times herein mentioned, dominated, influenced and controlled each of  
11 the Alter Ego LLCs and the officers thereof as well as the business,  
12 property and affairs of each of said LLC.
- 13 b. Plaintiffs are informed and believe and herein allege that, at all times  
14 herein mentioned, there existed and now exists a unity of interest and  
15 ownership between Olson and each of the Alter Ego LLCs; the  
16 individuality and separateness of Olson and each of the Alter Ego  
17 LLCs have ceased.
- 18 c. Plaintiffs are informed and believe and herein allege that, at all times  
19 since their formation, each of the Alter Ego LLCs has been and now is  
20 a mere shell and naked framework which Olson used as a conduit for  
21 the conduct of his personal business, property and affairs.
- 22 d. Plaintiffs are informed and believe and herein allege that, at all times  
23 herein mentioned, each of the Alter Ego LLCs was created and  
24 continued pursuant to a fraudulent plan, scheme and device conceived  
25 and operated by Olson, whereby the income, revenue and profits of  
26 each of the Alter Ego LLCs were diverted by Olson to himself.
- 27 e. Plaintiffs are informed and believe and herein allege that, at all times  
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1 Navy, earning several Navy Achievement Medals, and the prestigious commendation  
2 of Sailor of the Year. Similarly, Tammy Smith grew up in an Air Force family with  
3 two working-class parents. Tammy Smith met Mark Smith while he was stationed in  
4 Hawaii by the United States Navy.

5 23. Although Mark Smith wanted to spend the rest of his life in the military,  
6 where values like teamwork, cohesion, friendship, and being part of a bigger purpose  
7 were tremendously important, after marrying and having their first child, Mark Smith  
8 and Tammy Smith made the courageous decision to leave military life and transition  
9 full-time to Pre-Paid Legal Services, Inc. (“Pre-Paid Legal”), where they believed  
10 amazing opportunities in leadership, growth and income potential existed.

11 24. In their first four years with Pre-Paid Legal, the Smiths struggled and  
12 made many sacrifices, including instances where they sold their cherished personal  
13 belongings (including personal jewelry) to pay for gasoline to drive to their next  
14 business presentation in the hopes of generating sales and leads. Despite the tough  
15 times, the Smiths were relentless and resilient, and were able to build long-standing  
16 friendships and business relationships that ultimately propelled them to success in  
17 network marketing. Based on this struggle and sacrifice, the Smiths were able to build  
18 a marketing and sales system and infrastructure, at their own expense and through their  
19 own efforts. Despite starting as distributors, the Smiths quickly became trusted with  
20 leadership roles within Pre-Paid Legal and gained significant experience in the  
21 corporate side of the business (in addition to the sales and distribution aspect).

22 25. Before leaving Pre-Paid Legal to join Nerium International and Olson, the  
23 Smiths were: 1) earning a substantial monthly income from Pre-Paid Legal; 2) named  
24 the Pre-Paid Legal Regional Vice Presidents of the Maine, Maryland, Washington  
25 D.C., Texas, and California territories; and 3) awarded multiple awards and recognition  
26 for rank and income, including the prestigious Chairman’s Award, which was given  
27 out annually by the well-respected founder of Pre-Paid Legal.  
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1 **II. OLSON ENTICES THE SMITHS TO JOIN NERIUM INTERNATIONAL**  
2 **WITH MISREPRESENTATIONS AND FALSE PROMISES**

3 26. The Smiths became acquainted with Olson during their tenure with Pre-  
4 Paid Legal. While the Smiths were still at Pre-Paid Legal, Olson attempted to entice  
5 the Smiths to leave Pre-Paid Legal and join Nerium International. Nerium International  
6 is a multi-level marketing company that sells anti-aging skincare and wellness products  
7 under the name “Nerium.”

8 27. The Smiths advised Olson that they had made many significant sacrifices  
9 to build their business at Pre-Paid Legal and they would not leave Pre-Paid Legal  
10 without assurances of an ownership interest in Nerium International and significant  
11 compensation based on their sales (a significant royalty payment). Olson told the  
12 Smiths that the compensation they would receive as distributors at Nerium  
13 International would look like “play money” in comparison to the equity distributions  
14 they would be entitled to as equity holders in Nerium International and the 15%  
15 monthly royalty fees from “Nerium Edge.”

16 28. In or about August of 2011, Mark Smith and Tammy Smith met with  
17 Olson for lunch to further discuss the Smiths’ opportunities at Nerium International.  
18 This meeting took place at BJ’s Restaurant at 4901 Belt Line Road, in Dallas, Texas,  
19 75254. At this meeting, Olson represented himself as Chief Executive Officer of  
20 Nerium International. During this meeting, Olson made the following promises to the  
21 Smiths on behalf of himself and Nerium International: 1) Mark Smith and Tammy  
22 Smith would each receive a 5% equity interest in Nerium International (the Smiths  
23 would together own 10% of Nerium International); 2) the Smiths would be named “co-  
24 founders” of Nerium International; and 3) Nerium International would pay the Smiths  
25 a combined 15% royalty, in perpetuity, on all the back office subscription fees  
26 generated by Nerium International, which was subsequently referred to as “Nerium  
27 Edge.” These promises were subsequently confirmed by Olson in emails and other  
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1 conversations between Defendant Olson and the Smiths and have been repeated by  
2 Olson numerous times between September of 2011 to the present.

3 29. At this meeting, Jeff Olson repeatedly stated that Mark and Tammy Smith  
4 would receive an equity ownership in Nerium International. Jeff Olson said that Amber  
5 Olson could receive ownership of the company, but could not be allowed to run Nerium  
6 International. Jeff Olson said that Renee Olson could not be allowed ownership under  
7 any circumstances.

8 30. Collectively, Olson's promise to provide the Smiths with a 10% equity  
9 interest in Nerium International, naming the Smiths co-founders of Nerium  
10 International, and the promised 15% royalty payment are referred to as the "Ownership  
11 Promises."

12 31. On September 12, 2011, Jeff Olson met with Dennis Windsor, Mark  
13 Smith, and Tammy Smith at Nerium International's headquarters in Dallas, Texas.  
14 During this meeting, Jeff Olson again repeated the Ownership Promises to Mark and  
15 Tammy Smith. Jeff Olson further indicated that Dennis Windsor would or already had  
16 received a 5% equity interest in Nerium International.

17 32. On January 6 or 7 of 2012, Jeff Olson met with Mark and Tammy Smith  
18 at the Hilton Anaheim, located at 777 West Convention Way, Anaheim, California, to  
19 reiterate the terms of the Ownership Promises. At this meeting, Jeff Olson made the  
20 following promises to the Smiths on behalf of himself and Nerium International: 1)  
21 Mark Smith and Tammy Smith would each receive a 5% equity interest in Nerium  
22 International (the Smiths would together own 10% of Nerium International); 2) the  
23 Smiths would be named "co-founders" of Nerium International; and 3) Nerium  
24 International would pay the Smiths a combined 15% royalty, in perpetuity, on all the  
25 back office subscription fees generated by Nerium International, which was  
26 subsequently referred to as "Nerium Edge."  
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1           33. During this meeting, Jeff Olson said, “You will be a co-founder of Nerium  
2 and you will own 10% of the company. I know that you own 10% of Nerium, you  
3 know that you own 10% of Nerium, and I will make sure that it is properly  
4 documented.”

5           34. These promises have been repeated by Olson numerous times between  
6 September of 2011 to the present. Dozens of telephone conversations in which Jeff  
7 Olson reiterated the Ownership Promises were between Mark and Tammy Smith while  
8 they were located in California, and Jeff Olson while he was located in Florida.

9           35. Olson repeatedly assured the Smiths that there was nothing improper or  
10 illegal about moving from one multi-level marketing company to another and, if the  
11 Smiths did not initiate contact with their brand partners, that it would be acceptable to  
12 discuss their partners coming with them to Nerium International if the network partners  
13 made the first inquiry on the subject. Olson assured the Smiths that he considered that  
14 appropriate.

15           36. Olson also represented to the Smiths that he was an honest and ethical  
16 businessman and treated his customers, employees, and brand partners honestly, with  
17 integrity, and respect.

18           37. Ultimately, in reliance on the Ownership Promises and Olson’s statement  
19 regarding the permissible way to leave a company, the Smiths left Pre-Paid Legal and  
20 joined Olson at Nerium International.

21           38. To become a Nerium International “Brand Partner,” one is required to  
22 purchase a Brand Partner Launch Kit. On information and belief, Mark and Tammy  
23 Smith did not purchase a Brand Partner Launch Kit.

24           39. The Smiths joined Nerium International as distributors of Nerium  
25 International’s products in reliance upon the Ownership Promises that Olson made to  
26 the Smiths on behalf of himself and Nerium International and Olson’s statement  
27 regarding the permissible way to leave a company.  
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1           40. The Smiths had no reason to doubt the Ownership Promises at the time  
2 they left Pre-Paid Legal, and the Smiths would not have left Pre-Paid Legal if they had  
3 known that Olson did not intend to honor the Ownership Promises or would have taken  
4 a different position with respect to the permissible way to leave a network marketing  
5 company.

6           41. The Ownership Promises have been repeated by Jeff Olson on numerous  
7 occasions in California and other locations around the world.

8           42. On January 24, 2012, at the Market Party in Fort Lauderdale, Florida,  
9 Olson repeated the Ownership Promises to Mark and Tammy Smith. During this  
10 meeting, Olson said, “Of course you own 10% of Nerium – I told you that you own  
11 10% of the company.” At this meeting (and many others), Olson also promised the  
12 Smiths that Nerium International would install and pay Mark Smith and Tammy Smith  
13 as the “Master Distributors” at Nerium International, and permanently compensate the  
14 Smiths to the highest compensation level personally achieved under the Nerium  
15 International compensation plan, which would allow the Smiths to stop focusing on  
16 their commissionable network and stop actively recruiting to maintain their  
17 qualification.

18           43. On January 26, 2012, at the Market Party in Fort Lauderdale, Florida,  
19 Olson repeated the Ownership Promises to Mark and Tammy Smith. During this  
20 meeting, Olson said, “What does it feels like to own 10% of a company that will be  
21 worth a billion dollars?” Shortly after this meeting, Jeff Olson called Steve Bright to  
22 discuss the terms of the deal.

23           44. In mid-2012, after a Nerium International event, Mark and Tammy Smith  
24 met with Jeff Olson at the Double Tree Hotel near Dallas Galleria located at 4099  
25 Valley View Lane, in Dallas Texas. Jeff Olson repeatedly reiterated the Ownership  
26 Promises. During this meeting, Olson said, “You already got your ten percent equity  
27 – but if you make this a billion dollar company, I’ll give you another 5%.”  
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1           45. On or about December 9, 2014, Mark and Tammy Smith met with Jeff  
2 Olson at the Marriott Plano located at 7121 Bishop Rd, Plano, in Texas. During this  
3 meeting Jeff Olson reiterated the Ownership Promises. Jeff Olson reassured Mark and  
4 Tammy Smith that he would provide a written agreement which contained the  
5 Ownership Promises “shortly.” This meeting occurred shortly after the Q4/2014 NLT  
6 meeting. During this meeting, Olson said, “we need to make sure you get your 15%  
7 cut from the back-office subscriptions.”

8           46. On or about April 7, 2016, Mark and Tammy Smith met with Jeff Olson  
9 in St. Louis, Missouri after a Nerium International “Get Real” event to discuss the  
10 departure of a high level Nerium International employee (“DW”). At this meeting, Jeff  
11 Olson was very concerned that DW had left Nerium International because Jeff Olson  
12 had failed to document ownership promises to DW. At this meeting, Olson repeatedly  
13 reiterated the Ownership Promises to Mark and Tammy Smith, and assured Mark and  
14 Tammy Smith that the Ownership Promises would be written in a contract “shortly.”  
15 During this meeting, Olson said, “we need to make sure we document to everyone’s  
16 satisfaction yours and Tammy’s 10% of the company.”

17           47. In June, 2016, at the Nerium International Cancun Incentive Trip, at the  
18 Grand Fiesta Americana in Coral Beach, Mexico, Jeff Olson met with Mark and  
19 Tammy Smith to discuss the Ownership Promises. At this meeting, Jeff Olson  
20 repeatedly reiterated the Ownership Promises to Mark and Tammy Smith, and assured  
21 Mark and Tammy Smith that the Ownership Promises would be written in a contract  
22 “shortly.” During this meeting, Jeff Olson repeatedly told Mark and Tammy Smith  
23 that they were equity owners of Nerium International and that Mark and Tammy Smith  
24 were the co-founders of Nerium International.

25           48. On March 25, 2017, Mark and Tammy Smith met with Jeff Olson at the  
26 Nerium International Grand Launch Party at the Intercontinental Adelaide located at  
27 North Terrace, Adelaide in Australia. At this meeting, Jeff Olson repeatedly reiterated  
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1 the Ownership Promises to Mark and Tammy Smith, and assured Mark and Tammy  
2 Smith that the Ownership Promises would be honored.

3 49. The Ownership Promises have been repeated by Olson and Deborah Heisz  
4 (“Heisz”) as President of Nerium International on numerous occasions verbally and in  
5 writing at all times relevant.

6 50. As recently as February 27, 2018, Heisz acknowledged the Ownership  
7 Promises in a companywide “Special Conference Call” in which Heisz stated that,  
8 “after good faith efforts after several years, the Company has been unable to come to  
9 an agreement on how Mark and Tammy [Smith] would receive a 10% equity interest  
10 in the Company” and “the evidence will show that we negotiated in good faith, and all  
11 we wanted in return for the equity was a reasonable assurance that ... Mark [Smith]  
12 and Tammy [Smith] would continue to take an active role to grow the Company, which  
13 they were not willing to commit to.” During this call, Heisz disclosed Mark and  
14 Tammy Smith’s income at Nerium International, by stating that “Mark and Tammy  
15 have already received close to \$14,000,000 for their efforts.”

16 51. Later on February 27, 2018, Nerium International circulated an  
17 “Important Update from Nerium International” which again acknowledged the  
18 Ownership Promises, stating:

19 52. “[A]fter good faith efforts over several years the company has been unable  
20 to come to an agreement on how Mark and Tammy would receive a 10 percent equity  
21 interest in the Company. Believe me, it was not for lack of trying. The evidence will  
22 show that we negotiated in good faith and all we wanted in return for the equity was a  
23 reasonable assurance that Mark and Tammy would continue to take an active role to  
24 grow the Company, which they were not willing to commit to.” A redacted copy of  
25 this email is attached as **EXHIBIT “A.”**  
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1           53. The February 27, 2018 email disclosed Mark and Tammy Smith’s income,  
2 stating that “Mark and Tammy have already received close to \$14,000,000 for their  
3 efforts.”

4           54. Short disclosed Mark and Tammy Smith’s income on an April 10, 2018  
5 Nerium International conference call.

6 **III. OLSON’S REFUSAL TO DOCUMENT THE AGREEMENT**

7           55. Prior to the Smiths leaving Pre-Paid Legal, Olson told the Smiths that Pre-  
8 Paid Legal’s standard practice was to sue anyone who left to join a competitor. Olson  
9 told the Smiths that because the Smiths generated such tremendous sales for Pre-Paid  
10 Legal, Pre-Paid Legal would almost certainly sue Olson and Nerium International the  
11 moment they started working for Nerium International.

12           56. In anticipation that Pre-Paid Legal would sue Nerium International and  
13 the Smiths, Olson told the Smiths that Olson could not document and could not put into  
14 writing the Ownership Promises until after potential litigation with Pre-Paid Legal had  
15 been resolved. Olson indicated that any written agreement which documented the  
16 Ownership Promises would be discoverable in litigation with Pre-Paid Legal and would  
17 be used against Olson, Nerium International, and/or the Smiths. Olson further  
18 indicated that if the Ownership Promises were documented in writing, Pre-Paid Legal  
19 may have a stronger case against Olson, Nerium International, and/or the Smiths.

20           57. Based on these concerns, Olson promised Mark Smith and Tammy Smith  
21 that as soon as the litigation with Pre-Paid Legal was over, Olson would document and  
22 honor the Ownership Promises.

23 **IV. PRE-PAID LEGAL SUES NERIUM INTERNATIONAL AND THE**  
24 **SMITHS**

25           58. As anticipated by Olson, immediately after the Smiths joined Nerium  
26 International, Pre-Paid Legal initiated litigation against Nerium International and the  
27 Smiths.  
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1           59. Ultimately, the cases filed by Pre-Paid Legal against the Smiths were  
2 settled on or about mid-2013.

3 **V. OLSON AND NERIUM INTERNATIONAL’S REFUSAL TO HONOR**  
4 **THE OWNERSHIP PROMISES**

5           60. Immediately after the settlement of the Pre-Paid Legal lawsuits, the  
6 Smiths began requesting that Olson memorialize the Ownership Promises into writing.  
7 Olson provided excuse after excuse why the timing was not right to memorialize the  
8 Ownership Promises, but repeatedly assured the Smiths at all times, from prior to them  
9 joining Nerium International to the present, that Olson would honor the Ownership  
10 Promises. Olson routinely repeated the Ownership Promises, and the Smiths trusted  
11 that Olson would live up to the Ownership Promises.

12           61. On or about May of 2016, lawyers working for Nerium International and  
13 the Smiths began working on multiple drafts of a formal agreement to put into writing  
14 the Ownership Promises. Since prior to joining Nerium International until the present  
15 and at all times in between, Olson has repeatedly assured the Smiths that the Ownership  
16 Promises would be honored. Nonetheless, six years after the Ownership Promises were  
17 initially made, after almost two years of drafting by each party’s attorneys to hammer  
18 out the fine points of the Ownership Promises, and after numerous meetings in  
19 California to discuss the oral promise and agreement to formalize the Ownership  
20 Promises, to date Olson and his attorneys refuse to sign off on an agreement.

21           62. To date, Olson and his attorneys refuse to sign off on an agreement which  
22 simply memorializes the Ownership Promises. Such an agreement could be written on  
23 a single page and would take less than a minute to draft.

24           63. Instead, Olson and his attorneys have taken *years* to draft lengthy  
25 agreements which acknowledge the Ownership Promises, but also include unfair and  
26 ridiculous terms that were never agreed to by the Smiths and which were never  
27 mentioned by Olson before. Notably, these ridiculous and unfair terms have included:  
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1 (1) a provision that Olson must receive tens of millions of dollars before the Smiths  
2 would receive a penny; (2) a provision that Olson would have power of attorney over  
3 the ownership interests granted to the Smiths and could take control of the 10%  
4 ownership interest at any time; and (3) that the 10% ownership interest would be in  
5 JOP instead of Nerium International (the 10% ownership interest would be in the  
6 “wrong” entity).

7 64. Since diligently working with Olson to memorialize the Ownership  
8 Promises for several years, it is now apparent that Olson has no intention of honoring  
9 the Ownership Promises and has merely been leading the Smiths along to buy himself  
10 more time (and retain for himself significantly more profits).

11 **VI. THE SMITHS’ EXTRAORDINARY RESULTS AT NERIUM**  
12 **INTERNATIONAL**

13 65. In the meantime, from the moment the Smiths joined Nerium  
14 International, the Smiths spent their personal time, energy, money and resources to  
15 develop a network of Brand Partners at Nerium International. Because of the Smiths’  
16 incredible efforts, the Smiths were able to generate an astonishing \$100,000,000 in  
17 sales in their first year of business. Since then, the Smiths have helped Nerium  
18 International achieve record-breaking global sales of over \$500,000,000 annually and  
19 over \$1,500,000,000 in aggregated sales in its first five years of business.

20 66. While Nerium International likes to take the position that these Brand  
21 Partners are a “trade secret,” nothing could be further from the truth. Most of the  
22 Smiths’ sales leaders at Nerium International came from the network they developed  
23 at their own expense and on their own time while at Pre-Paid Legal (hence the lawsuit  
24 filed by Pre-Paid Legal).

25 67. Further, the multi-level marketing industry is very active on social media  
26 and the Smiths are well known in the community and to the Smith’s network of  
27 contacts. Specifically, the network which the Smiths built consists primarily of  
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1 contacts the Smiths made at Pre-Paid Legal and to the extent the network was  
2 developed beyond that, it was done so at the Smiths' own expense and on the Smiths'  
3 own time.

4 **VII. OLSON ENTICES THE SMITHS TO STAY AT NERIUM**  
5 **INTERNATIONAL WITH MORE MISREPRESENTATIONS AND**  
6 **FALSE PROMISES**

7 68. After achieving incredible results at Nerium International, to induce the  
8 Smiths to focus efforts on developing Nerium International as a whole and not just  
9 focus on their distribution network, Olson promised the Smiths that Nerium  
10 International would install and pay Mark Smith and Tammy Smith as the "Master  
11 Distributors" at Nerium International, and would pay Mark Smith and Tammy Smith  
12 the "Live Better Bonus" (now referred to as the "Nerium Lifestyle Bonus")  
13 permanently when earned. In effect, this would ensure that the Smiths were  
14 compensated at the highest level personally achieved under the Nerium International  
15 compensation plan. This promise was intended to allow the Smiths to stop focusing on  
16 their commissionable network and stop actively recruiting to maintain their  
17 qualification. An e-mail from Olson to Mark Smith and Tammy Smith documenting  
18 this promise dated September 14, 2016, is attached hereto as **EXHIBIT "B."**

19 69. Olson made this promise to Mark Smith and Tammy Smith because the  
20 Smiths would sacrifice income by focusing on the company as a whole instead of  
21 focusing on their personal network. In reliance on Olson's promise to install the Smiths  
22 as "Master Distributors" and permanently compensate them at their highest  
23 compensation level, the Smiths agreed to turn away from their personal interests and  
24 focus on the company as a whole.

25 70. In or about October 2016, the Smiths achieved their highest compensation  
26 level at Nerium International. Accordingly, since October 2016 the Smiths were  
27 entitled to their highest compensation level in perpetuity, as repeatedly promised by  
28

1 Olson. However, since on or about October 2016, the Smiths have not been  
2 compensated at the highest level at Nerium International. As a result, the Smiths are  
3 entitled to the amount of \$491,250. However, the Smiths have not received any portion  
4 of the \$491,250 owed to them.

5 71. Since this Master Distribution promise was not honored by Olson, tension  
6 began to build within the Brand Partners because the Smiths had to operate as if they  
7 were Master Distributors, but their compensation did not reflect such a title.

8 72. Thus, to maintain their livelihood, the Smiths were forced to continue  
9 recruiting and building multiple legs within the Nerium International compensation  
10 plan. The Brand Partners perceived this recruiting and building by the Smiths as  
11 constant competition, which created an unhealthy atmosphere for maximum sales  
12 growth within the Brand Partners network.

13 73. Despite Olson's failure to honor his promise regarding the master  
14 distributorship, the Smiths helped lead Nerium International to record-breaking global  
15 sales of over \$500,000,000 annually and over \$1,500,000,000 in aggregated sales in its  
16 first five years of business.

17 74. Further, in reliance upon the above-referenced promise and the Ownership  
18 Promises, the Smiths have traveled the world to build Nerium International's business  
19 with an even-handed approach. Specifically, since 2014, the Smiths have traveled to  
20 the following countries multiple times each: Canada, South Korea, Colombia, Mexico,  
21 Japan, Hong Kong, Australia, Germany, and Austria.

22 75. In addition, the Smiths have travelled extensively within the United States,  
23 along with incentive trips to other countries. In 2015 alone, Mark Smith traveled at  
24 least 196 calendar days for the promotion of Nerium International. The extraordinary  
25 effort given by the Smiths, which even resulted in vocal cord surgery for Mark Smith  
26 on or about July 2014, was in reliance upon the Ownership Promises and other above-  
27 referenced promises made by Olson.  
28

1           76. Plaintiffs are informed and believe and thereon allege that the above-  
2 referenced promises and Ownership Promises were made by Olson with intent to  
3 deceive the Smiths and that Olson did not intend to honor these promises (i.e., oral  
4 contracts).

5 **VIII. OLSON’S PERSONAL ATTACKS, ERRATIC BEHAVIOR, AND**  
6 **GROSS MISMANAGEMENT**

7           77. After spending significant time, money, and effort to develop their sales  
8 force network at Nerium International, it became clear that Olson was not the person  
9 the Smiths thought he was. Instead of an honest businessman, Olson revealed himself  
10 to be (among other things) dishonest, insincere, duplicitous, and anti-Christian.  
11 Moreover, Olson revealed himself to have a nasty habit of spreading hurtful falsehoods  
12 about the Smiths (and others) behind their backs. Olson’s behavior created an  
13 extremely uncomfortable and hostile work environment, which the Smiths found  
14 insufferable and at times completely unbearable.

15           78. In addition, Olson repeatedly made comments about Tammy Smith’s  
16 South Korean heritage, and repeatedly requested that Tammy Smith be excluded from  
17 important meetings on the grounds that she was “Korean.” Olson’s implication  
18 regarding Tammy Smith’s heritage was certainly not meant as a positive attribute.

19           79. On the one hand, Olson would tell the Smiths how valuable the Smiths  
20 were to the organization, even going as far as to publicly state on numerous occasions  
21 that all Olson needed to build the “best company in the world” was Mark and Tammy  
22 Smith at the helm of the sales force.

23           80. On the other hand, Olson would tell others in the company that: (1) the  
24 Smiths did not work hard; (2) the Smiths added no value to the company; (3) no one  
25 wanted Tammy Smith to work at the company; (4) the Smiths were “not who you think  
26 they are”; (5) the Smiths have marriage problems; and (6) the company’s mistakes were  
27 attributable to the Smiths’ decision-making, among other things.  
28

1           81. Olson also started to express disdain for the multi-level marketing industry  
2 (“MLM”) for which the Smiths had such respect and admiration. Olson began to  
3 disparage other MLM companies saying they were terrible companies with bad  
4 products and made other disparaging comments.

5           82. The Smiths were highly offended by this as they saw other reputable  
6 MLM companies as paving the way for others, like them, to succeed.

7           83. Olson has also engaged in erratic behavior that was harmful to the interests  
8 of the Smiths and Nerium International including, but not limited to: (1) bringing  
9 frivolous lawsuits against individuals to chill their right to pursue employment of their  
10 own choosing; and (2) bringing frivolous lawsuits against other companies he  
11 perceived as competitors to try to get a competitive advantage and to intimidate them.  
12 Olson would bully individuals and companies with litigation and the threat of litigation.

13           84. This significant litigation was siphoning millions upon millions of dollars  
14 of cash from Nerium International creating significant cash flow issues, which has  
15 crippled the company’s ability to function. These cash flow issues have limited Nerium  
16 International’s capabilities to fully support international expansion and to run the  
17 appropriate promotions to grow the sales force.

18           85. In fact, when Olson is faced with a new lawsuit or rumors about Nerium  
19 International, himself, or Nerium’s products, Olson would wage an assault on those  
20 companies, their leadership teams, compensation plans, products, management, and  
21 ethics, via public platforms such as conference calls, and presentations, as well as  
22 individual and group discussions.

23           86. Olson’s outbursts and constant communication to the field regarding  
24 litigation, or threatened litigation, harm Nerium International by distracting the Brand  
25 Partners from driving sales and by causing widespread fear and disbelief within the  
26 sales ranks of the company.  
27  
28

1           87. Olson also started engaging in a pattern of conduct designed to belittle the  
2 Smiths. Olson knew that the Smiths were Christians. Olson has made numerous  
3 disparaging comments to the Smiths about Christianity.

4           88. On one occasion, at a public restaurant, Olson loudly proclaimed that  
5 Christian and the Mormon religions were “frauds.” This meeting was over breakfast at  
6 a Dallas hotel that Smith’s called upon to discuss memorializing the Ownership  
7 Promises. Olson explained how the story of Jesus Christ is so unbelievably “farfetched  
8 and stupid” that he could not believe so many “idiots” fall for it. This was not an  
9 isolated incident.

10           89. However, when Olson is in front of audiences trying to promote Nerium  
11 International, Olson has been known to quote Bible verses or discuss his spirituality.

12           90. In general, Olson is a very rude and aggressive person. He treats  
13 subordinates very poorly. The Smiths have witnessed Olson engage in numerous  
14 hostile encounters with employees, Brand Partners, flight attendants, service people  
15 and innocent bystanders. Olson frequently makes rude and insensitive comments  
16 towards such persons, calling them “fat,” “ugly,” “stupid,” “disgusting,” just to name  
17 a few examples.

18           91. The abovementioned statements, and others, created a highly unpleasant  
19 and hostile work environment for the Smiths and others. The Smiths were highly  
20 offended by Olson’s conduct, in particular, his demeaning statements about  
21 Christianity, and have felt discriminated against.

22           92. After experiencing Olson’s conduct first-hand, the Smiths decided that  
23 they could not be associated with such demeaning behavior and thereafter withdrew  
24 their personal associations with Olson and limited their interactions to business  
25 activities only. As a result, on or around 2013, the Smiths pulled away from  
26 developing a deeper personal relationship with Olson.  
27  
28

1           93. The Smiths’ primary concern at Nerium International was for the  
2 thousands of Brand Partners whom the Smiths think of as family. Olson has made  
3 many decisions that the Smiths disagreed with and objected to that ultimately hurt  
4 Nerium International. When Olson’s decisions were proven to be harmful to the  
5 company Olson repeatedly publicly blamed the Smiths, even though Olson knew these  
6 poor business decisions were his own decisions and not the Smiths’.

7 **IX. OLSON’S FRAUDULENT CONDUCT**

8           94. Recently, the Smiths learned that Olson was intentionally misrepresenting  
9 the “Nerium” products sold by Nerium International in an effort to defraud Brand  
10 Partners and customers of Nerium International. Olson and Nerium International were  
11 subsequently sued by Nerium Skincare, Inc. which developed the “Nerium” products  
12 – in this lawsuit Nerium Skincare, Inc. seeks enforcement of Nerium SkinCare, Inc.’s  
13 rights, a declaratory judgement with respect to certain rights of Nerium SkinCare, Inc.,  
14 an accounting of Nerium International’s financial dealings, monetary damages and  
15 other remedies. On March 21, 2016, Nerium SkinCare, Inc. amended the claim to add  
16 Olson and JOP as defendants and include a claim for breaches by Olson of his fiduciary  
17 duties to Nerium International. On April 4, 2016, the claim was further amended by  
18 Nerium SkinCare, Inc. to request a court-ordered winding-up and termination of  
19 Nerium International.  
20

21           95. In anticipation that Nerium International would lose the abovementioned  
22 lawsuit, and that as a result Nerium International would lose access to the “Nerium”  
23 product line, Olson directed Nerium International to begin developing alternative  
24 products.

25           96. The Smiths were told that the clinical trials for the new products  
26 developed at Olson’s direction were inferior to the existing products in certain respects.

27           97. Despite the clinical trials of the new products, Olson misrepresented to  
28 Brand Partners and customers that the clinical trials for the new products produced



1 better results than the old products in certain respects. Moreover, Olson demanded that  
2 the Smiths falsely represent that the “new” products were better than the old products.

3 98. The Smiths were vehemently opposed to these false representations about  
4 the new products, and Olson was extremely unhappy that the Smiths’ refused to  
5 participate in his dishonesty.

6 99. Immediately after the Smiths refused to participate in Olson’s dishonesty  
7 and disregard for the truth, Olson embarked on a pattern of conduct designed to demean  
8 and belittle the Smiths, including repeatedly slandering them to their Brand Partners  
9 and publicly insulting their religion (as described above).

10 100. Defendants breached the above-referenced oral contracts by: 1) failing to  
11 issue Mark and Tammy Smith the promised 10% (5% each) equity in Nerium  
12 International; 2) failing to properly recognize Mark and Tammy Smith as the “co-  
13 founders” of Nerium International until July 22, 2017; 3) failing to install and pay Mark  
14 and Tammy Smith as the “Master Distributors,” and compensate the Smiths at the  
15 highest compensation level achieved under the Nerium International compensation  
16 plan; and 4) failing to pay Mark and Tammy Smith a combined 15% royalty on back  
17 office subscription fees.

18 **X. DISCRIMINATION, HARASSMENT, AND RETALIATION AT**  
19 **NERIUM INTERNATIONAL**

20 21 101. Since joining Nerium International, Mark and Tammy Smith have been  
22 designated as “independent contractors,” even though Mark and Tammy Smith are both  
23 employees. Mark and Tammy Smith are employees because Olson and others at  
24 Nerium International have had the right to control Mark and Tammy Smith both as to  
25 the work done and the manner and means in which it was performed.

26 102. Mark Smith and Tammy Smith were employed by Nerium International  
27 as Master Distributors and Chief Field Officers.



1           103. Mark Smith and Tammy Smith were subjected to working conditions that  
2 violated public policy, in that: Olson’s repeatedly demanded that the Smiths make  
3 untrue and fraudulent statements about Nerium International’s products which Olson  
4 knows are false; Olson repeatedly made anti-Christian and sexist comments to Mark  
5 and Tammy Smith, and the continuous pattern of defamatory and slanderous statements  
6 by Nerium International’s leadership team, including but not limited to statements  
7 made by Olson.

8           104. These actions and statements have been made to numerous Brand Partners  
9 in a collective effort to demean and harass the Smiths, discriminate against the Smiths,  
10 and effectively eliminate the Smiths’ ability to perform their necessary job duties. Not  
11 only did Nerium International have full knowledge of these intolerable actions and  
12 conditions - they deliberately caused them.

13           105. When Nerium International improperly designated and paid Mark and  
14 Tammy Smith as independent contractors, Nerium International illegally required them  
15 to assume a burden that the law imposed directly on Nerium International, including  
16 the withholding of payroll taxes and reporting such withholdings to the taxing  
17 authorities.

18           106. Nerium International improperly designated and paid Plaintiffs as  
19 independent contractors to avoid the costs and expenses associated with payroll,  
20 overtime pay, workers’ compensation insurance, disability, and other traditional  
21 employee benefits and protections.

22           107. While Plaintiffs have worked at Nerium International, they have worked  
23 overtime hours; however, they have not been paid for hours worked or overtime hours.  
24 Nerium International also failed to provide Plaintiffs with rest and meal periods.  
25 Nerium International has also failed to provide Plaintiffs with wage statements.  
26 Moreover, Nerium International has not provided Plaintiffs with any fixed salary.  
27  
28

1 108. At all times relevant to the allegations and claims in this action,  
2 Defendants' hostility toward Plaintiffs' protected expressive activities was based on a  
3 belief that Plaintiffs were engaged in religious expression. Defendants' hostility on this  
4 basis was the motivating and substantial factor behind the adverse employment  
5 decisions to which Plaintiff was subjected.

6 109. This action is brought for the purpose of vindicating Plaintiffs'  
7 employment rights arising from the adverse employment action taken against them and  
8 to reverse the injustice they were forced to endure as a result of the deprivation of their  
9 constitutional right to freely speak, write and publish their sentiments.

10 **XI. DEFAMATION AND INVASION OF PRIVACY BY NERIUM**  
11 **INTERNATIONAL**

12 110. On February 27, 2018, Heisz acknowledged the Ownership Promises in a  
13 hosted a companywide "Special Conference Call" in which Heisz stated that, "after  
14 good faith efforts after several years, the Company has been unable to come to an  
15 agreement on how Mark and Tammy [Smith] would receive a 10% equity interest in  
16 the Company" and "[t]he evidence will show that we negotiated in good faith, and all  
17 we wanted in return for the equity was a reasonable assurance that ... Mark [Smith]  
18 and Tammy [Smith] would continue to take an active role to grow the Company, which  
19 they were not willing to commit to."

20 111. During this "Special Conference Call," Heisz added that, "Mark and  
21 Tammy [Smith] have already received close to \$14 million from Nerium  
22 International."

23 112. Later on February 27, 2018, Nerium International circulated an  
24 "Important Update from Nerium International" which again acknowledged the  
25 Ownership Promises and Mark and Tammy's prior compensation, stating:  
26

27 113. "[A]fter good faith efforts over several years the company has been unable  
28 to come to an agreement on how Mark and Tammy would receive a 10 percent equity

1 interest in the Company. Believe me, it was not for lack of trying. The evidence will  
2 show that we negotiated in good faith and all we wanted in return for the equity was a  
3 reasonable assurance that Mark and Tammy would continue to take an active role to  
4 grow the Company, which they were not willing to commit to.” Later in the email,  
5 Nerium International notes that, “Mark and Tammy have already received close to \$14  
6 million” from Nerium International.” A redacted copy of this email is attached as  
7 **EXHIBIT “A.”**

8 114. On April 10, 2018, Short hosted a company-wide Nerium International  
9 conference call. During this call, Short stated that Mark Smith had earned his money  
10 “at the expense of other people.” Short further stated that Mark Smith had a “lack of  
11 character.” Short further stated that Mark Smith was a coward, running his business  
12 with “just flat out cowardice.”

13 115. Mark Smith is currently associated with Nerium International’s  
14 competitor. On the April 10, 2018 conference call, Olson stated that the eye cream  
15 Mark Smith was selling at Nerium’s competitor had an alkalinity of 11.5 which would  
16 “kill you, consistently.” Olson added that, “If you are willing to do that,” “What other  
17 decisions would you be willing to make?”

18 **XII. RETALIATION BY NERIUM INTERNATIONAL SINCE FILING THE**  
19 **COMPLAINT**

20 116. On February 23, 2018, the Smiths filed this lawsuit against Nerium  
21 International, alleging that Olson had repeatedly demanded that the Smiths make  
22 untrue and fraudulent statements about Nerium International’s products which Olson  
23 knows are false, had repeatedly harassed and discriminated against Mark and Tammy  
24 Smith based on their religion, and repeatedly harassed and discriminated Tammy Smith  
25 based on her gender.  
26

27 117. On February 26, 2018, the Smiths filed a notice with the Department of  
28 Fair Employment & Housing, seeking an immediate Right to Sue notice based on the

1 discrimination and harassment the Smiths have suffered from Nerium International’s  
2 CEO Olson. The Smiths filed amended notices on March 15, 2018, to include  
3 additional claims against Nerium International. See **EXHIBITS “C” and “D.”**

4 118. In retaliation for making these claims, Nerium International has removed  
5 the Smiths from their position as Chief Field Officers and Master Distributors,  
6 excluded Tammy Smith from her weekly corporate telephone conferences (that she has  
7 hosted for over six years), removed Tammy Smith from her weekly video calls (that  
8 she has hosted for years), closed the Smiths’ company credit cards, removed the  
9 Smiths’ administrative privileges across different platforms, discontinued Brand  
10 Partner communications to the Smiths, ordered the Smiths’ assistant to cease all  
11 communications with the Smiths regarding Nerium’s business, disinvited Mark and  
12 Tammy from participating company team building events, and removed the Smiths  
13 from the Nerium Leadership Team website, among other things.

14 119. Further, Nerium International and its’ leadership have “auctioned off”  
15 Mark and Tammy’s position (including compensation) within the company under the  
16 pretense that Mark and Tammy were leaving Nerium International.

17 120. Further, on February 27, 2018, Nerium International disclosed Mark and  
18 Tammy Smith’s compensation. A redacted copy of this email is attached as **EXHIBIT**  
19 **“A.”**

20  
21 **XIII. NERIUM INTERNATIONAL’S CONSTRUCTIVE DISCHARGE OF**  
22 **MARK AND TAMMY SMITH**

23 121. The aforementioned actions by Nerium International effectively  
24 prevented Mark and Tammy Smith from performing any of their job duties at Nerium  
25 International, and had created working conditions so intolerable that the Smiths had no  
26 option but to consider themselves constructively terminated. As a result, on March 12,  
27 2018, Mark and Tammy Smith informed Nerium International that pursuant to  
28 California law, the Smiths deemed that they had been constructively terminated from

1 Nerium International both as employees (officers) and as distributors. A copy of the  
2 Smiths' letter to Nerium International is attached hereto as **EXHIBIT "E"** and  
3 incorporated herein by reference.

4 **FIRST CAUSE OF ACTION**

5 **Fraud**

6 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
7 Olson; and DOES 1 – 10)

8 122. Plaintiffs incorporates each and every allegation contained in the  
9 preceding paragraphs of this SAC as fully set forth, and further allege:

10 123. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium  
11 International as distributors in reliance upon the Ownership Promises that Olson made  
12 to the Smiths, on behalf of himself and Nerium International.

13 124. Olson repeated the Ownership Promises to Mark and Tammy Smith  
14 during numerous phone calls and in-person meetings. Olson repeated the Ownership  
15 Promises to Mark and Tammy Smith at: (1) the August 2011 meeting in Dallas, Texas;  
16 (2) the September 12, 2011 meeting in Dallas, Texas; (3) the January 2012 meeting in  
17 Anaheim California; (4) the January 24, 2012 meeting in Fort Lauderdale, Florida; (5)  
18 the January 26, 2012 meeting in Fort Lauderdale, Florida; (6) the mid-2012 Nerium  
19 International Event in Dallas Texas; (7) the December 9, 2014 meeting in Plano, Texas;  
20 (8) the April 7, 2016 meeting in St. Louis, Missouri; (9) the June 2016 meeting in Coral  
21 Beach, Mexico; and (10) the March 25, 2017 meeting in North Terrace, Australia. The  
22 Ownership Promises were also confirmed and/or repeated on dozens of phone calls and  
23 other in-person meetings since 2012.

24 125. During each abovementioned meeting, Olson acknowledged and/or  
25 reiterated that: 1) Mark and Tammy Smith would each have 5% equity interest in  
26 Nerium International (the Smiths would together own 10% of Nerium International);  
27 2) the Smiths would be "co-founders" of Nerium International; and 3) Nerium  
28

1 International would pay the Smiths a combined 15% royalty, in perpetuity, on all the  
2 back office subscription fees generated by Nerium International, which was  
3 subsequently referred to as “Nerium Edge.”

4 126. In or about August of 2011, Mark Smith and Tammy Smith met with  
5 Olson for lunch to further discuss the Smiths’ opportunities at Nerium International.  
6 This meeting took place at BJ’s Restaurant at 4901 Belt Line Road, in Dallas, Texas,  
7 75254. At this meeting, Olson represented himself as Chief Executive Officer of  
8 Nerium International. During this meeting, Olson made the following promises to the  
9 Smiths on behalf of himself and Nerium International: 1) Mark Smith and Tammy  
10 Smith would each receive a 5% equity interest in Nerium International (the Smiths  
11 would together own 10% of Nerium International); 2) the Smiths would be named “co-  
12 founders” of Nerium International; and 3) Nerium International would pay the Smiths  
13 a combined 15% royalty, in perpetuity, on all the back office subscription fees  
14 generated by Nerium International, which was subsequently referred to as “Nerium  
15 Edge.” These promises were subsequently confirmed by Olson in emails and other  
16 conversations between Defendant Olson and the Smiths and have been repeated by  
17 Olson numerous times between September of 2011 to the present.

18 127. At this meeting, Jeff Olson repeatedly stated that while Mark and Tammy  
19 Smith would receive an equity ownership in Nerium International, Amber Olson and  
20 Renee Olson could not be trusted with ownership.

21 128. Collectively, Olson’s promise to provide the Smiths with a 10% equity  
22 interest in Nerium International, naming the Smiths co-founders of Nerium  
23 International, and the promised 15% royalty payment are referred to as the “Ownership  
24 Promises.”

25 129. On September 12, 2011, Jeff Olson met with Dennis Windsor, Mark  
26 Smith, and Tammy Smith at Nerium International’s headquarters in Dallas, Texas.  
27 During this meeting, Jeff Olson again repeated the Ownership Promises to Mark and  
28

1 Tammy Smith. Jeff Olson further indicated that Dennis Windsor would or already had  
2 received a 5% equity interest in Nerium International.

3 130. On January 6 or 7 of 2012, Jeff Olson met with Mark and Tammy Smith  
4 at the Hilton Anaheim, located at 777 West Convention Way, Anaheim, California, to  
5 reiterate the terms of the Ownership Promises. At this meeting, Jeff Olson made the  
6 following promises to the Smiths on behalf of himself and Nerium International: 1)  
7 Mark Smith and Tammy Smith would each receive a 5% equity interest in Nerium  
8 International (the Smiths would together own 10% of Nerium International); 2) the  
9 Smiths would be named “co-founders” of Nerium International; and 3) Nerium  
10 International would pay the Smiths a combined 15% royalty, in perpetuity, on all the  
11 back office subscription fees generated by Nerium International, which was  
12 subsequently referred to as “Nerium Edge.”

13 131. During this meeting, Jeff Olson said, “You will be a co-founder of Nerium  
14 and you will own 10% of the company. I know that you own 10% of Nerium, you  
15 know that you own 10% of Nerium, and I will make sure that it is properly  
16 documented.”

17 132. These promises have been repeated by Olson numerous times between  
18 September of 2011 to the present. Dozens of telephone conversations in which Jeff  
19 Olson reiterated the Ownership Promises were between Mark and Tammy Smith while  
20 they were located in California, and Jeff Olson while he was located in Florida.

21 133. Olson repeatedly assured the Smiths that there was nothing improper or  
22 illegal about moving from one multi-level marketing company to another and, if the  
23 Smiths did not initiate contact with their brand partners, that it would be acceptable to  
24 discuss their partners coming with them to Nerium International if the network partners  
25 made the first inquiry on the subject. Olson assured the Smiths that he considered that  
26 appropriate.  
27  
28



1           134. Olson also represented to the Smiths that he was an honest and ethical  
2 businessman and treated his customers, employees, and brand partners honestly, with  
3 integrity, and respect.

4           135. Ultimately, in reliance on the Ownership Promises and Olson’s statement  
5 regarding the permissible way to leave a company, the Smiths left Pre-Paid Legal and  
6 joined Olson at Nerium International.

7           136. The Smiths joined Nerium International as distributors of Nerium  
8 International’s products in reliance upon the Ownership Promises that Olson made to  
9 the Smiths on behalf of himself and Nerium International and Olson’s statement  
10 regarding the permissible way to leave a company.

11           137. The Smiths had no reason to doubt the Ownership Promises at the time  
12 they left Pre-Paid Legal, and the Smiths would not have left Pre-Paid Legal if they had  
13 known that Olson did not intend to honor the Ownership Promises or would have taken  
14 a different position with respect to the permissible way to leave a network marketing  
15 company.

16           138. The Ownership Promises have been repeated by Jeff Olson on numerous  
17 occasions in California and other locations around the world.

18           139. On January 24, 2012, at the Market Party in Fort Lauderdale, Florida,  
19 Olson repeated the Ownership Promises to Mark and Tammy Smith. During this  
20 meeting, Olson said, “Of course you own 10% of Nerium – I told you that you own  
21 10% of the company.” At this meeting (and many others), Olson also promised the  
22 Smiths that Nerium International would install and pay Mark Smith and Tammy Smith  
23 as the “Master Distributors” at Nerium International, and permanently compensate the  
24 Smiths to the highest compensation level personally achieved under the Nerium  
25 International compensation plan, which would allow the Smiths to stop focusing on  
26 their commissionable network and stop actively recruiting to maintain their  
27 qualification.  
28



1           140. On January 26, 2012, at the Market Party in Fort Lauderdale, Florida,  
2 Olson repeated the Ownership Promises to Mark and Tammy Smith. During this  
3 meeting, Olson said, “What does it feels like to own 10% of a company that will be  
4 worth a billion dollars?” Shortly after this meeting, Jeff Olson called Steve Bright to  
5 discuss the terms of the deal.

6           141. In mid-2012, after a Nerium International event, Mark and Tammy Smith  
7 met with Jeff Olson at the Double Tree Hotel near Dallas Galleria located at 4099  
8 Valley View Lane, in Dallas Texas. Jeff Olson repeatedly reiterated the Ownership  
9 Promises. During this meeting, Olson said, “You already got your ten percent equity  
10 – but if you make this a billion dollar company, I’ll give you another 5%.”

11           142. On or about December 9, 2014, Mark and Tammy Smith met with Jeff  
12 Olson at the Marriott Plano located at 7121 Bishop Rd, Plano, in Texas. During this  
13 meeting Jeff Olson reiterated the Ownership Promises. Jeff Olson reassured Mark and  
14 Tammy Smith that he would provide a written agreement which contained the  
15 Ownership Promises “shortly.” This meeting occurred shortly after the Q4/2014 NLT  
16 meeting. During this meeting, Olson said, “we need to make sure you get your 15%  
17 cut from the back-office subscriptions.”

18           143. On or about April 7, 2016, Mark and Tammy Smith met with Jeff Olson  
19 in St. Louis, Missouri after a Nerium International “Get Real” event to discuss the  
20 departure of a high level Nerium International employee (“DW”). At this meeting, Jeff  
21 Olson was very concerned that DW had left Nerium International because Jeff Olson  
22 had failed to document ownership promises to DW. At this meeting, Olson repeatedly  
23 reiterated the Ownership Promises to Mark and Tammy Smith, and assured Mark and  
24 Tammy Smith that the Ownership Promises would be written in a contract “shortly.”  
25 During this meeting, Olson said, “we need to make sure we document to everyone’s  
26 satisfaction yours and Tammy’s 10% of the company.”  
27  
28

1           144. In June, 2016, at the Nerium International Cancun Incentive Trip, at the  
2 Grand Fiesta Americana in Coral Beach, Mexico, Jeff Olson met with Mark and  
3 Tammy Smith to discuss the Ownership Promises. At this meeting, Jeff Olson  
4 repeatedly reiterated the Ownership Promises to Mark and Tammy Smith, and assured  
5 Mark and Tammy Smith that the Ownership Promises would be written in a contract  
6 “shortly.” During this meeting, Jeff Olson repeatedly told Mark and Tammy Smith  
7 that they were equity owners of Nerium International and that Mark and Tammy Smith  
8 were the co-founders of Nerium International.

9           145. On March 25, 2017, Mark and Tammy Smith met with Jeff Olson at the  
10 Nerium International Grand Launch Party at the Intercontinental Adelaide located at  
11 North Terrace, Adelaide in Australia. At this meeting, Jeff Olson repeatedly reiterated  
12 the Ownership Promises to Mark and Tammy Smith, and assured Mark and Tammy  
13 Smith that the Ownership Promises would be honored.

14           146. Since prior to joining Nerium International until the present and at all  
15 times in between, Olson has repeatedly assured the Smiths that the abovementioned  
16 Ownership Promises would be honored. Olson has made these assurances on numerous  
17 occasions and at numerous meetings in California.

18           147. Plaintiffs are informed and believe and thereon allege that the above-  
19 referenced promises were made by Olson with intent to induce the Smiths to leave Pre-  
20 Paid Legal and join Nerium International, and then to stay at Nerium International and  
21 redouble their sales efforts, and all such promises were made with the intent to defraud  
22 the Smiths as Olson did not intend to honor these promises (*i.e.*, oral contracts). These  
23 promises was false at the time they was made, and each subsequent time this promise  
24 was repeated, as demonstrated by the fact that Olson refused to confirm the existence  
25 of the promise in writing and refused to repeat the promise in the presence of others.  
26 Defendant Olson informed Plaintiffs that the above-referenced oral agreements could  
27  
28

1 not initially be reduced to writing, although the agreements were subsequently  
2 confirmed by emails and other conversations between Defendant Olson and the Smiths.

3 148. Plaintiffs did rely and were justified in their reliance on Defendants'  
4 representations herein because Plaintiffs had previously worked with Olson at Pre-Paid  
5 Legal and the representations seemed reasonable.

6 149. The representations by Olson were false. The true facts were: (1) Olson  
7 never intended to transfer any ownership interest in Nerium International to the Smiths;  
8 (2) Olson never intended to identify the Smiths as Co-Founders of Nerium  
9 International; (3) Olson never intended to pay the Smiths the 15% royalty; (4) Olson  
10 never intended to install and pay Mark Smith and Tammy Smith as the "Master  
11 Distributors" at Nerium International; and (5) Olson never intended to permanently  
12 compensate the Smiths at the highest compensation level personally achieved under  
13 the Nerium International compensation plan.

14 150. As a direct, proximate and foreseeable result of Defendants' fraudulent  
15 representations, Plaintiffs have incurred, and will continue to incur, general and special  
16 damages, the exact nature and full extent of which exceeds the jurisdictional amount,  
17 with the exact amount of damages to be determined at trial.

18 151. As a further direct, proximate and foreseeable result of Defendants'  
19 fraudulent representations, Plaintiffs have been compelled to incur attorneys' fees,  
20 court costs and other expenses related to this action, and may in the future be compelled  
21 to incur additional expenses in pursuing this litigation.

22 152. Defendants' actions and representations alleged herein were fraudulent,  
23 reckless, oppressive, and malicious, and so punitive damages should be assessed.  
24

25 **SECOND CAUSE OF ACTION**

26 **Breach of Oral Contract**

27 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
28 Olson; and DOES 1 – 10)

1           153. Plaintiffs incorporate each and every allegation contained in the preceding  
2 paragraphs of this SAC as fully set forth, and further allege:

3           154. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium  
4 International as distributors of Nerium International’s products in reliance upon the  
5 Ownership Promises that Olson made to the Smiths, on behalf of himself and Nerium  
6 International.

7           155. Olson made the following promises to the Smiths: 1) Mark Smith and  
8 Tammy Smith would each receive a 5% equity interest in Nerium International (the  
9 Smiths would together own 10% of Nerium International); 2) the Smiths would be “co-  
10 founders” of Nerium International; and 3) Nerium International would pay the Smiths  
11 a combined 15% royalty, in perpetuity, on all the back office subscription fees  
12 generated by Nerium International, which was subsequently referred to as “Nerium  
13 Edge.”

14           156. Olson repeated the Ownership Promises to Mark and Tammy Smith  
15 during numerous phone calls and in-person meetings. Olson repeated the Ownership  
16 Promises to Mark and Tammy Smith at: (1) the August 2011 meeting in Dallas, Texas;  
17 (2) the September 12, 2011 meeting in Dallas, Texas; (3) the January 2012 meeting in  
18 Anaheim California; (4) the January 24, 2012 meeting in Fort Lauderdale, Florida; (5)  
19 the January 26, 2012 meeting in Fort Lauderdale, Florida; (6) the mid-2012 Nerium  
20 International Event in Dallas Texas; (7) the December 9, 2014 meeting in Plano, Texas;  
21 (8) the April 7, 2016 meeting in St. Louis, Missouri; (9) the June 2016 meeting in Coral  
22 Beach, Mexico; and (10) the March 25, 2017 meeting in North Terrace, Australia. The  
23 Ownership Promises were also confirmed and/or repeated on dozens of phone calls and  
24 other in-person meetings since 2012.

25           157. Since prior to joining Nerium International until the present and at all  
26 times in between, Olson has repeatedly assured the Smiths that the abovementioned  
27  
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1 Ownership Promises would be honored. Olson has made these assurances on numerous  
2 occasions and at numerous meetings in California.

3 158. Subsequently, Olson, on behalf of Nerium International and on behalf of  
4 himself promised to install and pay Mark Smith and Tammy Smith as the “Master  
5 Distributors,” and permanently compensate the Smiths at the highest compensation  
6 level personally achieved under the Nerium International compensation plan.

7 159. Plaintiffs have performed and complied with all conditions and  
8 obligations required under the oral contract.

9 160. Defendants breached the above-referenced oral contracts by: 1) failing to  
10 issue Mark Smith and Tammy Smith the promised 10% (5% each) equity in Nerium  
11 International; 2) failing to properly recognize Mark Smith and Tammy Smith as the  
12 “co-founders” of Nerium International until July 22, 2017; 3) failing to install and pay  
13 Mark Smith and Tammy Smith as the “Master Distributors,” and compensate the  
14 Smiths at the highest compensation level achieved under the Nerium International  
15 compensation plan; and 4) failing to pay Mark and Tammy Smith a combined 15%  
16 royalty on back office subscription fees.

17 161. As a direct, proximate and foreseeable result of the breach of the oral  
18 contract by Defendants, Plaintiffs have incurred, and will continue to incur, general  
19 and special damages, the exact nature and full extent of which exceeds the jurisdictional  
20 amount, the exact amount of damages to be determined at trial.

21 162. As a direct, proximate and foreseeable result of the breach of the oral  
22 contract by Defendants, Plaintiffs have been compelled to incur attorneys’ fees, court  
23 costs, and other expenses related to this action, and may in the future be compelled to  
24 incur additional expenses in pursuing this litigation.

25  
26 **THIRD CAUSE OF ACTION**

27 **Breach of Partially Oral and Written Contract**

28 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;

1 Olson; and DOES 1 – 10)

2 163. Plaintiffs incorporate each and every allegation contained in the preceding  
3 paragraphs of this SAC as fully set forth, and further allege:

4 164. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium  
5 International as distributors of Nerium International’s products in reliance upon the  
6 Ownership Promises that Olson made to the Smiths, on behalf of himself and Nerium  
7 International.

8 165. Olson repeated the Ownership Promises to Mark and Tammy Smith  
9 during numerous phone calls and in-person meetings. Olson repeated the Ownership  
10 Promises to Mark and Tammy Smith at: (1) the August 2011 meeting in Dallas, Texas;  
11 (2) the September 12, 2011 meeting in Dallas, Texas; (3) the January 2012 meeting in  
12 Anaheim California; (4) the January 24, 2012 meeting in Fort Lauderdale, Florida; (5)  
13 the January 26, 2012 meeting in Fort Lauderdale, Florida; (6) the mid-2012 Nerium  
14 International Event in Dallas Texas; (7) the December 9, 2014 meeting in Plano, Texas;  
15 (8) the April 7, 2016 meeting in St. Louis, Missouri; (9) the June 2016 meeting in Coral  
16 Beach, Mexico; and (10) the March 25, 2017 meeting in North Terrace, Australia. The  
17 Ownership Promises were also confirmed and/or repeated on dozens of phone calls and  
18 other in-person meetings since 2012.

19 166. In addition to the master distributor promise and the Ownership Promises,  
20 as set forth above, Olson, on behalf of Nerium International and on behalf of himself,  
21 on or about August of 2011 orally promised to compensate Mark Smith and Tammy  
22 Smith as distributors of Nerium International’s products on a commission basis, based  
23 on an overall volume of sales in accordance with the Nerium International  
24 compensation plan.

25 167. Based on information and belief, the Smiths never executed the Nerium  
26 International United States Independent Brand Partner Application and Agreement  
27 (“Brand Partner Agreement”) and never agreed to comply with the rules, regulations,  
28

1 policies, and procedures contained in the Brand Partner Policies and Procedures  
2 Manual, including, but not limited to, the arbitration, non-competition, governing law,  
3 jurisdiction, or venue provisions, upon their acceptance of the promise to be  
4 compensated as a “Brand Partner.”

5 168. Based on information and belief, the Smiths never purchased a “Brand  
6 Partner Launch Kit,” which is required to become a “Brand Partner.”

7 169. Defendants breached the above-referenced partially oral and partially  
8 written contracts by: 1) slandering the professional and personal reputation of Mark  
9 Smith and Tammy Smith; 2) engaging in conduct which is abusive and disrespectful  
10 of Mark Smith and Tammy Smith as distributors of Nerium International’s products;  
11 and 3) engaging in conduct which is dishonest and harmful to Mark Smith and Tammy  
12 Smith. As a direct, proximate and foreseeable result of the breach of the partially oral  
13 and partially written contact by Defendants, Plaintiffs have incurred, and will continue  
14 to incur, general and special damages, the exact nature and full extent of which exceeds  
15 the jurisdictional amount, with the exact amount of damages to be determined at trial.

16 170. As a direct, proximate and foreseeable result of the breach of the partially  
17 oral and partially written contact by Defendants, Plaintiffs have been compelled to  
18 incur attorneys’ fees, court costs, and other expenses related to this action, and may in  
19 the future be compelled to incur additional expenses in pursuing this litigation.

20  
21 **FOURTH CAUSE OF ACTION**

22 **Breach of Implied Covenant of Good Faith and Fair Dealing (Oral Contract)**

23 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
24 Olson; and DOES 1 – 10)

25 171. Plaintiffs incorporate each and every allegation contained in the preceding  
26 paragraphs of this SAC as fully set forth, and further allege:

27 172. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium  
28 International as distributors of Nerium International’s products in reliance upon the



1 Ownership Promises that Olson made to the Smiths, on behalf of himself and Nerium  
2 International.

3 173. Olson made the following promises to the Smiths, on behalf of himself  
4 and Nerium International: 1) Mark Smith and Tammy Smith would **each** have 5%  
5 equity in Nerium International; 2) the Smiths would be “co-founders” of Nerium  
6 International; and 3) Nerium International would pay Mark and Tammy a combined  
7 15% royalty, in perpetuity, on all the back office subscription fees generated by Nerium  
8 International, which was subsequently referred to as “Nerium Edge.” Subsequently,  
9 the Smiths were promised that Nerium International would install and pay Mark Smith  
10 and Tammy Smith as the “Master Distributors,” and permanently compensate the  
11 Smiths to the highest compensation level personally achieved under the Nerium  
12 International compensation plan.

13 174. Olson repeated the Ownership Promises to Mark and Tammy Smith  
14 during numerous phone calls and in-person meetings. Olson repeated the Ownership  
15 Promises to Mark and Tammy Smith at: (1) the August 2011 meeting in Dallas, Texas;  
16 (2) the September 12, 2011 meeting in Dallas, Texas; (3) the January 2012 meeting in  
17 Anaheim California; (4) the January 24, 2012 meeting in Fort Lauderdale, Florida; (5)  
18 the January 26, 2012 meeting in Fort Lauderdale, Florida; (6) the mid-2012 Nerium  
19 International Event in Dallas Texas; (7) the December 9, 2014 meeting in Plano, Texas;  
20 (8) the April 7, 2016 meeting in St. Louis, Missouri; (9) the June 2016 meeting in Coral  
21 Beach, Mexico; and (10) the March 25, 2017 meeting in North Terrace, Australia. The  
22 Ownership Promises were also confirmed and/or repeated on dozens of phone calls and  
23 other in-person meetings since 2012.

24 175. Defendants breached the above-referenced orals contracts by: 1) failing to  
25 issue Mark Smith and Tammy Smith the promised 10% (5% each) equity interest in  
26 Nerium International; 2) failing to properly recognize Mark Smith and Tammy Smith  
27 as the “co-founders” of Nerium International until July 22, 2017; 3) failing to install  
28



1 and pay Mark and Tammy Smith as the “Master Distributors,”; (4) failing to  
2 permanently compensate the Smiths to the highest compensation level personally  
3 achieved under the Nerium International compensation plan; and 5) failing to pay Mark  
4 and Tammy Smith a combined 15% royalty on back office subscription fees.

5 176. Each and every contract contains an implied covenant of good faith and  
6 fair dealing in which neither party will do anything that will deprive the other party of  
7 the benefits of the contract.

8 177. This implied covenant of good faith and fair dealing obligated Defendants  
9 from taking or failing to take action to undermine or contravene the contract between  
10 Plaintiffs and Defendants.

11 178. Plaintiffs performed all of their obligations under the contract with  
12 Defendants, excepting those obligations that Mark and Tammy Smith were excused  
13 from performing.

14 179. Defendants breached the covenant of good faith and fair dealing under the  
15 contract by never giving Mark Smith and Tammy Smith the promised 10% (5% each)  
16 equity interest in Nerium International.

17 180. Defendants breached the covenant of good faith and fair dealing under the  
18 contract by not properly recognizing Mark Smith and Tammy Smith as the “co-  
19 founders” of Nerium International until July 22, 2017.

20 181. Defendants breached the covenant of good faith and fair dealing under the  
21 contract by failing to install and pay Mark Smith and Tammy Smith as the “Master  
22 Distributors,” and permanently compensating the Smiths at the highest compensation  
23 level personally achieved under the Nerium International compensation plan.

24 182. Defendants breached the covenant of good faith and fair dealing by failing  
25 to pay Mark Smith and Tammy Smith a combined 15% royalty on back office  
26 subscription fees.  
27  
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1 183. Defendants breached the covenant of good faith and fair dealing by  
2 engaging in conduct designed to undermine the Smiths' position in Nerium  
3 International by disseminating false statements (i.e., slander) about the Smiths to Brand  
4 Partners.

5 184. As a direct, proximate and foreseeable result of the breach of contract by  
6 Defendants, Plaintiffs have incurred, and will continue to incur, general and special  
7 damages, the exact nature and full extent of which exceeds the jurisdictional amount,  
8 which will be determined at trial.

9 185. As a direct, proximate and foreseeable result of the breach of the contract  
10 by Defendants, Plaintiffs have been compelled to incur attorneys' fees, court costs and  
11 other expenses related to this action, and may in the future be compelled to incur  
12 additional expenses in pursuing this litigation.

13 **FIFTH CAUSE OF ACTION**

14 **Breach of Implied Covenant of Good Faith and Fair Dealing (Partially Oral and**  
15 **Written Contract)**

16 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
17 Olson; and DOES 1 – 10)

18 186. Plaintiffs incorporate each and every allegation contained in the preceding  
19 paragraphs of this SAC as fully set forth, and further allege:

20 187. The Smiths were enticed to leave Pre-Paid Legal and join Olson at Nerium  
21 International as distributors of Nerium International's products in reliance upon the  
22 Ownership Promises that Olson made to the Smiths, on behalf of himself and Nerium  
23 International.

24 188. Olson, on behalf of Nerium International, orally promised to compensate  
25 Mark Smith and Tammy Smith as distributors of Nerium International's products on a  
26 commission basis, based on an overall volume of sales in accordance with the Nerium  
27 International's compensation plan.  
28

1 189. Olson repeated the Ownership Promises to Mark and Tammy Smith  
2 during numerous phone calls and in-person meetings. Olson repeated the Ownership  
3 Promises to Mark and Tammy Smith at: (1) the August 2011 meeting in Dallas, Texas;  
4 (2) the September 12, 2011 meeting in Dallas, Texas; (3) the January 2012 meeting in  
5 Anaheim California; (4) the January 24, 2012 meeting in Fort Lauderdale, Florida; (5)  
6 the January 26, 2012 meeting in Fort Lauderdale, Florida; (6) the mid-2012 Nerium  
7 International Event in Dallas Texas; (7) the December 9, 2014 meeting in Plano, Texas;  
8 (8) the April 7, 2016 meeting in St. Louis, Missouri; (9) the June 2016 meeting in Coral  
9 Beach, Mexico; and (10) the March 25, 2017 meeting in North Terrace, Australia. The  
10 Ownership Promises were also confirmed and/or repeated on dozens of phone calls and  
11 other in-person meetings since 2012.

12 190. Based on information and belief, the Smiths never executed the Nerium  
13 International Brand Partner Agreement and never agreed to comply with the rules,  
14 regulations, policies, and procedures contained in the Brand Partner Policies and  
15 Procedures Manual, including, but not limited to, the arbitration, non-competition,  
16 governing law, jurisdiction, or venue provisions, upon their acceptance of the promise  
17 to be compensated as distributors of Nerium International's products.

18 191. Each and every contract contains an implied covenant of good faith and  
19 fair dealing in which neither party will do anything that will deprive the other party of  
20 the benefits of the contract.

21 192. This implied covenant of good faith and fair dealing obligated Defendants  
22 from taking or failing to take action to undermine or contravene the contract between  
23 Plaintiffs and Defendants.

24 193. Plaintiffs performed all of their obligations under the contract with  
25 Defendants, excepting those obligations that Mark Smith and Tammy Smith were  
26 excused from performing.  
27  
28

1 194. Defendants breached the covenant of good faith and fair dealing under the  
2 contract by slandering the professional and personal reputation of Mark Smith and  
3 Tammy Smith.

4 195. Defendants breached the covenant of good faith and fair dealing under the  
5 contract by engaging in conduct which is abusive and disrespectful of Mark Smith and  
6 Tammy Smith.

7 196. Defendants breached the covenant of good faith and fair dealing under the  
8 contract by engaging in conduct which is dishonest and harmful to Mark Smith and  
9 Tammy Smith.

10 197. As a direct, proximate and foreseeable result of the breach of contract by  
11 Defendants, Plaintiffs have incurred, and will continue to incur, general and special  
12 damages, the exact nature and full extent of which exceeds the jurisdictional amount,  
13 which will be determined at trial.

14 198. As a direct, proximate and foreseeable result of the breach of the contract  
15 by Defendants, Plaintiffs have been compelled to incur attorneys' fees, court costs and  
16 other expenses related to this action, and may in the future be compelled to incur  
17 additional expenses in pursuing this litigation.

18 **SIXTH CAUSE OF ACTION**

19 **Breach of Fiduciary Duty**

20 (Plaintiffs Mark Smith and Tammy Smith Against Olson and DOES 1 – 10)

21 199. Plaintiffs incorporate each and every allegation contained in the preceding  
22 paragraphs of this SAC as fully set forth, and further allege:

23 200. As an officer and Manager of Nerium International, Defendant Olson  
24 owes fiduciary duties of care, loyalty, and good faith to members of Nerium  
25 International, including Plaintiffs. Defendant Olson's fiduciary duties include  
26 obligations to exercise good business judgment, to act prudently in the operation of the  
27

1 company's business, to discharge his actions in good faith, to act in the best interest of  
2 the company and its members, and to put the interests of the company before his own.

3 201. Olson breached his fiduciary duties of care, loyalty, and good faith by,  
4 among other things, routinely mismanaging Nerium International, using company  
5 resources and money for Olson's own personal use, making false statements about the  
6 "new" Nerium products developed under Olson's supervision, excluding Plaintiffs  
7 from equity distributions from Nerium International, and sending derogatory and false  
8 communications to Brand Partners about the Smiths.

9 202. Plaintiffs and other members of Nerium International have been damaged  
10 by Defendant Olson's breach of his fiduciary duties.

11 **SEVENTH CAUSE OF ACTION**

12 **Defamation**

13 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International;  
14 Olson; Heisz; Short; and DOES 1 – 10)

15 203. Plaintiffs incorporate each and every allegation contained in the preceding  
16 paragraphs of this SAC as fully set forth, and further allege:

17 204. In the ordinary course of business, and specifically throughout 2017,  
18 Defendant Olson made poor business decisions which harmed Nerium International.  
19 During this time, Defendant Olson publicly blamed the Smiths for these poor decisions,  
20 despite the fact Olson knew that these decisions were his own. These false statements  
21 were heard by numerous individuals known and unknown to Plaintiffs. These words  
22 were defamatory and slanderous per se because they tend to injure Plaintiffs in their  
23 profession by imputing to them poor business judgment that has a natural tendency to  
24 lessen the respectability of Plaintiffs' leadership within the multi-level marketing  
25 industry. The words uttered were false because Olson knew he made the poor business  
26 decisions himself, and Olson knew that the Smiths had nothing to do with his decisions.  
27  
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1           205. On or about November 2017, Plaintiffs learned that Defendants Olson and  
2 DOES 1-10 defamed and damaged Plaintiffs by disseminating false statements to  
3 Brand Partners that Mark Smith and Tammy Smith were “lazy,” “not working hard  
4 enough,” and were responsible for the decrease in company sales, which caused direct  
5 harm to the Smith’s reputation. In addition, Olson disseminated false statements that  
6 no one wanted Tammy to work at Nerium International. These false statements were  
7 heard by numerous persons whose names are known and unknown to Plaintiffs. These  
8 words were defamatory and slanderous per se because they tend to injure Plaintiffs in  
9 their profession by imputing to them laziness and poor work ethic which has a natural  
10 tendency to lessen the likeness and respectability of Plaintiffs’ leadership within the  
11 sales force of the company, which likely results in decreased sales performance for the  
12 company and the Smiths. The words uttered were false statements because Olson knew  
13 that the Smiths were not lazy, were working very hard, were not responsible for a  
14 decrease in company sales, and people did, in fact, want Tammy to work at Nerium  
15 International.

16           206. On or about February 27, 2018, Heisz hosted a companywide “Special  
17 Conference Call” in which Heisz stated that, “after good faith efforts after several  
18 years, the Company has been unable to come to an agreement on how Mark [Smith]  
19 and Tammy [Smith] would receive a 10% equity interest in the Company” and “the  
20 evidence will show that we negotiated in good faith, and all we wanted in return for the  
21 equity was a reasonable assurance that ... Mark [Smith] and Tammy [Smith] would  
22 continue to take an active role to grow the company, which they were not willing to  
23 commit to.” Heisz repeated these false statements in an email sent later that date titled  
24 “Important Update from Nerium International” See **EXHIBIT “A.”**

25           207. These statements by Nerium International and Heisz are false in at least  
26 two respects. First, Olson did not merely demand “reasonable assurances” by Mark  
27 and Tammy Smith in exchange for documenting the Ownership Promises. To the  
28

1 contrary, Olson and his attorneys wasted years drafting lengthy agreements which  
2 acknowledged the Ownership Promises, but also included unfair and ridiculous terms  
3 that were never agreed to by the Smiths and which were never mentioned by Olson  
4 before. Notably, these ridiculous and unfair terms have included: (1) a provision that  
5 Olson must receive tens of millions of dollars before the Smiths would receive a penny;  
6 (2) a provision that Olson would have power of attorney over the ownership interests  
7 granted to the Smiths and could take control of the 10% ownership interest at any time;  
8 and (3) that the 10% ownership interest would be in JOP instead of Nerium  
9 International (the 10% ownership interest would be in the “wrong” entity).

10 208. Second, these statements by Nerium International and Heisz are false  
11 because Mark and Tammy Smith were very willing to make (and in fact made)  
12 reasonable assurances that they would continue to grow the business at numerous  
13 points in the preceding seven years, as demonstrated by Mark and Tammy Smith  
14 spending over seven years building Nerium International into an international business  
15 empire.

16 209. Nerium International and Heisz’s false claim that Mark and Tammy Smith  
17 refused to commit to a “reasonable assurance” that Mark and Tammy Smith would  
18 continue to take an active role to grow the company has damaged Mark and Tammy  
19 Smith’s reputation by implying that Mark and Tammy Smith are unreasonable and  
20 difficult to work with.

21 210. On April 10, 2018, Short hosted a company-wide Nerium International  
22 conference call. During this call, Short stated that Mark Smith had earned his money  
23 “at the expense of other people.” Short further stated that Mark Smith had a “lack of  
24 character.” Short further stated that Mark Smith was a coward, running his business  
25 with “just flat out cowardice.” These statements were false because Mark Smith does  
26 not earn his money “at the expense of other people,” does not have a “lack of  
27 character,” and does not operate his business with “just flat out cowardice.”  
28



1           211. Short’s false claims that Mark Smith earns money at the expense of other  
2 people, lacks character, and is a coward has damaged Mark Smith’s reputation.

3           212. Mark Smith is currently associated with one of Nerium International’s  
4 competitors, and sells eye cream for that competitor. During the aforementioned April  
5 10, 2018 conference call, Olson stated that the eye cream Mark Smith was currently  
6 selling for the competitor had an alkalinity of 11.5 which would “kill you,  
7 consistently.” Olson then maligned Mark Smith’s ethics by stating, “If you are willing  
8 to do that” “what other decisions would you be willing to make?”

9           213. Olson’s false claims that the eye cream Mark Smith is selling has an  
10 alkalinity of 11.5 and would consistently kill people was false, and damaged Mark  
11 Smith’s reputation and reduced Mark Smith’s income.

12           214. As a result of the above-described words, Plaintiffs have suffered general  
13 damages to their reputation.

14           215. As a further proximate result of the above-described words, Plaintiffs have  
15 lost the ability to retain Brand Partners who heard Olson, Heisz, and Short’s false  
16 statements all to the Plaintiffs’ injury according to proof.

17           216. The above-described words spoken by Olson were said with malice in that  
18 Olson dislikes the Smiths, and thus an award of exemplary and punitive damages is  
19 justified.  
20

21                           **EIGHTH CAUSE OF ACTION**

22                                       **Civil Conspiracy**

23           (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP; Heisz,  
24                                       Short; Olson; and DOES 1 – 10)

25           217. Plaintiffs incorporate each and every allegation contained in the preceding  
26 paragraphs of this SAC as fully set forth, and further allege:

27           218. At all relevant times, Defendants Olson, Heisz, Short, and DOES 1-10  
28 knowingly and willfully conspired and agreed amongst themselves to defame and

1 damage Plaintiffs by disseminating false statements to Brand Partners that Mark Smith  
2 and Tammy Smith were “lazy,” “not working hard enough,” and were responsible for  
3 the decrease in company sales, which caused direct harm to Nerium International as a  
4 result.

5 219. At all relevant times, Defendants Olson and DOES 1-10 knowingly and  
6 willfully conspired and agreed amongst themselves to defame and damage Plaintiffs  
7 by disseminating false statements to Brand Partners that implied Mark Smith and  
8 Tammy Smith were unreasonable or difficult to work with. **See EXHIBIT “A.”**

9 220. These Defendants knowingly and willfully conspired among themselves  
10 to make false defamatory statements about Mark Smith, including that Mark Smith sold  
11 deadly products, was unethical, and was a coward.

12 221. Defendants Olson, Heisz, Short, and DOES 1-10 did the acts and things  
13 herein alleged pursuant to, and furtherance of, the conspiracy and above-alleged  
14 agreement.

15 222. Plaintiffs are informed and believe and thereon allege that the last overt  
16 act in pursuance of the above-described conspiracy occurred on or about November  
17 2017, on which date Defendant Olson, Heisz, Short, and Defendant DOES 1-10  
18 directly contacted numerous Brand Partners and defamed and damaged the  
19 professional and personal reputation of Plaintiffs Mark Smith and Tammy Smith.

20 223. As a proximate result of the wrongful acts herein alleged, Plaintiffs have  
21 been generally damaged.

22 224. In doing the things herein alleged, Defendants acted willfully and with the  
23 intent to cause injury to the Plaintiffs. Defendants consciously disregarded Plaintiffs’  
24 rights, thereby warranting an assessment of punitive damages in an amount appropriate  
25 to punish Defendants and deter others from engaging in similar misconduct.  
26

27 **NINTH CAUSE OF ACTION**

28 **Conversion**

1 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
2 Olson; and DOES 1 – 10)

3 225. Plaintiffs incorporate each and every allegation contained in the preceding  
4 paragraphs of this SAC as fully set forth, and further allege:

5 226. At all times herein mentioned, and in particular on or about August of  
6 2011, Plaintiffs were, and still are, the rightful legal and/or equitable owners of: 1) a  
7 10% equity interest in Nerium International and any and all member distributions  
8 stemming therefrom; and 2) the combined 15% royalty on back office subscription  
9 fees.

10 227. Plaintiffs were, and still are, entitled to the possession of the following  
11 personal property, namely: 1) a combined 10% equity interest in Nerium International;  
12 2) 10% percent of any and all member distributions since August 2011; and 3) a  
13 combined 15% royalty from all back office subscription fees collected since August  
14 2011.

15 228. Between August 2011 and August 2015, Nerium International reached \$1  
16 billion in cumulative sales. Based upon information and belief, Plaintiffs allege the  
17 Plaintiffs' property interests described above have a current value in excess of  
18 \$100,000,000.

19 229. On numerous occasions since August 2011, Plaintiffs demanded the  
20 immediate return of the above-mentioned property interests but Defendants failed and  
21 refused, and continues to fail and refuse, to return the property to Plaintiffs.

22 230. As a proximate result of Defendants' conversion, Plaintiffs failed to  
23 receive: 1) a combined 10% equity interest in Nerium International; 2) 10% percent of  
24 any and all member distributions since August 2011; and 3) a combined 15% royalty  
25 from all back office subscription fees collected since August 2011, which are the  
26 natural, reasonable, and proximate results of Defendants' conversion, all to Plaintiffs'  
27 damage in excess of \$100,000,000. At all relevant times, Olson and Nerium  
28

1 International took and converted the abovementioned property for Olson and Nerium  
2 International's own use.

3 231. In addition, on or about October 2016, the Smiths achieved the highest  
4 compensation level at Nerium International. Accordingly, since October 2016 the  
5 Smiths were entitled to the highest compensation level in perpetuity, as repeatedly  
6 promised by Olson. However, since on or about October 2016, the Smiths have not  
7 been compensated at the highest level at Nerium International. As a result, the Smiths  
8 are owed the amount of \$491,250. However, the Smiths have not received any portion  
9 of the \$491,250 owed to them. As a result, the Defendants has converted the amount  
10 of \$491,250.

11 232. The Defendants' acts alleged above were willful, wanton, malicious, and  
12 oppressive, and justify the awarding of exemplary and punitive damages.

### 13 TENTH CAUSE OF ACTION

#### 14 **Accounting**

15 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
16 Olson; and DOES 1 – 10)

17 233. Plaintiffs incorporate each and every allegation contained in the preceding  
18 paragraphs of this SAC as fully set forth, and further allege:

19 234. On or about August of 2011, Plaintiffs and Defendant entered into an oral  
20 contract whereby Olson promised: 1) Mark Smith and Tammy Smith would **each** have  
21 5% equity in Nerium International; 2) the Smiths would be "co-founders" of Nerium  
22 International; and 3) Nerium International would pay Mark and Tammy a combined  
23 15% royalty, in perpetuity, on all the back office subscription fees generated by Nerium  
24 International, which was subsequently referred to as "Nerium Edge."

25 235. Beginning on or about August of 2011, Defendants have: 1) issued  
26 numerous member distributions; 2) generated numerous back office subscription fees;  
27  
28

1 and 3) received money, a portion of which is due to Plaintiffs, pursuant to the terms of  
2 the oral contract hereinabove alleged.

3 236. The amount of money due from Defendants to Plaintiffs is unknown to  
4 Plaintiffs and cannot be ascertained without an accounting of: 1) the distributions to  
5 the members of Nerium International, and 2) the receipts for all back office subscription  
6 fees, since August of 2011. Plaintiffs are informed and believe and thereon allege that  
7 the amount owed, however, exceeds the sum of \$100,000,000.

8 **ELEVENTH CAUSE OF ACTION**

9 **Breach of Contract (Implied in Fact)**

10 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
11 Olson; and DOES 1 – 10)

12 237. Plaintiffs incorporate each and every allegation contained in the preceding  
13 paragraphs of this SAC as fully set forth, and further allege:

14 238. In the event the oral and partially oral and partially written contracts  
15 described above fail to establish the basis of a contract, Plaintiffs alternatively contend  
16 that the circumstances surrounding the Smiths status as “Co-Founders & Chief Field  
17 Officers” at Nerium International, their assumption of sales responsibilities with  
18 respect to worldwide sales of products, and the Smiths’ actions in soliciting and  
19 ultimately recruiting Brand Partners created an implied-in-fact contract to compensate  
20 the Smiths for their sales and non-sales related efforts on behalf of Nerium  
21 International.

22 239. Olson on behalf of Nerium International solicited Plaintiffs efforts as  
23 described above under circumstances in which they reasonably understood that  
24 compensation would be owed for Plaintiffs’ efforts, and in which compensation in  
25 customarily paid for such efforts. Plaintiffs did everything asked of them and  
26 reasonably necessary to justify the payment of compensation, except to the extent such  
27 requirements were waived by Olson and/or Nerium International.  
28



1           245. Through their actions, Olson, Nerium International, and DOES 1-10  
2 engaged in unlawful, unfair and/or fraudulent business acts and practices within the  
3 meaning of Bus. & Prof. Code § 17200 *et seq.* because each Defendants’ conduct,  
4 business affairs and practices as alleged herein violate state statutes and regulations,  
5 and state common law, each of which constitutes an independent and separate violation  
6 of Bus. & Prof. Code § 17200 *et seq.*

7           246. These practices include, but are not limited to: (1) fraudulent  
8 misrepresentations and omissions of material facts by each Defendant regarding  
9 Nerium International’s true financial condition and business prospects in order to  
10 benefit themselves individually at Plaintiffs’ expense and to Plaintiffs’ detriment; (2)  
11 fraudulent misrepresentations and omissions of material facts by each Defendant  
12 regarding the quality of Nerium International’s products; and (3) fraudulent  
13 misrepresentation and omissions of material facts regarding the existence and results  
14 of laboratory testing of Nerium International’s products.

15           247. The California Supreme Court has stated that the UCL’s “broad and  
16 sweeping language” was designed to deal with business practices which on [their] face  
17 violate the fundamental rules of honesty and fair dealing.” *Cel-Tech Communications,*  
18 *Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163,181 (1999). This is exactly  
19 the type of scheme which is the basis of Plaintiffs’ First, Second, Third, Fourth, Fifth,  
20 Sixth, and Seventh Causes of Action.

21           248. Defendants’ unlawful, unfair and/or fraudulent business acts and practices  
22 were designed to deceive and harm Plaintiffs. Defendants unfairly damaged Plaintiffs  
23 for Defendants’ own economic benefit. Plaintiffs injuries arise out of Defendants  
24 fraudulent misrepresentations and omissions of material fact which caused Plaintiffs to  
25 invest time and money in Nerium International which they would not have if  
26 Defendants had accurately represented Nerium International’s true financial condition,  
27  
28



1 the quality of Nerium International's products, the existence and results of peer-  
2 reviewed laboratory testing of Nerium International's products.

3 249. These practices were perpetrated against Plaintiffs, who, as a direct and  
4 proximate result, have been substantially injured and have lost money and property.

5 250. Plaintiffs are entitled to restitution and injunctive relief to restore the  
6 money and property that Defendants wrongfully acquired. Further, Defendants should  
7 be ordered to disgorge any and all profits and benefits Defendants may have gained  
8 through interest or earnings on the money they wrongfully acquired.

9 **THIRTEENTH CAUSE OF ACTION**

10 **Constructive Trust**

11 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International)

12 251. Plaintiffs incorporate each and every allegation contained in the preceding  
13 paragraphs of this SAC as fully set forth, and further allege:

14 252. On or about October 2016, the Smiths achieved their highest  
15 compensation level at Nerium International. Accordingly, since October 2016 the  
16 Smiths were entitled to their highest compensation level in perpetuity, as repeatedly  
17 promised by Olson on behalf of Nerium International. However, since on or about  
18 October 2016, the Smiths have not been compensated at their highest level at Nerium  
19 International. As a result, the Smiths are entitled to the amount of \$491,250.

20 253. Plaintiffs are informed and believe that Nerium International is in custody  
21 of and has control of the \$491,250 the Plaintiffs are entitled, which Nerium  
22 International is not entitled, and that Nerium International has improperly retained  
23 these payments derived from the above alleged fraudulent acts and representations, as  
24 constructive trustee for Plaintiffs' benefit.

25 254. Plaintiffs are informed and believes that payments in the amount of  
26 \$491,250 are held in constructive trust for Plaintiffs and should be paid to Plaintiffs.  
27  
28

1 255. Plaintiffs are informed and believes that these assets and funds were  
2 knowingly and wrongfully withheld by Plaintiffs with full knowledge of Plaintiffs'  
3 rights and claims.

4 256. Nerium International is, therefore, constructive trustee of all of the assets  
5 and funds wrongfully withheld and diverted as alleged herein.

6 **FOURTEENTH CAUSE OF ACTION**

7 **Declaratory Relief (Oral Contract)**

8 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
9 Olson; and DOES 1 – 10)

10 257. Plaintiffs incorporate each and every allegation contained in the preceding  
11 paragraphs of this SAC as fully set forth, and further allege:

12 258. A dispute and actual controversy has arisen and now exists between  
13 Plaintiffs and Defendants, and each of them, in that Plaintiffs contend they are owed in  
14 excess of \$100,000,000, excluding interest, from Defendants for the promised 10%  
15 (5% each) equity interest in Nerium International and the 15% royalty due to each of  
16 the Smiths for the back office subscription fees.

17 259. Plaintiffs desire a judicial determination of the respective rights and duties  
18 of Plaintiffs and Defendants, and each of them, with respect to the damages claimed in  
19 this FAC.

20 260. Such a declaration is necessary and appropriate at this time so Plaintiffs  
21 may ascertain their rights to recovery with respect to the damages claimed in this FAC.

22 **FIFTEENTH CAUSE OF ACTION**

23 **Declaratory Relief (Partially Oral and Written Contract)**

24 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; JOP;  
25 Olson; and DOES 1 – 10)

26 261. Plaintiffs incorporate each and every allegation contained in the preceding  
27 paragraphs of this SAC as fully set forth, and further allege:  
28



1           267. When Olson did the acts described in this FAC, Olson, as an employer,  
2 abused a relation and position which gave him power to damage Plaintiffs' interests.  
3 Olson knew that Plaintiffs were susceptible to injury through mental distress.

4           268. When Olson did the acts described in this FAC, Olson acted intentionally  
5 and unreasonably and engaged in extreme and outrageous conduct. Olson did such acts  
6 deliberately, intentionally and recklessly so as to cause both Mark and Tammy Smith  
7 distress. Olson's conduct was done with knowledge that Plaintiffs' distress would  
8 thereby increase, and was done with wanton and reckless disregard of the consequences  
9 to both Mark and Tammy Smith.

10           269. Based on the acts described in this FAC, Mark and Tammy Smith are  
11 entitled to pursue this cause of action.

12           270. The above acts of Olson caused Mark and Tammy Smith severe emotional  
13 distress, anxiety, sleeplessness, and were outrageous and beyond the scope of their  
14 employment. As a direct, proximate and foreseeable result of the aforesaid conduct of  
15 Olson, Mark and Tammy Smith have suffered damages and injuries set forth below.

16           271. As a result of the aforesaid acts of Olson, Mark and Tammy Smith have  
17 become upset, distressed and aggravated. Mark and Tammy Smith claim general  
18 damages for such distress and aggravation in an amount of which will be proven at  
19 time of trial.

20           272. As a proximate result of the aforesaid acts of Olson, Mark and Tammy  
21 Smith have foreseeably suffered and continue to suffer substantial loss of earnings in  
22 an amount according to proof at the time of trial. Mark and Tammy Smith claim such  
23 amount as damages together with prejudgment interest.

24           273. As a direct and proximate result of the aforementioned wrongful conduct  
25 of Olson, Mark and Tammy Smith will suffer additional loss of earnings, reduced  
26 earning capacity in the future, and other incidental and consequential damages in an  
27 amount according to proof at the time of trial.  
28

1           274. As a proximate result of the conduct complained of herein, Mark and  
 2 Tammy Smith suffered and continues to suffer distress, anguish and shock, and thereby  
 3 sustained serious injuries to their physical and mental health, strength and activity,  
 4 causing them physical and emotional pain, all to general damage in such amount as  
 5 may be proven. Said amount is within the jurisdiction of the Superior Court of the State  
 6 of California.

7           275. As a direct and proximate result of the aforementioned wrongful conduct  
 8 of defendants, and each of them, Mark and Tammy Smith incurred medical expenses,  
 9 the exact nature and extent of which are unknown to Plaintiffs at this time and Plaintiffs  
 10 will ask leave of court to amend this SAC in this regard when the same have been  
 11 ascertained.

12           276. As a direct and proximate result of the aforementioned wrongful conduct  
 13 of defendants, and each of them, Plaintiffs will be required to incur additional future  
 14 medical expenses all to their further damage in an amount to be proven at trial.

15           277. To the extent distress to Mark and Tammy Smith was caused by the acts  
 16 of Olson, Plaintiffs request the assessment of punitive damages against Olson in an  
 17 amount appropriate to punish and make an example of Olson, because the acts taken  
 18 toward Mark and Tammy Smith were carried out in a deliberate, cold, callous and  
 19 intentional manner in order to injure and damage plaintiff. *See Heller v. Pillsbury  
 20 Madison & Sutro*, (1996) 50 Cal.App.4th 1367 (punitive damages are recoverable in  
 21 actions for intentional infliction of emotional distress).

22           278. Wherefore, plaintiff prays for judgment against the defendants as  
 23 hereinafter set forth.  
 24

**SEVENTEENTH CAUSE OF ACTION**

**Failure to Timely And Accurately Pay/Administer Wages**

(Plaintiffs Mark Smith and Tammy Smith Against Nerium International)

1           279. Plaintiffs incorporate each and every allegation contained in the preceding  
2 paragraphs of this SAC as fully set forth, and further allege:

3           280. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an  
4 employer to suffer or permit a California employee to work without paying wages for  
5 all hours worked.

6           281. During the liability period, Plaintiffs were regularly required as a matter  
7 of uniform policy and practice to work, and in fact worked, as unpaid employees for  
8 Nerium International, and Plaintiffs received no salary or hourly compensation by  
9 Nerium International for all hours worked, in violation of California Labor Code 1197  
10 and the applicable California Industrial Welfare Commission wage order(s).

11           282. Plaintiffs were, at all relevant times, under the control of Nerium  
12 International, and worked as employees for Nerium International. Nerium  
13 International's acts or omissions in failing to adequately compensate Plaintiffs were  
14 not in good faith nor were there reasonable grounds for Nerium International to believe  
15 that their acts or omissions were not contrary to California law.

16           283. For all times that Plaintiffs have already worked and were not paid wages  
17 by Nerium International and, pursuant to Labor Code section 1194.2, subdivision (a),  
18 liquidated damages in an amount equal to the unpaid wages and interest thereon.  
19 Pursuant to Labor Code section 1194, Plaintiffs are also entitled to their attorneys' fees,  
20 costs and interest according to proof

21           284. Within the applicable statutory period prior to filing the FAC, Nerium  
22 International failed to pay the Smiths for all hours worked for legally due wages.  
23 Nerium International failed to properly pay the Smiths and these wages remain due and  
24 unpaid.

25           285. As a result, the Smiths are entitled to all unpaid wages in an amount to be  
26 determined, commissions, statutory late-pay wages and related sums, civil penalties,  
27

28

1 attorneys' fees and costs, liquidated damages, disbursements, and interest as provided  
2 by California law.

3 **EIGHTEENTH CAUSE OF ACTION**

4 **Failure to Provide Accurate Wage Statements / Failure To Keep Records**

5 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International)

6 286. Plaintiffs incorporate each and every allegation contained in the preceding  
7 paragraphs of this SAC as fully set forth, and further allege:

8 287. Because of the wage failures, Nerium International failed to provide the  
9 Smiths with accurate time records and earnings statements as required by Labor Code  
10 section 226 and IWC Wage Orders. Nerium International knowingly and intentionally  
11 failed to provide the Smiths with a true and accurate wage statement showing all  
12 applicable hourly rates in effect during the pay period and the corresponding number  
13 of hours worked at each hourly rate by the employee, in violation of Labor Code §  
14 226(a).

15 288. Nerium International knowingly and intentionally failed to follow  
16 California's timing and record keeping requirements as set forth in Labor Code § 210.

17 289. Pursuant to Labor Code §§ 210 and 226(e), the Smiths are entitled to  
18 penalties for each violation. In addition, the Smiths are entitled to attorneys' fees and  
19 costs in an amount to be proved at trial.

20 **NINETEENTH CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages**

22 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International)

23 290. Plaintiffs incorporate each and every allegation contained in the preceding  
24 paragraphs of this SAC as fully set forth, and further allege:

25 291. Within the applicable Statutory period prior to the filing of this FAC.  
26 Nerium International allowed, suffered, permitted and/or required the Plaintiffs to  
27 perform work in excess of the statutory maximum hours per day, and in excess of the  
28



1 statutory maximum hours per week, for which they were not paid at premium rates of  
2 pay (or any rates of pay). Additionally, Nerium International failed to provide Plaintiffs  
3 with accurate time records and earnings statements as required by Labor Code section  
4 226 and IWC wage orders. As a result, Plaintiffs are entitled to unpaid overtime wages  
5 in an amount to be determined, statutory late-pay wages and related sums, civil  
6 penalties, attorneys’ fees and costs, liquidated damages, disbursements, and interest as  
7 provided by California law.

8 **TWENTIETH CAUSE OF ACTION**

9 **Failure to Provide Rest and Meal Periods**

10 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; Olson; and  
11 DOES 1 – 10)

12 292. Plaintiffs incorporate each and every allegation contained in the preceding  
13 paragraphs of this SAC as fully set forth, and further allege:

14 293. Within the applicable statutory period prior to the filing of the FAC,  
15 Nerium International failed to provide the Smiths required rest periods and meal  
16 periods as required by California law, including, but not limited to, California Labor  
17 Code sections 226.7, 512, and 516, and IWC Wage Orders.

18 294. Additionally, and because of its failure to provide the rest and meal  
19 periods, Nerium International failed to provide the Smiths with accurate time records  
20 and earnings statements as required by Labor Code section 226 and IWC Wage Orders.  
21 As a result, the Smiths are entitled to wages for all unpaid rest periods in an amount to  
22 be determined, statutory late-pay wages and related sums, civil penalties, attorneys’  
23 fees and costs, liquidated damages, disbursements, and interest as provided by  
24 California law.

25 **TWENTY-FIRST CAUSE OF ACTION**

26 **Unfair Wage/Hour Business Practices Pursuant To**  
27 **Business & Professions Code § 17200 Et Seq.**  
28

1 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International)

2 295. Plaintiffs incorporate each and every allegation contained in the preceding  
3 paragraphs of this SAC as fully set forth, and further allege:

4 296. Within the applicable statutory period prior to the filing of the FAC,  
5 Nerium International failed to comply with many Wage and Hour provisions of the  
6 State of California, as set forth herein.

7 297. The Smiths allege that at all relevant times Nerium International's actions,  
8 including, but not limited to, its violations of California Law and the California Labor  
9 Code as set forth herein, constitute a continuing/ongoing unfair and unlawful activity  
10 prohibited by Business & Professions Code section 17200 *et seq.*, and justify the  
11 issuance of an order disgorging wrongfully withheld wages and other related  
12 restitutionary sums held by Nerium International. The unlawful business practices of  
13 Nerium International are likely to continue to mislead the public into falsely believing  
14 that employees are being paid in accordance with the California Labor Code and not  
15 subjected to Nerium International's illegal, intimidating and coercive practices. The  
16 unlawful business practices of Nerium International, including avoiding wage  
17 obligations and expenses, present a continuing threat to the public. These violations  
18 constitute a threat to employees, competition, and the public. The Court is authorized  
19 to order an injunction, and/or disgorgement of wages and other restitutionary amounts  
20 to affected members of the public as a remedy for any violations of Business &  
21 Professions Code section 17200 *et seq.*

22 298. Nerium International has engaged in unfair business practices in  
23 California by utilizing the illegal employment practices outlined herein, including, but  
24 not limited to, mis-classifying its work force to circumvent California labor law  
25 requirements and to cuts labor costs; failing to compensate its work force with  
26 premium, overtime pay; failing to provide the Smiths with mandatory rest and meal  
27 breaks; causing the Smiths to work Off-the-Clock without paying wages for said time;  
28

1 failing to pay all wages when due; and failing to compensate the Smiths for other sums  
2 due for labor, fees and penalties according to California Law. Nerium International also  
3 failed to provide the Smiths with accurate time records and earnings statements as  
4 required by Labor Code section 226 and applicable IWC Wage Orders.

5 299. Nerium International’s employment conduct constitutes an unfair  
6 business practice, unfair competition, and provides an unfair advantage over Nerium  
7 International’s competitors. The Smiths seek full restitution and disgorgement of said  
8 monies from Nerium International, as necessary and according to proof, to restore any  
9 and all monies withheld, acquired, or converted by Nerium International by means of  
10 the unfair practices complained of herein.

11 300. The Smiths allege that the actions of Nerium International, as alleged  
12 herein, has caused and continue to cause the Smiths to suffer an injury in fact and lose  
13 money and/or property as a result of such unfair competition. The Smiths further allege  
14 that at all relevant times Nerium International engaged in unlawful, deceptive and  
15 unfair business practices prohibited by Business & Professions Code sections 17200*et*  
16 *seq.*, including those set forth herein, thereby depriving the Smiths and the public of  
17 the minimum working conditions and standards due them under California Labor Laws  
18 and IWC Wage Orders.

19 **TWENTY-SECOND CAUSE OF ACTION**

20 **Conversion of Wages**

21 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; Olson; and  
22 DOES 1 – 10)  
23

24 301. Plaintiffs incorporate each and every allegation contained in the preceding  
25 paragraphs of this SAC as fully set forth, and further allege:

26 302. In actively failing and refusing to pay wages to the Smiths, Nerium  
27 International unlawfully and intentionally took and converted the property of the  
28 Smiths for its own use. At the time the conversion took place, the Smiths were entitled

1 to immediate possession of the amounts of wages payable. Nerium International's  
2 conversion was oppressive, malicious and fraudulent and concealed by Nerium  
3 International from the Smiths. The Smiths seek all wages and related sums wrongfully  
4 converted by Nerium International, interest, as well as exemplary damages pursuant to  
5 Civil Code section 3294.

6 **TWENTY-THIRD CAUSE OF ACTION**

7 **Claim for Violation Of Civil Code Section 52.1**

8 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; Olson; and  
9 DOES 1 – 10)

10 303. Plaintiffs incorporate each and every allegation contained in the preceding  
11 paragraphs of this SAC as fully set forth, and further allege:

12 304. The State of California secures various rights for the Smiths, including,  
13 but not limited to, overtime wages, wages, rest breaks, meal breaks, and pay for missed  
14 rest breaks and meal periods as set forth in the California Labor Code and IWC Wage  
15 Orders. Within the applicable statutory period prior to the filing of the FAC, Nerium  
16 International willfully failed to pay wages, provide rest and meal breaks, and pay  
17 premium overtime wages as required by California law. Additionally, Nerium  
18 International failed to provide the Smiths with accurate time records and earnings  
19 statements as required by Labor Code section 226 and IWC wage orders, including,  
20 but not limited to, 4-2001 and 7-2001.

21 305. The Smiths allege that at all relevant times Nerium International's actions  
22 in violating California law, including, but not limited to, California Labor Code  
23 sections 200, 201, 202, 203, 204, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 227.7,  
24 2926, 510, 512, 516, 1174, 1174.5, 1198, and IWC Wage Orders 4-2001 and 7-2001,  
25 constituted violations of the rights protected under Civil Code section 52.1.

26 306. The Smiths allege that at all relevant times Nerium International used  
27 force, pressure, coercion and/or intimidation to discourage the Smiths from seeking  
28

1 their statutory entitlement of wages, rest breaks, meal periods, premium overtime pay,  
2 rest break pay, meal period pay and termination pay. The Smiths are entitled to relief  
3 because of Nerium International’s illegal conduct, and because of Nerium  
4 International’s conduct of making the Smiths fear reprisals if the Smiths sought to  
5 enforce those rights, wages, and other pay provided by California law, because of  
6 Nerium International’s reprisal scheme, including, but not limited to, threatening that  
7 the Smiths would not obtain advancement in the company, would lose their jobs, and  
8 would receive a bad job recommendation for future employment.

9 307. The Smiths further allege that Nerium International’s actions of force,  
10 pressure, coercion, and/or intimidation deprived the Smiths of rights secured by the  
11 laws of the State of California. As a direct and proximate result of Nerium  
12 International’s unlawful and predatory practices, Nerium International remains in  
13 possession of wages and other monies owed to the Smiths. As a result of Nerium  
14 International’s conduct as alleged herein, the Smiths are entitled to recover all unpaid  
15 wages and related sums, minimum statutory and civil penalties, plus attorneys’ fees  
16 and costs, interest, liquidated damages and disbursements pursuant to California law.

17 **TWENTY-FOURTH CAUSE OF ACTION**

18 **Invasion of Privacy**

19 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International;

20 Olson; Heisz; Short; and DOES 1 – 10)

21 308. Plaintiffs incorporate each and every allegation contained in the preceding  
22 paragraphs of this SAC as fully set forth, and further allege:

23 309. The California Constitution provides in its very first article that: “All  
24 people are by nature free and independent and have inalienable rights. Among these  
25 are enjoying and defending life and liberty, acquiring, possessing, and protecting  
26 property, and pursuing and obtaining safety, happiness, and privacy.”  
27  
28

1           310. A party claiming a violation of the constitutional right of privacy  
2 established in article I, section 1 of the California Constitution must establish (1) a  
3 legally protected privacy interest, (2) a reasonable expectation of privacy under the  
4 circumstances, and (3) a serious invasion of the privacy interest.

5           311. As employees and as distributors of Nerium International’s products, the  
6 Smiths had a reasonable expectation of privacy with respect to their compensation from  
7 Nerium International, including, but not limited to their compensation, bonuses and  
8 other remuneration.

9           312. On February 27, 2018, Nerium International intentionally and maliciously  
10 disclosed the Smiths’ private financial information by publicly disclosing, on a  
11 companywide email blast, without the Smiths’ permission or consent, the Smith’s  
12 personal and private financial information, including their compensation. See  
13 **EXHIBIT “A.”**

14           313. On the same day, Heisz intentionally and maliciously disclosed the  
15 Smiths’ private financial information by publicly disclosing, on a companywide  
16 conference call, without the Smiths’ permission or consent, the Smith’s personal and  
17 private financial information, including their compensation.

18           314. On April 10, 2018, Short disclosed Mark and Tammy’s income on an  
19 April 10, 2018 Nerium International conference call, stating, “This is a guy that made  
20 almost \$14 million dollars as a field person in this company.”

21           315. The intrusion into the Smith’s private financial information by Nerium  
22 International, Short, and Heisz would be highly offensive to a reasonable person  
23 because their motive and goal in disclosing this information to the call participants on  
24 the companywide teleconference and companywide email blast was to cast the Smiths  
25 in a negative light, to embarrass them, to humiliate them, to bring unwanted attention  
26 to them, to make them a target, and to injure their reputation in the multi-level  
27 marketing community.  
28

1 316. The intrusion into the Smiths’ private financial affairs by Nerium  
2 International, Heisz, and Short was done in a malicious attempt to interfere and injure  
3 the Smith’s reputation, financial prospects, employment, and future prospects.

4 317. As a result of Nerium International, Heisz, and Short’s comments, the  
5 Smiths sustained harm in the form of mental anguish, emotional distress, and harm to  
6 their reputation in their profession in the multi-level marketing community, and the  
7 conduct of Nerium International, Short, and Heisz was a substantial factor in causing  
8 the Smiths’ harm.

9 318. As a direct and proximate result of the wrongful conduct of Nerium  
10 International the Smiths have suffered and will continue to suffer emotional distress  
11 and damage to their reputation in the multi-level marketing community, as well other  
12 general and specific damages, all in an amount to be determined according to proof.

13 319. The conduct of Nerium International, Short, and Heisz was done  
14 maliciously, oppressively, and with intent to injure the Smiths. The Smiths are,  
15 therefore, entitled to punitive damages.

16 **TWENTY-FIFTH CAUSE OF ACTION**

17 **Violation of the California Fair Employment and Housing Act’s Prohibition of**  
18 **Harassment in Employment on the Basis of Religious Creed, and Race**

19 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; Olson; and  
20 DOES 1 – 10)  
21

22 320. Plaintiffs incorporate each and every allegation contained in the preceding  
23 paragraphs of this SAC as fully set forth, and further allege:

24 321. California’s Fair Employment and Housing Act (“FEHA”) proscribes  
25 employers from harassing an employee “because of ... religious creed”, and makes it  
26 unlawful for an employer that “knows or should have known of this conduct and fails  
27 to take immediate and appropriate corrective action. *Id.*  
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1           322. In violation of FEHA, Plaintiffs were subjected to offensive comments  
2 and other abusive conduct based on their religion by Olson that was severe and  
3 pervasive, altering the conditions of their employment.

4           323. Olson’s conduct was unreasonably abusive and created an offensive and  
5 hostile work environment for the Plaintiffs and for any reasonable person in Plaintiffs’  
6 position.

7           324. In violation of FEHA, Olson made discriminatory and derogatory  
8 comments relating to Plaintiffs’ religion including describing Christianity as a “fraud”  
9 and publicly proclaiming that the story of Jesus Christ is so unbelievably farfetched  
10 and stupid that he could not believe so many “idiots” fall for it. Olson made these  
11 comments with actual knowledge that Plaintiffs were Christians.

12           325. In violation of FEHA, Olson made discriminatory and derogatory  
13 comments relating to Tammy Smith’s race, and repeatedly requested that Tammy  
14 Smith be excluded from important meetings because, as Olson puts it, she is a “Korean  
15 Tiger.”

16           326. In violation of FEHA, Olson made derogatory comments about Mark and  
17 Tammy’s marriage, and their status as a married couple.

18           327. In violation of FEHA, Nerium International failed to take prompt and  
19 appropriate action to remedy and prevent the harassment of Plaintiffs by Olson.

20           328. Nerium International is strictly liable for the offensive and harassing  
21 conduct of its Chief Executive Officer.

22           329. As a direct and proximate result of Defendants’ unlawful conduct, the  
23 Smiths have suffered and will continue to suffer emotional injuries. Plaintiffs are  
24 thereby entitled to general and compensatory damages in amounts to be proven at trial.

25           330. The conduct of Nerium International, through its agent, as described  
26 herein was malicious, fraudulent, and oppressive and/or done with knowledge that they  
27 were acting in violation of federal and state law, and/or with a willful and conscious  
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1 disregard for Plaintiffs’ rights and for the deleterious consequences of their actions.  
2 Consequently, Plaintiffs are entitled to punitive damages.

3 331. Under FEHA, plaintiffs are required to exhaust their administrative  
4 remedies before resorting to the courts. In this case, Plaintiffs exhausted their  
5 administrative remedies by filing a timely charge with the California Department of  
6 Fair Employment and Housing  
7 (“DFEH”).

8 332. On February 26, 2018, the DFEH issued Mark Smith and Tammy Smith  
9 a notice of right to bring a civil action based on the charges that are attached hereto and  
10 incorporated herein as **EXHIBITS “C” and “D.”**

11 **TWENTY-SIXTH CAUSE OF ACTION**

12 **Retaliation (FEHA)**

13 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; Olson; and  
14 DOES 1 – 10)

15 333. Plaintiffs incorporate each and every allegation contained in the preceding  
16 paragraphs of this SAC as fully set forth, and further allege:

17 334. FEHA forbids retaliating against an employee for “having opposed any  
18 practices forbidden under this part or because the person has filed a complaint, testified,  
19 or assisted in any proceeding . . .” Cal. Gov. Code § 12940(h).

20 335. On February 23, 2018, the Smiths filed a complaint against Nerium  
21 International and Olson alleging that Olson and Nerium International had perpetuated  
22 a culture of sexual and religious discrimination and harassment and that Olson had  
23 personally discriminated against and harassed the Smiths by making sexist and anti-  
24 Christian statements.

25 336. On February 26, 2018, the Smiths filed a notice with the Department of  
26 Fair Employment & Housing, seeking an immediate Right to Sue notice based on the  
27 discrimination and harassment the Smiths have suffered from Nerium International’s  
28

1 CEO Olson. The Smiths’ filed updated notices on March 15, 2018. See **EXHIBITS**  
2 **“C” and “D”**.

3 337. In retaliation for making these claims, Nerium International has removed  
4 the Smiths from their position as Chief Field Officers, Master Distributors and as  
5 distributors of Nerium International’s products, excluded Tammy Smith from her  
6 weekly corporate telephone conferences (that she has hosted for over six years),  
7 excluded Tammy Smith from her weekly video calls (that she has hosted for years),  
8 closed the Smiths’ company credit cards, removed the Smiths’ administrative  
9 privileges across different platforms, discontinued Brand Partner communications to  
10 the Smiths, ordered the Smiths’ assistant to cease all communications with the Smiths  
11 regarding Nerium’s business, disinvited Mark and Tammy from participating company  
12 team building events, and removed the Smiths from the Nerium Leadership Team  
13 website, among other things. Further, Nerium International and its’ leadership have  
14 “auctioned off” Mark and Tammy’s position (including compensation) within the  
15 company under the pretense that Mark and Tammy were leaving Nerium International.  
16

17 338. The Smiths have repeatedly requested some explanation for these  
18 retaliatory actions, but Nerium International has failed to provide any satisfactory  
19 explanation.

20 **TWENTY-SEVENTH CAUSE OF ACTION**

21 **Hostile Work Environment Harassment—Conduct Directed at Others**

22 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International;  
23 Olson; and DOES 1 – 10)

24 339. Plaintiffs incorporate each and every allegation contained in the preceding  
25 paragraphs of this SAC as fully set forth, and further allege:

26 340. Mark Smith and Tammy Smith were employed by Nerium International  
27 as Master Distributors and Chief Field Officers.  
28

1 341. Mark Smith and Tammy Smith personally witnessed harassing conduct  
2 that took place in their immediate work environment.

3 342. This harassment included Olson insulting and harassing individuals  
4 because of their religion.

5 343. The harassing conduct was severe or pervasive insofar as a reasonable  
6 person in Mark and Tammy Smith's circumstances would have considered the work  
7 environment to be hostile or abusive.

8 344. Mark Smith and Tammy Smith considered the work environment to be  
9 hostile or abusive towards Christians.

10 345. Olson perpetrated the harassing conduct and Mark Smith and Tammy  
11 Smith was harmed.

12 346. The conduct was a substantial factor in causing the Plaintiff's harm.

13 **TWENTY-EIGHTH CAUSE OF ACTION**

14 **Constructive Discharge in Violation of Public Policy**

15 (Plaintiffs Mark Smith and Tammy Smith Against Nerium International; and DOES 1  
16 – 10)

17 347. Plaintiffs incorporate each and every allegation contained in the preceding  
18 paragraphs of this SAC as fully set forth, and further allege:

19 348. Mark Smith and Tammy Smith were employed by Nerium International  
20 as Master Distributors and Chief Field Officers.

21 349. Mark Smith and Tammy Smith were subjected to working conditions that  
22 violated public policy, in that: Olson repeatedly demanded that the Smiths make untrue  
23 and fraudulent statements about Nerium International's products which Olson knows  
24 are false; Olson's repeatedly made anti-Christian and sexist comments to Mark Smith,  
25 Tammy Smith, and others; and the Nerium leadership team, including but not limited  
26 to Olson, Amber Olson Rourke, Renee Olson, Deborah Heisz, and Bo Short, has  
27 engaged in a continuous pattern of defamatory and slanderous statements while the  
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1 Smiths were still employed by and contracted with Nerium International.  
2 These comments and statements were intended to demean and harass the Smiths, and  
3 effectively eliminate the Smiths' ability to perform their necessary job duties at Nerium  
4 International.

5 350. Since the Smiths filed the litigation on February 23, 2018, Nerium  
6 International initially refused to "terminate" the Smiths, but moved quickly to ensure  
7 that the Smiths could not continue in their position as Chief Field Officers and Master  
8 Distributors by: removing Tammy Smith from her weekly corporate telephone  
9 conferences (that she has hosted for over six years), excluded Tammy Smith from her  
10 weekly video training (that she has hosted for years), closing company credit cards  
11 used by the Smiths; removing administrative privileges across different platforms;  
12 discontinuing Brand Partner communications to the Smiths; ordering the Smiths'  
13 assistant to cease all communications with the Smiths regarding Nerium International's  
14 business; disinviting Mark and Tammy from participating in company team building  
15 events; and removing the Smiths from the Nerium Leadership Team website, among  
16 other things.

17 351. Nerium International intentionally created and knowingly permitted these  
18 working conditions.

19 352. These working conditions were so intolerable that a reasonable person in  
20 the Smiths' position would have had no reasonable alternative except to give notice of  
21 constructive discharge pursuant to California law.

22 353. On or about March 12, 2018, Mark Smith and Tammy Smith gave notice  
23 of constructive discharge because of these working conditions, and indicated that their  
24 notice was deemed to be a constructive discharge under California law. A copy of the  
25 Smiths' letter to Nerium International is attached hereto and incorporated herein by  
26 reference as **EXHIBIT "E."**  
27  
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1 354. Mark Smith and Tammy Smith were harmed; and the working conditions  
2 at Nerium International were a substantial factor in causing the Smiths' harm.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for relief, as follows:

5 **For Cause of Action No. 1 (Fraud):**

- 6 1. For compensatory damages according to proof plus interest for monies
- 7 owed to Plaintiffs by Defendants;
- 8 2. For incidental and special damages according to proof;
- 9 3. For pre-judgment interest and other interest on the sum of compensatory
- 10 damages awarded as permitted or required by law;
- 11 4. For punitive damages;
- 12 5. For any other remedy to which Plaintiffs may be entitled under any
- 13 California law; and
- 14 6. For such other and further relief as this Court deems just and proper.

15 **For Causes of Action Nos. 2 through 6, 11, and 12:**

- 16 1. For compensatory damages according to proof, plus interest for monies
- 17 owed to Plaintiffs by Defendants;
- 18 2. For incidental and special damages according to proof;
- 19 3. For return to Plaintiffs of monies paid to Defendant according to proof;
- 20 4. For pre-judgment interest and other interest on the sum of compensatory
- 21 damages awarded as permitted or required by law;
- 22 5. For any other remedy to which Plaintiffs may be entitled under any
- 23 California law; and
- 24 6. For such other and further relief as this Court deems just and proper.

25 **For Cause of Action No. 7 (Defamation):**

- 26 1. For general damages according to proof;
- 27 2. For special damages according to proof;
- 28

- 1 3. For punitive damages;
- 2 4. For costs of suit incurred herein; and
- 3 5. For such other and further relief as the Court may deem proper.

4 **For Cause of Action No. 8 (Civil Conspiracy):**

- 5 1. For general damages;
- 6 2. For damages for loss of earnings according to proof;
- 7 3. For exemplary or punitive damages;
- 8 4. For costs of suit herein incurred; and
- 9 5. For such other and further relief as the Court may deem proper.

10 **For Cause of Action No. 9 (Conversion):**

- 11 1. For the value of the property converted;
- 12 2. For compensatory damages according to proof, plus interest for monies  
13 owed to Plaintiffs by Defendants;
- 14 3. For damages for time and money properly expended in pursuit of the  
15 converted property according to proof;
- 16 4. For punitive and exemplary damages;
- 17 5. For any other remedy to which Plaintiffs may be entitled under any  
18 California law, including treble damages and attorneys' fees as authorized by the  
19 California Penal Code;
- 20 6. For costs of suit herein incurred; and
- 21 7. For such other and further relief as the Court may deem proper.

22 **For Cause of Action No. 10 (Accounting):**

- 23 1. For an accounting between Plaintiffs and Defendants;
- 24 2. For payment over to Plaintiffs of the amount due from Defendants as a  
25 result of the account and interest on that amount from and after August of 2011;
- 26 3. For costs of suit herein incurred; and
- 27 4. For such other and further relief as the Court may deem proper.
- 28



1 **For Cause of Action No. 13 (Constructive Trust):**

- 2 1. For a judicial declaration stating that Nerium International holds the  
3 amount of \$491,250 as constructive trustee for the benefit of Plaintiffs;  
4 2. For costs of suit incurred herein; and  
5 3. For such other further relief as the court may deem proper.

6 **For Cause of Action No. 14 (Declaratory Relief – Oral Contract):**

- 7 1. For a judicial declaration stating the respective rights and duties of  
8 Plaintiffs and Defendants, and each of them, with respect to the damages claimed in  
9 this FAC.

10 **For Cause of Action No. 15 (Declaratory Relief – Partially Oral and Written**  
11 **Contract):**

- 12 1. For a judicial declaration stating the respective rights and duties of  
13 Plaintiffs and Defendants, and each of them, with respect to the non-competition,  
14 non-solicitation, governing law, venue, jurisdiction, and arbitration provisions  
15 contained in the Brand Partner Agreement.

16 **For Cause of Action No. 16 (Intentional Infliction of Emotional Distress):**

- 17 1. For compensatory damages as allowed by law according to proof at trial;  
18 2. For medical and related expenses as allowed by law according to proof  
19 at trial;  
20 3. For an award of punitive damages as allowed by law and according to  
21 proof at trial;  
22 4. For lost earnings and related expenses as allowed by law according to  
23 proof at trial;  
24 5. For wages, interest, damages and penalties as allowed by law and  
25 according to proof at trial;  
26 6. For prejudgment interest on all amounts claimed, as permitted by law;  
27 and  
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1           7. For such other and further relief as the Court deems just and proper.

2 **For Causes of Action Nos. 17 through 23:**

3           1. For compensatory damages according to proof, plus interest for monies  
4 owed to Plaintiffs by Defendants;

5           2. For incidental and special damages according to proof;

6           3. For return to Plaintiffs of monies paid to Defendant according to proof;

7           4. For civil penalties as permitted or required by law;

8           5. For pre-judgment interest and other interest on the sum of compensatory  
9 damages awarded as permitted or required by law;

10           6. For a declaration from the Court pursuant to California Business and  
11 Professions Code Section 17200 et seq., that Nerium International is prohibited from  
12 engaging in future unfair business practices affecting Nerium International's  
13 employees and distributors of Nerium International's products;

14           7. For any other remedy to which Plaintiffs may be entitled under any  
15 California law; and

16           8. For such other and further relief as this Court deems just and proper.

17 **For Causes of Action Nos. 24 through 26:**

18           1. For back pay, front pay, and other monetary relief according to proof;

19           2. For general damages according to proof;

20           3. For punitive damages in an amount appropriate to punish defendant for  
21 its wrongful conduct and set an example for others;

22           4. For interest on the sum of damages awarded;

23           5. For reasonable attorney's fees and costs, including expert witness fees,  
24 pursuant to Government Code Section 12965(b);

25           6. For costs of suit herein incurred; and

26           7. For such other and further relief as the court deems proper.

27 **For Causes of Action Nos. 27 and 28:**

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1. For general damages;
  2. For lost wages and other compensation;
  3. For punitive damages in an amount appropriate to punish defendant for its wrongful conduct and set an example for others;
  4. For interest on the sum of damages awarded;
  5. For reasonable attorney’s fees and costs, including expert witness fees;
- and
6. For such other and further relief as the court deems proper.

Dated: July 23, 2018

BOHM WILDISH & MATSEN, LLP

By: /s/ Christopher J. Green  
James G. Bohm  
Klaus Heisze  
Christopher J. Green

Attorneys for Plaintiffs,  
MARK AND TAMMY SMITH

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**DEMAND FOR JURY TRIAL**

Mark Smith and Tammy Smith hereby demand trial by jury on all issues raised by the SAC.

Dated: July 23, 2018

BOHM WILDISH & MATSEN, LLP

By: /s/ Christopher J. Green  
James G. Bohm  
Klaus Heisze  
Christopher J. Green

Attorneys for Plaintiffs,  
MARK AND TAMMY SMITH

# EXHIBIT "A"

From: "Nerium International " <[mailer@neriuminternational.net](mailto:mailer@neriuminternational.net)>

Date: February 27, 2018 at 3:07:53 PM CST

To: [REDACTED]

Subject: Important Update from Nerium International

Reply-To: [support@nerium.com](mailto:support@nerium.com)



To our Nerium Family:

I know you share our excitement as we begin another successful year. It is hard to imagine but in less than seven years we are approaching sales of almost two billion dollars.

One key to this success is the open and transparent relationship that we all share. That is why I am writing today, to inform you of some issues that have arisen between Mark and Tammy Smith and our company that have resulted in them suing the company and its founder. I want to make sure that you have the facts and know that this will not distract the company and management team from moving full speed ahead on continuing to grow our dynamic business.

Unfortunately, after good faith efforts over several years the company has been unable to come to an agreement on how Mark and Tammy would receive a 10 percent equity interest in the company. Believe me, it was not for lack of trying. The evidence will show that we negotiated in good faith and all we wanted in return for the equity was a reasonable assurance that Mark and Tammy would continue to take an active role to grow the company, which they were not willing to commit to. Our goal is to protect the company on behalf of the many Brand Partners whose dreams and livelihoods are dependent on it, not make one couple happy at the expense of those same people.

Mark and Tammy have already received close to \$14 million for their efforts, which is substantially more than any other field leader or executive member. We fully intend to defend the company in this frivolous case which we believe was filed with a clear intent for personal gain. We are confident the evidence will clearly show that the claims in the lawsuit are completely without merit. In addition, we feel it is important to note that not only is the personal disparagement aimed at Jeff, the company's founder, in the pleadings untrue and disappointing but we believe it is an attempt to gain leverage in a case that is not supported by the facts or the law.

I know that the first question you will have when receiving this information is what does this mean for the future of our company and your business? The plain answer is that it is business as usual. More exciting new programs, tools, training and products are already in the pipeline for 2018.

Our management team, with a vast combined experience in finance, direct marketing, technology, management and operations, is in place and working full-time to help you achieve success.

We are currently in 13 countries which comprise approximately 65 percent of the direct selling markets in the world and 60 percent of the marketplace with beauty and wellness products. We had a great Prolistic launch and have other new innovative products in the pipeline for this year. Everything is in place for you to harvest from the work you have already done with many new opportunities for 2018.

In times of change those who succeed and prosper focus on being a leader and executing the key strategies needed for success and avoid focusing on gossip, personal attacks, false claims or other distractions that can keep them from achieving their goals.

We look forward to helping you achieve those goals and look forward to seeing you at Get Real in Las Vegas to celebrate your success.





**Nerium International™, LLC**

4006 Belt Line Road, Suite 100, Addison, TX 75001

Please add [mailer@neriuminternational.net](mailto:mailer@neriuminternational.net) to your address book.



This message was intended for: [REDACTED]  
You were added to the system [REDACTED].  
[Update your preferences](#) | [Unsubscribe](#)

# EXHIBIT "B"

**From:** Jeff Olson <[JeffOlson3@msn.com](mailto:JeffOlson3@msn.com)>

**Subject:** Fw: Proposed LOI between JO Products and Mr. and Ms. Smith

**Date:** September 14, 2016 at 2:51:57 PM PDT

**To:** "[teamfreedom1@gmail.com](mailto:teamfreedom1@gmail.com)" <[teamfreedom1@gmail.com](mailto:teamfreedom1@gmail.com)>, Tammy Smith <[tammycoty@yahoo.com](mailto:tammycoty@yahoo.com)>, "[sfb@bright-law.com](mailto:sfb@bright-law.com)" <[sfb@bright-law.com](mailto:sfb@bright-law.com)>, Dan Bruce <[dbruce@sb-texas.com](mailto:dbruce@sb-texas.com)>

Hi..Here is the proposed term sheet covering our Equity agreement. As far as other things we have discussed I have addressed below.

No legs outside of your distributorship will be formed and none above it as well.

You will be the Master Distributor.

We will be adding the top three ranks as proposed by Deb and agreed to by Mark and you will be paid the LBB bonus when earned permanently.

I and the management team have no problem with co founder title when you feel it is the right time to implement.

As you know I am in the process of putting together a succession plan that will involve a governing board of which you will be on.

The above points can be part of a separate agreement.

Think this covers it all .. Look forward to a long and successful journey together.. Thanks

# EXHIBIT "C"



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 | TDD (800) 700-2320  
<http://www.dfeh.ca.gov> | email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

March 15, 2018

Christopher Green  
695 Town Center Drive Suite 700  
Costa Mesa, California 92626

RE: **Notice to Complainant's Attorney**  
DFEH Matter Number: 201802-01350826  
Right to Sue: Smith / Nerium International LLC

Dear Christopher Green:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION  
BEFORE THE STATE OF CALIFORNIA  
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING  
Under the California Fair Employment and Housing Act  
(Gov. Code, § 12900 et seq.)**

**In the Matter of the Complaint of**

Mark Smith

DFEH No. 201802-01350826

Complainant,

vs.

Nerium International LLC  
4006 Belt Line Road  
Addison, Texas 75001

Respondent.

1. Respondent **Nerium International LLC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

Mission Viejo

2. Complainant **Mark Smith**, resides in the City of ~~Costa Mesa~~ State of **California**.

3. Complainant alleges that on or about **February 23, 2018**, respondent took the following adverse actions:

**Complainant was harassed** because of complainant's religious creed - includes dress and grooming practices, marital status, sexual harassment- hostile environment.

**Complainant was discriminated against** because of complainant's religious creed - includes dress and grooming practices, marital status and as a result of the discrimination was forced to quit, suspended, denied a work environment free of discrimination and/or retaliation.

**Complainant experienced retaliation** because complainant reported or resisted any form of discrimination or harassment and as a result was terminated, forced to quit, suspended, denied a work environment free of discrimination and/or retaliation.

**Additional Complaint Details:** CEO Jeff Olson has engaged in a pattern of conduct designed to belittle Mark Smith, including making numerous disparaging comments to Mark Smith about Christianity. On one occasion, at a public restaurant, Olson

1 loudly proclaimed that Christian and the Mormon religions were “frauds.” This  
2 particular meeting was over breakfast at a Dallas hotel. Olson explained how the  
3 story of Jesus Christ is so unbelievably “farfetched and stupid” that he could not  
4 believe so many “idiots” fall for it. This was not an isolated incident.  
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1 VERIFICATION

2 I, **Christopher Green**, am the **Attorney** in the above-entitled complaint. I have read  
3 the foregoing complaint and know the contents thereof. The matters alleged are  
4 based on information and belief, which I believe to be true.

5 On March 15, 2018, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

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**Costa Mesa, California**

# EXHIBIT "D"



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 | TDD (800) 700-2320  
<http://www.dfeh.ca.gov> | email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

March 15, 2018

Christopher Green  
695 Town Center Drive  
Costa Mesa, California 92626

RE: **Notice to Complainant's Attorney**  
DFEH Matter Number: 201802-01351526  
Right to Sue: Smith / Nerium International LLC

Dear Christopher Green:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION  
BEFORE THE STATE OF CALIFORNIA  
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING  
Under the California Fair Employment and Housing Act  
(Gov. Code, § 12900 et seq.)**

**In the Matter of the Complaint of**

Tammy Smith

DFEH No. 201802-01351526

Complainant,

vs.

Nerium International LLC  
4006 Belt Line Road  
Addison, Texas 75001

Respondent.

1. Respondent **Nerium International LLC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

Mission Viejo

2. Complainant **Tammy Smith**, resides in the City of ~~Costa Mesa~~ State of **California**.

3. Complainant alleges that on or about **February 23, 2018**, respondent took the following adverse actions:

**Complainant was harassed** because of complainant's race, ancestry, religious creed - includes dress and grooming practices, sex/gender, marital status, sexual harassment- hostile environment.

**Complainant was discriminated against** because of complainant's race, ancestry, national origin (includes language restrictions), religious creed - includes dress and grooming practices, sex/gender, marital status and as a result of the discrimination was forced to quit, suspended, denied a work environment free of discrimination and/or retaliation.

**Complainant experienced retaliation** because complainant reported or resisted any form of discrimination or harassment and as a result was forced to quit, suspended, denied a work environment free of discrimination and/or retaliation.

1 **Additional Complaint Details:** CEO Jeff Olson has engaged in a pattern of conduct  
2 designed to belittle Tammy Smith, including making numerous disparaging  
3 comments to Tammy Smith about Christianity. On one occasion, at a public  
4 restaurant, Olson loudly proclaimed that Christian and the Mormon religions were  
5 “frauds.” This particular meeting was over breakfast at a Dallas hotel. Olson  
6 explained how the story of Jesus Christ is so unbelievably “farfetched and stupid”  
7 that he could not believe so many “idiots” fall for it. This was not an isolated incident.  
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1 VERIFICATION

2 I, **Christopher Green**, am the **Attorney** in the above-entitled complaint. I have read  
3 the foregoing complaint and know the contents thereof. The matters alleged are  
4 based on information and belief, which I believe to be true.

5 On March 15, 2018, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

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**Costa Mesa, California**

# EXHIBIT "E"



MARK AND TAMMY SMITH  
Mark@TeamFreedom.com

March 12, 2018

VIA E-MAIL

Nerium International, LLC  
c/o Deborah K. Heisz, President  
4006 Belt Line Rd #100  
Addison, TX 75001

RE: Nerium International's Constructive Discharge of Mark and Tammy Smith

Dear Deborah Heisz:

This letter is to inform you that, effectively immediately, we deem ourselves to be constructively terminated by Nerium International, LLC, as employees (Chief Field Officers) and Brand Partners. The intolerable and unacceptable working conditions at Nerium include: Jeff Olson's repeated demands that we make untrue and fraudulent statements; Jeff Olson's repeated anti-Christian and sexist statements; Nerium's suspension of our e-mail accounts; Nerium's removal of us from company conference calls; Nerium's cancellation of our company credit cards; and Nerium's continuous onslaught of defamatory and slanderous statements before and after the litigation we filed in California.

We can only assume that Nerium's actions and statements, many of which have been made in the presence of Brand Partners, are intended to demean us and eliminate our ability to perform our job and succeed as Brand Partners and Chief Field Officers in the company that we co-founded. As a result, we are currently evaluating all legal recourse against Nerium and its leadership.

We also wanted to take this opportunity to speak out about Nerium's mistreatment of the Brand Partners. The Brand Partners do not deserve to have their contracts with Nerium unilaterally terminated when Jeff Olson determines that he can no longer afford to pay them. Moreover, Jeff Olson's mismanagement of Nerium has damaged the finances of the company, put Nerium in financial distress, and decreased the Brand Partner's earning potential.

The Nerium Brand Partners are a fantastic group of people and we would love to continue working with them. As you know, the Brand Partners are what makes Nerium the company it is today. While we would love to continue working with the Brand Partners and hope to have an opportunity to work with them again, we cannot continue in good conscience to work for Nerium under the leadership and direction of Jeff Olson.

If you need to reach us for any reason, our e-mail address is: Mark@TeamFreedom.com. We would love to hear from you as we start another exciting chapter of our lives!

Very Truly Yours,

Mark and Tammy Smith

