

**Cause No. DC-18-03726**

<b>NERIUM INTERNATIONAL, LLC,</b>	<b>§</b>	<b>IN THE DISTRICT COURT OF</b>
	<b>§</b>	
<b>Plaintiff,</b>	<b>§</b>	
	<b>§</b>	
<b>v.</b>	<b>§</b>	<b>DALLAS COUNTY, TEXAS</b>
	<b>§</b>	
<b>MARK SMITH, MARK &amp; TAMMY</b>	<b>§</b>	
<b>SMITH, LLC, DARIN KIDD, and TEE</b>	<b>§</b>	
<b>DANIEL,</b>	<b>§</b>	
	<b>§</b>	
<b>Defendants.</b>	<b>§</b>	<b>134th JUDICIAL DISTRICT</b>

**PLAINTIFF’S THIRD AMENDED PETITION AND APPLICATION FOR  
TEMPORARY AND PERMANENT INJUNCTION, SUBJECT TO ARBITRATION**

TO THE HONORABLE COURT:

Plaintiff Nerium International, LLC (“Nerium”) files this Third Amended Petition and Application for Temporary and Permanent Injunction, Subject to Arbitration, against Defendants Mark Smith, Mark & Tammy Smith, LLC (“MTS, LLC”), Darin Kidd, and Tee Daniel (together, “Defendants”), saying:

**I. SUMMARY**

1. Nerium’s tens of thousands of salespeople are independent contractors who have small businesses selling Nerium’s products and recruiting others salespeople to join Nerium’s sales force. This lawsuit arises out of the efforts of Nerium’s highest-ranking salespeople, the Smiths, to raid Nerium’s sales force for a competitor through their own efforts and the efforts of the co-defendants, consultants to Nerium and other Nerium salespeople. Unless the Court issues injunctive relief, Nerium, and the Brand Partners whose businesses are affected, will be irreparably damaged.

2. Nerium went to great lengths to ensure the success of the Smiths. The Smiths were placed in a highly visible position, given direct access to Nerium’s sales force, and earned

millions during their tenure with Nerium. But this was not enough for the Smiths. Greed and ego led Mark Smith to plot a raid of Nerium's sales force, in direct violation of the Smiths' non-solicitation agreements with Nerium, with the assistance of their co-defendants. Kidd, and Tee Daniel are similarly subject to, and violating, their non-solicitation agreements with Nerium.

3. The Defendants have worked in concert with each other, and third parties, to attempt to cover their tracks, and employ artificial constructs they believe will insulate their behavior. But their conduct (and its impact) was not well-disguised, and it persisted despite the filing of this lawsuit. Pursuant to the terms of the parties' agreement, Nerium therefore sought a temporary injunction against Defendants and others, to preserve the status quo and prevent the Defendants from causing further harm until the merits of this dispute are resolved, reserving all rights to proceed in arbitration as agreed. The Court granted a Temporary Injunction against the Defendants on May 21, 2018.

## **II. RELIEF SOUGHT & DISCOVERY LEVEL**

4. Nerium sought to conduct discovery under a Level 3 Discovery Control Plan with respect to its application for a temporary injunction. The temporary injunction has been granted against the Defendants. Following its decision not to proceed with further injunction hearings against the then-remaining defendants as the result of the remaining defendants' extreme delay in producing court-ordered discovery, Nerium nonsuited those parties and commenced a AAA arbitration, *Nerium International, LLC, et al. v. Mark Smith, et al.*, AAA Cause No. 01-18-0002-8613 (the "Arbitration"), and seeks to have its substantive claims adjudicated in that Arbitration. (See Ex. 12, Demand for Arbitration and Statement of Claims) Accordingly, Nerium has moved this Court to compel arbitration of this dispute. All further discovery, therefore (with the exception of discovery directed solely to the Motion to Compel Arbitration), should be conducted in the Arbitration rather than in this Court.

5. Pursuant to Texas Rule of Civil Procedure 47, and without waiving its right to arbitrate, Nerium seeks to maintain the temporary injunction already issued by this Court, to prevent irreparable injury during the pendency of its claims both in arbitration and, as necessary, in this Court, and the entry of a permanent injunction pursuant to and following the entry of an award in the Arbitration and its confirmation by this Court. Plaintiff has sought money damages in the Arbitration that, upon submission to this Court for confirmation of an award, are within the jurisdictional limits of this Court.

### **III. PARTIES**

6. Nerium is a limited liability company organized under Texas law, with its principal place of business in Addison, Texas.

7. Defendant Mark Smith is an individual who appeared in this action on April 6, 2018.

8. Defendant Mark & Tammy Smith, LLC is a Wyoming LLC that appeared in this action on April 6, 2018.

9. Defendant Darin Kidd is an individual who appeared in this action on April 24, 2018.

10. Defendant Tee Daniel is an individual who appeared in this action on April 27, 2018.

### **IV. JURISDICTION AND VENUE**

11. The Court has jurisdiction because the damages sought are within the Court's jurisdictional limits, and further because Smith, MTS, LLC, Kidd, and Daniel consented to jurisdiction in Texas as a condition of becoming a Nerium Brand Partner. Likewise, the Court has jurisdiction over Defendants because they have purposefully availed themselves of the privileges and benefits of conducting business in Texas. Nerium's claims relate to and arise out

of Defendants' forum contacts, specifically their attempt to raid, and assist in the raid of, Nerium's sales force, which is headquartered in Addison, Texas. Exercising personal jurisdiction comports with traditional notions of fair play and substantial justice. Jurisdiction is also proper under the Texas long-arm statute because Defendants have, on information and belief, committed torts in whole or in part in Texas. TEX. CIV. PRAC. & REM. CODE § 17.042(1).

12. Venue is proper because Smith, MTS, LLC, Kidd, and Daniel contractually agreed to venue in Dallas County, Texas. In addition, a substantial part of the acts or omissions giving rise to Nerium's claims occurred in Dallas County, Texas. Venue is further proper pursuant to TEX. CIV. PRAC. & REM. CODE § 15.005.

## **V. FACTUAL BACKGROUND**

### **Nerium's Relationship-Based Sales Structure**

13. Nerium is a direct-sales company (also called direct-marketing or multi-level marketing) that sells anti-aging and other products through independent distributors called "Brand Partners," collectively referred to as the "field." (Ex. 1, Wager Decl., ¶ 3)<sup>1</sup> Nerium's Brand Partners earn money by selling Nerium's products, often through social media and personal contacts, and by recruiting new Brand Partners to do the same. (*Id.*) A Brand Partner's personal recruits, and those people's recruits, and so on, are called the Brand Partner's "downline." (*Id.*) Brand Partners receive commissions both on their own sales and on sales in their downline. (*Id.*) The "upline" is the person who recruited the Brand Partner, and the people who recruited that person, and so on. (*Id.*) Nerium supports its Brand Partners by providing superior products, commissions and bonuses, training, corporate-level advertising, back-office

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<sup>1</sup> The factual assertions underlying Nerium's request for injunctive relief were and are verified by the declarations of Kayla Wager, Puya Ghandian, Bruce Toovey, Debbie Carter, Vivian Hickok, Donna Calabrese, Melissa Mazza, Melissa Pulling, and Amber Olson Rourke.



support, confidential information about customers and sales data, access to a highly sophisticated sales structure, and various other benefits. (*Id.*)

14. Brand Partners establish relationships with customers and other Brand Partners, which drive Nerium's sales and growth in the marketplace. (*Id.* ¶ 4) Not surprisingly, recruiting and retaining salespeople is the key to the success of any direct-sales company. (*Id.*) Because the industry is fiercely competitive, other direct-sales companies will attempt to coax away salespeople to work on their behalf. (*Id.*) When the recruitment activities of those salespeople involve raiding their existing network of salespeople to work for another direct-sales company, it is referred to as cross-recruiting. (*Id.*) And because Nerium's business is essentially a network of people, any such violations harm not only Nerium, but also the network of other Brand Partners who generate income from their downlines. (*Id.*)

**Nerium Gave the Smiths a Plum Position, and the Smiths Agreed Not to Solicit Nerium's Brand Partners.**

15. Mark Smith became acquainted with Nerium's CEO, Jeff Olson, while they were associated with Prepaid Legal Services, Inc., another direct-sales company. Olson mentored Smith, and Smith became highly successful as a result of their relationship.

16. When Olson departed Prepaid Legal, and later founded Nerium, the Smiths expressed interest in joining Nerium, but Olson encouraged them to consider staying at Prepaid Legal. The Smiths ultimately decided to leave Prepaid Legal and join Nerium. Olson placed Smith, and his wife Tammy, through their company Mark & Tammy Smith, LLC, in an extremely beneficial position with Nerium, above other experienced and successful Brand Partners who were already hard at work building their organizations, even though the Smiths did not recruit them, giving the Smiths a built-in organization and all of the financial benefits that

would flow to them from being in the upline of these and other extremely successful distributors. Indeed, the Smiths were placed as Nerium's "top" Brand Partner.

17. Olson made the Smiths highly visible to the entire Nerium sales force. The Smiths were even given the ceremonial title of Chief Field Officers to cement their role as the "top" Brand Partner. To help them build, mentor, and lead Nerium's field of Brand Partners, they were given a staff, at a cost to Nerium of hundreds of thousands of dollars, company credit cards, and free rein to travel the world on Nerium's dime. The Smiths were prominently featured in Nerium's promotional materials, including its marketing videos, training materials, and even a book. They were given control of and hosted Nerium's weekly calls with its sales force and with its leaders, as well as Nerium's weekly video training system, Nerium U. They were featured extensively at company conferences, frequently appearing on stage as the leaders of Nerium's sales force. They were also given a "seat at the table" with Nerium's executive team, essentially representing Nerium's sales force.

18. Also, to support their role as the "top" Brand Partner, the Smiths were given substantial confidential information and trade secrets belonging to Nerium. (Ex. 1, Wager Decl., ¶ 15) Among other things, the Smiths were privy to information about Nerium's business plans, including international expansion and product strategy, and had access to contact information and detailed information about the organizations of every current and former Brand Partner in Nerium's history. (*Id.*)

19. This arrangement proved extraordinarily lucrative for the Smiths. Nerium has paid them upwards of \$14 million during their tenure with the company, which easily makes them the highest compensated Brand Partners in the company's history.

20. In mid-2017, Nerium implemented a requirement that each Brand Partner review a notice that Nerium's "Policies and Procedures" ("P&P") (the document governing the Brand Partner's relationship with the company) had been amended. (*Id.* ¶ 6) After this requirement was enabled, the next time each Brand Partner logged into their "back office" account,<sup>2</sup> the Brand Partner was automatically redirected to a screen stating that Nerium International had amended its P&P. (*Id.*) The Brand Partner was required to scroll through the pages of the amended P&P, and at the end of the document, the Brand Partner had to click to check a box next to the statement "I accept the new Policies and Procedures." (*Id.*) The Brand Partner could then click on "Continue" and was directed into their back office account. (*Id.*) A Brand Partner could not access his or her back office without going through this process. Nerium requires all Brand Partners to agree to the Policies and Procedures. (*Id.*)

21. Through the process detailed above, Mark and Tammy Smith were shown the amended P&P, and accepted them, individually and on behalf of MTS, LLC, on July 7, 2017. (*Id.* ¶ 8) Thereafter, they continued as Brand Partners, until they resigned their positions in March 2018. (*Id.*)

22. Section 11.06 of the P&P provides:

**11.06 Non-Solicitation and Non-Competition.** Brand Partner acknowledges and agrees that the only way to protect the goodwill, confidential, proprietary and trade secret information of Company and the integrity and stability of the sales force created by other Brand Partners is to prohibit all Brand Partners from recruiting and soliciting of other Brand Partners to other companies during the term of this agreement and for a reasonable time thereafter. **Consequently, in consideration for all of the rights granted by this Agreement, including the protection this non-solicitation provision affords to Brand Partner, for the term of this Agreement and for two (2) years after termination hereof, for any reason, Brand Partner agrees not to, directly or**

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<sup>2</sup> The back office is the online account center each independent Brand Partner uses to manage his or her distributorship business.

**indirectly, recruit or solicit any of Company's other Brand Partners to join other direct sales, multi-level or network marketing companies.**

For the term of this Agreement and for two (2) years after termination hereof, for any reason, Brand Partner agrees not to sell any product that is the same or similar to or competes with the products of Company within the United States of America or any other country where Company sells its products.

Brand Partner agrees not to solicit, directly or indirectly, Company's Brand Partners to purchase services or products, except those of Company, throughout the term of this Agreement.

(Ex. 1, Wager Decl., Ex. A (emphasis added)) Kidd and Daniel have likewise accepted the terms of the P&P. (Ex. 1, Wager Decl., ¶ 9 (Kidd), ¶ 14 & Ex. B (Daniel))

23. These provisions do not unreasonably restrict the ability of Brand Partners to earn a living or generate income through other sales efforts. The recruiting restrictions are limited to protecting Nerium's sales force.

**Despite Being Given a Plum Position and Making Millions, the Smiths Wanted More.**

24. As detailed above, the Smiths had success at Nerium handed to them on a silver platter when they were installed as the "top" Brand Partner. But they were not content with the extremely advantageous position they were given or the tremendous financial consideration they reaped. They continued to demand more advantages, more perks, and more money from Nerium.

25. Among other things, the Smiths demanded equity in Nerium. They also demanded an "override" over the entire field, meaning they would make a commission off of each and every Brand Partner's sales. And they demanded that each new Brand Partner would be placed in their downline and that they would be guaranteed top rank among the Brand Partners, regardless of their own actual performance. If acceded to, the Smiths' demands would have likely doubled or tripled their annual seven-figure income.

26. Jeff Olson did not dismiss the Smiths' demands. And because of the prominent and powerful position the Smiths held, with access to all of Nerium's tens of thousands of Brand

Partners, it was important to the Nerium organization to maintain harmony with valued team members like the Smiths. Olson therefore entered into negotiations with the Smiths. But any arrangement needed to be mutually advantageous for the Smiths and Nerium, so Nerium could continue growing its sales and network of Brand Partners with assurances that the Smiths were committed to the company's lasting success.

27. Olson went to great lengths to offer additional benefits to the Smiths. Olson and then Nerium's president, Deb Heisz, attempted to negotiate with the Smiths for over two years. Despite being offered generous benefits, the Smiths would not agree to reasonable terms that would protect Nerium in return. For example, the Smiths refused to agree to reasonable contract terms requiring them to actively engage with Nerium for a period of time or additional provisions (beyond those in the P&P) that would prevent the Smiths from unfairly competing with Nerium if they departed from the company.

28. During the negotiations, stymied by the Smiths' own unreasonable demands, the Smiths began to disengage, becoming nonresponsive to calls and requests from other Brand Partners and Nerium's corporate office, and they began plotting to leave Nerium for a competing direct-sales company. But the Smiths did not intend to leave in accordance with the agreement governing their relationship with Nerium. Rather, the Smiths' greed led them to launch an escalating attack against Nerium and Olson, with the hope that the attack would help them siphon Brand Partners to a competitor or that Nerium would finally agree to their unreasonable demands as a ransom.

### **The Smiths and Their Co-Defendants Begin to Raid Nerium's Sales Force**

29. The Smiths began disparaging Nerium and Olson, ranging from attempting to spread alarm about the company's financial condition (by, among other things, disseminating

confidential documents entirely out of context), to criticisms about the quality of certain Nerium products, to vicious personal attacks on Olson himself. Meanwhile, the Smiths continued to make demands, including demands that Nerium “buy them out” or even that Olson sell the entire company to him. The implication of what the Smiths had planned as their “or else” was clear—litigation and a raid.

30. Word started to spread among Brand Partners that the Smiths were leaving Nerium. Nerium’s corporate office set up a call with several leading Brand Partners to dispel the rumor, but the Smiths failed to appear on the call and never dispelled the rumor. Mark Smith later revealed to another Brand Partner that he was unavailable for the call because he was meeting with a competitor. The Smiths also failed to show up at certain large Nerium events where Brand Partners would expect to see them. And these were more than mere rumors—the Smiths were talking to a competing direct-sales company called Isagenix and intended to join the company. (Ex. 2, Ghandian Decl., ¶ 7) And Smith approached several of his Brand Partner friends about leaving for Isagenix and asked them which members of their downlines they could bring along. (*Id.* at ¶ 6) Meanwhile, company representatives began reaching out to Brand Partners associated with the Smiths. (*Id.* at ¶ 13) There can be no doubt as to the source of those contacts. (*Id.*) Fortunately for Nerium, the Smiths’ plan hit a snag. On information and belief, Isagenix got cold feet and declined to move forward with the Smiths. Undeterred, the Smiths decided to join Jeunesse Global, another direct sales company.

31. The Smiths plotted their departure to come after important Nerium team events. At these events, certain leading Brand Partners, doing the bidding of the Smiths, informed other Brand Partners about the Smiths’ (original) plan to leave Nerium for Isagenix, and encouraged these Brand Partners to move as well, at the appropriate time.

32. They continued their efforts to raid Nerium's sales force and injure the very Brand Partners to whom they owe their great financial success, working in conjunction with other Brand Partners including the co-defendants to facilitate the recruitment of Nerium Brand Partners to sign up with Jeunesse.

33. Starting in February 2014, Nerium assigned an employee, Megan Leckband, to be Mark Smith's executive assistant. (Ex. 1, Wager Decl., ¶ 16) In this full-time position, Leckband supported Mark Smith's efforts to build and support Nerium's sales force. (*Id.*) Among other things, she managed Mark Smith's schedule, and Brand Partners' communications to and requests for meetings with Mark Smith went through Leckband. (*Id.*) It was widely known throughout Nerium that if someone needed something from Mark Smith, they would have to go through Leckband. (*Id.*)

34. Leckband also arranged for speakers on Nerium's corporate update calls and arranged for Brand Partners to conduct training at events. (*Id.* ¶ 17) She also was in charge of communications with Nerium's Master Distributor leaders, including a weekly email sent to Master Distributors. (*Id.*)

35. On August 10, 2015, Leckband's title was changed to Director, Field Administration. (*Id.* ¶ 18)

36. Leckband had a Nerium email address, which she used in connection with her employment. (*Id.* ¶ 19) Through her work supporting Mark Smith, Leckband had access to a wide variety of information about, and contact with, Nerium Brand Partners. (*Id.*) Leckband's employment with Nerium ended on or about March 14, 2018, and she has continued to work for the Smiths in support of their new venture with Jeunesse. (*Id.*)

37. Since Leckband's departure, a number of emails have been sent to her Nerium email address, apparently mistakenly, rather than whatever email address she is using in her ongoing work for the Smiths. (*Id.* ¶ 20) For example, on April 4 and 5, 2018, Leckband received emails attaching passenger lists containing the names of German and Austrian individuals to arrange for their transportation to Jeunesse headquarters in Orlando, Florida. (*Id.* ¶ 21 & Ex. C) These lists included nineteen Nerium Brand Partners. (*Id.*) A few days later, on April 10, 2018, Mark Smith sent Leckband an email (again, at her old Nerium address) with the subject line "Flights"; Smith asked if she had received a list of "175 people from Mexico coming into our private retreat." (*Id.* ¶ 22 & Ex. D) Smith worked extensively with that market while he was a Nerium Brand Partner, including trips to Mexico and other interaction with key members of the field in that market. (*Id.*) It is apparent that Smith was arranging for the recruitment of European Brand Partners, and likely was doing so in Mexico as well.

38. Thorsten Mueller is the General Manager, Europe for a European affiliate of Nerium International, LLC. On March 12, 2018, Mueller received a call from Mark Smith. Smith stated that he was at the corporate offices of Jeunesse, a direct-sales company that competes with Nerium, in Orlando, Florida.

39. Smith told Mueller that "changes" were close at hand and that he did not want Mueller to be negatively affected. He wanted all of his "guys" to be with him when he moved, and that he wanted to move fast. Smith had decided to join Jeunesse. Smith promised to place Mueller and his entire European HQ team high within Jeunesse's organization and offered to pay Mueller's airfare to Orlando for an interview with Jeunesse's owners. Smith went on to state that other top leaders in Nerium were already with him in Orlando and had decided to follow him to Jeunesse. He said that many more Nerium leaders would be coming to Jeunesse. According to



Smith, Jeunesse had the ability to pay former Nerium personnel very well and had an enormous amount of cash set aside to orchestrate the move Smith was plotting. Smith also told Mueller that leading European Brand Partners were being contacted to get them to fly to Orlando with the intent of having them join Jeunesse.

40. Mueller declined Smith's invitation to join him at Jeunesse. When Mueller told Smith that, among other things, he would be unable to join him at Jeunesse because he has a non-compete with Nerium, Smith responded that he would pay any contractual penalty, out of his own pocket if necessary.

41. The call concluded with Smith demanding that Mueller immediately speak with Nerium's senior sales manager in Europe, Juergen Pulvermueller, to get him to fly in to visit Jeunesse.

42. This all occurred, of course, just weeks before Nerium received the misdirected emails showing the German and Austrian Brand Partners Mark Smith was flying to Orlando to meet with Jeunesse.

43. The Smiths have also used third parties to carry out their raid of Nerium's sales force. For example, they have used David Byrd, and his daughter, Jenni Byrd Grier, to spread fear and uncertainty, and help encourage Brand Partners to leave Nerium. Byrd and Grier are popular and well-respected coaches paid by Nerium to work with Nerium Brand Partners to develop more effective sales and recruiting strategies. Indeed, it was Mark Smith who convinced Nerium to hire Byrd Consulting to serve as personal coaches for leaders in the Nerium sales force. Nerium agreed, and hired the firm (consisting of David Byrd, Jenni Byrd Grier, and her husband Rob Grier), paying them millions of dollars to serve as confidantes for numerous high-ranking Brand Partners. Over the years, they have developed deep personal relationships with

and knowledge about hundreds of Nerium's leaders, and are looked to by leading Brand Partners as a trusted resource. Byrd and Grier appeared to be working closely with the Smiths, using their position of trust and confidence to employ underhanded techniques to help facilitate the Smiths' raid on Nerium, sowing seeds of doubt among the leadership. Jenni was even featured as a speaker on a leadership call the day before Byrd and Grier abruptly resigned (claiming falsely they had not been paid, before later acknowledging in writing this was untrue). It is apparent they were actively communicating with Nerium's Brand Partners on behalf of the Smiths.

44. Co-defendants Tee Daniel and Darin Kidd joined the campaign to damage Nerium's relationship with its Brand Partners and to solicit Brand Partners to enlist with other direct-sales companies, including Isagenix and Jeunesse, using a wide variety of methods including text message, email, social media, and phone calls and online videoconferences such as "zoom." They spout similar-sounding messages perpetuating negativity towards Nerium, the prospect of great success at Jeunesse, and the need to act *now* to reap maximum benefits. Their efforts have occasionally been accompanied by humorously transparent declarations of *non-solicitation*.

45. Among other solicitation efforts, Darin Kidd has sent multiple emails to Nerium Brand Partners seeking to recruit them to Jeunesse. For example, on March 26, 2018, Kidd sent a "blast" email announcing that he was "no longer with my previous company," i.e., Nerium, and had made the "biggest move of his career." (Ex. 3, Toovey Decl., ¶ 4 & Ex. B; Ex. 4, Carter Decl., ¶ 4 & Ex. A; Ex. 5, Hickok Decl., ¶ 4, Ex. A; Ex. 6, Mazza Decl., ¶ 4, Ex. A) He then stated:

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

(*Id.*) After his recruiting pitch, and beneath his email signature, Kidd included a notice purporting to unring the bell:

**Important Notice:** If you are associated with Nerium International or a Brand Partner at Nerium International, you are not an authorized recipient of this email. Please contact the sender, do not read this email, remove yourself from this email list, and delete this email from all your computers. The information transmitted by this email is intended only for the person or entity to which it is addressed, and is not intended for anyone associated with Nerium International. This email may contain proprietary, business-confidential and/or privileged material. If you are not the intended recipient of this message, be aware that any use, review, retransmission, distribution, reproduction or any action taken in reliance upon this message is strictly prohibited. If you received this in error, or you received this email while associated with Nerium International or as a Brand Partner of Nerium International, please contact the sender and delete this email from all computers.

(*Id.*) Earlier that day, Kidd sent another email blast announcing his departure from Nerium International and indicating he would soon announce his move, which was also received by Nerium Brand Partners. (Ex. 3, Toovey Decl., ¶ 4 & Ex. A; Ex. 5, Hickok Decl., ¶ 4, Ex. B) Again, Kidd purported to ask Brand Partners to unsubscribe. (*Id.*) In other words, instead of taking reasonable efforts to avoid communicating with Nerium Brand Partners in the first place, Kidd sent multiple recruiting emails to Brand Partners, feigning concern about Brand Partners

being not “authorized recipients.” As examples of this cross-recruiting by Kidd, Nerium has attached to this Petition the emails sent by Kidd to four Brand Partners in the United States and Canada. (Exs. 3-6 & exhibits thereto)

46. On April 11, 2018, Kidd again sent an email blast to Nerium Brand Partners purporting to give his “closer followers a quick update.” (Ex. 3, Toovey Decl., ¶ 5 & Ex. C; Ex. 4, Carter Decl., ¶ 5 & Ex. B; Ex. 5, Hickok Decl., ¶ 5, Ex. C; Ex. 6, Mazza Decl., ¶ 4, Ex. B) Kidd asked recipients to contact him if interested in an opportunity, promising an advantage for first movers. (*Id.*) And once more, Kidd included a sham disclaimer at the end of the email stating that Brand Partners were not “authorized recipients” as if he had not been the one to actually choose to send the emails to them.” (*Id.*)

47. And like the Smiths, Kidd has coordinated third parties to support their recruiting efforts—or worse is using them to do his bidding. For example, Chic Craddock, a former Brand Partner, contacted Brand Partner Donna Calabrese and tried to recruit her to join Jeunesse. (Ex. 8, Calabrese Decl. ¶¶ 3-6, Ex. A-B) Craddock explained that he was “working directly with Darin and Mark Smith” and offered to get Calabrese on “the team’s power le[g] that Darin and Mark are building out.” (Ex. 8, Calabrese Decl., Ex. A) Calabrese had met Kidd a few months earlier at a Nerium event in Pittsburgh. (Ex. 8, Calabrese Dec. ¶ 7) Craddock told Calabrese that he “[s]poke to Darin about you and he thinks he remembers you.” (Ex. 8, Calabrese Decl., Ex. A) He then offered to arrange for Calabrese’s travel to Orlando to visit Jeunesse headquarters. (*Id.*)

48. Defendants have also attempted to create a bogus paper trail to make it appear that Brand Partners were contacting them about Jeunesse when, in fact, Defendants were approaching Brand Partners. For example, Tee Daniel asked Brand Partner Melissa Pulling to discuss a

business opportunity with him. (Ex. 11. Pulling Decl., ¶ 4 & Ex. A) After Tee left Nerium, he had asked Pulling to keep him updated on another business she was considering investing in (outside of the direct-sales field), so Pulling agreed to talk with him in case he wanted to discuss this other business. (*Id.* at ¶ 4) Pulling had made clear to Tee that she had no interest in joining Jeunesse. (*Id.*) When they spoke, Tee attempted to recruit Pulling to enroll with Jeunesse, inviting her to come to Jeunesse headquarters in Orlando to get the extended sales pitch. (*Id.* ¶ 5) Because Pulling couldn't take notes, she asked Tee to email her with the information about Jeunesse and the opportunity to go to Orlando. (*Id.*) Instead of agreeing to provide this information, Tee asked Pulling to send him an email stating that *Pulling* had contacted *him* and that she had requested the information about Jeunesse (even though Pulling hadn't requested the sales pitch that Tee had just given). (*Id.*) After their call ended, Tee sent Pulling a text message with his email address. (*Id.* at ¶ 5 & Ex. A) A few days later, Pulling emailed Tee to let him know that she was not interested in an opportunity with Jeunesse. (*Id.* at ¶ 6)

## **VI. CAUSE OF ACTION FOR BREACH OF CONTRACT**

49. Nerium incorporates by reference all of the allegations set forth in the preceding paragraphs.

50. Nerium entered enforceable contracts with Smith, MTS, LLC, Daniel, and Kidd that contain covenants relating to their competitive activities. Smith, MTS, LLC, Daniel, and Kidd received valuable consideration for the execution of these contracts, and the contracts are valid and enforceable.

51. Nerium has fully performed its obligations under the contracts.

52. Smith, MTS, LLC, Daniel, and Kidd have breached one or more of the covenants in the contracts by recruiting Nerium's Brand Partners to become sales representatives for

Isagenix, and later Jeunesse, both through their own direct efforts and the efforts of third parties working on their behalf.

53. As a result, Nerium has been damaged in an amount within this Court's jurisdictional limits and would be imminently and irreparably harmed if Smith, MTS, LLC, Daniel, and Kidd were not enjoined from further breaches of and interference with Nerium's contracts.

54. Pursuant to the arbitration agreement between Nerium and each of the Defendants, Nerium has submitted this breach-of-contract claim for resolution in the Arbitration. Nerium anticipates seeking confirmation in this Court of the arbitrator's award in its favor with respect to this claim when the Arbitration is complete.

## **VII. TORTIOUS INTERFERENCE WITH CONTRACT**

55. Nerium incorporates herein by reference all of the allegations set forth in the preceding paragraphs.

56. There are valid, enforceable, contracts between Nerium and its Brand Partners, and employees including Thorsten Mueller, that contain covenants relating to their competitive activities. Defendants were aware of these contractual obligations, yet intentionally, maliciously, and willfully chose to induce breaches of these contractual obligations for their own pecuniary benefit, causing damages to Nerium.

57. Pursuant to the arbitration agreement between Nerium and each of the Defendants, Nerium has submitted this tortious-interference claim for resolution in the Arbitration. Nerium anticipates seeking confirmation in this Court of the arbitrator's award in its favor with respect to this claim when the Arbitration is complete.

### **VIII. REQUEST FOR INJUNCTIVE RELIEF**

58. Nerium incorporates herein by reference all of the allegations set forth in the preceding paragraphs.

59. Nerium's request for injunctive relief against Smith, MTS, LLC, Daniel, and Kidd is and has been verified by the declarations of Kayla Wager, Puya Ghandian, Bruce Toovey, Debbie Carter, Vivian Hickok, Melissa Mazza, Donna Calabrese, Melissa Pulling, and Amber Olson Rourke, which are attached as Exhibits 1 through 6, 8, 9, and 11 and incorporated herein by reference. Plaintiff also incorporates by reference the evidence it put forth at the hearing on its application for temporary injunction, upon which the Court based its May 21, 2018 order granting a temporary injunction.

60. As set forth in more detail above and at the May 21, 2018 hearing, there is no question Smith, MTS, LLC, Daniel, and Kidd breached their obligation to refrain from soliciting Nerium's Brand Partners, that they, in active concert and participation with others, solicited and facilitated solicitation of other Brand Partners, and would continue to do so absent intervention by the Court. Defendants have also tortiously interfered with Nerium's contracts with its Brand Partners and employees. Nerium has therefore established, at the very least, a probable right to the relief it seeks upon final hearing in arbitration, as the Court found in issuing its temporary injunction order.

61. Had the Court not issued its temporary injunction restraining Defendants from continuing to violate, and from assisting and encouraging other Nerium Brand Partners and employees in violating, contractual obligations to Nerium by recruiting Nerium's Brand Partners and employees to become sales representatives and employees for a competing direct-sales company, Nerium would suffer immediate and irreparable injury as a result of Defendants' continued wrongdoing because Nerium's goodwill and confidential and proprietary information

would be compromised. (Ex. 9, Rourke Decl., ¶ 4) Worse, this information would be used to Nerium's detriment and to directly benefit a competitor. (*Id.*) The impact of Defendants' wrongful use would be difficult or impossible to fully discover and assess. (*Id.* at ¶ 6)

62. Without the Court's intervention, Nerium would suffer imminent, irreparable harm for which there is no adequate remedy at law. (*Id.* at ¶ 5) Maintaining a motivated and dedicated sales force is the lifeblood of Nerium's business. (*Id.*) If Defendants succeeded in pillaging a portion of Nerium's network of Brand Partners and employees, Nerium may be unable to recover those critical relationships. (*Id.*) And given the structure of Nerium's business, the harm Defendants have caused has had a ripple effect and infected not only individual Brand Partners, but also their respective networks of associated Brand Partners and customers. (*Id.*)

63. The full extent of Nerium's damages, including lost profits, loss of reputation, and loss of goodwill, which will continue to occur if Defendants' conduct were not abated, is difficult—if not impossible—to assess fully. (*Id.* at ¶ 6) It was vitally important that this wrongful conduct be stopped and Defendants be prohibited from further wrongdoing. In particular, this comes as no surprise to Smith, MTS, LLC, Daniel, and Kidd, who expressly agreed in the P&P that violating the non-solicitation provision would cause Nerium "irreparable injury for which there is no adequate remedy at law and hereby agrees to the entry of an ex[]parte temporary restraining order [and] preliminary and permanent injunction." (Ex. 1, Wager Decl., Ex. A (P&P § 11.09(c)) The only adequate, effective, and complete relief for Nerium was and is to restrain Defendants from further engaging in certain proscribed activities, as set forth below and in the Court's temporary injunction order.

64. For all these reasons, pursuant to Texas Rule of Civil Procedure 681 et seq. and Texas Civil Practice and Remedies Code § 65.001 et seq., and to preserve the status quo during



the pendency of this action, Nerium respectfully requests, (i) that the Court continue in effect its temporary injunction issued May 21, 2018, enjoining Defendants, including their agents, representatives, and all other persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise (collectively, the “Injunction Restrained Parties”) on the terms stated in that order, and (ii) that, upon issuance the award in Arbitration, this Court confirm that award and issue a permanent injunction incorporating the following terms:

**Defendants are prohibited from directly or indirectly recruiting or soliciting any of Nerium’s Brand Partners and employees to join any other direct-sales, multi-level marketing, or network-marketing company, including but not limited to Jeunesse Global Holdings, LLC, for a period of two (2) years after their departure from Nerium.**

As with its other claims for permanent relief, pursuant to the arbitration agreement between Nerium and each of the Defendants, Nerium has submitted its claim for a permanent injunction for resolution in the Arbitration. Nerium anticipates seeking confirmation in this Court of the arbitrator’s award in its favor with respect to this claim when the Arbitration is complete, including implementation and enforcement of the requested permanent injunction.

## **IX. NERIUM’S ARBITRATION RIGHTS PRESERVED**

65. As previously noted, Nerium’s agreements with Smith, MTS, LLC, Daniel, and Kidd include an arbitration provision. These arbitration provisions expressly provide that the Company may seek injunctive relief in a Court to protect the Company’s rights. Nerium has done so, and this Court has granted that relief, issuing its temporary injunction to “remain[] in effect until the conclusion of the final trial *or final arbitration hearing on the merits.*” (Emphasis added.) In so doing, the Court expressly recognized Nerium’s right to “apply for and obtain ‘a temporary injunction ...’ in court” without prejudice to its rights to pursue its substantive claims

in arbitration. Consistent with those findings, Nerium fully reserves and does not waive herein the terms of its arbitration agreement or its right to proceed with arbitration against those Defendants, in all respects.

## **X. CONCLUSION & PRAYER**

For these reasons, Nerium respectfully prays, without waiving its right to arbitrate, (i) that Nerium be awarded temporary and permanent injunctive relief (in the form of confirmation of the arbitration award); (ii) that Nerium be awarded damages (i.e., that damages awarded in arbitration, including any award for fees, costs, expenses, and prejudgment and post-judgment interest be confirmed); and (iii) for such other and further relief to which Nerium may be justly entitled.

Respectfully submitted,

/s/ Monica Latin

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*Attorneys for Plaintiff Nerium International, LLC*

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record in the above cause in accordance with the Texas Rules of Civil Procedure on this 26th day of October, 2018.

/s/ Brent M. Rubin

Rick Illmer

[rillmer@huschblackwell.com](mailto:rillmer@huschblackwell.com)

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*Attorneys for Defendants Mark Smith,  
Mark & Tammy Smith, LLC, Darin Kidd,  
and Tee Daniel*

EXHIBIT 1

CAUSE NO. DC-18-03726

NERIUM INTERNATIONAL, LLC,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
MARK SMITH, MARK & TAMMY	§	
SMITH, LLC, DAVID BYRD, JENNI	§	DALLAS COUNTY, TEXAS
BYRD GRIER, CLAUDIA RANSOM,	§	
JASON RANSOM, DARIN KIDD,	§	
DANNY GASEMY, LORI GASEMY,	§	
DALE MUNGER, VANESSA	§	
MUNGER, CASSIE DANIEL, and TEE	§	
DANIEL	§	
	§	
Defendants.	§	134th JUDICIAL DISTRICT

**DECLARATION OF KAYLA WAGER**

1. My name is Kayla Wager. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.

2. I am the Senior Director of Customer Experience at Nerium International, a position I have held since April of 2016, and I have been employed by the company since 2011.

3. Nerium is a direct-sales company (also called direct-marketing or multi-level marketing) that sells anti-aging and other products through independent distributors called “Brand Partners,” collectively referred to as the “field.” Nerium’s Brand Partners earn money by selling Nerium’s products, often through social media and personal contacts, and by recruiting new Brand Partners to do the same. A Brand Partner’s personal recruits, and those people’s recruits, and so on, are called the Brand Partner’s “downline.” Brand Partners receive commissions both on their own sales and on sales in their downline. The “upline” is the person who recruited the Brand Partner, and the people who recruited that person, and so on. Nerium

supports its Brand Partners by providing superior products, commissions and bonuses, training, corporate-level advertising, back-office support, confidential information about customers and sales data, access to a highly sophisticated sales structure, and various other benefits.

4. Brand Partners establish relationships with customers and other Brand Partners, which drive Nerium's sales and growth in the marketplace. Recruiting and retaining salespeople is the key to the success of any direct-sales company. Because the industry is fiercely competitive, other direct-sales companies will attempt to coax away salespeople to work on their behalf. When the recruitment activities of those salespeople involve raiding their existing network of salespeople to work for another direct-sales company, it is referred to as cross-recruiting. And because Nerium's business is essentially a network of people, any such violations harm not only Nerium, but also the network of other Brand Partners who generate income from their downlines.

5. In connection with my positions throughout my employment, I have been personally involved in any changes to the "back office," the online account center each independent Brand Partner uses to manage his or her distributorship business.

6. In mid-2017, Nerium implemented a requirement that each Brand Partner review a notice that Nerium's "Policies and Procedures" (the document governing the Brand Partner's relationship with the company) had been amended. After this requirement was enabled, the next time each Brand Partner logged into their back office account, the Brand Partner was automatically redirected to a screen stating that Nerium International had changed its Policies and Procedures. The Brand Partner was required to scroll through the pages of the Policies and Procedures, and at the end of the document, the Brand Partner had to click to check a box next to the statement "I accept the new Policies and Procedures." The Brand Partner could then click on

“Continue,” and they were directed into their back office account. A Brand Partner could not access his or her back office without going through this process. I was personally involved in this process and viewed how it worked at the time.

7. Nerium’s computer system tracked these acceptances and created an electronic record of the document presented to the Brand Partner and that the Brand Partner checked the box to accept the agreement.

8. I have reviewed Nerium's database records pertaining to Mark and Tammy Smith (who originally enrolled as Brand Partners as individuals and later converted their Brand Partner account to an entity account using the name "Mark and Tammy Smith LLC"). A true and correct copy of the agreement through which Mark and Tammy Smith converted their Nerium Brand Partner account to an entity account, under the name Mark & Tammy Smith, LLC, is attached as Exhibit E. Nerium's records indicate that they viewed the Policies and Procedures attached as Exhibit A and acknowledged their acceptance of them on July 7, 2017. A true and correct copy of a screenshot from the database is pasted below:

The screenshot shows the Nerium International customer profile page for Mark & Tammy Smith. The page includes a sidebar with navigation links: ORDERS, PROFILE, SUBSCRIPTION, HISTORY, POINTS, LEAD/AV STATUS, ADJUSTMENTS, LEGAL AGREEMENT, ACKNOWLEDGMENT (selected), and INCENTIVE TRIPS. The main content area displays the customer's name, title (Gold International Marketing Director), and a table titled "Policy Agreements Acknowledgements". The table has columns for Policy Type, Policy Version Name, Language, Accepted Date, Source, and Document. A single row is visible, showing "Policies & Procedures", "US EN Policy", "English", "07/07/2017", "Backoffice", and a "View" link. The page also shows a "Customer ID" of 14802 and a "Change Country" button.

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/07/2017	Backoffice	<a href="#">View</a>

After acknowledging their acceptance of the Policies and Procedures, Mark and Tammy Smith continued as Brand Partners until resigning their positions in March 2018.

9. I have reviewed Nerium's database records pertaining to former Nerium Brand Partner Darin Kidd, which indicates that he viewed the Policies and Procedures attached as Exhibit A and acknowledged his acceptance of them on July 8, 2017. A true and correct copy of a screenshot from the database is pasted below:

Darin Kidd
Close Profile (/)
Upline/Downline (/customer-profile/tree?id=15040)

Five Star National Marketing Director

Customerid 15040

Sponsor Mark & Tammy Smith (/customer-profile/profile?id=14802)

Enroller Mark & Tammy Smith (/customer-profile/profile?id=14802)

[ORDERS \(/CUSTOMER-PROFILE/ORDERS?ID=15040\)](#)
[PROFILE \(/CUSTOMER-PROFILE/PROFILE?ID=15040\)](#)
[SUBSCRIPTION \(/CUSTOMER-PROFILE/SUBSCRIPTIONS?ID=15040\)](#)
[HISTORY \(/CUSTOMER-PROFILE/HISTORY?ID=15040\)](#)
[POINTS \(/CUSTOMER-PROFILE/POINTS?ID=15040\)](#)
[LEFTNAV-STATUS \(/CUSTOMER-PROFILE/STATUS?ID=15040\)](#)

### Policy Agreements Acknowledgements

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/08/2017	Backoffice	<a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN Policies and Procedures 5-15 RB FINAL.pdf">View (/https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN Policies and Procedures 5-15 RB FINAL.pdf)</a>

10 25 50 100

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After acknowledging his acceptance of the Policies and Procedures, Darin Kidd continued as a Brand Partner until resigning his position in March 2018.



10. I have reviewed Nerium's database records pertaining to former Nerium Brand Partner Lori Ulrich Gasemy, which indicates that she viewed the Policies and Procedures attached as Exhibit A and acknowledged his acceptance of them on July 18, 2017. A true and correct copy of a screenshot from the database is pasted below:



Lori Ulrich

Two Star National Marketing Director

Close Profile (/)

Upline/Downline (/customer-profile/tree?id=1586358)

Customerid

1586358

Sponsor

C J Miller (/customer-profile/profile?id=976847)

Enroller

C J Miller (/customer-profile/profile?id=976847)

[ORDERS \(/CUSTOMER-PROFILE/ORDERS?ID=1586358\)](#)
[PROFILE \(/CUSTOMER-PROFILE/PROFILE?ID=1586358\)](#)
[SUBSCRIPTION \(/CUSTOMER-PROFILE/SUBSCRIPTIONS?ID=1586358\)](#)
[HISTORY \(/CUSTOMER-PROFILE/HISTORY?ID=1586358\)](#)
[POINTS \(/CUSTOMER-PROFILE/POINTS?ID=1586358\)](#)
[LEFTNAV-STATUS \(/CUSTOMER-PROFILE/STATUS?ID=1586358\)](#)

### Policy Agreements Acknowledgements

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/18/2017	Backoffice	<a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN Policies and Procedures S-15 RB FINAL.pdf">View (https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN Policies and Procedures S-15 RB FINAL.pdf)</a>

10 25 50 100

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After acknowledging her acceptance of the Policies and Procedures, Lori Ulrich Gasemy continued as a Brand Partner until resigning her position in March 2018.

11. I have reviewed Nerium's database records pertaining to former Nerium Brand Partner Dehnad "Danny" Gasemy, which indicates that he viewed the Policies and Procedures attached as Exhibit A and acknowledged his acceptance of them on July 16, 2017. A true and correct copy of a screenshot from the database is pasted below:

**ORDERS/(CUSTOMER-PROFILE/ORDERS?**  
**ID=15278)**  
**PROFILE/(CUSTOMER-PROFILE/PROFILE?**  
**ID=15278)**  
**SUBSCRIPTION/(CUSTOMER-PROFILE/SUBSCRIPTIONS?**  
**ID=15278)**  
**HISTORY/(CUSTOMER-PROFILE/HISTORY?**  
**ID=15278)**  
**POINTS/(CUSTOMER-PROFILE/POINTS?**  
**ID=15278)**  
**LEFTNAV-STATUS/(CUSTOMER-PROFILE/STATUS?**  
**ID=15278)**

### Policy Agreements Acknowledgements

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/16/2017	Backoffice	<a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378/US-EN Policies and Procedures 5-15 RB FINAL.pdf">View</a> <a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378/US-EN Policies and Procedures 5-15 RB FINAL.pdf">https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378/US-EN Policies and Procedures 5-15 RB FINAL.pdf</a>

10 25 50 100

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After acknowledging his acceptance of the Policies and Procedures, Dehnad "Danny" Gasemy continued as a Brand Partner until resigning his position in March 2018.

12. I have reviewed Nerium's database records pertaining to former Nerium Brand Partners Dale and Vanessa Munger, which indicates that they viewed the Policies and Procedures attached as Exhibit A and acknowledged their acceptance of them on July 10, 2017. A true and correct copy of a screenshot from the database is pasted below:



**Dale & Vanessa Munger**
[Close Profile \(/\)](#)

Upline/Downline (/customer-profile/tree?id=15467)

<b>Five Star National Marketing Director</b>	<b>CustomerId</b>	<b>Company</b>	<b>Sponsor</b>	<b>Enroller</b>
	15467	Munger Lifestyle, INC.	<a href="#">Dehnad Gasemy (/customer-profile/profile?id=15278)</a>	<a href="#">Dehnad Gasemy (/customer-profile/profile?id=15278)</a>

[ORDERS \(/CUSTOMER: PROFILE/ORDERS?\)](#)  
[ID=15467](#)  
[PROFILE \(/CUSTOMER: PROFILE/PROFILE?\)](#)  
[ID=15467](#)  
[SUBSCRIPTION](#)  
[/CUSTOMER: PROFILE/SUBSCRIPTIONS?](#)  
[ID=15467](#)  
[HISTORY \(/CUSTOMER: PROFILE/HISTORY?\)](#)  
[ID=15467](#)  
[POINTS \(/CUSTOMER: PROFILE/POINTS?\)](#)  
[ID=15467](#)  
[LEFTNAV-STATUS](#)  
[/CUSTOMER:](#)

### Policy Agreements Acknowledgements

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/10/2017	Backoffice	<a href="#">View</a> <a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN Policies and Procedures 5-15 RB FINAL.pdf">https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN Policies and Procedures 5-15 RB FINAL.pdf</a>


10 25 50 100

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After acknowledging their acceptance of the Policies and Procedures, Dale and Vanessa Munger continued as Brand Partners until resigning their position in March 2018.

13. I have reviewed Nerium's database records pertaining to former Nerium Brand Partners Claudia and Jason Ransom, which indicates that they viewed the Policies and Procedures attached as Exhibit A and acknowledged their acceptance of them on July 17, 2017. A true and correct copy of a screenshot from the database is pasted below:



**Claudia & Jason Ransom**
[Close Profile \(/\)](#)

[Upline/Downline \(/customer-profile/tree?id=1596914\)](#)

**One Star National**  
Marketing Director

**Customerid**  
1596914

**Sponsor**  
[Kathleen Nelson \(/customer-profile/profile?id=895157\)](#)

**Enroller**  
[Vikki & John Downey \(/customer-profile/profile?id=500637\)](#)

[ORDERS \(/CUSTOMER-PROFILE/ORDERS?\)](#)  
[ID=1596914\)](#)  
[PROFILE \(/CUSTOMER-PROFILE/PROFILE?\)](#)  
[ID=1596914\)](#)  
[SUBSCRIPTION](#)  
[/CUSTOMER-PROFILE/SUBSCRIPTIONS?](#)  
[ID=1596914\)](#)  
[HISTORY \(/CUSTOMER-PROFILE/HISTORY?\)](#)  
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[POINTS \(/CUSTOMER-PROFILE/POINTS?\)](#)  
[ID=1596914\)](#)  
[LEFTNAV-STATUS](#)  
[/CUSTOMER-PROFILE/STATUS?](#)  
[ID=1596914\)](#)

### Policy Agreements Acknowledgements

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/07/2017	Backoffice	<a href="#">View</a> <a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN_Policies_and_Procedures_5-15_RB_FINAL.pdf">https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN_Policies_and_Procedures_5-15_RB_FINAL.pdf</a>

10   25   50   100

ID=1596914)  
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After acknowledging their acceptance of the Policies and Procedures, Claudia and Jason Ransom continued as Brand Partners until resigning their position in March 2018.

14. I have reviewed Nerium’s database records pertaining to former Nerium Brand Partners Cassie and Tee Daniel. Cassie Daniel initially enrolled as a Brand Partner, agreeing to the Terms of Agreement and Policies and Procedures at that time. On or about November 8, 2016, she submitted an application to add her husband, Tee Daniel, to her account. Tee Daniel signed the application, dated November 8, 2016, and stated that he has “carefully read and understand the Terms of Agreement and the Policies and Procedures Manual . . . and that I am willing to accept the terms and conditions herein.” A true and correct copy of this application is attached as Exhibit B. The Policies and Procedures attached as Exhibit A were in effect at the time Tee Daniel signed this application. Cassie and Tee Daniel also viewed the Policies and Procedures attached as Exhibit A through their back office and acknowledged their acceptance of them on July 17, 2017. A true and correct copy of a screenshot from the database is pasted below

Cassie Daniel

Close Profile (/)

Upline/Downline (/customer-profile/tree?id=2391379)

One Star National  
Marketing Director

Customerid  
2391379

Sponsor  
[Lori Ulrich \(/customer-profile/profileid=23350163\)](#)

Enroller  
[Lori Ulrich \(/customer-profile/profileid=23350163\)](#)

ORDERS (/CUSTOMER: PROFILE/ORDERS? ID=2391379)

PROFILE (/CUSTOMER: PROFILE/PROFILE? ID=2391379)

SUBSCRIPTION (/CUSTOMER: PROFILE/SUBSCRIPTIONS? ID=2391379)

HISTORY (/CUSTOMER: PROFILE/HISTORY? ID=2391379)

POINTS (/CUSTOMER: PROFILE/POINTS? ID=2391379)

LEADNAVSTATUS (/CUSTOMER: PROFILE/STATUS? ID=2391379)

Policy Agreements Acknowledgements

Policy Type	Policy Version Name	Language	Accepted Date	Source	Document
Policies & Procedures	US EN Policy	English	07/06/2017	Backoffice	<a href="#">View</a> ( <a href="https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN_Policies_and_Procedures_5-15_RB_FINAL.pdf">https://neriumpolicydocuments.blob.core.windows.net/policies/1496245164378US-EN_Policies_and_Procedures_5-15_RB_FINAL.pdf</a> )

10 25 50 100

ID=2391379

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After acknowledging their acceptance of the Policies and Procedures, Cassie and Tee Daniel continued as Brand Partners until resigning their position in March 2018.

15. To support their role as Nerium's "top" Brand Partner, Mark and Tammy Smith were given substantial confidential information and trade secrets belonging to Nerium. Among other things, the Smiths were privy to information about Nerium's business plans, including international expansion and product strategy, and had access to contact information and detailed information about the organizations of every current and former Brand Partner in Nerium's history.

16. Megan Leckband became an employee of Nerium on March 1, 2013. She served in a number of roles working with high-ranking executives at Nerium. On February 10, 2014, Leckband became Mark Smith's executive assistant. In this full-time position, Leckband supported Mark Smith's efforts to build and support Nerium's sales force. Among other things, she managed Mark Smith's schedule, and Brand Partners' communications to and requests for meetings with Mark Smith went through Leckband. It was widely known throughout Nerium that if someone needed something from Mark Smith, they would have to go through Leckband.

17. In this position, Leckband also arranged for speakers on Nerium's corporate update calls and arranged for Brand Partners to conduct training at events. She also was in charge of communications with Nerium's Master Distributor leaders, including a weekly email sent to Master Distributors.

18. On August 10, 2015, Leckband's title was changed to Director, Field Support.

19. Leckband had a Nerium email address, which she used in connection with her employment. Through her work supporting Mark Smith, Leckband had access to a wide variety of information about, and contact with, Nerium Brand Partners. Leckband's employment with

Nerium ended on March 14, 2018, and she has apparently continued to work for the Smiths in support of their new venture with Jeunesse.

20. Since Leckband's departure, a number of emails have been sent to the Nerium email account she used while she was an employee, rather than whatever email address she is using in her ongoing work for the Smiths.

21. For example, on April 4 and 5, 2018, Leckband received emails attaching what were indicated to be passenger lists containing the names of German and Austrian individuals to arrange for their transportation to Jeunesse headquarters in Orlando, Florida. True and correct copies of these emails and the passenger lists attached to them are attached to this declaration as Exhibit C. I have reviewed Nerium's records and have determined that the following nineteen individuals on these passenger lists are Nerium Brand Partners:

- Kerstin Ullrich
- Kurt Hannes Elsasser
- Helmut Rauch
- Jacqueline Rauch
- Brigitte Meyer
- Othmar Lindner
- Barbara Bauer
- Ionica Banica
- Anna Denk
- Bianca Denk
- Sonja Mayer

- Michael Huttner
- Walter Donig
- Ulrike Christine Neudhart
- Julia Nirtl
- Klaus Kerschbaumer
- Claudia Beate Lazar
- Eva Martina Dzhic
- Sanja Risovic

22. On April 10, 2018, Mark Smith sent Leckband an email at her Nerium address with the subject line “Flights.” Smith asked if Leckband had received a list of “175 people from Mexico coming into our private retreat.” A true and correct copy of this email is attached to this declaration as Exhibit D. Smith worked extensively with Nerium’s Mexico market while he was a Nerium Brand Partner, including trips to Mexico and other interaction with key members of the field in that market.



**JURAT UNDER PENALTY OF PERJURY**

My name is Kayla Wager, my date of birth is May 21, 1975, and my address is 2209 Meadow Lane Garland TX 75040, USA. I declare under penalty of perjury that the foregoing is true and correct.

Kayla Wager  
Kayla Wager

Executed in Dallas County, State of Texas, on April 22, 2018.



# United States Policies and Procedures Manual

As a Brand Partner of Nerium International™, LLC (hereafter the “Company”), you are required to understand and comply with all rules, regulations, policies and procedures contained in this Brand Partner Policies & Procedures Manual (the “Policy Manual”) that may be published or disseminated by the Company. The Company reserves the right to amend this Policy Manual by publishing or transmitting amendments as it deems appropriate.

The Company honors all federal, state and local regulations governing network marketing and requires every Brand Partner to do the same. It is, therefore, very important that you read and understand the information contained in this Policy Manual. If you have any questions regarding any rule or policy, seek an answer from your Sponsor, upline leader or the Company Department of Ethics and Compliance. The Code of Professional Ethics is included in Section 12 of this Policy Manual; you should review these materials and make them a part of your planning.

## CONTENTS

SECTION ONE:	BRAND PARTNER STATUS	2
SECTION TWO:	TERM AND RENEWAL	5
SECTION THREE:	SPONSORSHIP	6
SECTION FOUR:	RESIGNATION/TERMINATION	7
SECTION FIVE:	TRANSFERABILITY	9
SECTION SIX:	PROPRIETARY INFORMATION	11
SECTION SEVEN:	TRADEMARKS, LITERATURE AND ADVERTISING	12
SECTION EIGHT:	PAYMENT OF COMMISSIONS	16
SECTION NINE:	PURCHASE AND SALE OF PRODUCTS	17
SECTION TEN:	RETAIL CUSTOMER RETURNS	21
SECTION ELEVEN:	GENERAL PROVISIONS	23
SECTION TWELVE:	CODE OF PROFESSIONAL ETHICS	26
SECTION THIRTEEN:	ADDENDA FOR SPECIFIC STATES	27

## SECTION ONE: BRAND PARTNER STATUS

**1.01 Becoming a Brand Partner.** An applicant becomes an Independent Brand Partner (“Brand Partner”) of the Company when the following requirements are fulfilled:

- a) The applicant's completed Brand Partner Application and Agreement (the “Agreement”) and any related documents have been received and accepted by the Company at its corporate office in Addison, Dallas County, Texas;
- b) The applicant purchases, at Company cost, a Brand Partner Launch Kit, which contains Brand Partner Forms (including, but not limited to, Brand Partner Applications and Product Order Forms), Company information and brochures, which are sales materials (not for resale). This sum is not a service or franchise fee, but rather is strictly to offset costs incurred by the Company for educational and business materials required for a Brand Partner of the Company; and
- c) The Company reserves the right to decline to accept any Agreement for any reason at its sole discretion.

**1.02 No Purchase Required.** Except as set forth above, no purchase is required to become a Brand Partner.

**1.03 Brand Partner Obligations and Rights.** A Brand Partner is authorized to sell the Company's products and services and to participate in the Company's Compensation Plan. A Brand Partner may sponsor new Brand Partners into the Company.

**1.04 Legal Age.** A Brand Partner shall be of legal age to enter into a binding contract in the state of Brand Partner's residence.

**1.05 Common Address.** No more than three (3) Brand Partners or Customers may ship product to the same shipping address.

**1.06 Married Couples.** Married couples and their dependent children shall share a single Brand Partner entity. Brand Partners who subsequently marry shall maintain separate Brand Partner status unless one is the direct Sponsor of the other, in which case their Brand Partner entities may be consolidated. When a couple sharing a Brand Partner entity divorces or separates, the Company will continue to pay commission checks in the same manner as before the divorce or separation until it receives written notice, signed by both parties or issued by a court decree, which specifies to whom future commission checks should be paid, provided the couple has complied with the requirements of Section 5.03, if applicable.

**1.07 Simultaneous Interests.** A Brand Partner and spouse and dependents may not have simultaneous beneficial interests in more than one Brand Partner position entity. For example, a shareholder of a corporation that is a Brand Partner may not become an individual Brand Partner.

**1.08 Corporations, Partnerships, Limited Liability Companies and Trusts.** Corporations, Partnerships, Limited Liability Companies or other forms of business organizations and/or trusts may become a Brand Partner of the Company when the Agreement is accompanied by copies of the following documents within thirty (30) days after the Agreement is accepted; otherwise, the Brand Partner position may go into suspension:

- a) Articles of incorporation, Partnership agreement, trust documents and/or other governing documents, as applicable;
- b) A complete list of all directors, officers and shareholders involved in a corporation, all general and limited Partners of a Partnership, members of a limited liability company or trustee(s) and beneficiaries of a trust, as applicable;
- c) A Federal ID number or other identification number as the Company may approve in its sole discretion; and
- d) Such other documents and information as may be reasonably requested from time to time.

Shareholders, directors, officers, partners, members, beneficiaries and trustees, as applicable, of a Brand Partner entity shall agree to be, and the Company will hold each personally liable, to the Company and bound by the Agreement and the Policy Manual.

**1.09 Non-Profit Organizations.** Non-Profit Organizations may become a Brand Partner of the Company when the Agreement is accompanied by copies of the following documents within thirty (30) days after the Agreement is accepted; otherwise, the Brand Partner position may go into suspension:

- a) Articles of incorporation, Partnership agreement, trust documents and/or other governing documents, as applicable;
- b) A complete list of all directors and officers involved in the Non-Profit Organization and who is authorized to enter into a contract on behalf of the organization, as applicable;
- c) A Federal ID number or other identification number as the Company may approve in its sole discretion;
- d) Verification of 501c (3) status; and
- e) Such other documents and information as may be reasonably requested from time to time.

Directors, officers, partners and members, as applicable, of a Brand Partner entity shall agree to be, and the Company will hold each personally liable, to the Company and bound by the Agreement and the Policy Manual.

**1.10 Fictitious and/or Assumed Names.** A person or entity may not apply as a Brand Partner using a fictitious or assumed name without Company approval, which may be withheld in the Company's sole discretion.

**1.11 Independent Contractor Status.** A Brand Partner is an independent contractor. Brand Partner is not a franchisee, joint venture Partner, business Partner, employee or agent of the Company, and Brand Partner is prohibited from stating or implying, whether orally or in writing, otherwise. Brand Partner has no authority to bind the Company to any obligation. The Company is not responsible for payment or co-payment of any employee benefits. Brand Partner is responsible for liability, health, disability and workmen's compensation insurance. Brand Partner sets Brand Partner's own hours and determines how to conduct Brand Partner's business, subject to the Agreement and the Policy Manual.

**1.12 Taxation.** As an independent contractor, a Brand Partner will not be treated as a franchisee, Partner, employee or agent for federal or state tax purposes including, with respect to the Internal Revenue Code, Social Security Act, federal unemployment act, state unemployment acts or any other federal, state or local statute, ordinance, rule or regulation. At the end of each calendar year, the Company will issue to each Brand Partner IRS Form 1099, or other applicable documentation required by law, for non-employee compensation of a Brand Partner.

**1.13 Legal Compliance.** A Brand Partner shall comply with all federal, state and local statutes, regulations and ordinances concerning the operation of Brand Partner's business. A Brand Partner is responsible for Brand Partner's own managerial decisions and expenditures, including all estimated income and self-employment taxes.

**1.14 Brand Partner Identification Number.** A Brand Partner is required by federal law to obtain a Social Security number, Federal ID. number or other approved government-issued identification based on their resident country. Brand Partners will be assigned a Nerium International ID number for purposes of the Brand Partner's business with the Company. This number shall be placed on all orders and correspondence with the Company, hereinafter referred to as the Brand Partner Identification Number ("BPIN"). The Company will use this number in all internal Brand Partner transactions. Any penalties or fines that may result from the use of an incorrect tax identification number furnished to the Company will be the responsibility of Brand Partner.

**1.15 No Exclusive Territories.** There are no exclusive territories for marketing or sponsoring purposes, nor shall any Brand Partner imply or state that Brand Partner has an exclusive territory. No franchise is granted and there are no exclusive territories for sales or sponsoring purposes. No geographical limitations exist on Brand Partner sponsoring within the United States or any country in which the Company is approved to do business.

- 1.16 Other Products.** A Brand Partner agrees that no products except the Company's products shall be sold or shown at any event where the Company's products are sold or shown. During the term of the Brand Partner Agreement, and for a period of six months thereafter, Brand Partner is prohibited from selling or promoting any competing products or services or marketing programs to any of the Company's Employees, Agents or Brand Partners, except those Brand Partners personally sponsored by Brand Partner. Any Brand Partner found in violation of this subsection risks the loss of buying privileges, possible suspension and/or termination of Brand Partner position and participation in the Company Compensation Plan, and the Company will pursue all legal recourses to recover damages.
- 1.17 Cross-Group Selling.** Selling to other Company Brand Partners in order to receive credit for bonuses and advancement is prohibited. Brand Partner shall obtain all of Brand Partner's Company products, literature and materials directly from the Company. Any violation of this rule subjects Brand Partner to possible suspension and/or termination.
- 1.18 Contacts.** Brand Partners are to limit all corporate communication to the office and staff of the Company. No direct contact is to be made with the Company's partners, suppliers, consultants or hired professionals without the express written approval of the Company.

## SECTION TWO: TERM AND RENEWAL

- 2.01 Term.** Subject to the provisions of Section Four, the Agreement shall have a term beginning on the date of acceptance by the Company and ending one year from the date thereof (the “Anniversary Date”).
- 2.02 Annual Renewal.** A Brand Partner authorizes Company to automatically renew their Brand Partner’s status annually. The annual renewal fee is posted in the Online Business Center or is available through Nerium Support and is due on the Anniversary Date of enrollment. A Brand Partner not renewing by the renewal date, as provided herein, shall be deemed to have voluntarily terminated their Brand Partner position relationship with the Company and will thereby lose their Brand Partner position, all sponsorship rights, their position in the Compensation Plan, all rights to commissions and bonuses and the ability to purchase products from the Company at wholesale prices. A Brand Partner who fails to renew his/her Brand Partner status may not reenroll under a new Sponsor for six (6) months after non-renewal.
- 2.03 Inactivity.** A Brand Partner who is “inactive” in any 180 consecutive-day period shall be automatically deactivated from Brand Partner status and converted to Retail Customer status instead.

### SECTION THREE: SPONSORSHIP

**3.01 Sponsoring.** A Brand Partner may sponsor other Brand Partners in the United States and any country in which the Company is authorized. Sponsors shall ensure that each new Brand Partner has received, had access to and understands the Company's Agreement, the Policy Manual and the Compensation Plan. A Brand Partner will be compensated only for the generation of sales volumes, not for sponsoring new Brand Partners into the program.

**3.02 Multiple Agreements.** If an applicant submits multiple Agreements that list different Sponsors, only the first completed Agreement to be received by the Company will be accepted. The decision of the Company in recognizing the official Sponsor is final.

**3.03 Training Requirement.** Brand Partners are required to assure the adequate training of Brand Partners they sponsor. A Sponsor shall maintain an ongoing professional leadership association with Brand Partners in the organization and shall fulfill the obligation of performing a bona fide supervisory, distribution and selling function in the sale or delivery of products and services. Upon request, a Brand Partner must be able to provide the Company with evidence of ongoing fulfillment of Sponsor responsibilities, including training.

**3.04 Income Claims.** No income projections, including those based solely on mathematical projections or "ideal projections" of the Company Compensation Plan may be made to prospective Brand Partners. Brand Partner shall not represent Brand Partner's income as an indication of the success assured to others, since income success depends upon many variables. Commission checks may not be used as marketing materials. Brand Partner shall not guarantee or estimate compensation, draws, expenses or deductions attributable to the business to prospects. Brand Partner shall truthfully and fairly describe and present the Compensation Plan. No past, potential or actual income claims may be made to prospective Brand Partners. Brand Partner may not guarantee commissions or estimate expenses to prospects.

**3.05 Transfer of Sponsorship.** Although it is strongly discouraged and is seldom permitted, a Brand Partner may transfer to a different Sponsor or Sponsorship line, subject to the written approval of the Company, which may be withheld in its sole discretion, subject to the following conditions:

- a) If the transferring Brand Partner is within the same Sponsorship group, notarized signatures are required from all Brand Partners that are, or may be impacted, by the move;
- b) If the transferring Brand Partner is outside the same Sponsorship group, a notarized statement signed by all affected upline Brand Partners shall be submitted reflecting that each affected party understands and consents to the transfer. Any request for transfer of Sponsorship shall be first submitted to the Company in writing explaining the reason for the request of transfer;
- c) A \$50.00 transfer fee shall be paid to the Company;
- d) A written request for transfer explaining the exact reason for the requested transfer shall be submitted to the Company; and
- e) The final approval of the Company, if granted, will apply only to the Brand Partner making the request and not the Brand Partner's downline organization. Brand Partner shall comply with the requirements of section 5.03.

**3.06 Preferred Customers Associated with Brand Partner.** As a general matter, Nerium recognizes that a potential Brand Partner should be entitled to sign on with any Brand Partner sponsor of their choosing. However, a unique circumstance exists when an existing Brand Partner has undertaken a very serious sales and relationship effort to cause a prospective customer to become, not merely a one-time retail customer, but a committed Preferred Customer. In this situation, Nerium has determined that the very serious efforts of the selling Brand Partner should be honored and respected. To this extent, Nerium has adopted a policy that a Preferred Customer who decides to become a Brand Partner will be deemed to be associated and sponsored by the original Brand Partner who originally expended the effort to sign up the customer as a Preferred Customer.

## SECTION FOUR: RESIGNATION/TERMINATION

### 4.01 Voluntary Resignation.

- a) A Brand Partner may voluntarily terminate Brand Partner's status by failing to renew or by sending a written notice of resignation or termination to the Company. Voluntary resignation is effective upon receipt of such notice by the Company.
- b) A Brand Partner who resigns or terminates Brand Partner's status may reapply as a brand Partner at an entry-level position six (6) months after resignation.
- c) When a Brand Partner voluntarily terminates the Agreement, Brand Partner's sales network shall automatically roll up to the first upline Brand Partner.

**4.02 Suspension.** A Brand Partner may be suspended for violating the terms of the Agreement, which includes this Policy Manual, the Compensation Plan and other documents produced by the Company. When a decision is made to suspend Brand Partner, the Company will inform Brand Partner in writing that the suspension has occurred effective as of the date of the written notification, the reason for the suspension and the steps necessary to remove such suspension, if any. The suspension notice will be sent to Brand Partner's address on file with the Company pursuant to the notice provisions contained in the Policy Manual. Such suspension may or may not lead to termination of Brand Partner's position as so determined by the Company in its sole discretion. If Brand Partner wishes to appeal, the Company shall receive such appeal in writing within fifteen (15) days from the date of the suspension notice. The Company will review and consider the suspension and notify Brand Partner in writing of its decision within thirty (30) days from the date of the suspension notice. The decision of the Company will be final and subject to no further review. The Company may take certain action during the suspension period, including, but not limited to, the following:

- a) Prohibiting Brand Partner from holding Brand Partner meeting or outing as a Brand Partner of the Company or using any of the Company's proprietary marks and/or materials;
- b) Withholding commissions and bonuses due Brand Partner during the suspension period;
- c) Prohibiting Brand Partner from purchasing services and products from the Company; and/or
- d) Prohibiting Brand Partner from sponsoring new Brand Partners, contacting current Brand Partners or attending meetings of Brand Partners.
- e) If the Company, in its sole discretion, determines that the violation that caused the suspension is continuing, has not been satisfactorily resolved, or a new violation involving the suspended Brand Partner has occurred, the suspended Brand Partner may be terminated.

**4.03 Termination.** Brand Partner may be terminated for violating the terms of the Agreement, which includes this Policy Manual, the Compensation Plan and other documents produced by the Company. The Company may terminate a violating Brand Partner without placing Brand Partner on suspension, in the Company's sole discretion. Brand Partner will be given notice of the opportunity to be heard by a panel to consider the issues relating to the grounds for termination. When the decision is made to terminate Brand Partner, the Company will inform Brand Partner in writing at the address in Brand Partner's file that the termination has occurred effective thirty (30) days from the date of the written notification.

**4.04 Appeal.** If Brand Partner wishes to appeal the termination, the Company must receive the appeal in writing within fifteen (15) days from the date of notice of termination. If no appeal is received within the fifteen (15) day period, the termination will automatically be deemed final. If Brand Partner files a timely notice of appeal, the Company will review the appeal and notify Brand Partner of its decision within ten (10) days after receipt of the appeal. The decision of the Company will be final and subject to no further review. In the event the termination is not rescinded, the termination will remain effective as of the date stated in the original termination notice.

**4.05 Effect of Termination.** Immediately upon termination, the terminated Brand Partner:

- a) Shall remove and permanently discontinue the use of the trademarks, service marks, trade names and any signs, labels, stationery or advertising referring to or relating to any Company product, plan or program;
- b) Shall cease representing themselves as a Brand Partner of the Company;
- c) Shall lose all rights to Brand Partner's position and position in the Compensation Plan and to all future commissions and bonuses resulting there from; and



d) Shall take all action reasonably required by the Company relating to protection of its confidential information. The Company has the right to offset any amounts owed by Brand Partner to the Company from commissions or other bonuses due to Brand Partner. The Company may also offset an estimate of the reasonable amount that Brand Partner owes under the terms of the indemnity obligation incurred pursuant to Section 11.01 herein.

**4.06 Reapplication.** The acceptance of any reapplication of a terminated Brand Partner, or the application of any family member of a terminated Brand Partner, shall be in the sole discretion of the Company and may be denied.

**4.07 State Laws.** Where these provisions on termination violate the public policy of state laws, the applicable state law shall apply.

## SECTION FIVE: TRANSFERABILITY

**5.01 Acquisition of Business.** Any Brand Partner desiring to acquire an interest in another Brand Partner's business shall first terminate his her Brand Partner position and wait six (6) months before becoming eligible for such a purchase. All such transactions shall be fully disclosed to the Company and are subject to approval by the Company in advance.

**5.02 Transfers to Brand Partner.** Except as expressly set forth herein, Brand Partner may not sell, assign or otherwise transfer Brand Partner's entity (or rights thereto) to another Brand Partner or to an individual who has an interest in Brand Partner entity. Notwithstanding the foregoing, a Brand Partner may transfer the Brand Partner position to the Sponsor, subject to the conditions of Section 5.03. In such event, the Sponsor's Brand Partner position and the transferring Brand Partner's Brand Partner position shall be merged into one entity.

**5.03 Conditions to Transferability.** Brand Partner may not sell, assign, merge or transfer Brand Partner's position (or rights thereto) without the prior written approval of the Company, and any such transfer, if approved, is subject to the following conditions:

- a) Brand Partner must be in good standing, and must strictly adhere to all Nerium Policies and Procedures and not currently be on probation or suspension for Policy Compliance Violations.
- b) The Company possesses the right of first refusal with respect to any sale, assignment, transfer or merger of any Brand Partner position. A Brand Partner wishing to sell, assign, transfer or merge the Brand Partner position shall first provide the Company with the right and option to make such a purchase or receive such transfer in writing on the same terms and conditions as any outstanding offer. The Company will advise Brand Partner within ten (10) business days after receipt of such notice of its decision to accept or reject the offer. If the Company fails to respond within the ten (10) day period or declines such offer, Brand Partner may make the same offer or accept any outstanding offer which is on the same terms and conditions as the offer to the Company to any person or entity who is not a Brand Partner, married to or a dependent of a Brand Partner or who has any interest in a Brand Partner position.
- c) The selling Brand Partner shall provide the Company an executed "Sale of Nerium International Brand Partner Position" form and with a copy of all documents which detail the transfer, including without limitation, the name of the purchaser, the purchase price and terms of purchase and payment;
- d) A transfer fee of \$50.00 shall accompany the transfer documents;
- e) The documents shall contain a covenant made by the selling Brand Partner for the benefit of the proposed purchaser not to compete with the purchaser or attempt to divert or sponsor any existing Brand Partner of the Company for a period of six (6) months from the date of the sale or transfer; and
- f) Upon approval of sale, transfer or assignment being approved, the seller must provide a notarized Bill of Sale for the position being sold as proof of payment of the stated purchase price before the position will be transferred to the potential buyer. Upon approval by the Company in writing, the buying party shall assume the position of the selling Brand Partner and shall execute a current agreement and all such other documents as may be reasonably required by the Company.
- g) The Company reserves the right, in its sole discretion, to stipulate additional terms and conditions prior to approval of any proposed sale or transfer. The Company reserves the right to disapprove any sale or transfer.
- h) A Brand Partner must have had a completed product sale in the last 90 days.
- i) Brand Partner must have enrolled or renewed their Brand Partner position within the last twelve (12) months or have an active Auto-Delivery template and an active Auto-Delivery Order that was paid with the selling Brand Partner's credit card and shipped to the shipping address on their customer record within the last 30 days.

- j) A Brand Partner position being sold must have personally sponsored at least one (1) Brand Partner in the last twelve (12) months.
- k) The new owner will assume the original enrollment date of the position being sold.
- l) If the position enrollment date is thirty (30) days or greater, the new owner will not be eligible to earn an iPad.
- m) If the position being purchased has achieved a rank of Senior Director or higher, the purchaser must maintain a "Paid As" rank equal to the Highest Achieved rank for that position for ninety (90) days before they may be eligible to receive the benefits of the Lexus program.

**5.04 Circumvention of Policies.** If it is determined, in the Company's sole discretion, that a Brand Partner position was transferred in an effort to circumvent compliance with the Agreement, this Policy Manual or the Compensation Plan, the transfer will be declared null and void, and the Brand Partner position will revert back to the transferring Brand Partner who will be treated as if the transfer had never occurred from the reversion day forward. If necessary, and in the Company's sole discretion, appropriate action, including without limitation, termination may be taken against the transferring Brand Partner to ensure compliance with the Agreement and this Policy Manual.

**5.05 Succession.** Notwithstanding any other provision of Section Five, upon the death of a Brand Partner, the Brand Partner's position will pass to Brand Partner's successors in interest as provided by law; however, the Company will not recognize such a transfer until the successor in interest has executed a current Agreement and submitted certified copies of the death certificate and will, trust or other instrument required by the Company to evidence transfer of ownership. The successor will thereafter be entitled to all the rights and be subject to all the obligations of a Company Brand Partner.

**5.06 Reentry.** Any Brand Partner who transfers their Brand Partnership shall wait for six (6) months after the effective date of such transfer before becoming eligible to reapply to become a new Brand Partner.

## SECTION SIX: PROPRIETARY INFORMATION

**6.01 Confidentiality Agreement.** During the term of the Agreement, the Company may supply to Brand Partner confidential, proprietary or trade secret information including, but not limited, to genealogical and downline reports, customer lists, customer information developed by the Company or developed for and on behalf of the Company by Brand Partner (including, but not limited, to credit data, customer and Brand Partner profiles and product purchase information), Brand Partner lists, manufacturer and supplier information, business reports, commission or sales reports and such other financial and business information which the Company may designate as confidential, proprietary or trade secret. All such information (whether in written or electronic form) is confidential, proprietary or trade secret to the Company and is transmitted to Brand Partner in strictest confidence on a “need to know” basis for use solely in Brand Partner’s business with the Company. Brand Partner shall use Brand Partner’s best efforts to keep confidential, proprietary or trade secret information protected and shall not disclose any such information to any third party, directly or indirectly. Brand Partner shall not use the information to compete with the Company or for any purpose other than promoting the Company’s program and its products and services. Upon expiration, non-renewal or termination of the Agreement, Brand Partner shall discontinue the use of such confidential, proprietary or trade secret information and promptly return any confidential, proprietary or trade secret information in their possession to the Company.

**6.02 Copyright Restrictions.** With respect to product purchases from the Company, Brand Partner shall abide by all manufacturers’ use restrictions and copyright protections.

**6.03 Vendors’ and Other Business Associates’ Confidentiality.** The Company’s business relationships with its vendors, manufacturers, suppliers and researchers are confidential. Brand Partner shall not contact, directly or indirectly, speak to or communicate with any supplier, manufacturer or researcher of the Company except at a Company-sponsored event at which the supplier, manufacturer or researcher is present at the request of the Company.

**7.01 Trademarks.**

- a) The Company's name, trademarks, service marks and copyrighted materials are owned by the Company, including the names of the Company's products. The use of such marks and materials shall be in strict compliance with the Policy Manual. Only the Company is authorized to produce and market products and literature under these trademarks. Use of the Company name on any item not produced or authorized by the Company is prohibited, except in the manner described below:

Mary Jones  
Independent Brand Partner  
Nerium International™

- b) Trademark usage, unless otherwise as stated above: Independent Brand Partners who wish to use the Company's name, trademarks, service marks and copyrighted materials for Internet marketing purposes only will have the option to participate in the Company's Internet Licensee Program, and must adhere to the Company's Policies within this document, as well as the requirements of the program. Email [compliance@nerium.com](mailto:compliance@nerium.com) for additional information.

**7.02 Telephone, Yellow and White Page Listing.** Brand Partner is not permitted to use the Company's trade name in advertising in the white or yellow page sections of the telephone book. Brand Partner is not permitted to list their telephone numbers under the Company's trade name without first obtaining prior written approval from the Company. If approval is granted for a listing, it shall be stated in the following manner:

Jones, Mary  
Independent Brand Partner  
Nerium International™

**7.03 Imprinted Checks.** Brand Partner is not permitted to use the Company trade name or any of its trademarks or service marks on their business or personal checking accounts; however, Brand Partner may imprint Brand Partner's business checks as being a "Nerium International™, LLC Independent Brand Partner."

**7.04 Imprinted Business Cards or Letterheads.** Brand Partner is not permitted to "create" Brand Partner's own stationary, business cards or letterhead graphics if the Company's trade name and/or trademarks are used. Only the approved Company graphics version and wording are permitted and letterhead shall be ordered either from the Company directly or from the Company-licensed independent contractor.

**7.05 Print and Electronic Advertising.** Only Company-produced or -approved (in writing and in advance) promotional and advertising materials may be used to advertise or promote a Brand Partner's business or sell products or services of the Company in any print or electronic media, including on an Internet website. No person shall use the Company name, logos, trademarks or copyrighted material in any advertising not produced by the Company or without prior express written permission from the Company. The Company's literature and materials may not be duplicated or reprinted without prior written permission of the Company. The Company's consent or approval may be withheld at its sole discretion. Banners, trade show materials and the like must be approved in writing by the Company.

**7.06 Internet.** The Company maintains a presence on the Internet on its own website. Brand Partner is prohibited from using any trademarks of Company, including the name Nerium International™, LLC, the Nerium International™, LLC logo, and the name of any of the products, or any other trade names, trademarks or distinctive phrases or remarks used by Company, including those related to any product or any term confusingly similar thereto - in any form on the internet. If a Brand Partner desires to provide a link from Brand Partner's personal web site directly to the Company's website, the Brand Partner's request must be in writing and is subject to Company approval in its sole discretion. No link may be established until the Brand Partner receives written approval from Nerium International.

**7.07 Protection of Minors.** The Nerium International website is not designed for or targeted at children. We do not knowingly collect, use or disseminate any personally identifiable information from children under the age of 18. If, however, we become aware that personally identifiable information regarding a child under the age of 18 has been collected at the Nerium International site, we will use such information for the sole purpose of contacting a parent or guardian of the child to obtain verifiable parental consent. If we cannot obtain consent after a reasonable period of time, or if when contacted, a parent or guardian requests that we do not use or maintain such information, we will make reasonable efforts to delete it from our records. Upon request by a parent or guardian, Nerium International will provide a description of the specific types of personal information collected from a child who is under the age of 18.

## 7.08 Gifts, Enticement and Special Discounts.

- a) Nerium Independent Brand Partners are prohibited from using print, electronic or verbal advertisements to entice potential prospects, including Preferred Customers, to join their organization or team, which includes, but is not limited to; special rewards, incentives, bonuses, products or guarantee of downline placements, which can be determined upon Company's sole discretion.
- b) Nerium Independent Brand Partners are not allowed to use the Placement Suite as a form of incentive and/or enticement to leverage potential prospects, including Preferred Customers, in any public or private forum for joining their Nerium business.

## 7.09 Social Media.

- a) As a Brand Partner for Nerium International, you are not required to maintain a presence in social media. Should you choose to do so, however, you must adhere to the guidelines and policies set forth by Nerium International. These guidelines and policies are designed to ensure the uniformity and professionalism of the Nerium International brand which, in turn, benefits your business.
- b) Nerium International maintains an online presence for the benefit of the company as a whole, which includes Customers, Brand Partners and the general public. We ask that in our public forums (Facebook, Twitter, etc.) you keep your comments relevant to all. Our blog (neriumblog.net) is a resource for you to ask questions related to the business side of Nerium International, and our corporate staff is available to help.
- c) You may not use the official corporate Nerium pages to drive business, solicit business, drive people to your own site or recruit Brand Partners. Our trademarked brand name cannot be used to drive traffic away from our corporate site.
- d) You cannot represent your independent business as the corporate office. All Brand Partner communications, both in print and online, must clearly appear as coming from an independent representative of the company and not lead the consumer to think they may be interacting with the corporate office.
- e) You are welcome to use the term "Independent Brand Partner for Nerium International" in the name/description of various social media sites for your business. You cannot use the word "official" or anything similar. You cannot create an alias for any sites like Twitter or others that use any permutation of the Nerium International name. For further clarification regarding naming, please refer to Section 7.06.
- f) When posting information online related to Nerium International, please consider if the information you are sharing is beneficial to your business and to the company as a whole. Do not represent yourself in any way online that detracts from the Nerium International brand. All Independent Brand Partners agree, acknowledge and affirmatively accept any content posted (photos, testimonials, statements, marketing materials, etc.) on a social networking website including, but not limited to, Facebook, Twitter, MySpace, LinkedIn, Flickr, etc., must adhere to the Print and Electronic Guidelines found in Section 7.05. Health/medical claims, income claims or disparaging comments, remarks, etc are expressly prohibited and will not be approved or allowed.
- g) In the event of your voluntary or involuntary termination as a Nerium International Independent Brand Partner, you are required to remove all references to Nerium International from social networking profile(s) within ten (10) days.
- h) Should Nerium International discover non-compliant profiles and/or websites, you will be required to remove the material immediately.
- i) Infractions of any social media guideline may result in disciplinary actions up to and including termination of your Brand Partner account.
- j) Nerium International requires that all Brand Partners identify themselves as independent business owners and should therefore adhere to the naming convention of their Facebook page and all other social media networks to read as follows: "John Doe, Independent Brand Partner, Nerium International." On Facebook only are you allowed to use "Nerium" in your vanity URL if its naming convention is the same as your Nerium replicated site i.e. "Facebook.com/john doe.nerium". This is the only acceptable use of the word "Nerium" in a URL.
- k) All Independent Brand Partners are prohibited from advertising "Nerium" on websites such as Groupon, Facebook offers, Twitter ads, or any website or social media networks with a coupon or special discount offer, including and not limited to the purchase of ads with the "Nerium" name used in the naming conventions of URL domains, subdomains or in the advertising on pay per click ads and/or adwords, etc.

- 7.10 Endorsements.** No endorsements by a Company officer or any third party may be asserted, except as expressly communicated in the Company literature and communications. Federal and state regulatory agencies do not approve or endorse direct selling programs. Therefore, a Brand Partner may not represent or imply, directly or indirectly, that the Company's program, products or services has been approved or endorsed by any governmental agency.
- 7.11 Independent Communications.** Subject to the restrictions imposed by Section Seven, Brand Partner is encouraged to distribute information and direction to Brand Partner's respective downline; however, Brand Partner shall identify and distinguish between personal communications and the official communications of the Company.
- 7.12 Medical Claims.** No medical claims (expressed or implied) may be made for any Company product by Brand Partner.
- 7.13 Brand Partner Services.** The Company provides every active Brand Partner with management and training communications, timely delivery of product and sales materials and a computer report of sales made in their marketing group for the pay period in which commissions and overrides are earned and paid.
- 7.14 Pricing.** Pricing for products sold on the Internet must adhere to the general rules for all such retail sales, as outlined in Section 9.13.
- 7.15 Recordings.** Brand Partner may not produce or reproduce for sale or personal use products sold by the Company or any Company-produced literature, audio or video material, presentations, events or speeches, including conference calls. Video and/or audio taping of Company meetings and conferences is strictly prohibited. Still photography is allowable at the discretion of the meeting host.
- 7.16 Telephone Answering.** Brand Partner may not answer the telephone by saying "Nerium International" or in any other manner that would lead the caller to believe that the call has reached the corporate offices of the Company.
- 7.17 Liability.** Violation of any of the rules contained in this Policy Manual is grounds for termination of the individual's Brand Partner status. The violator may also be liable for damages resulting from unauthorized use of the Company copyrights, trademarks and materials.
- 7.18 iPad Incentive Rules.** There can be no mention of iPad in any type of promotion or incentive program that is presented to the public at large, either in print or electronically. It is not acceptable to have a picture of someone with his or her iPad and communication involving the iPad cannot explain how to win, earn or obtain an iPad by working with Nerium.
- 7.19 Lexus and iPad Payout Option.**
- a) Lexus bonus earners who choose the Nerium bottle option will receive four (4) bottles of Age-Defying Night Cream and four (4) bottles of Age-Defying Day Cream, and receive this payout option up to a maximum of six (6) qualifying months. The Lexus Car Payment Option will remain available once the bottles option has ended.
  - b) iPad bonus earners who choose the Nerium bottle option will receive a one (1) time pay out of four (4) bottles of Age-Defying Night Cream and four (4) bottles of Age-Defying Day Cream.

## SECTION EIGHT: PAYMENT OF COMMISSIONS

- 8.01 Basis for Commissions.** Commissions. Commissions and other bonuses cannot be paid until a completed Agreement has been received and accepted by the Company prior to the end of the month in which the sale is made. Commissions are paid ONLY on the sale of Company services and products. No commissions are paid on the purchase of a Brand Partner kit or for sponsoring Brand Partners.
- 8.02 Calendar.** Commissions, overrides and bonuses are calculated and paid on the current pay period information. A Brand Partner is promoted to the highest rank in which he/she qualifies at the close of each bonus period. Commissions and bonuses are paid based on the "Paid As" rank.
- 8.03 Commission and Bonus Payment Date.** Commissions, overrides and bonuses are calculated and paid on the current pay period information. A Brand Partner is promoted to the highest rank in which he/she qualifies at the close of each bonus period. Commissions and bonuses are paid based on the "Paid As" rank.
- 8.04 Minimum Payment.** The minimum amount for payment of commissions and overrides is \$15.00; all monies not paid will be included in the next bonus payment. Processing fees vary based on payment options and may be deducted from all commission and bonus payments.
- 8.05 Offset of Commissions.** Any commissions or bonuses earned and paid on products returned is the obligation of and shall be repaid to the Company by the Brand Partner originally paid such commissions or bonuses. The Company has the right to offset such amounts against future commissions and other bonuses paid or owed to such Brand Partner and Brand Partner's upline who participated in an override.
- 8.06 Tax Reporting for Commissions.** Any commissions paid to a Brand Partner are subject to State and Federal tax laws. Payments made in the form of incentive trips, free product (3UR Free, NGB, in lieu of Lexus lease) and/or Lexus car payments are all subject to taxation as income and will be reported annually on a 1099 prepared for the Brand Partner. The Brand Partner is responsible to file all income and expense reports appropriate for operating a home-based business.



## SECTION NINE: PURCHASE AND SALE OF PRODUCTS

- 9.01 Purchase Requirement.** No product purchase is required in order for an applicant to become a Brand Partner, although purchases or sales of products may be required in order to advance in the Compensation Plan. Brand Partners who have had their Agreement accepted by the Company may buy products at wholesale prices directly from the Company.
- 9.02 Stockpiling Prohibited.** The success of the Company depends on sales to the ultimate consumer and all forms of stockpiling are strictly prohibited including, but not limited to, purchases of products primarily for purposes of qualifying for additional compensation. The Company recognizes that Brand Partner will purchase products for Brand Partner's own use, however, the Company strictly prohibits the purchase of products in unreasonable amounts in an attempt to qualify for advancement in the Compensation Plan.
- 9.03 70% Rule.** In order to qualify for commissions and bonuses, Brand Partner shall certify on the product order form that the Brand Partner has sold to non-Brand Partner consumers or used at least 70% of all products previously purchased. Brand Partners placing telephone orders to the Company are also required to comply with this rule and may be requested by the Company to verify compliance. In its effort to support and enforce the retail sales/70% Rule, the Company, on a quarterly basis, will conduct random audit verification follow-ups. Representatives of the Company will contact Brand Partners to further verify compliance with the 70% Rule. Brand Partners should maintain records and be prepared to assist the Company representative in their task.
- 9.04 Retail Sales Rule.** Requiring sales to at least five (5) retail customers per month.
- 9.05 Preferred Customer Rules.** A Preferred Customer must personally opt in to the monthly Auto-Delivery Order program. Invalid Preferred Customer orders are defined as orders submitted as Preferred Customer orders for qualification purposes without the written authorization from the customer. If a Nerium International Brand Partner submits a Preferred Customer order without the Customer's consent, the Brand Partner will be subject to disciplinary action, including termination. Preferred Customer orders cannot be paid by or shipped to a Nerium International Brand Partner for any reason. No exceptions.
- 9.06 Ordering Methods.** All orders submitted to the Company shall have the Brand Partner's or Customer's Company issued identification number placed thereon to assist the Company in processing and shipping the order properly. Failure to provide this information may result in a delay in processing the order.
- 9.07 Direct Purchase.** Brand Partner may purchase Brand Partner's product needs directly from the Company. Should a Brand Partner obtain product from Brand Partner's Sponsor or upline Brand Partner's personal inventory and a replacement product order is not placed and processed through the Company, no commissions or overrides will be paid by the Company on such transactions.
- 9.08 Payment Options.** Purchases may be paid by money order, cashier's check, personal check or credit cards, unless specifically stated otherwise by the Company. Pre-printed name, physical address and phone number must be on all checks. Personal checks will be accepted only for payments in an amount not greater than \$1,000. In the event a check or credit card is declined, Brand Partner will be contacted for an alternate form of payment and may be subject to an additional processing fee. No orders will be shipped without prior payment. Returned checks are subject to a \$30.00 returned check fee.
- 9.09 Shipping and Handling.** It is the ordering Brand Partner's sole responsibility to indicate (a) the method and means of shipping and (b) the destination address.
- 9.10 Product Delivery.** Upon clearance of payment, the Company processes for shipment the products and materials ordered. If an item is temporarily not available ("TNA"), the consignee will be notified on the packing list included with the shipment. If a TNA should occur, the item(s) will be shipped as soon as available and usually within ten (10) days of the date the original order was received. Back orders may be canceled by Brand Partner by written request received by the Company prior to shipment.

- 9.11 Damaged Goods.** The shipping company is responsible for any damage that occurs after it takes physical custody of the products. Therefore, it is important that the damage is reported promptly in order to allow Nerium International to file a claim with the shipper. The purchaser of Company products who receives damaged goods shall comply with the following procedures:
- a) Accept delivery;
  - b) Before the driver leaves, note on the delivery receipt the number of boxes that appear to be damaged and require the driver to acknowledge the damage in writing;
  - c) Save the damaged products or boxes for inspection by the shipping agent; and
  - d) Contact Nerium International Support Department to arrange for a replacement order to be shipped and a damaged goods claim to be filed.
- 9.12 Price Changes.** Prices for the Company's products, services and literature are subject to change without prior notice.
- 9.13 Receipts for Retail Pricing.** Brand Partner will provide all retail purchasers of the Company products with written receipts. Although the Company provides a suggested retail price as a guideline, Brand Partner may sell the Company products at whatever retail price they and their customers may agree upon, as long as the price is not below the Preferred Customer price.
- 9.14 Sales Tax.** To ensure compliance with the sales and use tax requirement of each state, unless required otherwise by state law, the Company may, at its option, collect and remit all applicable sales and use taxes on products, promotional materials and services sold to Brand Partners and retail customers based on the suggested retail price of the product. The applicable rate of tax due shall be based on the address to which the product and/or material are shipped. If Brand Partner requests a tax exempt purchase for products purchased for resale (not for personal use), Brand Partner shall provide the Company with a true and correct copy of a current resale certificate from the applicable state.
- 9.15 Shipping Loss.** The Company will track all deliveries shipped. Brand Partner should contact the Company immediately upon being made aware of any shipping problem.
- 9.16 Inaccurate Delivery.** If a product is shipped in error by the Company, the unordered merchandise may be returned at the Company's expense provided the following steps are taken:
- a) Brand Partner or retail customer notifies the Company within five (5) days of receipt of the order;
  - b) A copy of the shipping or packing slip shall be enclosed with the proper forms required by the Company completed and executed by Brand Partner or retail customer; and
  - c) Products shall be returned in original containers and shall be packed properly to prevent damage in return shipment.
- 9.17 Refused Shipments.** Should Brand Partner refuse delivery on any order placed with the Company, the Company shall have the right to place Brand Partner in suspension pending resolution of the refusal of delivery. Neither Brand Partner nor a retail customer shall refuse any shipment from the Company unless prior approval of the Company has been obtained. Should the receiving party of any order shipped from the Company refuse to accept delivery and the shipment is returned to the Company, the ordering Brand Partner's status will be suspended pending resolution of the delivery refusal. Non-accepted delivery charges will be debited to Brand Partner's account. If the Company determines that a valid reason exists for refusing shipment, it will instruct the Brand Partner or retail customer on the proper procedure for a return.
- 9.18 Retail Outlets.** The integrity of the Company's marketing plan is built upon person-to-person, one-on-one and in-home presentation methods of sale. Selling Company products through any chain of retail stores, including but not limited to drugstores, pharmacies, supermarkets, health food stores, shopping mall booths and the like, restaurants or online shopping malls including, but not limited to, eBay, Craigslist, etc. is strictly prohibited. Selling Company products by Brand Partners through retail outlets or professional offices that are not part of chains and are owned or operated by the Brand Partner is acceptable upon written approval by the Company.
- 9.19 Service-Oriented Establishments.** It is permissible to take orders for Company products in businesses such as health spas, health resorts or similar establishments.
- 9.20 Medical Offices.** Medical doctors and other health professionals may sell Company products from their offices only if the doctor or health professional is a Brand Partner.

**9.21 Trade Shows.** With written authorization from the Company, Company products or services and opportunity may be displayed at trade shows by Brand Partners. Request for participation in trade shows must be received in writing by the Company at least two weeks prior to the show. Written authorization from the Company must be received before participating in the trade show. Unless written authorization is secured from the Company, Company products or services and opportunity are the only products or services and/or opportunity that may be offered in the trade show booth. Only Company produced marketing materials may be displayed or distributed. No Brand Partner may sell or promote the Company's products or services or business opportunity at flea markets, swap meets or garage sales. Company tradeshow authorization does not guarantee exclusive participation in any tradeshow.

**9.22 International Sales.** No independent Brand Partner may export or sell directly or indirectly to others who export the Company's products, literature, sales tools or promotional material relating to the Company, its products or services or the Company's program from the United States or its possessions or territories to any other country. Independent Brand Partners who choose to sponsor internationally may do so only in countries in which the Company has registered to operate its business and must comply fully with the Rules of Operation of a Company Brand Partner in that country. Any violation of this rule constitutes a material breach of this contract and is grounds for immediate termination of the Brand Partner position.

**9.23 Product/Services Claims.** Brand Partner shall make no claim, representation or warranty concerning any product or service of the Company, except for those contained in the official Company materials. Brand Partner can only promote benefits of Nerium products using language contained in the official Company materials. **Brand Partners may not make any medical, therapeutic, curative or treatment claims regarding any Nerium product. Brand Partners may only use "Before" and "After" photos provided by the Company. The use of any unauthorized "Before" and "After" photos is prohibited.**

**9.24 Promotional Items.** All promotional items that bear the Company name or logo shall be purchased solely from the Company or its approved supplier unless prior written permission is obtained from the Company.

**9.25 Telemarketing.** Telemarketing is strictly prohibited. The Federal Trade Commission and Federal Communications Commission each have laws that restrict telemarketing practices. Both federal agencies (as well as a number of states) have "do not call" regulations as part of their telemarketing laws. Although the Company does not consider Brand Partners to be "telemarketers" in the traditional sense of the word, these government regulations broadly define the term "telemarketer" and "telemarketing" so that your inadvertent action of calling someone whose telephone number is listed on the federal "Do Not Call" registry could cause you to violate the law. Moreover, these regulations must not be taken lightly, as they carry significant penalties.

- a) Therefore, Brand Partners must not engage in telemarketing in the operation of their Company businesses. The term "telemarketing" means the placing of one or more telephone calls to an individual or entity to induce the purchase of a Company product or service or to recruit them for the Company opportunity. "Cold calls" made to prospective customers or Brand Partners that promote either Company products or services or the Company opportunity constitute telemarketing and are prohibited. However, a telephone call placed to a prospective customer or Brand Partner (a "prospect") is permissible under the following situations:
- b) You may call family members, personal friends and acquaintances. An "acquaintance" is someone with whom you have at least a recent first-hand relationship within the preceding three (3) months. Bear in mind, however, that if you make a habit of "card collecting" with everyone you meet and subsequently call them, the FTC may consider this a form of telemarketing that is not subject to this exemption. Thus, if you engage in calling "acquaintances," you must make such calls on an occasional basis only and not make this a routine practice;
- c) The prospect's personal inquiry or application regarding a product or service offered by the Brand Partner happens within the three (3) months immediately preceding the date of such a meeting;
- d) If the Brand Partner has an established business relationship with the prospect. An "established business relationship" is a relationship between a Brand Partner and a prospect based on the prospect's purchase, rental or lease of goods or services from the Brand Partner or a financial transaction between the prospect and the Brand Partner within the eighteen (18) months immediately preceding the date of a telephone call to induce the prospect's purchase of a product or service; and
- e) If the Brand Partner receives written and signed permission from the prospect authorizing the Brand Partner to call. The authorization must specify the telephone number(s) which the Brand Partner is authorized to call.
- f) In addition, Brand Partners shall not use automatic telephone dialing systems relative to the operation of their Company businesses. The term "automatic telephone dialing system" means equipment which has the capacity to (a) store or produce telephone numbers to be called, using a random or sequential number generator, and (b) to dial such numbers.

## SECTION TEN: RETAIL CUSTOMER RETURNS

**10.01 Retail Customer Guarantee.** The Company offers a 100% money-back satisfaction guarantee to all retail customers within thirty (30) days of purchase. If a retail customer is dissatisfied with any of the Company products for any reason, then that retail customer may return that product in its original package and shipping containers, with original proof of purchase, to the original selling Brand Partner for either a replacement or a full refund of the purchase price minus shipping. Customer is responsible for cost of return freight.

**10.02 Warranties.** Except as expressly stated herein, the Company makes no warranty or representation as to the merchantability, fitness for a particular purpose, workmanship or any other warranty concerning any product or service purchased from or through the Company. The manufacturer's warranty will be transferred to Brand Partner.

**10.03 Buyer's Right to Cancel.** Federal law grants a buyer the right to cancel certain sales without penalty prior to midnight of the third business day after the transaction. This rule covers retail consumer sales of \$25.00 or more that occur away from the seller's main office. The Company sales order form contains all legally required notices. Two copies shall be given to the buyer by Brand Partner on every sale. In addition, the Brand Partner shall orally inform the buyer of the three-day right to cancel at the time the buyer purchases the goods.

**10.04 Retail Customer Refunds.** The Company will replace the returned retail product to the Brand Partner provided the following procedures and conditions are met:

- a) The product shall be returned to the Company by the Brand Partner who purchased it from the Company within sixty (60) days of the date of the original purchase;
- b) Brand Partner shall obtain a return authorization number from the Company customer service department within ten (10) days of the return date to Brand Partner and prior to returning any product; and
- c) The product shall be received by the Company within twenty (20) days of the return date to Brand Partner.
- d) The return shall be accompanied by the following:
  - 1.) A signed statement from the retail customer identifying the reason for the return;
  - 2.) A copy of the original retail sales receipt;
  - 3.) The unused portion of the product is returned in its original container; and
  - 4.) The name, address and telephone number of the retail customer.
- e) A signed statement from the retail customer identifying the reason for the return;
- f) A copy of the original retail sales receipt;
- g) The unused portion of the product is returned in its original container; and
- h) The name, address and telephone number of the retail customer.
- i) Proper shipping carton(s) and packing materials shall be used in packaging the product(s) being returned for replacement, and the best and most economical means of shipping is suggested.
- j) The Brand Partner will pay the cost of shipping replacement product(s).
- k) The Company will replace the product, but will not refund to any Brand Partner the purchase price of any retail customer returns.

**10.05 Quality Control.** The Company will replace, within twelve (12) months of purchase, any product found to be defective; however, no product shall be returned to the Company without prior written approval. Exchanges only. No Refunds.

- a) A written replacement request shall be submitted stating the reason for the request and accompanied by a copy of the Purchase Order Form or packing slip. Product returned without prior authorization will not be accepted.
- b) The Company will provide the Brand Partner with a return authorization number and will instruct Brand Partner where to ship the product for inventory verification. Upon receipt and verification of the product, the Company will ship out replacement product as appropriate.
- c) The Company will not replace any product previously certified by Brand Partner as sold under the 70% Rule, sold at a special discount or sold as a promotional item.

**10.06 Termination Returns.**

- a) A Brand Partner who terminates Brand Partner's business relationship with the Company has the right to return for repurchase on commercially reasonable terms currently marketable inventory including Company-produced promotional materials, sales tools and kits in possession of Brand Partner and purchased by Brand Partner for resale prior to the date of termination. For purposes hereof, "reasonable commercial terms" shall mean the repurchase of marketable inventory within twelve (12) months from the Brand Partner's date of purchase at not less than 90% of the Brand Partner's original net cost less appropriate set-offs and legal claims, if any. In addition, for purposes of this section, products shall not be considered "currently marketable" if returned for repurchase after the products commercially reasonable usable or shelf life period has passed (shelf life will be deemed to have passed if the product package has been opened); nor shall products be considered "currently marketable" if the Company clearly discloses to the Brand Partner prior to purchase that the products are seasonal, discontinued or special promotional products and are not subject to the repurchase obligation. The Company will not issue a refund nor replace any product previously certified as having been sold under the 70% Rule. No refunds will be issued unless a Brand Partner is in strict compliance with the procedures contained herein:
- b) A written return request shall be submitted, stating the reason for the termination, the reason for the return of product and/or sales materials, and accompanied by original proof of payment and a copy of the Purchase Order Form or Packing Slip. Product returned without prior authorization will be returned to Brand Partner;
- c) The Company will provide Brand Partner with a return authorization number, and will instruct Brand Partner where to ship the product for inventory verification. Upon receipt and inspection of the return, Company will process the appropriate refund for payment; and
- d) Brand Partner shall pay the cost of return freight.
- e) All commissions, overrides and bonuses paid to a terminated Brand Partner as a result of any product returned upon termination shall be repaid to the Company. The Company may deduct such amounts from any commissions or other amounts owed to such Brand Partner. All commissions, overrides and/or bonuses paid to a Brand Partner's upline on a returned product shall be repaid to the Company by the upline Brand Partner.

## SECTION ELEVEN: GENERAL PROVISIONS

- 11.01 Indemnity Agreement.** Brand Partner agrees to indemnify and hold harmless the Company, its shareholders, officers, directors, employees, agents and successors in interest from and against any claim, demand, liability, loss, cost or expense including, but not limited to, court costs and attorneys' fees, asserted against or suffered or incurred by any of them, directly or indirectly, arising out of or in any way related to or connected with allegedly or otherwise, that Brand Partner's (a) activities as Brand Partner; (b) breach of the terms of the Agreement; and/or (c) violation of or failure to comply with any applicable federal, state or local law or regulation.
- 11.02 Other Services and Products.** No products or services, except for the Company's products or services, shall be sold or shown at any event where the Company's product or services are sold or shown. Except as provided above, a Brand Partner is not restricted from selling other companies' services and products that are not similar to or competitive with the products and services of the Company. However, promotion of direct sales and/or network marketing programs and/or competitive services or products with anyone are strictly prohibited.
- 11.03 Limit on Liability.** To the extent permitted by law, the Company shall not be liable for and Brand Partner releases the Company from and waives all claims for any loss of profits, indirect, direct, special or consequential damages or any other loss incurred or suffered by Brand Partner as a result of (a) the breach by Brand Partner of the Agreement and/or the terms and conditions of the Policy Manual; (b) the operation of Brand Partner's business; (c) any incorrect or wrong data or information provided by Brand Partner; (d) any copyright violation in connection with materials provided by Brand Partner; or (e) the failure to provide any information or data necessary for the Company to operate its business, including, without limitation, the enrollment and acceptance of Brand Partner into the Compensation Plan or the payment of commissions and bonuses.
- 11.04 Limitation of Damages.** To the extent permitted by law, the company and its affiliates, officers, directors, employees and other representatives shall not be liable for and Brand Partner hereby releases the foregoing from and waive any claim for loss of profit, incidental, special, consequential or exemplary damages which may arise out of any claim whatsoever relating to the company's performance, non performance, act or omission with respect to the business relationship or other matters between any brand partner and the company, whether sounding in contract, tort or strict liability. Furthermore, it is agreed that any damages to Brand Partner shall not exceed and is hereby expressly limited to, the amount of unsold Company programs, services and/or products of the Company owned by Brand Partner and any commissions owed to Brand Partner.
- 11.05 Record Keeping.** The Company encourages Brand Partner to keep complete and accurate records of all Brand Partner's business dealings.
- 11.06 Non-Solicitation and Non-Competition.** Brand Partner acknowledges and agrees that the only way to protect the goodwill, confidential, proprietary and trade secret information of Company and the integrity and stability of the sales force created by other Brand Partners is to prohibit all Brand Partners from recruiting and soliciting of other Brand Partners to other companies during the term of this agreement and for a reasonable time thereafter. Consequently, in consideration for all of the rights granted by this Agreement, including the protection this non-solicitation provision affords to Brand Partner, for the term of this Agreement and for two (2) years after termination hereof, for any reason, Brand Partner agrees not to, directly or indirectly, recruit or solicit any of Company's other Brand Partners to join other direct sales, multi-level or network marketing companies.
- For the term of this Agreement and for two (2) years after termination hereof, for any reason, Brand Partner agrees not to sell any product that is the same or similar to or competes with the products of Company within the United States of America or any other country where Company sells its products.
- Brand Partner agrees not to solicit, directly or indirectly, Company's Brand Partners to purchase services or products, except those of Company, throughout the term of this Agreement.
- 11.07 Amendments.** The Company reserves the right to amend the Agreement, Policy Manual, its retail prices, product availability and the Compensation Plan at any time without prior notice as it deems appropriate. Amendments will be communicated to Brand Partner through official Nerium publications, by posting on the Nerium website or voice and/or e-mail. Amendments are effective and binding on Brand Partner and Nerium thirty (30) days after notice. All amendments are prospective and do not apply to incidents, occurrences or proceedings occurring before the effective date of the amendment. In the event any conflict between the original documents or policies and any such amendment, the amendment will control.



**11.08 Non-Waiver Provision.** No failure of the Company to exercise any power under the Policy Manual or to insist upon strict compliance by Brand Partner with any obligation or provision herein, and no custom or practice of the parties at variance with this Policy Manual, shall constitute a waiver of the Company's right to demand exact compliance with this Policy Manual. The Company's waiver of any particular default by Brand Partner shall not affect or impair the Company's rights with respect to any subsequent default, nor shall it affect any way in the rights or obligations of any other Brand Partner. Nor shall any delay or omissions by the Company to exercise any right arising from a default affect or impair the Company's rights as to that or any subsequent default. Waiver by the Company can be affected only in writing by an authorized officer of the Company.

**11.09 Arbitration.**

- a) Except as expressly set forth herein, all disputes, claims or causes of action relating to or arising from any Independent Brand Partner Application, Nerium International Terms of Agreement, Company's Policies and Procedures, and any other Company policies, products and services, the rights and obligations of Company and Brand Partner or any other disputes, claims or causes of action between Brand Partner and any of its officers, directors, employees or affiliates and Company or any of its officers, directors, employees or affiliates whether in tort or contract, shall be settled totally and finally by arbitration in Dallas, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including the optional rules for emergency measures of protection which Company may use, in addition to or instead of the procedures set forth in section (c) below. The arbitration shall be conducted before a single arbitrator and shall not be conducted on a class-wide, class action or multiple complaining-party basis.
- b) Notwithstanding the foregoing, the arbitrator shall have no jurisdiction over disputes relating to the ownership, validity or registration of any mark or other intellectual property or proprietary or confidential information of the Company without the Company's prior written consent. The Company may seek any applicable remedy in any applicable forum with respect to these disputes and with respect to money owing to the Company. In addition to monetary damages, the Company may obtain injunctive relief against Brand Partner for any violation of the Agreement or misuse of the Company's trademark, copyright or confidential information policies.
- c) Nothing in this rule shall prevent the Company from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, preliminary injunction and/or other injunctive or emergency relief available to safeguard and protect the Company's interests prior to the filing of or during or following any arbitration or other proceeding or pending the handing down of a decision or award in connection with any arbitration or other proceeding. Brand Partner hereby agrees that violation of the prohibition on use or disclosure of trade secrets, proprietary or confidential information or the prohibition of the non-solicitation and non-disparagement provisions herein stated will cause Company irreparable injury for which there is no adequate remedy at law and hereby agrees to the entry of an ex parte temporary restraining order, preliminary and permanent injunction or any other emergency remedy necessary to prevent said violation.
- d) Nothing contained herein shall be deemed to give the arbitrator any authority, power or right to alter, change, amend, modify, add to or to subtract from any of the provisions of this Agreement.

**11.10 Entire Agreement.** This Policy Manual is incorporated into the Agreement, along with the Compensation Plan, and constitutes the entire agreement of the parties regarding their business relationship.

**11.11 Governing Law, Jurisdiction and Venue.** The Agreement, including this Policy Manual, shall be governed by the laws of the State of Texas, except that any conflict-of-law rule that may require reference to the laws of some other jurisdiction shall be disregarded. The parties further agree that, subject to and without waiver of the requirements of the agreement to arbitrate contained in paragraph 11.09 above, the state and federal courts located in Dallas County, Texas shall be the exclusive forum for litigation of any dispute between or among Brand Partner and any of its officers, directors, employees or affiliates and Company or any of its officers, directors, employees or affiliates, that is permitted to be litigated in court under paragraph 11.09. The parties irrevocably waive any right any of them may have to assert that venue or jurisdiction for any such litigation should lie elsewhere, including, but not limited to, any objection based on forum non conveniens or personal jurisdiction. The parties intend this provision to be a binding, mandatory and exclusive forum-selection clause, subject to and without waiver of the agreement to arbitrate.

**11.12 Force Majeure.** The Company shall not be responsible for delays or failure in performance caused by circumstances beyond a party's control, such as strikes, labor difficulties, fire, war, government decrees or orders or curtailment of a party's usual source of supply.

**11.13 Notice.** Any communication, notice or demand of any kind whatsoever, which either Brand Partner or the Company may be required or may desire to give or to serve upon the other shall be in writing and delivered by electronic communication whether by telex, telegram, e-mail or fax (if confirmed in writing sent by registered or certified mail, postage pre-paid, return receipt requested or by personal service). Any party may change its address for notice by giving written notice to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been given or served on the date personally served by personal service, on the date of confirmed dispatch if by electronic communication, or on the date shown on the return receipt or other evidence if delivery is by mail.

**11.14 Severability.** If under any applicable and binding law or rule of any applicable jurisdiction, any provision of the Agreement, including this Policy Manual, or any specification, standard or operating procedure which the Company has prescribed, is held to be invalid or unenforceable, the Company shall have the right to modify the invalid or unenforceable provision, specification, standard or operating procedure or any portion thereof, to the extent required to be valid and enforceable, and Brand Partner shall be bound by any such modification. The modification will be effective only in the jurisdiction in which it is required.

**11.15 Violations.** It is the obligation of every Brand Partner to abide by and maintain the integrity of this Policy Manual. If Brand Partner observes another Brand Partner committing a violation, such Brand Partner should discuss the violation directly with the violating Brand Partner. Any violations reported to the Company shall follow the Company's reporting procedures and may be reported by phone to Nerium International Support Department at 855-4-NERIUM (855-463-7486).



## SECTION TWELVE: CODE OF PROFESSIONAL ETHICS

Nerium international, LLC., believes that its Brand Partners should subscribe to the principles of fairness, honesty, integrity and service. The relationship of the company to Brand Partner, Brand Partner to customer and Brand Partner to others should be preserved, protected and promoted in accordance with the highest standards of conduct. Therefore, Brand Partner agrees to abide by and subscribe to the code of professional ethics (the “code of ethics”) contained in this section twelve.

AS A BRAND PARTNER, I AGREE THAT:

- 12.01** I will be honest and fair in all my dealings while acting as a Brand Partner of the Company.
- 12.02** I will respect the time and privacy of the people I contact to become retail customers or Brand Partners of the Company. I will be courteous and respectful to every person contacted in the course of my Company business.
- 12.03** I will perform all my professional activities in a manner that will enhance my reputation and the reputation of the Company.
- 12.04** I will fulfill my leadership responsibilities as a Sponsor, including training and otherwise supporting Brand Partners in my sales organization.
- 12.05** I will not engage in any deceptive or illegal practice, or any practice prohibited by the Agreement or the Policy Manual.
- 12.06** I will not make diagnostic, therapeutic or curative claims for the Company’s products. I will not make any claims not contained in official Company literature. I will represent only that “each body is unique and responds uniquely to different products,” remembering that even my personal experience with the product may be interpreted as an “extension of labeling claims” if I use those experiences as a sales device.
- 12.07** I will make no income claims or representations regarding the Company Compensation Plan, remembering that ideal projections of the Company Compensation Plan are unrealistic. No network is grown in a perfect geometric progression and therefore it is impossible to predict incomes. Further, a Brand Partner’s success depends on many variables, such as the amount of time committed to his/her business and the degree of organizational ability.
- 12.08** I understand and agree that I am solely responsible for all financial and/or legal obligations incurred by me in the course of my business as a Brand Partner of Nerium International, including self-employment taxes, income taxes, sales taxes, license fees and related personal fees.
- 12.09** I will always honor the Company’s 100% satisfaction, thirty (30) day money back guarantee when dealing with my retail customers.
- 12.10** I understand and agree that capitalism is one of the most competitive economic systems in the world; I will compete aggressively but fairly, and I will respect the professionals of other network marketing companies. I will not solicit from the proprietary rolls or “genealogical” printouts of other network marketing companies. I will not use sales materials or professional associations that may be regarded as proprietary by other companies. The Company seeks to promote the reputation of all reputable network marketing companies that are furthering the cause of personal independence for their Brand Partners.
- 12.11** A Brand Partner shall engage in no conduct which negatively impacts, disrupts or impairs the reputation or business of the Company or other Brand Partners, including, but not limited to: disparagement of the Company, its Officers or Employees or other Brand Partners; manipulation of the Compensation Plan; undermines or is at odds with the training systems utilized by and authorized by the Company; conduct which is abusive, disrespectful or intimidating of other Brand Partners, Customers, Employees or Affiliates of the company; conduct that undermines the relationship between the Company and Brand Partners or relationships between Brand Partners; conduct which is false, fraudulent, dishonest or deceptive in any way; or any other conduct which the Company deems disreputable or, in anyway, negatively impacts the Company or other Brand Partners.

## SECTION THIRTEEN: ADDENDA FOR SPECIFIC STATES

### 13.01 Distributor Agreement for Georgia. This addendum is applicable to Georgia participants only.

- a) This addendum shall supersede and override any provisions in the independent distributor agreement which shall be in conflict with this addendum, except that any cancellation or buy-back provision in the distributor agreement, which is more favorable in terms to the distributor than this addendum, shall remain in full force and effect. The further purpose of this addendum is to set forth the rights of the independent distributor.
- b) Description of Products or Services: The company markets skincare and health-oriented products and services to the consumer through independent distributors by way of network marketing. The company's product line is indicated on the enclosed brochures. The company's primary service to distributors who are independent contractor marketers is to make available quality products for distributors to sell. In addition, the company makes available sales and marketing literature, ordering and other forms, supportive materials to promote the business and policies and procedures to provide guidance in conduct of the business. The company maintains a distributor relations department to answer questions of distributors. The company makes available to distributors downline sales organization data processing reports to inform distributors of sales production activity of their sales organization. Information regarding shipping and training are provided in other paragraphs. The company's sales and marketing materials provide more detailed information. The company supplies marketing materials and fulfills orders of its distributors.
- c) Delivery Date of Products: After receipt of orders and payment in full, the company ships orders for its products received before 12:00 p.m. CST the same day, and orders received after 12:00 p.m. CST are shipped the next business day. Product orders are sent via Federal Express. Methods of payment include check or credit cards.
- d) Training: The Company offers a complete library of print and video materials to all independent distributors at no charge. The materials are readily available over the internet in the distributor's personal virtual office. The training materials cover the science behind the product, how to conduct a personal sales party in the home, an understanding of the Compensation Plan and a complete library of personal development tools.
- e) A participant in this multilevel marketing plan has a right to cancel at any time, regardless of reason. Cancellation must be submitted in writing to the company at its principal business address.
- f) Cancellation and Buy-Back Policy: The company will honor minimum cancellation rights to the participant in accordance with OCGA § 10-1-415(d)(1), (2) and (3), which code sections provide as follows and are set forth verbatim:
  - 1.) "If the participant has purchased products or paid for administrative services while the contract of participation was in effect, the seller shall repurchase all unencumbered products, sales aids, literature, and promotional items which are in a reasonably resalable or reusable condition and which were acquired by the participant from the seller; such repurchase shall be at a price not less than 90 percent of the original net cost to the participant of the goods being returned. For purposes of this paragraph, 'original net cost' means the amount actually paid by the participant for the goods, less any consideration received by the participant for purchase of the goods which is attributable to the specific goods now being returned. Goods shall be deemed 'resalable or reusable' if the goods are in an unused, commercially resalable condition at the time the goods are returned to the seller. Goods which are no longer marketed by the company shall be deemed 'resalable or reusable' if the goods are in an unused, commercially resalable condition and are returned to the seller within one year from the date the company discontinued marketing the goods; provided, however, that goods which are no longer marketed by a multilevel distribution company shall not be deemed 'resalable or reusable' if the goods are sold to participants as nonreturnable, discontinued, or seasonal items and the nonreturnable, discontinued, or seasonal nature of the goods was clearly disclosed to the participant seeking to return the goods prior to the purchase of the goods by the participant. Notwithstanding anything to the contrary contained in this paragraph, a multilevel distribution company may not assert that any more than 15 percent of its total yearly sales per calendar year to participants in dollars are from nonreturnable, discontinued, or seasonal items;
  - 2.) The repayment of all administrative fees or consideration paid for other services shall be at not less than 90 percent of the costs to the participant of such fees or services and shall reflect all other administrative services that have not, at the time of termination, been provided to the participant; and

- 3.) The participant may be held responsible for all shipping expenses incurred in returning sales aids or products to the company but only if such responsibility of a canceling participant is disclosed in the written description of the cancellation rights." The cancellation and buy-back policy above is controlling and overrides any contrary language in any other company materials.
- g) Pursuant to OCGA § 10-1-415(d)(3), notice is given that the participant shall be responsible for all shipping expenses incurred in returning sales aids or products to the company.

**13.02 Distributor Agreement for Louisiana.** This addendum is applicable to Louisiana participants only.

- a) This addendum shall supersede and override any provisions in the independent distributor agreement which shall be in conflict with this addendum, except that any cancellation or buy-back provision in the distributor agreement, which is more favorable in terms to the distributor than this addendum, shall remain in full force and effect. The further purpose of this addendum is to set forth the rights of the independent distributor.
- b) A participant in this multilevel marketing plan has a right to cancel at any time, regardless of reason. Cancellation must be submitted in writing to the Company at its principal business address.
- c) No purchase or investment is necessary to become a Company distributor other than the purchase of a distributor sales kit which is sold "at Company cost."
- d) **Waiver of Personal Activity Requirement During First Sixth Months.** During the first six (6) months after commencement of the distributor agreement, every Louisiana distributor is excused from personal product purchase activity requirements to the extent that payment for product purchased when combined with any other consideration (e.g. sales kit) exceeds \$300. During this period, no total payment in excess of \$300, either by express condition or practical necessity may be required to qualify as an active distributor or to qualify for bonuses. The waiver of qualifying purchase requirements is controlling and overrides anything to the contrary in other Company materials. Other than purchase of sales kit, all purchases by a distributor are voluntary and are neither required by actual or practical necessity to participate fully in the marketing program.
- e) **Prohibition:** Any payment by a distributor during his or her first 180 days in excess of \$300 which may be considered under La. R.S. 51:1821(2) as initial consideration required by express condition or practical necessity is strictly prohibited.
- 1.) The above prohibition shall not in any way restrict the amount of retail sales.
  - 2.) Upon termination, if the independent distributor has purchased products for inventory purposes or mandatory sales tools while the distributor agreement was in effect, all unencumbered products purchased within the previous twelve (12) months which are in an unused and commercially resalable condition then in possession of the independent distributor shall be repurchased. The repurchase shall be at price of not less than ninety (90%) percent of the original net cost to the participant returning such goods, taking into account any sales made by or through such participant prior to notification to the Company of the election to cancel. You may not re-join the Company for a period of six (6) months after a resignation.
  - 3.) **Louisiana Law Applicable.** In the event of a dispute for jurisdictional purposes, a distributor shall be entitled to file an adjudicatory claim or lawsuit in the jurisdiction of Louisiana and the governing law shall be Louisiana law.

**13.03 Montana Addendum to Agreement.**

- a) **Refund Policy for Montana Representatives.** The following refund policies shall be applicable to Montana representatives and shall supercede any policies that are less protective to Montana representatives.
- 1.) A representative may cancel participation in the representative contract for any reason at any time upon notification in writing to the company of the election to cancel.
  - 2.) If the representative cancels participation and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation.
  - 3.) Upon the request of a representative deciding to terminate participation in the sales plan or operation, there shall be the purchase, at not less than ninety percent (90%) of the amount paid by the representative, of any currently marketable goods or services sold to the representative within twelve (12) months of the request that have not been resold or consumed by the representative.

- 4.) Within fifteen (15) days from the date of enrollment, a Montana resident may cancel his or her Agreement and may return his or her starter kit for a full refund within such time period.

**13.04 Distributor Agreement for Oklahoma.** This addendum is applicable to Oklahoma only.

- a) The independent distributor agreement may be canceled at any time and for any reason by a distributor notifying the company and the sponsoring distributor in writing of the election to cancel.
- b) If a distributor elects not to renew his or her distributor agreement, all rights to bonuses, marketing position and wholesale purchases cease. The terminated distributor's sales organization shall be transferred to his or her sponsor.
- c) If the independent distributor has purchased products for inventory purposes or mandatory sales tools while the distributor agreement was in effect, all unencumbered products in a resalable condition then in possession of the independent distributor, which have been purchased within twelve (12) months of cancellation, shall be repurchased. The repurchase shall be at a price of not less ninety percent than ninety (90%) of the original net cost to the participant returning such goods, taking into account any sales made by or through such participant prior to notification to the Company of the election to cancel.
- d) Any product purchases which have been previously represented by the terminating distributor as having been either resold or utilized for personal or family use under the company's 70% Rule or otherwise, are not subject to repurchase.

**13.05 Distributor Agreement for Texas.** This addendum is applicable to Texas distributors only.

- a) The independent distributor agreement may be canceled at any time and for any reason by a distributor notifying the company and the sponsoring distributor in writing of the election to cancel.
- b) If a distributor elects not to renew his or her distributor agreement, all rights to bonuses, marketing position and wholesale purchases cease. The terminated distributor's sales organization shall be transferred to his or her sponsor.
- c) If the independent distributor has purchased products for inventory purposes or mandatory sales tools while the distributor agreement was in effect, all unencumbered products in a resalable condition then in possession of the independent distributor, which have been purchased within twelve months of cancellation, shall be repurchased. The repurchase shall be at a price of not less than ninety percent (90%) of the original net cost to the participant returning such goods, taking into account any sales made by or such participant through prior to notification to the Company of the election to cancel.
- d) Any product purchases which have been previously represented by the terminating distributor as having been either resold or utilized for personal or family use under the company's 70% Rule or otherwise, are not subject to repurchase.

**13.06 Wyoming Addendum to Agreement.**

- a) Refund Policy for Wyoming Distributors. The following refund policies shall be applicable to Wyoming distributors and shall control over any policies that are less protective to Wyoming distributors.
  - 1.) A distributor may cancel participation in the distributor contract for any reason at any time upon notification in writing to the company of the election to cancel.
  - 2.) If the participant has purchased products while the contract of participation was in effect, all unencumbered products in a resalable condition then in the possession of the participant shall be repurchased by the company. The repurchase shall not be at a price of not less than ninety percent (90%) of the original net cost to the participant returning such goods, taking into account any sales made by or through such participant prior to notification to the company of the election to cancel.
  - 3.) Although the company does not have a purchase requirement, in the event such a requirement is made of participants in its marketing program to purchase products or services or pay any other consideration in order to participate in the marketing program, the following refund policy shall be applicable and the company agrees:
    - a.) To repurchase all or part of any products which are unencumbered and in a resalable condition at a price of not less ninety percent (90%) of the original net cost to the participant, taking into account any sales made by or through such participant prior to notification to the company of election to cancel;

- b.) To repay not less than ninety percent (90%) of the original net cost of any services purchased by the participants; or
- c.) To refund not less than ninety percent (90%) of any other consideration paid by the participant in order to participate in the marketing program.



# EXHIBIT B United States Independent Brand Partner Application & Agreement



## Step 1: Become a Brand Partner

### ☐ STARTER PACK \$499.95

\$879.95 RETAIL VALUE

4 bottles of Night Cream, 1 bottle of Day Cream,  
1 tube of Body Contour Cream, 1 box of EHT®,  
1 bottle of Eye Serum and Business Tools (Basic Kit):

- Personalized website
- Online Business Center
- Training resources
- Sales tools
- Up to 30 days free
- Enrollment in Auto-Delivery Program
- Nerium Edge access (see Step 3)

Some features of Nerium Edge may not be available during free trial period; \$29.95 monthly fee thereafter.

### ☐ BASIC KIT \$49.95

Business Tools listed above ONLY. No product included.

## Step 2: Pick Your Pack(s) - Each pack is 48% or more off retail price!

### ☐ NIGHT/DAY PACK \$250

3 BOTTLES OF NIGHT CREAM  
2 BOTTLES OF DAY CREAM

\$500 RETAIL VALUE QUANTITY: \_\_\_\_\_

### ☐ NIGHT PACK \$250

4 BOTTLES OF NIGHT CREAM

\$480 RETAIL VALUE QUANTITY: \_\_\_\_\_

### ☐ DAY PACK \$250

6 BOTTLES OF DAY CREAM

\$420 RETAIL VALUE QUANTITY: \_\_\_\_\_

### ☐ EYE SERUM PACK \$250

6 BOTTLES OF EYE SERUM

\$480 RETAIL VALUE QUANTITY: \_\_\_\_\_

### ☐ EYE SERUM SINGLE-USE PACK \$250

5 BOXES OF SINGLE-USE PACKETS  
(30 PACKETS PER BOX)

\$475 RETAIL VALUE QUANTITY: \_\_\_\_\_

### ☐ BODY PACK \$250

4 TUBES OF BODY CONTOUR CREAM

\$480 RETAIL VALUE QUANTITY: \_\_\_\_\_

### ☐ EHT PACK \$250

6 BOXES OF EHT SUPPLEMENT

\$480 RETAIL VALUE QUANTITY: \_\_\_\_\_

## Step 3: Pick Your Product(s) - Auto-Delivery Order (ADO) Options

### ☐ NIGHT/DAY COMBO \$140 QUANTITY: \_\_\_\_\_

### ☐ NIGHT CREAM \$90 QUANTITY: \_\_\_\_\_

### ☐ BODY CONTOUR CREAM \$90 QUANTITY: \_\_\_\_\_

### ☐ EYE SERUM 10 ML. BOTTLE \$60 QUANTITY: \_\_\_\_\_

### ☐ EYE SERUM SINGLE-USE PACKETS \$70 QUANTITY: \_\_\_\_\_

### ☐ EHT SUPPLEMENT \$60 QUANTITY: \_\_\_\_\_

Enroll me in the optional Auto-Delivery Order program. I understand and agree that my Auto-Delivery Order will be processed and shipped monthly, starting next month. I understand that if my initial enrollment is processed after the 23rd of the current month, my next Auto-Delivery Order will be processed on the 23rd of the next calendar month. The payment method used for my initial enrollment will be used for my Auto-Delivery Order.

Signature: \_\_\_\_\_

## Sponsor (Brand Partner Who Introduced You to Nerium)

Sponsor's Nerium Brand Partner ID Number or Username: Cassie Daniel 2391379

Sponsor's Name (First Name Last Name): adding husband to account

## Primary Applicant

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_ ☐ Male ☐ Female

Social Security Number (SSN): \_\_\_\_\_ Date of Birth (mm/dd/yyyy): \_\_\_\_\_

Business Name (if applicable): \_\_\_\_\_

Shipping Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Country: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_ ☐ Cell ☐ Home

## Co-Applicant (If Applicable)

First Name: Tee Last Name: Daniel

Email: tee@chsind.com Date of Birth (mm/dd/yyyy): 08/05/77

To enroll via email, please scan or take a photo of your application and send to [enrollments@nerium.com](mailto:enrollments@nerium.com).

All amounts shown are in U.S. dollars unless specified differently.

## Log-in and Marketing Information

Choose a URL for your branded Nerium website.

This will also be your username for logging in to your Business Center. Example: [username.nerium.com](http://username.nerium.com).

Username Option 1: \_\_\_\_\_

Username Option 2: \_\_\_\_\_

Password: \_\_\_\_\_

(Letters or numbers only, 6-12 characters in length.)

## Payment Method

☐ Visa ☐ MasterCard ☐ Discover ☐ American Express

Card Number: \_\_\_\_\_

Exp. (mm/yyyy): \_\_\_\_\_

CVV: \_\_\_\_\_

Name on Card: \_\_\_\_\_

Billing Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Signature of Cardholder (required): \_\_\_\_\_

I authorize Nerium International to charge the above named account for the enrollment option selected. I understand that Nerium International will apply applicable taxes and shipping and handling charges to my order. If an Auto-Delivery Order (ADO) or monthly Nerium Edge subscription is included in the purchase option, I authorize Nerium International to ship/charge for these products monthly. Cancellation must be submitted in writing at least five (5) business days prior to the auto delivery or Nerium Edge billing cycle date. I understand that all financial transactions are in U.S. dollars. My signature below indicates that I have carefully read and understand the Terms of Agreement and the Policies and Procedures Manual, that I have included Payment Authorization and Auto-Delivery Agreement, and that I am willing to accept the terms and conditions herein. As an Independent Brand Partner, I understand that I have the right to cancel at any time, for any reason. Cancellation must be submitted in writing to the company at its principal place of business. This agreement is not effective until accepted by Nerium International at its principal place of business.

I hereby attest that I am 18 years of age or older and have the legal capacity to enter into binding agreements.

Signature: \_\_\_\_\_

Date: 11-8-16



## EXHIBIT C

**From:** Philippe Schneider [<mailto:philippe.schneider.80@gmail.com>]  
**Sent:** Wednesday, April 4, 2018 4:27 PM  
**To:** Megan Leckband <[MLeckband@Nerium.com](mailto:MLeckband@Nerium.com)>  
**Subject:** Fwd: Passagierliste und Reisepässe

Hello Megan, Attached you'll find the List from Austria. Germany still to come...

All lines which contains groups, would like to fly together.

If you have questions for that list, please let me know.

please copy me with the details of their flight.

best regards,

Philippe Schneider  
Schulstrasse 8  
5503 Schafisheim

Tel. 076 393 06 05

----- Weitergeleitete Nachricht -----  
Von: **Helmut E. Rauch** <[hrauch.mpb@gmail.com](mailto:hrauch.mpb@gmail.com)>  
Datum: 4. April 2018 um 23:01  
Betreff: Passagierliste und Reisepässe  
An: [philippe.schneider80@gmail.com](mailto:philippe.schneider80@gmail.com)

Hallo Philippe,

danke für das Organisieren der Flüge.

Die Personen die in Gruppen aufgelistet sind, sollten in einem Flugzeug sein.

Lg Helmut

passport number	name	first name	date off birth	address	zip code	town	country	phone
██████	Rauch	Helmut	██████████	Theresienfeldergasse 37a	2700	Wiener Neustadt	Austria	004366488295552
██████	Rauch	Claudia	██████████	Theresienfeldergasse 37a	2700	Wiener Neustadt	Austria	004366488295550
██████	Rauch	Jacqueline	██████████	Theresienfeldergasse 37a	2700	Wiener Neustadt	Austria	004366488295551
██████	Meyer	Brigitte	██████████	Fischastraße 75	2486	Siegersdorf	Austria	00436508913240
██████	Meyer	Josef	██████████	Fischastraße 75	2486	Siegersdorf	Austria	00436766367783
██████	Jung	Monika	██████████	Jägerweg 6 b	2751	Matzensdorf	Austria	00436643446465
██████	Lindner	Gabriele	██████████	Hafergasse 4	2353	Guntramsdorf	Austria	00436643968855
██████	Lindner	Othmar	██████████	Hafergasse 4	2353	Guntramsdorf	Austria	00436644105510
██████	Bauer	Barbara	██████████	Grohnergasse 3/6/48	1100	Wien	Austria	00436645144667
██████████	Banica	Ionica	██████████	Meidlinger Hauptstrasse 76	1120	Wien	Austria	00436641685988
██████	Denk	Anna	██████████	Kirchengasse 2/1	2751	Wöllersdorf-Steinabrückl	Austria	004369911987449
██████	Holzer	Heinz	██████████	Kirchengasse 2/1	2751	Wöllersdorf-Steinabrückl	Austria	
██████	Denk	Heinz	██████████	Wassergasse 4/19	2751	Steinabrückl	Austria	004369913239300
██████	Denk	Bianca	██████████	Frauenbachgasse 144	2722	Winzensdorf	Austria	004369913843860
██████	Hofer	Kristina	██████████	Frauenbachgasse 144	2722	Winzensdorf	Austria	00436643971155
██████	Mayer	Sonja	██████████	Schrattensteingasse 29a	2700	Wiener Neustadt	Austria	00436606576570
██████	██████	██████	██████████	██████████	██████	██████████	██████	██████████
██████	Huttner	Michael	██████████	Schaukenbergweg 5	94227	Zwiesel	Germany	004369917094341
██████	Salomonsberger	Karin	██████████	Mitterfeldzeile 67	2483	Ebreichsdorf	Austria	004369916716700
██████	Donig	Walter	██████████	Gaemäckerstraße 28	2483	Ebreichsdorf	Austria	00436766606607
██████	Schnaitl	Gerhard	██████████	Engerthstasse 138/28	1200	Wien	Austria	004367762219982
██████	Neudhart	Ulrike Christine	██████████	Viehtriftgasse 4/4/4	1210	Wien	Austria	00436641908263
██████	Nirtl	Julia	██████████	Schönbrunnerstrasse 66/11	1050	Wien	Austria	00436506200040
██████	Kerschbaumer	Klaus	██████████	Peserlgasse 7	2542	Kottingbrunn	Austria	00436641790500
██████	Schnaitl	Romana	██████████	Pottendorferstrasse 18	2486	Siegersdorf	Austria	004369910270504
██████	Lazar	Claudia Beate	██████████	Weekendstrasse 2 /68	2491	Hornstein Seesiedlung	Austria	004369918269107



[REDACTED]	Dzihic	Eva Martina	[REDACTED]	Hauptstrasse 50/11	7011	Siegenderdorf	Austria	0436649636663
[REDACTED]	Hahnekamp	Doris	[REDACTED]	Lindenweg 7	7000	Eisenstadt	Austria	0436645343920
[REDACTED]	Risovic	Sanja	[REDACTED]	Schönauweg 2	7461	Stadtschlaining	Austria	00436803300430

REDACTED

email	departure	return flight		from
hrauch.mpb@gmail.com	8th	15th	business	Vienna
crauch.mpb@gmail.com	8th	15th	business	Vienna
rauch.j@hotmail.com	8th	15th	business	Vienna
brigitte.meyer@proteam1.at	11th	15th	economy	Vienna
josef.meyer@proteam1.at	11th	15th	economy	Vienna
monikajung@putlook.com	11th	14th	economy	Vienna
g.lind@gmx.at	11th	15th	economy	Vienna
o.lind1406@gmail.com	11th	15th	economy	Vienna
bauer.barbara@chello.at	11th	14th	economy	Vienna
ionicabanica@yahoo.se	11th	14th	economy	Vienna
a.denk@oekodry.com	11th	14th	economy	Vienna
h.holzer@oekodry.com	11th	14th	economy	Vienna
h.denk@gmx.at	11th	14th	economy	Vienna
bibi199516@gmail.com	11th	15th	economy	Vienna
krisihofer84@gmail.com	11th	15th	economy	Vienna
sonja.mail@gmail.net	11th	14th	economy	Vienna
sonja.mail@gmail.net	11th	14th	economy	Vienna
michaelr.huttner@gmail.com	11th	14th	economy	Vienna
k.salomonsberger@gmx.at	11th	14th	economy	Vienna
w.donig@aon.at	11th	14th	economy	Vienna
gerhard.schnaitl@gmail.com	11th	14th	economy	Vienna
ulrike@neudhart.at	11th	14th	economy	Vienna
julia.nirtl@gmail.com	11th	14th	economy	Vienna
klausandmichaela@gmail.com	11th	14th	economy	Vienna
romy_34@gmx.at	11th	14th	economy	Vienna
info@nerium4you.at	11th	14th	economy	Vienna

eva.dzihic@gmail.com	11th	14th	economy	Vienna
doris.hahnekamp@gmx.at	11th	14th	economy	Vienna
sanja.risovic.sr@gmail.com	11th	14th	economy	Vienna

**From:** Philippe Schneider [<mailto:philippe.schneider.80@gmail.com>]  
**Sent:** Thursday, April 5, 2018 8:12 AM  
**To:** Megan Leckband <[MLeckband@Nerium.com](mailto:MLeckband@Nerium.com)>  
**Subject:** Fwd: Passagierliste Nachzügler

----- Forwarded message -----

From: Helmut E. Rauch <[hrauch.mpb@gmail.com](mailto:hrauch.mpb@gmail.com)>  
Date: Do., 5. Apr. 2018, 15:03  
Subject: Passagierliste Nachzügler  
To: <[philippe.schneider80@gmail.com](mailto:philippe.schneider80@gmail.com)>

Hallo lieber Philippe,

das sind jetzt die letzten drei Members die ich mitnehmen möchte.

Der Kurt Elsasser ist der Bruder von Eva Dzihic, wenn noch geht sind die sicher froh wenn sie gemeinsam auf einem Flug sind.

Danke und lg

Helmut

passport number	name	first name	date off birth	address	zip code	town	country	phone
<b>Last group</b>								
██████	Kriszanitzs	Erich	██████████	Heimgasse	2544	Leobersdorf	Austria	00436507222168
██████	Ullrich	Kerstin	██████████	Annenhofszt.10	3032	Eichgraben	Austria	004369914021244
██████	Elsasser	Kurt Hannes	— ████████	Steinbreitgasse 23	7022	Schrattendorf	Austria	00436649469471

REDACTED

email	departure	return	flight	from
krizi1980gmx.at	11th	14th	economy	Vienna
kerstin.ullrich@gmx.at	11th	14th	economy	Vienna
<a href="mailto:kurt.elsasser@gmail.com">kurt.elsasser@gmail.com</a>	11th	14th	economy	Vienna

**From:** Philippe Schneider [<mailto:philippe.schneider.80@gmail.com>]

**Sent:** Thursday, April 5, 2018 9:03 AM

**To:** Megan Leckband <[MLeckband@Nerium.com](mailto:MLeckband@Nerium.com)>

**Subject:** Fwd: Passagierliste Nachzügler

ATTENTION!

ERICH KRISZANITS CANNOT COME TO ORLANDO.

PLEASE REMOVE!

P 2691030 Kriszanitzs Erich Dezember 21,  
1980 Heimgasse 2544 Leobersdorf Austria 00436507222168 [krizi1980gmx.at](mailto:krizi1980gmx.at) 11th 14th economy Vienn  
a

PLEASE REMOVE HIM!

Philippe Schneider  
Schulstrasse 8  
5503 Schafisheim

Tel. 076 393 06 05

----- Weitergeleitete Nachricht -----

Von: **Philippe Schneider** <[philippe.schneider.80@gmail.com](mailto:philippe.schneider.80@gmail.com)>

Datum: 5. April 2018 um 15:12

Betreff: Fwd: Passagierliste Nachzügler

An: Megan Leckband <[mleckband@nerium.com](mailto:mleckband@nerium.com)>

----- Forwarded message -----

From: Helmut E. Rauch <[hrauch.mpb@gmail.com](mailto:hrauch.mpb@gmail.com)>

Date: Do., 5. Apr. 2018, 15:03

Subject: Passagierliste Nachzügler

To: <[philippe.schneider80@gmail.com](mailto:philippe.schneider80@gmail.com)>

Hallo lieber Philippe,

das sind jetzt die letzten drei Members die ich mitnehmen möchte.

Der Kurt Elsasser ist der Bruder von Eva Dzihic, wenn noch geht sind die sicher froh wenn sie gemeinsam auf einem Flug sind.

Danke und lg

Helmut

## EXHIBIT D

From: mark smith [<mailto:teamfreedom1@gmail.com>]

Sent: Tuesday, April 10, 2018 5:47 PM

To: Megan Leckband <[MLeckband@Nerium.com](mailto:MLeckband@Nerium.com)>

Subject: Flights

Megs,

Did you get my list?? Sent it 2x.

We got a lot of work to do with 175 people from Mexico coming into our private retreat.

Confirm.

Mark Smith



## EXHIBIT E

To operate your Nerium™ International Independent Brand Partner position under a business name, you must complete and return this document with a completed W-9 Form.

MARK : TAMMY SMITH  
 First Name Last Name  
 MARK : TAMMY SMITH, LLC  
 Business Name  
 24822 SAUCO  
 Address  
 MISSION VIEJO, CA 92692  
 City ST/Prov Zip/Postal Code  
 TAMMYCOTY@YAHOO.COM 949-903-0283 949-454-0972  
 Email Phone Number (check one: ☒ cell ☐ home) Fax

State in which Business was Registered: WYOMING Date Business was Registered: JUNE 23<sup>rd</sup> 2010

Corporation Partnership Sole Proprietorship ☒ Limited Liability Corp. (LLC)

Please list all officers, directors, shareholders, managers, partners, and individuals for the above-mentioned business. None of these entities may be in the form of a trust. Please attach an additional page to accommodate your list, if necessary.

1) LANIKAI INVESTMENTS, LLC			
Full Name	Title		
Address	City	ST	Zip
2) MARK OLIVER SMITH	MANAGER		
Full Name	Title		
24822 SAUCO	MISSION VIEJO	CA	92692
Address	City	ST	Zip
3) TAMMY Y SMITH	MANAGER		
Full Name	Title		
24822 SAUCO	MISSION VIEJO	CA	92692
Address	City	ST	Zip

I certify that the operation of this Nerium Independent Brand Partner business under the above-mentioned business name is authorized by all applicable laws, whether federal, state, county, or local, and that all the relevant and necessary procedures, filings, declarations, etc. to use such a name have been properly followed and/or filed with the proper authorities.

All individuals in the above-mentioned business agree to be bound by the Nerium International Brand Partner Guidelines.

I certify that the information provided in this document is accurate and complete and that I am obligated to notify Nerium International within two (2) weeks of any changes and/or amendments to the information contained herein.

I hereby declare that I have read the terms of the Application & Agreement and that I fully understand and agree to abide by all said terms contained therein and that I am duly authorized to execute this document. I also understand that all commissions earned will be issued under the business name.

I am providing a completed W-9 Form with the Operating Under a Business Name Form.

Signature of Applicant: TSJ Date: 2/24/12

Send completed documents via mail, email, or fax to:

Nerium International, LLC.  
 4004 Belt Line Road, Suite 112  
 Addison, TX 75001

Fax Number: 214-390-9988

support@nerium.com

## EXHIBIT 2

### **DECLARATION OF PUYA GHANDIAN**

1. My name is Puya Ghandian. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.

2. I have been a Brand Partner for Nerium International, LLC ("Nerium") since 2011, and I have become one of Nerium's top earners. I knew Mark Smith through previous business ventures and over time developed what I considered to be a close relationship with him.

3. Mark and I would have periodic check-in calls to discuss business with Nerium. Starting in February 2018, Mark told me he was considering leaving Nerium and had begun exploring other options, including joining another direct-sales company. Mark considered at least a dozen other companies, and we discussed several of them, including Jeunesse, Isagenix, and Lifevantage. Mark indicated Isagenix was the leading contender because it was debt free, he liked the company's leadership, and there was significant room for international expansion. On the other hand, Mark expressed concerns and made disparaging statements about Jeunesse.

4. On February 8, 2018, Mark and I had a phone call that lasted approximately three hours. From the outset, it was apparent to me that something had changed for Mark.

5. Mark revealed to me that he planned to sue Nerium in California. He explained that he wanted to be sure he filed the first lawsuit and believed that as a California resident and military veteran, the California courts would favor him. He wanted to use the lawsuit to attack Jeff Olson's integrity. He explained that the \$100 million in damages he was claiming was "just a number."

6. Apparently assuming that I was planning to depart Nerium with him, Mark asked me which Brand Partners on my team I could approach and who I thought I could take with me. He revealed that he had had similar conversations with other Brand Partners about leaving Nerium.

7. Mark told me that he had decided to join Isagenix. He told me that he wanted me to be one of his leaders at Isagenix and would place me in one of his top three levels. Mark asked me to fly in to Isagenix's corporate office and to come after business hours so no one would see me. I did not commit to do this or to solicit Brand Partners to move to Isagenix.

8. Because I was not interested in leaving Nerium, I began speaking to Mark less frequently.

9. Around this time, a Brand Partner on my Nerium team told me that Jenni Byrd Grier told her that I could not be trusted. Jenni and her father David Byrd worked for David Byrd Consulting, a firm that provided coaching services to Nerium Brand Partners. I attempted to call Jenni to discuss what she said about me. David, who had coached me in the past, called me back.

10. I told David what I heard Jenni had said about me. David denied that Jenni would say something like that. David then told me that he had just gotten off the phone with Mark Smith.

11. I previously had had a call with some of the leaders on my Nerium team, where I told the leaders the names of Brand Partners who I expected to be leaving Nerium with Mark. David said it was not my place to be doing this. David told me that I should talk to Mark because Mark was "really counting on me to be one of his main people" when he left Nerium.

12. I then asked David where he stood with respect to Mark's departure from Nerium. David hedged, explaining to me that he felt like a parent with two children who were fighting, Mark and Jeff Olson. When I pressed him, David claimed that he told Nerium that David Byrd Consulting would be committed to servicing Nerium Brand Partners as long as Nerium wanted. But David made clear that David Byrd Consulting did not have an exclusive relationship with

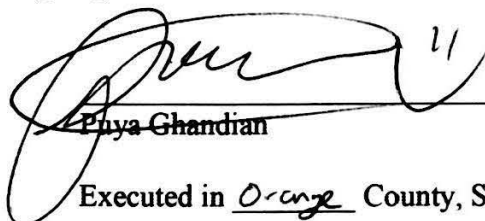
Nerium and had private clients and would continue to do so. I understood this to mean that David would continue to work with Mark.

13. On or about February 22, 2018, I received voice mails from and exchanged text messages with the assistant to the CEO of Isagenix, trying to get me to fly in to the Isagenix corporate office. I never communicated with anyone from Isagenix prior to this phone call, so I can only conclude that Mark gave my contact information to Isagenix.

14. During one of our last phone calls, Mark told me that he had me "taken care of financially" if I were to leave Nerium with him. He asked me what my income with Nerium was, and he told me not to tell Isagenix about my earnings. Mark did not specify what he meant, but I believe he was referring to arranging for "bridge" payments from Isagenix so I would not be left without income if I were to join him at Isagenix.

**JURAT UNDER PENALTY OF PERJURY**

My name is Puya Ghandian, my date of birth is 3/20/88, and my address is 21 Gamery #119, Irvine, CA 92612, USA. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Puya Ghandian

Executed in Orange County, State of CA, on April 23, 2018.

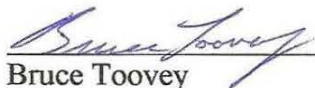
### EXHIBIT 3

#### DECLARATION OF BRUCE TOOVEY

1. My name is Bruce Toovey. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.
2. My wife Lisa and I have been a Brand Partners for Nerium International, LLC ("Nerium") since 2014.
3. Darin Kidd was my direct sponsor when I joined Nerium, and we were regularly in contact until December of 2017. Around that time, Darin became very disconnected, began missing appointments, and we fell out of contact.
4. On March 26, 2018, I received two unsolicited emails from Darin Kidd at the email address I share with my wife. Attached to this Declaration as Exhibits A and B are true and correct copies of these emails.
5. On April 11, 2018, I received another unsolicited email from Darin Kidd at the email address I share with my wife. Attached to this Declaration as Exhibit C is a true and correct copy of this email.

#### JURAT UNDER PENALTY OF PERJURY

My name is Bruce Toovey, my date of birth is April 30, 1961, and my address is 33032 Supton Rd, Rm of Springfield, Manitoba, Canada. I declare under penalty of perjury that the foregoing is true and correct.

  
Bruce Toovey

Executed in Oakbank Town, Province of Manitoba, Canada, on April 17, 2018  
\_\_\_\_\_, 2018.

## EXHIBIT A

**From:** Darin Kidd [<mailto:Darin=DarinKidd.com@mail78.wdc01.mcdlv.net>] **On Behalf Of** Darin Kidd  
**Sent:** March-26-18 4:56 PM  
**To:** lisa  
**Subject:** Exciting News: Big Changes

# Big Changes On the Way!

I have exciting news to share! As of last week, I have left Nerium International. While I will definitely miss working with everyone at Nerium, I am excited to share this next chapter of my life. It may be the biggest move Cheryl and I have every made, and I will officially announce that later today!

Until then, for legal reasons, I have to ask anyone in receipt of this email who is associated with Nerium International, (*including Nerium Brand Partners*), to remove themselves from this email list. You can do this by clicking on the '[unsubscribe from this list](#)' link below. If you need help removing your name from the list please contact me and I will be happy to help remove yourself.

I really appreciate the support you all have provided me over the years, and I hope we can stay in touch in other ways. If you are associated with Nerium but still want to stay in touch, my email address is [darinkidd@gmail.com](mailto:darinkidd@gmail.com), and my phone number is 434.546.1733.

Thanks again for everything.

Darin Kidd

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Darin Kidd  
PO Box 2529  
Appomattox, VA 24522

## EXHIBIT A

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## EXHIBIT B

**From:** Darin Kidd [<mailto:Darin=DarinKidd.com@mail200.suw101.mcdlv.net>] **On Behalf Of** Darin Kidd  
**Sent:** March-26-18 9:18 PM  
**To:** lisa  
**Subject:** Exciting News: Details

# Exciting News: International Growth!

Please keep this confidential because this is **NOT** public knowledge yet, but



I am no longer with my previous company. My wife and I have been blessed to have made millions of dollars in the Network Marketing industry, and I just made the biggest move of my career! It was time for us to grow internationally and work with a company positioned to do just that.

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to keep everyone posted so they have insight and the opportunity to join me early. I will



## EXHIBIT B

be responding in the order of inquiries so please get in touch with me if you are interested.

Darin Kidd

434-546-1733

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## EXHIBIT C

From: Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
Date: 2018-04-11 9:08 AM (GMT-06:00)  
To: lisa <[agerenewingtreatment@gmail.com](mailto:agerenewingtreatment@gmail.com)>  
Subject: Exciting News: Follow-Up

### Exciting News: Quick Follow-Up

I wanted to give my closer followers a quick update. (*Note: If you are receiving this, you signed up through my personal website so if you are receiving this in error please unsubscribe below.*)

The last couple weeks have been amazing! Our Team has already expanded into over 27 countries! Even if you aren't interested, it's okay. However, you may know someone that wants to be personally sponsored, mentored, or coached by me. I've learned



that mentors are key to getting to where we want to be in life. It's much easier to have a tour guide that has been there before and can show us the way.

Vision is seeing it BEFORE the masses and this is a big part of my success. I'm looking for people that want to change their life and see what I see.

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

## EXHIBIT C

Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to keep everyone posted so they have insight and the opportunity to join me early. I will be responding in the order of inquiries so please get in touch with me if you are interested.

Darin Kidd  
434-546-1733

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## EXHIBIT 4

### **DECLARATION OF DEBBIE CARTER**

1. My name is Debbie Carter. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.

2. I have been a Brand Partner for Nerium International, LLC ("Nerium") for over six years and am currently at the level of regional marketing director.

3. As a Nerium Brand Partner, I am familiar with Darin Kidd because he has appeared on stage at several events, and I attended an event he put on in Maryland. I do not have a personal relationship with Darin Kidd.


4. On March 26, 2018, I received an unsolicited email from Darin Kidd. Attached to this Declaration as Exhibit A is a true and correct copy of this email.

5. On April 11, 2018, I received an unsolicited email from Darin Kidd. Attached to this Declaration as Exhibit B is a true and correct copy of this email.

### **JURAT UNDER PENALTY OF PERJURY**

7

My name is Debbie Carter, my date of birth is Jan, 4, 1957, and my address is 79 Wendee Way, Sewell, NJ 08080, USA. I declare under penalty of perjury that the foregoing is true and correct.

  
Debbie Carter

Executed in Gloucester County, State of NJ, on April 18, 2018.

## EXHIBIT A

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** March 26, 2018 at 10:17:45 PM EDT  
**To:** Deb <[currycart@aol.com](mailto:currycart@aol.com)>  
**Subject:** Exciting News: Details  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

# Exciting News: International Growth!

Please keep this confidential because this is **NOT** public knowledge yet, but



I am no longer with my previous company. My wife and I have been blessed to have made millions of dollars in the Network Marketing industry, and I just made the biggest move of my career! It was time for us to grow internationally and work with a company positioned to do just that.

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to keep everyone posted so they have insight and the opportunity to join me early. I will be responding in the order of inquiries so please get in touch with me if you are interested.

## EXHIBIT A

Darin Kidd

434-546-1733

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## EXHIBIT B

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** April 11, 2018 at 10:08:19 AM EDT  
**To:** Deb <[currycart@aol.com](mailto:currycart@aol.com)>  
**Subject:** Exciting News: Follow-Up  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

# Exciting News: Quick Follow-Up

I wanted to give my closer followers a quick update. (*Note: If you are receiving this, you signed up through my personal website so if you are receiving this in error please unsubscribe below.*)

The last couple weeks have been amazing! Our Team has already expanded into over 27 countries! Even if you aren't interested, it's okay. However, you may know someone that wants to be personally sponsored, mentored, or coached by me. I've learned



that mentors are key to getting to where we want to be in life. It's much easier to have a tour guide that has been there before and can show us the way.

Vision is seeing it BEFORE the masses and this is a big part of my success. I'm looking for people that want to change their life and see what I see.

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## EXHIBIT B

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Darin Kidd  
434-546-1733

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## EXHIBIT 5

### DECLARATION OF VIVIAN HICKOK

1. My name is Vivian Hickok. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.
2. I am a Brand Partner for Nerium International, LLC ("Nerium").
3. As a Nerium Brand Partner, I am familiar with Darin Kidd because I have attended events where he has also been present, but I have not personally communicated with him.
4. On March 26, 2018, I received two unsolicited emails from Darin Kidd. Attached to this Declaration as Exhibits A and B are true and correct copies of these emails.
5. On April 11, 2018, I received another unsolicited email from Darin Kidd. Attached to this Declaration as Exhibit C is a true and correct copy of this email.

### JURAT UNDER PENALTY OF PERJURY

My name is Vivian Hickok, my date of birth is 8/9/54, and my address is 1436 E 27th Ave Anchorage Ak, USA. I declare under penalty of perjury that the foregoing is true and correct.

Vivian Hickok  
Vivian Hickok

Executed in Anch. County, State of Alaska on April 18, 2018.

## EXHIBIT A

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** March 26, 2018 at 6:17:45 PM AKDT  
**To:** Vivian <[Viviliciousak@gmail.com](mailto:Viviliciousak@gmail.com)>  
**Subject:** Exciting News: Details  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

# Exciting News: International Growth!

Please keep this confidential because this is **NOT** public knowledge yet, but



I am no longer with my previous company. My wife and I have been blessed to have made millions of dollars in the Network Marketing industry, and I just made the biggest move of my career! It was time for us to grow internationally and work with a company positioned to do just that.

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Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to keep everyone posted so they have insight and the opportunity to join me early. I will be responding in the order of inquiries so please get in touch with me if you are interested.

## EXHIBIT A

Darin Kidd

434-546-1733

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## EXHIBIT B

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** March 26, 2018 at 1:56:27 PM AKDT  
**To:** Vivian <[Viviliciousak@gmail.com](mailto:Viviliciousak@gmail.com)>  
**Subject:** Exciting News: Big Changes  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

# Big Changes On the Way!

I have exciting news to share! As of last week, I have left Nerium International. While I will definitely miss working with everyone at Nerium, I am excited to share this next chapter of my life. It may be the biggest move Cheryl and I have ever made, and I will officially announce that later today!

Until then, for legal reasons, I have to ask anyone in receipt of this email who is associated with Nerium International, (*including Nerium Brand Partners*), to remove themselves from this email list. You can do this by clicking on the '[unsubscribe from this list](#)' link below. If you need help removing your name from the list please contact me and I will be happy to help remove yourself.

I really appreciate the support you all have provided me over the years, and I hope we can stay in touch in other ways. If you are associated with Nerium but still want to stay in touch, my email address is [darinkidd@gmail.com](mailto:darinkidd@gmail.com), and my phone number is 434.546.1733.

Thanks again for everything.

Darin Kidd

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## EXHIBIT C

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** April 11, 2018 at 6:08:18 AM AKDT  
**To:** Vivian <[Viviliciousak@gmail.com](mailto:Viviliciousak@gmail.com)>  
**Subject:** Exciting News: Follow-Up  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

### Exciting News: Quick Follow-Up

I wanted to give my closer followers a quick update. (*Note: If you are receiving this, you signed up through my personal website so if you are receiving this in error please unsubscribe below.*)

The last couple weeks have been amazing! Our Team has already expanded into over 27 countries! Even if you aren't interested, it's okay. However, you may know someone that wants to be personally sponsored, mentored, or coached by me. I've learned that mentors are key to getting to where we want to be in life. It's much easier to have a tour guide that has been there before and can show us the way.



Vision is seeing it BEFORE the masses and this is a big part of my success. I'm looking for people that want to change their life and see what I see.

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to keep everyone posted so they have insight and the opportunity to join me early. I will be responding in the order of inquiries so please get in touch with me if you are interested.

## EXHIBIT C

Darin Kidd  
434-546-1733

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PO Box 2529  
Appomattox, VA 24522

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**DECLARATION OF MELISSA MAZZA**

1. My name is Melissa Mazza. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.
2. I have been a Brand Partner for Nerium International, LLC ("Nerium") for over three years and am currently at the level of director.
3. As a Nerium Brand Partner, I have attended two training events put on by Darin Kidd.
4. Other than taking a picture with Darin Kidd at a Richmond, Virginia training event, I have not communicated with Darin Kidd.
5. On March 26, 2018, I received an unsolicited email from Darin Kidd. Attached to this Declaration as Exhibit A is a true and correct copy of this email.
6. On April 11, 2018, I received an unsolicited email from Darin Kidd. Attached to this Declaration as Exhibit B is a true and correct copy of this email.

**JURAT UNDER PENALTY OF PERJURY**

My name is Melissa Mazza, my date of birth is 10/14/1962, and my address is 221 Buckhannon Ave Clarksburg, WV, USA. I declare under penalty of perjury that the foregoing is true and correct.

Melissa Mazza  
Melissa Mazza

Executed in Harrison County, State of WV, on April 17, 2018.



## EXHIBIT A

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** March 26, 2018 at 10:17:45 PM EDT  
**To:** Melissa <[melmazza@aol.com](mailto:melmazza@aol.com)>  
**Subject:** Exciting News: Details  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

# Exciting News: International Growth!

Please keep this confidential because this is **NOT** public knowledge yet, but



I am no longer with my previous company. My wife and I have been blessed to have made millions of dollars in the Network Marketing industry, and I just made the biggest move of my career! It was time for us to grow internationally and work with a company positioned to do just that.

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to

## EXHIBIT A

keep everyone posted so they have insight and the opportunity to join me early. I will be responding in the order of inquiries so please get in touch with me if you are interested.

Darin Kidd

434-546-1733

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Appomattox, VA 24522

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## EXHIBIT B

**From:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>  
**Date:** April 11, 2018 at 10:08:19 AM EDT  
**To:** Melissa <[melmazza@aol.com](mailto:melmazza@aol.com)>  
**Subject:** Exciting News: Follow-Up  
**Reply-To:** Darin Kidd <[Darin@DarinKidd.com](mailto:Darin@DarinKidd.com)>

### Exciting News: Quick Follow-Up

I wanted to give my closer followers a quick update. (*Note: If you are receiving this, you signed up through my personal website so if you are receiving this in error please unsubscribe below.*)

The last couple weeks have been amazing! Our Team has already expanded into over 27 countries! Even if you aren't interested, it's okay. However, you may know someone that wants to be personally sponsored, mentored, or coached by me. I've learned



that mentors are key to getting to where we want to be in life. It's much easier to have a tour guide that has been there before and can show us the way.

Vision is seeing it BEFORE the masses and this is a big part of my success. I'm looking for people that want to change their life and see what I see.

So many people have told me that they wished they had joined with me in the early stages of my career. Now I'm making sure everyone is aware of this as soon as possible so that they can take advantage of this opportunity. If you or anyone you know is interested in partnering with me in my new company and working with me

## EXHIBIT B

personally, please let me know. There is **DEFINITELY** a first movers advantage in this situation.

Let me know if you have any interest and I will send you some more information. Then we can chat over the phone and see if there is a fit. My goal is to keep everyone posted so they have insight and the opportunity to join me early. I will be responding in the order of inquiries so please get in touch with me if you are interested.

Darin Kidd  
434-546-1733

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PO Box 2529  
Appomattox, VA 24522

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EXHIBIT 7

AFFIDAVIT OF PING ZHANG

STATE OF CALIFORNIA §  
COUNTY OF Los Angeles §

Before me, the undersigned notary, on this day, personally appeared Ping Zhang, a person whose identity is known to me, who being by me duly sworn, stated on oath as follows:

1. My name is Ping Zhang. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Affidavit. I have personal knowledge of the facts stated herein and they are true and correct.

2. I am an attorney with the law firm of Blank Rome LLP. I represent Nerium International, LLC ("Nerium") in connection with a lawsuit styled *Mark Smith, et al. v. Nerium International, LLC, et al.*, No. 30-2018-00975602-CU-BC-CJC, pending in the Superior Court of Orange County, California (the "California Lawsuit").

3. Attached to this declaration as Exhibit A is a true and correct copy of Mark Smith's Special Interrogatories to Nerium International, LLC, Set One, as received by my firm from Mr. Smith's counsel.

4. Attached to this declaration as Exhibit B is a true and correct copy of Mark Smith's Form Interrogatories to Nerium International, LLC, Set One, as received by my firm from Mr. Smith's counsel.

5. Attached to this declaration as Exhibit C is a true and correct copy of Mark Smith's Request for Production to Nerium International, LLC, Set One, as received by my firm from Mr. Smith's counsel.

  
\_\_\_\_\_  
Ping Zhang

SUBSCRIBED AND SWORN TO BEFORE ME this 19<sup>th</sup> day of April, 2018, to certify which witness my hand and official seal of office.




  
\_\_\_\_\_  
Printed Name: Cheryl A. Reynolds  
Notary Public in and for the State of California  
My Commission Expires: May 24, 2019



EXHIBIT A

BOHM WILDISH & MATSEN, LLP  
James G. Bohm (SBN 132430)  
jbohm@bohmwildish.com  
Klaus Heinze (SBN 279634)  
kheinze@bohmwildish.com  
Christopher J. Green (SBN 295874)  
cgreen@bohmwildish.com  
695 Town Center Drive, Suite 700  
Costa Mesa, California 92626  
Tel: (714) 384-6500 Fax: (714) 384-6501

Attorneys for Plaintiffs,  
MARK SMITH & TAMMY SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MARK SMITH, an individual; TAMMY  
SMITH, an individual;

Plaintiffs,

v.

NERIUM INTERNATIONAL, LLC, a limited  
liability company; JO PRODUCTS, LLC, a  
limited liability company; JEFF OLSON, an  
individual; and DOES 1 through 10, inclusive,

Defendants.

Case No. 30-2018-00975602-CU-BC-CJC

Assigned for all purposes to:  
Hon. Nathan Scott  
Dept. C-12

**MARK SMITH'S SPECIAL  
INTERROGATORIES TO NERIUM  
INTERNATIONAL, LLC, SET ONE**

Complaint: February 23, 2018  
Trial: None set

PROPOUNDING PARTY: MARK SMITH

RESPONDING PARTY: NERIUM INTERNATIONAL, LLC

SET NUMBER: ONE (1)

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 Pursuant to Code of Civil Procedure section 2030.010 *et seq.*, Plaintiff Mark Smith  
3 (“Smith”) hereby requests that Defendant Nerium International, LLC (“Nerium”) answer the  
4 following special interrogatories, under oath, within thirty (30) days of service.

5 **INSTRUCTIONS**

6 1. You must serve responses to these interrogatories on the propounding party and  
7 serve copies of your responses on all other parties to the action that have appeared within thirty (30)  
8 days. See Cal. Civ. Proc. Code § 2030.260.

9 2. Your answers to these interrogatories must be verified, dated and signed.

10 3. Each answer must be complete and straightforward as the information reasonably  
11 available to you permits.

12 4. If an interrogatory cannot be answered completely, answer it to the extent possible.

13 5. If you do not have enough personal knowledge to fully answer an interrogatory, state  
14 so, but you are required to make a reasonable and good faith effort to acquire information  
15 responsive to an interrogatory, unless the information is equally available to the propounding party.

16 6. Whenever an interrogatory may be answered by referring to a document, the  
17 document may be attached as an exhibit to the response and referred to in the response.

18 7. If the document has more than one page, refer to the page and section where the  
19 answer to the interrogatory can be found.

20 8. Whenever an address and telephone number for the same person are requested in  
21 more than one interrogatory, you are required to furnish them in answering only the first  
22 interrogatory asking for that information.

23 **SPECIAL INTERROGATORIES**

24 **SPECIAL INTERROGATORY NO. 1:**

25 Do YOU contend that SMITH accepted YOUR Policies and Procedures?

26 (The following terms apply to Special Interrogatory No. 1: “YOU” or “YOUR” means and  
27 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
28 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,



1 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
2 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
3 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

4 **SPECIAL INTERROGATORY NO. 2:**

5 If YOU contend that SMITH accepted YOUR Policies and Procedures, state all facts  
6 RELATING TO YOUR contention.

7 (The following terms apply to Special Interrogatory No. 2: "YOU" or "YOUR" means and  
8 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
9 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
10 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
11 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
12 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
13 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
14 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
15 in any way.)

16 **SPECIAL INTERROGATORY NO. 3:**

17 If YOU contend that SMITH accepted YOUR Policies and Procedures, IDENTIFY each  
18 PERSON with knowledge of facts RELATING TO YOUR contention.

19 (The following terms apply to Special Interrogatory No. 3: "YOU" or "YOUR" means and  
20 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
21 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
22 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
23 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
24 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
25 "IDENTIFY" means to state the individual's full current name, to state the individual's full current  
26 residential address, full current business address, e-mail address, and the individual's telephone  
27 numbers. "PERSON" has the same meaning as defined in Judicial Council of California Form  
28 DISC-001, Form Interrogatories—General, in Section 4(c): "a natural person, firm, association,

1 organization, partnership, business, trust, limited liability company, corporation, or public entity”;  
2 and includes all potential trial witnesses and all those that may have first-hand knowledge.

3 “RELATING TO” means consisting of, summarizing, describing, reflecting, referring to,  
4 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
5 in any way.)

6 **SPECIAL INTERROGATORY NO. 4:**

7 If YOU contend that SMITH accepted YOUR Policies and Procedures, IDENTIFY each  
8 DOCUMENT RELATING TO YOUR contention.

9 (The following terms apply to Special Interrogatory No. 4: “YOU” or “YOUR” means and  
10 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
11 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
12 successors in interest, and anyone else acting on its behalf. “SMITH” means and refers to Plaintiff  
13 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
14 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
15 “IDENTIFY” means to state the type of DOCUMENT, date, author, addressee, title, bates number,  
16 its present location, the name and address of its custodian, whether it has been destroyed, and the  
17 substance of the contents. “ELECTRONICALLY STORED INFORMATION” has the meaning  
18 provided under Code of Civil Procedure section 2016.20(e): “information that is stored in an  
19 electronic medium,” and includes, by way of illustration and without limitation, emails, voice  
20 messages, and text messages. “DOCUMENT” has the same meaning as defined in Judicial Council  
21 of California Form DISC-001, Form Interrogatories—General, in Section 4(d): “a writing, as  
22 defined in Evidence Code section 250, and includes the original or a copy of handwriting,  
23 typewriting, printing, photostats, photographs, [ELECTRONICALLY STORED INFORMATION],  
24 email, and every other means of recording upon any tangible thing and form of communicating or  
25 representation, including letters, words, pictures, sounds, or symbols, or combinations of them”; and  
26 also includes, without limitation, originals, drafts, and all copies different in any way from the  
27 original whether by interlineation, receipt stamp, notation, or otherwise, whether used or not, as  
28 illustrated without limitation by Evidence Code sections 255 and 260. “RELATING TO” means

1 consisting of, summarizing, describing, reflecting, referring to, embodying, concerning, setting  
2 forth, analyzing, evidencing, identifying, supporting, or mentioning in any way.)

3 **SPECIAL INTERROGATORY NO. 5:**

4 IDENTIFY each PERSON with knowledge of facts RELATING TO the conference call  
5 hosted by YOU on February 27, 2018, to address the filing of the instant action, including all  
6 individuals invited to participate in the conference call.

7 (The following terms apply to Special Interrogatory No. 5: "YOU" or "YOUR" means and  
8 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
9 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
10 successors in interest, and anyone else acting on its behalf. "IDENTIFY" means to state the  
11 individual's full current name, to state the individual's full current residential address, full current  
12 business address, e-mail address, and the individual's telephone numbers. "PERSON" has the same  
13 meaning as defined in Judicial Council of California Form DISC-001, Form Interrogatories—  
14 General, in Section 4(c): "a natural person, firm, association, organization, partnership, business,  
15 trust, limited liability company, corporation, or public entity"; and includes all potential trial  
16 witnesses and all those that may have first-hand knowledge. "RELATING TO" means consisting  
17 of, summarizing, describing, reflecting, referring to, embodying, concerning, setting forth,  
18 analyzing, evidencing, identifying, supporting, or mentioning in any way.)

19 **SPECIAL INTERROGATORY NO. 6:**

20 IDENTIFY each PERSON with knowledge of facts RELATING TO the "Important Update  
21 from Nerium International" notice sent by YOU on February 27, 2018, including all individuals to  
22 who the notice was sent.

23 (The following terms apply to Special Interrogatory No. 6: "YOU" or "YOUR" means and  
24 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
25 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
26 successors in interest, and anyone else acting on its behalf. "IDENTIFY" means to state the  
27 individual's full current name, to state the individual's full current residential address, full current  
28 business address, e-mail address, and the individual's telephone numbers. "PERSON" has the same

1 meaning as defined in Judicial Council of California Form DISC-001, Form Interrogatories—  
2 General, in Section 4(c): “a natural person, firm, association, organization, partnership, business,  
3 trust, limited liability company, corporation, or public entity”; and includes all potential trial  
4 witnesses and all those that may have first-hand knowledge. “RELATING TO” means consisting  
5 of, summarizing, describing, reflecting, referring to, embodying, concerning, setting forth,  
6 analyzing, evidencing, identifying, supporting, or mentioning in any way.)

7 **SPECIAL INTERROGATORY NO. 7:**

8 Do YOU contend that in return for granting SMITH an equity stake in Nerium International,  
9 LLC, YOU only wanted reasonable assurances from SMITH that he would continue to take an  
10 active role to grow Nerium International, LLC?

11 (The following terms apply to Special Interrogatory No. 7: “YOU” or “YOUR” means and  
12 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
13 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
14 successors in interest, and anyone else acting on its behalf. “SMITH” means and refers to Plaintiff  
15 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
16 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

17 **SPECIAL INTERROGATORY NO. 8:**

18 If YOU contend that in return for granting SMITH an equity stake in Nerium International,  
19 LLC, YOU only wanted reasonable assurances from SMITH that he would continue to take an  
20 active role to grow Nerium International, LLC, state all facts RELATING TO YOUR contention.

21 (The following terms apply to Special Interrogatory No. 8: “YOU” or “YOUR” means and  
22 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
23 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
24 successors in interest, and anyone else acting on its behalf. “SMITH” means and refers to Plaintiff  
25 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
26 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

27 ///

28 ///

1 **SPECIAL INTERROGATORY NO. 9:**

2 Do YOU contend that SMITH was unwilling to take an active role to grow Nerium  
3 International, LLC?

4 (The following terms apply to Special Interrogatory No. 9: "YOU" or "YOUR" means and  
5 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
6 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
7 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
8 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
9 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

10 **SPECIAL INTERROGATORY NO. 10:**

11 If YOU contend that SMITH was unwilling to take an active role to grow Nerium  
12 International, LLC, state all facts RELATING TO YOUR contention.

13 (The following terms apply to Special Interrogatory No. 10: "YOU" or "YOUR" means and  
14 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
15 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
16 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
17 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
18 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

19 **SPECIAL INTERROGATORY NO. 11:**

20 If YOU contend that in return for granting SMITH an equity stake in Nerium International,  
21 LLC, YOU only wanted reasonable assurances from SMITH that he would continue to take an  
22 active role to grow Nerium International, LLC, specify the "reasonable assurances" YOU wanted  
23 from SMITH.

24 (The following terms apply to Special Interrogatory No. 11: "YOU" or "YOUR" means and  
25 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
26 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
27 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
28

1 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
2 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

3 **SPECIAL INTERROGATORY NO. 12:**

4 Do YOU contend that YOU negotiated with SMITH in good faith RELATING to him  
5 acquiring an equity stake in Nerium International, LLC?

6 (The following terms apply to Special Interrogatory No. 12: "YOU" or "YOUR" means and  
7 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
8 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
9 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
10 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
11 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

12 **SPECIAL INTERROGATORY NO. 13:**

13 If YOU contend that YOU negotiated with SMITH in good faith RELATING to him  
14 acquiring an equity stake in Nerium International, LLC, state all facts RELATING TO YOUR  
15 contention.

16 (The following terms apply to Special Interrogatory No. 13: "YOU" or "YOUR" means and  
17 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
18 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
19 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
20 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
21 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
22 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
23 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
24 in any way.)

25 **SPECIAL INTERROGATORY NO. 14:**

26 Do YOU contend that SMITH was never an employee of Nerium International, LLC?

27 (The following terms apply to Special Interrogatory No. 14: "YOU" or "YOUR" means and  
28 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,

1 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
2 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
3 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
4 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

5 **SPECIAL INTERROGATORY NO. 15:**

6 If YOU contend that SMITH was never an employee of Nerium International, LLC, state all  
7 facts RELATING TO YOUR contention.

8 (The following terms apply to Special Interrogatory No. 15: "YOU" or "YOUR" means and  
9 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
10 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
11 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
12 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
13 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
14 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
15 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
16 in any way.)

17 **SPECIAL INTERROGATORY NO. 16:**

18 State the amount of money, if any, that YOU currently owe OLSON, including, but not  
19 limited to, any amounts owed for repayment of loans, compensation or distributions.

20 (The following terms apply to Special Interrogatory No. 16: "YOU" or "YOUR" means and  
21 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
22 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
23 successors in interest, and anyone else acting on its behalf. "OLSON" means and refers to  
24 Defendant Jeff Olson, and all his present and former agents, employees, insurance companies,  
25 attorneys, accountants, investigators, assigns, successors in interest, and anyone else acting on his  
26 behalf.)

27 ///

28 ///

1 **SPECIAL INTERROGATORY NO. 17:**

2 State all facts RELATING to all loans, if any, by JO PRODUCTS, LLC, to YOU, including,  
3 but not limited to, the date, length, interest rate and amount of each loan, as well any amount still  
4 owed by YOU on each loan.

5 (The following terms apply to Special Interrogatory No. 17: "YOU" or "YOUR" means and  
6 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
7 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
8 successors in interest, and anyone else acting on its behalf. "JO PRODUCTS, LLC" means and  
9 refers to Defendant JO Products, LLC, and all its present and former officers, directors, members,  
10 agents, employees, insurance companies, attorneys, accountants, investigators, assigns, successors  
11 in interest, and anyone else acting on its behalf.)

12 **SPECIAL INTERROGATORY NO. 18:**

13 Do YOU contend that SMITH is in breach of any obligation to YOU?

14 (The following terms apply to Special Interrogatory No. 18: "YOU" or "YOUR" means and  
15 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
16 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
17 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
18 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
19 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)

20 **SPECIAL INTERROGATORY NO. 19:**

21 If YOU contend that SMITH is in breach of any obligation to YOU, state all facts  
22 RELATING TO YOUR contention.

23 (The following terms apply to Special Interrogatory No. 19: "YOU" or "YOUR" means and  
24 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
25 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
26 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
27 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
28 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.



1 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
2 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
3 in any way.)

4 **SPECIAL INTERROGATORY NO. 20:**

5 If YOU contend that SMITH is in breach of any obligation to YOU, IDENTIFY each  
6 PERSON with knowledge of facts RELATING TO YOUR contention.

7 (The following terms apply to Special Interrogatory No. 20: "YOU" or "YOUR" means and  
8 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
9 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
10 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
11 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
12 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
13 "IDENTIFY" means to state the individual's full current name, to state the individual's full current  
14 residential address, full current business address, e-mail address, and the individual's telephone  
15 numbers. "PERSON" has the same meaning as defined in Judicial Council of California Form  
16 DISC-001, Form Interrogatories—General, in Section 4(c): "a natural person, firm, association,  
17 organization, partnership, business, trust, limited liability company, corporation, or public entity";  
18 and includes all potential trial witnesses and all those that may have first-hand knowledge.

19 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
20 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
21 in any way.)

22 **SPECIAL INTERROGATORY NO. 21:**

23 If YOU contend that SMITH is in breach of any obligation to YOU, IDENTIFY each  
24 DOCUMENT RELATING TO YOUR contention.

25 (The following terms apply to Special Interrogatory No. 21: "YOU" or "YOUR" means and  
26 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
27 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
28 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff

1 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
2 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
3 "IDENTIFY" means to state the type of DOCUMENT, date, author, addressee, title, bates number,  
4 its present location, the name and address of its custodian, whether it has been destroyed, and the  
5 substance of the contents. "ELECTRONICALLY STORED INFORMATION" has the meaning  
6 provided under Code of Civil Procedure section 2016.20(e): "information that is stored in an  
7 electronic medium," and includes, by way of illustration and without limitation, emails, voice  
8 messages, and text messages. "DOCUMENT" has the same meaning as defined in Judicial Council  
9 of California Form DISC-001, Form Interrogatories—General, in Section 4(d): "a writing, as  
10 defined in Evidence Code section 250, and includes the original or a copy of handwriting,  
11 typewriting, printing, photostats, photographs, [ELECTRONICALLY STORED INFORMATION],  
12 email, and every other means of recording upon any tangible thing and form of communicating or  
13 representation, including letters, words, pictures, sounds, or symbols, or combinations of them"; and  
14 also includes, without limitation, originals, drafts, and all copies different in any way from the  
15 original whether by interlineation, receipt stamp, notation, or otherwise, whether used or not, as  
16 illustrated without limitation by Evidence Code sections 255 and 260. "RELATING TO" means  
17 consisting of, summarizing, describing, reflecting, referring to, embodying, concerning, setting  
18 forth, analyzing, evidencing, identifying, supporting, or mentioning in any way.)

19 **SPECIAL INTERROGATORY NO. 22:**

20 Do YOU contend that SMITH solicited any Brand Partners or independent contractors  
21 associated with YOU?

22 (The following terms apply to Special Interrogatory No. 22: "YOU" or "YOUR" means and  
23 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
24 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
25 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
26 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
27 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.)  
28

///

1 **SPECIAL INTERROGATORY NO. 23:**

2 If YOU contend that SMITH solicited any Brand Partners or independent contractors  
3 associated with YOU, state all facts RELATING TO YOUR contention.

4 (The following terms apply to Special Interrogatory No. 23: "YOU" or "YOUR" means and  
5 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
6 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
7 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
8 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
9 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
10 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
11 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
12 in any way.)

13 **SPECIAL INTERROGATORY NO. 24:**

14 If YOU contend that SMITH solicited any Brand Partners or independent contractors  
15 associated with YOU, IDENTIFY each PERSON with knowledge of facts RELATING TO YOUR  
16 contention.

17 (The following terms apply to Special Interrogatory No. 24: "YOU" or "YOUR" means and  
18 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
19 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
20 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
21 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
22 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
23 "IDENTIFY" means to state the individual's full current name, to state the individual's full current  
24 residential address, full current business address, e-mail address, and the individual's telephone  
25 numbers. "PERSON" has the same meaning as defined in Judicial Council of California Form  
26 DISC-001, Form Interrogatories—General, in Section 4(c): "a natural person, firm, association,  
27 organization, partnership, business, trust, limited liability company, corporation, or public entity";  
28 and includes all potential trial witnesses and all those that may have first-hand knowledge.

1 "RELATING TO" means consisting of, summarizing, describing, reflecting, referring to,  
2 embodying, concerning, setting forth, analyzing, evidencing, identifying, supporting, or mentioning  
3 in any way.)

4 **SPECIAL INTERROGATORY NO. 25:**

5 If YOU contend that SMITH solicited any Brand Partners or independent contractors  
6 associated with YOU, IDENTIFY each DOCUMENT RELATING TO YOUR contention.

7 (The following terms apply to Special Interrogatory No. 25: "YOU" or "YOUR" means and  
8 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
9 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
10 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
11 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
12 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
13 "IDENTIFY" means to state the type of DOCUMENT, date, author, addressee, title, bates number,  
14 its present location, the name and address of its custodian, whether it has been destroyed, and the  
15 substance of the contents. "ELECTRONICALLY STORED INFORMATION" has the meaning  
16 provided under Code of Civil Procedure section 2016.20(e): "information that is stored in an  
17 electronic medium," and includes, by way of illustration and without limitation, emails, voice  
18 messages, and text messages. "DOCUMENT" has the same meaning as defined in Judicial Council  
19 of California Form DISC-001, Form Interrogatories—General, in Section 4(d): "a writing, as  
20 defined in Evidence Code section 250, and includes the original or a copy of handwriting,  
21 typewriting, printing, photostats, photographs, [ELECTRONICALLY STORED INFORMATION],  
22 email, and every other means of recording upon any tangible thing and form of communicating or  
23 representation, including letters, words, pictures, sounds, or symbols, or combinations of them"; and  
24 also includes, without limitation, originals, drafts, and all copies different in any way from the  
25 original whether by interlineation, receipt stamp, notation, or otherwise, whether used or not, as  
26 illustrated without limitation by Evidence Code sections 255 and 260. "RELATING TO" means  
27 consisting of, summarizing, describing, reflecting, referring to, embodying, concerning, setting  
28 forth, analyzing, evidencing, identifying, supporting, or mentioning in any way.)

1 **SPECIAL INTERROGATORY NO. 26:**

2 State the BOOK VALUE of Nerium International, LLC, as calculated based on YOUR most  
3 recent balance sheet.

4 (The following terms apply to Special Interrogatory No. 26: "YOU" or "YOUR" means and  
5 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
6 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
7 successors in interest, and anyone else acting on its behalf. "BOOK VALUE" means and refers to  
8 the net asset value of a company, calculated as total assets minus intangible assets and liabilities.)

9 **SPECIAL INTERROGATORY NO. 27:**

10 As of the date of service of these Interrogatories, state the total combined amount of Nerium  
11 International, LLC's accounts payable that are more than thirty days past due.

12 (The following terms apply to Special Interrogatory No. 27: "YOU" or "YOUR" means and  
13 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
14 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
15 successors in interest, and anyone else acting on its behalf. "BOOK VALUE" means and refers to  
16 the net asset value of a company, calculated as total assets minus intangible assets and liabilities.)

17 **SPECIAL INTERROGATORY NO. 28:**

18 IDENTIFY every lawsuit to which YOU have been a named party over the course of the last  
19 five years.

20 (The following terms apply to Special Interrogatory No. 28: "YOU" or "YOUR" means and  
21 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
22 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
23 successors in interest, and anyone else acting on its behalf. "IDENTIFY" means to state the case  
24 name, case number, the date the case was filed, the venue of the case and YOUR status (e.g.,  
25 plaintiff, defendant, cross-defendant, etc.) in the case.)

26 **SPECIAL INTERROGATORY NO. 29:**

27 IDENTIFY every instance in which YOU have sought injunctive relief against a Brand  
28 Partner or independent contractor.

1 (The following terms apply to Special Interrogatory No. 29: "YOU" or "YOUR" means and  
2 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
3 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
4 successors in interest, and anyone else acting on its behalf. "IDENTIFY" means to state the case  
5 name, case number, the date the case was filed, the venue of the case, the injunctive relief sought  
6 and the outcome of YOUR request for injunctive relief.)

7 **SPECIAL INTERROGATORY NO. 30:**

8 Did YOU pay any portion of Amber Olson Rourke's wedding expenses?

9 (The following terms apply to Special Interrogatory No. 30: "YOU" or "YOUR" means and  
10 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
11 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
12 successors in interest, and anyone else acting on its behalf.)

13 **SPECIAL INTERROGATORY NO. 31:**

14 If YOU paid any portion of Amber Olson Rourke's wedding expenses, state the amount of  
15 Amber Olson Rourke's wedding expenses paid by YOU.

16 (The following terms apply to Special Interrogatory No. 31: "YOU" or "YOUR" means and  
17 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
18 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
19 successors in interest, and anyone else acting on its behalf.)

20 **SPECIAL INTERROGATORY NO. 32:**

21 Do YOU contend that SMITH has misappropriated a TRADE SECRET possessed by  
22 Nerium International, LLC?

23 (The following terms apply to Special Interrogatory No. 32: "YOU" or "YOUR" means and  
24 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
25 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
26 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
27 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
28 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.

1 "TRADE SECRET" means and refers to any means information, including a formula, pattern,  
2 compilation, program, device, method, technique, or process, that: 1) derives independent economic  
3 value, actual or potential, from not being generally known to the public or to other persons who can  
4 obtain economic value from its disclosure or use; and 2) is the subject of efforts that are reasonable  
5 under the circumstances to maintain its secrecy.)

6 **SPECIAL INTERROGATORY NO. 33:**

7 If YOU contend that SMITH has misappropriated a TRADE SECRET possessed by Nerium  
8 International, LLC, state all facts RELATING TO YOUR contention.

9 (The following terms apply to Special Interrogatory No. 33: "YOU" or "YOUR" means and  
10 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
11 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
12 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
13 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
14 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.

15 "TRADE SECRET" means and refers to any means information, including a formula, pattern,  
16 compilation, program, device, method, technique, or process, that: 1) derives independent economic  
17 value, actual or potential, from not being generally known to the public or to other persons who can  
18 obtain economic value from its disclosure or use; and 2) is the subject of efforts that are reasonable  
19 under the circumstances to maintain its secrecy. "RELATING TO" means consisting of,  
20 summarizing, describing, reflecting, referring to, embodying, concerning, setting forth, analyzing,  
21 evidencing, identifying, supporting, or mentioning in any way.)

22 **SPECIAL INTERROGATORY NO. 34:**

23 If YOU contend that SMITH has misappropriated a TRADE SECRET possessed by Nerium  
24 International, LLC, IDENTIFY each PERSON with knowledge of facts RELATING TO YOUR  
25 contention.

26 (The following terms apply to Special Interrogatory No. 34: "YOU" or "YOUR" means and  
27 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
28 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,

1 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
2 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
3 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
4 "TRADE SECRET" means and refers to any means information, including a formula, pattern,  
5 compilation, program, device, method, technique, or process, that: 1) derives independent economic  
6 value, actual or potential, from not being generally known to the public or to other persons who can  
7 obtain economic value from its disclosure or use; and 2) is the subject of efforts that are reasonable  
8 under the circumstances to maintain its secrecy. "IDENTIFY" means to state the individual's full  
9 current name, to state the individual's full current residential address, full current business address,  
10 e-mail address, and the individual's telephone numbers. "PERSON" has the same meaning as  
11 defined in Judicial Council of California Form DISC-001, Form Interrogatories—General, in  
12 Section 4(c): "a natural person, firm, association, organization, partnership, business, trust, limited  
13 liability company, corporation, or public entity"; and includes all potential trial witnesses and all  
14 those that may have first-hand knowledge. "RELATING TO" means consisting of, summarizing,  
15 describing, reflecting, referring to, embodying, concerning, setting forth, analyzing, evidencing,  
16 identifying, supporting, or mentioning in any way.)

17 **SPECIAL INTERROGATORY NO. 35:**

18 If YOU contend that SMITH has misappropriated a TRADE SECRET possessed by Nerium  
19 International, LLC, IDENTIFY each DOCUMENT RELATING TO YOUR contention.

20 (The following terms apply to Special Interrogatory No. 35: "YOU" or "YOUR" means and  
21 refers to Defendant Nerium International, LLC, and all its present and former officers, directors,  
22 members, agents, employees, insurance companies, attorneys, accountants, investigators, assigns,  
23 successors in interest, and anyone else acting on its behalf. "SMITH" means and refers to Plaintiff  
24 Mark Smith, and all his present and former agents, employees, insurance companies, attorneys,  
25 accountants, investigators, assigns, successors in interest, and anyone else acting on his behalf.  
26 "TRADE SECRET" means and refers to any means information, including a formula, pattern,  
27 compilation, program, device, method, technique, or process, that: 1) derives independent economic  
28 value, actual or potential, from not being generally known to the public or to other persons who can



1 obtain economic value from its disclosure or use; and 2) is the subject of efforts that are reasonable  
2 under the circumstances to maintain its secrecy. "IDENTIFY" means to state the type of  
3 DOCUMENT, date, author, addressee, title, bates number, its present location, the name and  
4 address of its custodian, whether it has been destroyed, and the substance of the contents.  
5 "ELECTRONICALLY STORED INFORMATION" has the meaning provided under Code of Civil  
6 Procedure section 2016.20(e): "information that is stored in an electronic medium," and includes,  
7 by way of illustration and without limitation, emails, voice messages, and text messages.  
8 "DOCUMENT" has the same meaning as defined in Judicial Council of California Form DISC-001,  
9 Form Interrogatories—General, in Section 4(d): "a writing, as defined in Evidence Code section  
10 250, and includes the original or a copy of handwriting, typewriting, printing, photostats,  
11 photographs, [ELECTRONICALLY STORED INFORMATION], email, and every other means of  
12 recording upon any tangible thing and form of communicating or representation, including letters,  
13 words, pictures, sounds, or symbols, or combinations of them"; and also includes, without  
14 limitation, originals, drafts, and all copies different in any way from the original whether by  
15 interlineation, receipt stamp, notation, or otherwise, whether used or not, as illustrated without  
16 limitation by Evidence Code sections 255 and 260. "RELATING TO" means consisting of,  
17 summarizing, describing, reflecting, referring to, embodying, concerning, setting forth, analyzing,  
18 evidencing, identifying, supporting, or mentioning in any way.)

19  
20 Dated: April 10, 2018

BOHM WILDISH & MATSEN, LLP

21  
22 By: 

James G. Bohm (SBN 132430)

Klaus Heinze (SBN 279634)

Christopher J. Green (SBN 295874)

23  
24  
25 Attorneys for Plaintiff,

26 MARK SMITH & TAMMY SMITH  
27  
28

1 **PROOF OF SERVICE**

2 Smith, et al., v. Nerium International, LLC, et al.  
3 OCSC Case No. 30-2018-30-2018-00975602-CU-BC-CJC

4 STATE OF CALIFORNIA, COUNTY OF ORANGE

5 I, Lindsay M. Rivara, declare: I am a citizen of the United States and employed in the City of  
6 Costa Mesa, County of Orange, State of California, by the law offices of Bohm Wildish, LLP. I am  
7 over the age of 18 years and not a party to the within action. My business address is 695 Town  
8 Center Drive, Suite 700, Costa Mesa, California 92626. On April 10, 2018, pursuant to California  
Rules of Court, Federal Rules of Civil Procedure, and local rules, I served the documents named  
below on the parties in this action as follows:

9

10 DOCUMENT(S) SERVED:	<b>MARK SMITH'S SPECIAL INTERROGATORIES TO NERIUM INTERNATIONAL, LLC, SET ONE</b>
11 12 13 14 15 16 17 SERVED UPON:	Mike Margolis mmargolis@blankrome.com Naki Margolis nmargolis@blankrome.com Ping Zhang pzhang@blankrome.com BLANK ROME LLP 2029 Century Park East, 6th Floor Los Angeles, California 90067 Tel: (424) 239-3400; Fax: (424) 239-3434

18 ☒ [VIA U.S. MAIL] I enclosed the above-referenced documents in a sealed envelope or  
19 package addressed to the persons at the addresses listed above and placed the envelope  
20 for collection and mailing, following our ordinary business practices. I am readily  
21 familiar with our firm's practice for collecting and processing correspondence for  
22 mailing. On the same day that correspondence is placed for collection and mailing, it  
is deposited with the United States Postal Service, in a sealed envelope with postage  
fully prepaid.

23 ☐ [VIA ELECTRONIC MAIL] I caused the above-referenced documents to be  
24 electronically transmitted from [lrivara@bohmwildish.com](mailto:lrivara@bohmwildish.com) to all persons at the email  
25 addresses listed above. I did not receive, within a reasonable time after transmission,  
any electronic message or other indication that the transmission was unsuccessful.

26 ☐ [VIA OVERNIGHT MAIL] I enclosed the above-referenced documents in a sealed  
27 envelope or package addressed to the persons at the addresses listed above and placed  
28 the envelope for collection and mailing, following our ordinary business practices. I  
am readily familiar with our firm's practices for the collection and processing of  
correspondence for overnight delivery. On the same day that correspondence is placed

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for collection and mailing, it is deposited in a box or other facility regularly maintained by overnight mail service for overnight delivery.

☐ **[VIA PERSONAL SERVICE]** I caused the above-referenced documents to be personally delivered to the addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. This proof of service was executed on April 10, 2018, at Costa Mesa, California.



---

Lindsay M. Rivara

# EXHIBIT B

DISC-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James G. Bohm (SBN 132430), Klaus Heinze (SBN 279634), Christopher J. Green (SBN 295874) Bohm Wildish & Matsen, LLP 695 Town Center Drive, Suite 700 Costa Mesa, California 92626 TELEPHONE NO.: 714-384-6500 FAX NO. (Optional): 714-384-6501 E-MAIL ADDRESS (Optional): jbohm@bohmwildish.com; kheinze@bohmwildish.com; cgreen@bohmwildish.com ATTORNEY FOR (Name): Mark Smith & Tammy Smith	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive, Santa Ana, CA 92701	
SHORT TITLE OF CASE: Mark Smith et al v. Nerium International, LLC et al	
<b>FORM INTERROGATORIES—GENERAL</b> Asking Party: Mark Smith  Answering Party: Nerium International, LLC Set No.: One (1)	CASE NUMBER: 30-2018-00975602-CU-BC-CJC

## Sec. 1. Instructions to All Parties

- (a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

## Sec. 2. Instructions to the Asking Party

- (a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds \$25,000. Separate interrogatories, *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is \$25,000 or less; however, those interrogatories may also be used in unlimited civil cases.
- (b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.
- (c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.
- (d) The interrogatories in section 16.0, Defendant's Contentions—Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.
- (e) Additional interrogatories may be attached.

## Sec. 3. Instructions to the Answering Party

- (a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.
- (b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

- (c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
- (f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

*I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.*

(DATE)

(SIGNATURE)

## Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

- (a) (Check one of the following):

- ☒ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

Page 1 of 8

- ☐ (2) **INCIDENT** means (insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)");

**(b) YOU OR ANYONE ACTING ON YOUR BEHALF**

includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

**Sec. 5. Interrogatories**

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

**CONTENTS**

- 1.0 Identity of Persons Answering These Interrogatories
- 2.0 General Background Information—Individual
- 3.0 General Background Information—Business Entity
- 4.0 Insurance
- 5.0 [Reserved]
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages
- 10.0 Medical History
- 11.0 Other Claims and Previous Claims
- 12.0 Investigation—General
- 13.0 Investigation—Surveillance
- 14.0 Statutory or Regulatory Violations
- 15.0 Denials and Special or Affirmative Defenses
- 16.0 Defendant's Contentions Personal Injury
- 17.0 Responses to Request for Admissions
- 18.0 [Reserved]
- 19.0 [Reserved]
- 20.0 How the Incident Occurred—Motor Vehicle
- 25.0 [Reserved]
- 30.0 [Reserved]
- 40.0 [Reserved]
- 50.0 Contract
- 60.0 [Reserved]
- 70.0 Unlawful Detainer [See separate form DISC-003]
- 101.0 Economic Litigation [See separate form DISC-004]
- 200.0 Employment Law [See separate form DISC-002]
- Family Law [See separate form FL-145]

**1.0 Identity of Persons Answering These Interrogatories**

- ☒ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

**2.0 General Background Information—individual**

- ☐ 2.1 State:
- (a) your name;
  - (b) every name you have used in the past; and
  - (c) the dates you used each name.
- ☐ 2.2 State the date and place of your birth.
- ☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license? If so state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance; and
  - (d) all restrictions.
- ☐ 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle? If so, state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance; and
  - (d) all restrictions.
- ☐ 2.5 State:
- (a) your present residence **ADDRESS**;
  - (b) your residence **ADDRESSES** for the past five years; and
  - (c) the dates you lived at each **ADDRESS**.
- ☐ 2.6 State:
- (a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment; and
  - (b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.
- ☐ 2.7 State:
- (a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
  - (b) the dates you attended;
  - (c) the highest grade level you have completed; and
  - (d) the degrees received.
- ☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
- (a) the city and state where you were convicted;
  - (b) the date of conviction;
  - (c) the offense; and
  - (d) the court and case number.
- ☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?
- ☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?

- ☐ 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:  
 (a) the name, **ADDRESS**, and telephone number of that **PERSON**; and  
 (b) a description of your duties.
- ☐ 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:  
 (a) the name, **ADDRESS**, and telephone number;  
 (b) the nature of the disability or condition; and  
 (c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.
- ☐ 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:  
 (a) the name, **ADDRESS**, and telephone number;  
 (b) the nature or description of each substance;  
 (c) the quantity of each substance used or taken;  
 (d) the date and time of day when each substance was used or taken;  
 (e) the **ADDRESS** where each substance was used or taken;  
 (f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken; and  
 (g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

### 3.0 General Background Information—Business Entity

- ☒ 3.1 Are you a corporation? If so, state:  
 (a) the name stated in the current articles of incorporation;  
 (b) all other names used by the corporation during the past 10 years and the dates each was used;  
 (c) the date and place of incorporation;  
 (d) the **ADDRESS** of the principal place of business; and  
 (e) whether you are qualified to do business in California.
- ☒ 3.2 Are you a partnership? If so, state:  
 (a) the current partnership name;  
 (b) all other names used by the partnership during the past 10 years and the dates each was used;  
 (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;  
 (d) the name and **ADDRESS** of each general partner; and  
 (e) the **ADDRESS** of the principal place of business.
- ☒ 3.3 Are you a limited liability company? If so, state:  
 (a) the name stated in the current articles of organization;  
 (b) all other names used by the company during the past 10 years and the date each was used;  
 (c) the date and place of filing of the articles of organization;  
 (d) the **ADDRESS** of the principal place of business; and  
 (e) whether you are qualified to do business in California.

- ☒ 3.4 Are you a joint venture? If so, state:  
 (a) the current joint venture name;  
 (b) all other names used by the joint venture during the past 10 years and the dates each was used;  
 (c) the name and **ADDRESS** of each joint venturer; and  
 (d) the **ADDRESS** of the principal place of business.
- ☒ 3.5 Are you an unincorporated association? If so, state:  
 (a) the current unincorporated association name;  
 (b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and  
 (c) the **ADDRESS** of the principal place of business.
- ☒ 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:  
 (a) the name;  
 (b) the dates each was used;  
 (c) the state and county of each fictitious name filing; and  
 (d) the **ADDRESS** of the principal place of business.
- ☒ 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:  
 (a) identify the license or registration;  
 (b) state the name of the public entity; and  
 (c) state the dates of issuance and expiration.

### 4.0 Insurance

- ☒ 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:  
 (a) the kind of coverage;  
 (b) the name and **ADDRESS** of the insurance company;  
 (c) the name, **ADDRESS**, and telephone number of each named insured;  
 (d) the policy number;  
 (e) the limits of coverage for each type of coverage contained in the policy;  
 (f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and  
 (g) the name, **ADDRESS**, and telephone number of the custodian of the policy.
- ☒ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

### 5.0 [Reserved]

### 6.0 Physical, Mental, or Emotional Injuries

- ☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 6.2 through 6.7).
- ☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each complaint state:

- (a) a description;
- (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
- (c) the frequency and duration.

☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE PROVIDER** state:

- (a) the name, **ADDRESS**, and telephone number;
- (b) the type of consultation, examination, or treatment provided;
- (c) the dates you received consultation, examination, or treatment; and
- (d) the charges to date.

☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:

- (a) the name;
- (b) the **PERSON** who prescribed or furnished it;
- (c) the date it was prescribed or furnished;
- (d) the dates you began and stopped taking it; and
- (e) the cost to date.

☐ 6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:

- (a) the nature;
- (b) the date;
- (c) the cost; and
- (d) the name, **ADDRESS**, and telephone number of each provider.

☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:

- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
- (b) the complaints for which the treatment was advised; and
- (c) the nature, duration, and estimated cost of the treatment.

## 7.0 Property Damage

☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:

- (a) describe the property;
- (b) describe the nature and location of the damage to the property;

- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
- (b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy of it; and
- (c) the amount of damage stated.

☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:

- (a) the date repaired;
- (b) a description of the repair;
- (c) the repair cost;
- (d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
- (e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

## 8.0 Loss of Income or Earning Capacity

☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? (If your answer is "no," do not answer interrogatories 8.2 through 8.8).

☐ 8.2 State:

- (a) the nature of your work;
- (b) your job title at the time of the **INCIDENT**; and
- (c) the date your employment began.

☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.

☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT**.

☐ 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT**.

☐ 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

☐ 8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:

- (a) the facts upon which you base this contention;
- (b) an estimate of the amount;
- (c) an estimate of how long you will be unable to work; and
- (d) how the claim for future income is calculated.

## 9.0 Other Damages

- ☐ 9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:
- (a) the nature;
  - (b) the date it occurred;
  - (c) the amount; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.
- ☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in Interrogatory 9.1? If so, describe each document and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

## 10.0 Medical History

- ☐ 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:
- (a) a description of the complaint or injury;
  - (b) the dates it began and ended; and
  - (c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.
- ☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. *(You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)*
- ☐ 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
- (a) the date and the place it occurred;
  - (b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
  - (c) the nature of any injuries you sustained;
  - (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
  - (e) the nature of the treatment and its duration.

## 11.0 Other Claims and Previous Claims

- ☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
- (a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
  - (b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;

- (c) the court, names of the parties, and case number of any action filed;
- (d) the name, **ADDRESS**, and telephone number of any attorney representing you;
- (e) whether the claim or action has been resolved or is pending; and
- (f) a description of the injury.

- ☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:
- (a) the date, time, and place of the **INCIDENT** giving rise to the claim;
  - (b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
  - (c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
  - (d) the period of time during which you received workers' compensation benefits;
  - (e) a description of the injury;
  - (f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
  - (g) the case number at the Workers' Compensation Appeals Board.

## 12.0 Investigation—General

- ☒ 12.1 State the name, **ADDRESS**, and telephone number of each individual:
- (a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
  - (b) who made any statement at the scene of the **INCIDENT**;
  - (c) who heard any statements made about the **INCIDENT** by any individual at the scene; and
  - (d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).
- ☒ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:
- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
  - (b) the date of the interview; and
  - (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.
- ☒ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:
- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
  - (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
  - (c) the date the statement was obtained; and
  - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.



- ☒ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:

- (a) the number of photographs or feet of film or videotape;
- (b) the places, objects, or persons photographed, filmed, or videotaped;
- (c) the date the photographs, films, or videotapes were taken;
- (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes; and
- (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

- ☒ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) concerning the **INCIDENT**? If so, for each item state:

- (a) the type (i.e., diagram, reproduction, or model);
- (b) the subject matter; and
- (c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

- ☒ 12.6 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:

- (a) the name, title, identification number, and employer of the **PERSON** who made the report;
- (b) the date and type of report made;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the report.

- ☒ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:

- (a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310); and
- (b) the date of the inspection.

### 13.0 Investigation—Surveillance

- ☒ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:

- (a) the name, **ADDRESS**, and telephone number of the individual or party;
- (b) the time, date, and place of the surveillance;
- (c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

- ☒ 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:

- (a) the title;
- (b) the date;
- (c) the name, **ADDRESS**, and telephone number of the individual who prepared the report; and
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

### 14.0 Statutory or Regulatory Violations

- ☐ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**? If so, identify the name, **ADDRESS**, and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.

- ☐ 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON**;
- (b) the statute, ordinance, or regulation allegedly violated;
- (c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and
- (d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

### 15.0 Denials and Special or Affirmative Defenses

- ☐ 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or special or affirmative defense;
- (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
- (c) identify all **DOCUMENTS** and other tangible things that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

### 16.0 Defendant's Contentions—Personal Injury

- ☐ 16.1 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON**:

- (a) state the name, **ADDRESS**, and telephone number of the **PERSON**;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- ☐ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**? If so:

- (a) state all facts upon which you base your contention;
- (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:

- (a) identify it;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:

- (a) identify each service;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:

- (a) identify each cost;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:

- (a) identify each part of the loss;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? If so:

- (a) identify each item of property damage;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:

- (a) identify each cost item;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:

- (a) the source of each **DOCUMENT**;
- (b) the date each claim arose;
- (c) the nature of each claim; and
- (d) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310)? If so, for each plaintiff state:

- (a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
- (b) a description of each **DOCUMENT**; and
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

#### 17.0 Responses to Request for Admissions

☒ 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

- (a) state the number of the request;
- (b) state all facts upon which you base your response;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
- (d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 [Reserved]

19.0 [Reserved]

#### 20.0 How the Incident Occurred—Motor Vehicle

☐ 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection)

☐ 20.2 For each vehicle involved in the **INCIDENT**, state:

- (a) the year, make, model, and license number;
- (b) the name, **ADDRESS**, and telephone number of the driver;

- (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
- (d) the name, **ADDRESS**, and telephone number of each registered owner;
- (e) the name, **ADDRESS**, and telephone number of each lessee;
- (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder; and
- (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.

☐ 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**? If so, state:

- (a) your location when you first saw it;
- (b) the color;
- (c) the number of seconds it had been that color; and
- (d) whether the color changed between the time you first saw it and the **INCIDENT**.

☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:

- (a) just before the **INCIDENT**;
- (b) at the time of the **INCIDENT**; and (c) just after the **INCIDENT**.

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:

- (a) identify the vehicle;
- (b) identify each malfunction or defect;
- (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**? If so:

- (a) identify the vehicle;
- (b) identify each malfunction or defect;
- (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and

- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

25.0 [Reserved]

30.0 [Reserved]

40.0 [Reserved]

#### 50.0 Contract

☒ 50.1 For each agreement alleged in the pleadings:

- (a) identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
- (b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
- (c) identify all **DOCUMENTS** that evidence any part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
- (d) identify all **DOCUMENTS** that are part of any modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
- (e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
- (f) identify all **DOCUMENTS** that evidence any modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

☒ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☒ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

☒ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.

☒ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

☒ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 [Reserved]

**PROOF OF SERVICE**

Smith, et al., v. Nerium International, LLC, et al.  
OCSC Case No. 30-2018-30-2018-00975602-CU-BC-CJC

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Lindsay M. Rivara, declare: I am a citizen of the United States and employed in the City of Costa Mesa, County of Orange, State of California, by the law offices of Bohm Wildish, LLP. I am over the age of 18 years and not a party to the within action. My business address is 695 Town Center Drive, Suite 700, Costa Mesa, California 92626. On April 10, 2018, pursuant to California Rules of Court, Federal Rules of Civil Procedure, and local rules, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED:	<b>MARK SMITH'S FORM INTERROGATORIES TO NERIUM INTERNATIONAL, LLC, SET ONE</b>
SERVED UPON:	Mike Margolis mmargolis@blankrome.com Naki Margolis nmargolis@blankrome.com Ping Zhang pzhang@blankrome.com BLANK ROME LLP 2029 Century Park East, 6th Floor Los Angeles, California 90067 Tel: (424) 239-3400; Fax: (424) 239-3434

☒ [VIA U.S. MAIL] I enclosed the above-referenced documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ [VIA ELECTRONIC MAIL] I caused the above-referenced documents to be electronically transmitted from [lrivara@bohmwildish.com](mailto:lrivara@bohmwildish.com) to all persons at the email addresses listed above. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ [VIA OVERNIGHT MAIL] I enclosed the above-referenced documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with our firm's practices for the collection and processing of correspondence for overnight delivery. On the same day that correspondence is placed

1 for collection and mailing, it is deposited in a box or other facility regularly maintained  
2 by overnight mail service for overnight delivery.

3 ☐ [VIA PERSONAL SERVICE] I caused the above-referenced documents to be  
4 personally delivered to the addresses listed above.

5 I declare under penalty of perjury under the laws of the State of California that the above is  
6 true and correct. This proof of service was executed on April 10, 2018, at Costa Mesa, California.

7 

8 Lindsay M. Rivara

## EXHIBIT C

BOHM WILDISH & MATSEN, LLP  
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Attorneys for Plaintiffs,  
MARK SMITH & TAMMY SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MARK SMITH, an individual; TAMMY  
SMITH, an individual;

Plaintiffs,

v.

NERIUM INTERNATIONAL, LLC, a limited  
liability company; JO PRODUCTS, LLC, a  
limited liability company; JEFF OLSON, an  
individual; and DOES 1 through 10, inclusive,

Defendants.

Case No. 30-2018-00975602-CU-BC-CJC

Assigned for all purposes to:  
Hon. Nathan Scott  
Dept. C-12

**MARK SMITH'S REQUEST FOR  
PRODUCTION TO NERIUM  
INTERNATIONAL, LLC, SET ONE**

Complaint: February 23, 2018  
Trial: None set

PROPOUNDING PARTY: MARK SMITH

RESPONDING PARTY: NERIUM INTERNATIONAL, LLC

SET NUMBER: ONE (1)

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 Pursuant to Code of Civil Procedure section 2030.010 *et seq.*, Plaintiff Mark Smith  
3 (“Smith”) hereby requests that Defendant Nerium International, LLC (“Nerium”) respond to the  
4 following requests, fully and separately, and to produce originals and/or copies in its possession,  
5 custody, or control, 6969 exhibits and attachments annexed thereto, of each of the documents or  
6 items described below, within thirty (30) days of service. Any of the documents described herein  
7 that are stored electronically may be reproduced on paper, copies of which shall be served on Smith.

8 The following definitions apply to each of the requests set forth below and are deemed to be  
9 incorporated therein.

10 1. As used herein, the term “ALL” shall mean: Alternately, both “any and all” and  
11 “each and every.”

12 2. As used herein, the words “and” and “or” as used herein shall be construed both  
13 conjunctively and disjunctively and include the other whenever such construction will serve to bring  
14 within the scope of these Requests any information that would otherwise not be within their scope.

15 3. As used herein, the words “INCLUDE”, “INCLUDES” and “INCLUDING” should  
16 be construed to mean without limitation.

17 4. As used herein, the terms “YOU” and/or “YOUR” shall mean: Defendant Nerium  
18 International, LLC, and all its present and former officers, directors, members, agents, employees,  
19 insurance companies, attorneys, accountants, investigators, assigns, successors in interest, and  
20 anyone else acting on its behalf.

21 5. As used herein, the term “SMITH” shall mean: Plaintiff Mark Smith, and all his  
22 present and former agents, employees, insurance companies, attorneys, accountants, investigators,  
23 assigns, successors in interest, and anyone else acting on his behalf.

24 6. As used herein, the term “FORM INTERROGATORY” shall mean: The first set of  
25 form interrogatories SMITH served on YOU on concurrently with these Requests, titled “Mark  
26 Smith’s Form Interrogatories to Nerium International, LLC, Set One.”

1           7. As used herein, the term "SPECIAL INTERROGATORY" shall mean: The first set  
2 of special interrogatories SMITH served on YOU on concurrently with these Requests, titled "Mark  
3 Smith's Special Interrogatories to Nerium International, LLC, Set One."

4           8. As used herein, the term "PERSON" shall mean: The same as the definition found in  
5 Judicial Council of California Form DISC-001, Form Interrogatories—General, in Section 4(c): "a  
6 natural person, firm, association, organization, partnership, business, trust, limited liability  
7 company, corporation, or public entity"; and also includes ALL potential trial witnesses and ALL  
8 those that may have first-hand knowledge. "PERSONS" means and refers to ALL of those that  
9 conform with the definition of PERSON.

10          9. As used herein, the term "ELECTRONICALLY STORED INFORMATION" shall  
11 mean: The same as provided under Code of Civil Procedure section 2016.20(e), which is  
12 "information that is stored in an electronic medium," and includes, by way of illustration and  
13 without limitation, emails, voice messages, and text messages.

14          10. As used herein, the term "DOCUMENT" shall mean: Any writing and any other  
15 tangible thing as defined in Evidence Code section 250, known to YOU and/or in YOUR custody,  
16 possession, or control whether printed or recorded, stored or reproduced by any process and on any  
17 media, 6969 mechanical, electronic and magnetic, or written or produced by hand, and whether or  
18 not claimed to be privileged or exempt from production for any reason. Examples of  
19 DOCUMENTS include, but are not limited to, declarations, affidavits, statements, letters, reports,  
20 agreements, communications, [ELECTRONICALLY STORED INFORMATION], electronic mail  
21 ("e-mail"), electronic recordings, compact discs, magnetic media, tape recordings, video  
22 recordings, audio recordings, digital recordings or other type of memory utilized in computers  
23 (6969 any instructions necessary to read such material), correspondence, telegrams, memoranda,  
24 notes, notations, summaries, records of meetings or conversations, diaries, calendars, chronologies,  
25 journals, forecasts, photographs, models, graphs, minutes or records of conferences, lists of persons  
26 attending meetings or conferences, records, reports or summaries of negotiations, work orders,  
27 tests, pamphlets, advertisements, circulars, press releases, drafts of any DOCUMENTS, canceled  
28 checks, bank statements, invoices, receipts, computer print-outs, and spreadsheets).



1           11. As used herein, the term "COMMUNICATIONS" shall mean: Any transfer of  
2 information, ideas, opinions or thoughts by any means, written, electronically, orally or otherwise,  
3 at any time or place under any circumstances, and is not limited to transfers between persons or  
4 entities, but includes other transfers, such as electronic mail ("e-mail"), instant messages, records  
5 and memoranda, any written letters, memorandum or other documents sent by one or more  
6 individuals and/or entities to another or others; any DOCUMENTS memorializing or reflecting a  
7 telephone call between or more individuals; and any DOCUMENT memorializing a conversation or  
8 meeting between one or more individuals.

9           12. As used herein, the term "RELATING TO" shall mean: Consisting of, summarizing,  
10 discussing, describing, referring to in any way, constituting, evidencing, concerning, pertaining to,  
11 stating, embodying, supporting, memorializing or analyzing.

### 12                                   INSTRUCTIONS

- 13           1. The following instructions apply to each and every request below.
- 14           2. In producing DOCUMENTS or tangible things pursuant to these demands, please  
15 IDENTIFY the following:
- 16               a. the paragraphs, paragraph, or subparts of the demand to which each  
17               DOCUMENT or tangible thing corresponds; and
- 18               b. the location from which the DOCUMENT or tangible thing was produced, 6969  
19               address, file, drawer, or cabinet name and number.
- 20           3. If any requested DOCUMENT was, but is no longer in YOUR possession, custody,  
21 or control, or no longer exists, state whether the DOCUMENT is:
- 22               a. missing or lost;
- 23               b. destroyed;
- 24               c. transferred voluntarily or involuntarily to others PERSONS and, if so, to whom;
- 25               or
- 26               d. otherwise disposed of.
- 27           4. In each instance, explain the circumstances surrounding the disposition and state the  
28 approximate date of disposition.

1           5.       With respect to any DOCUMENT or tangible thing, or portion thereof, withheld  
2 under a claim of privilege, please furnish with your response to these Requests the statement  
3 required by Code of Civil Procedure section 2031.240(b), IDENTIFYING each DOCUMENT or  
4 tangible thing for which privilege is claimed, 6969 the following information:  
5               a.     the name, title, description, and type of each such DOCUMENT or tangible  
6                    thing;  
7               b.     the name, address, email address, and telephone number of the PERSONS that  
8                    sent and received each such DOCUMENT or tangible thing;  
9               c.     each such DOCUMENT or tangible thing's origination date;  
10              d.     the relationship between the senders and each recipient at the time the  
11                    DOCUMENT or tangible thing was received by the recipients;  
12              e.     the name, address, and telephone number of the PERSON having custody of each  
13                    such DOCUMENT;  
14              f.     the basis upon which privilege is claimed or other ground asserted for  
15                    withholding each such DOCUMENT or tangible thing;  
16              g.     the paragraphs, paragraph, or subparts of these Requests to which the  
17                    DOCUMENT or tangible thing corresponds; and  
18              h.     the general description of the subject matter of the information contained in the  
19                    DOCUMENT or tangible thing.

20           6.       YOU are required to produce that portion of a DOCUMENT to which no claim of  
21 privilege has been made.

22           7.       In the event that any requested DOCUMENT and tangible thing can be obtained  
23 from a computer or any other electronic media, such information should be printed out and  
24 provided, as well as provided on the media on which the information and programs that access it are  
25 stored are produced.

26           8.       Unless specifically requested, duplicative originals or copies that are absolutely and  
27 totally identical to a produced DOCUMENT or tangible thing need not also be produced. However,  
28 any duplicate that is in any way different (e.g., contains notes or has missing material) must also be

1 produced. Any DOCUMENT with any mark on any sheet or side thereof—6969, by way of  
2 illustration and without limitation, initials, stamped indicia, any comment, or any notation of any  
3 character—that is not part of the original text, or any reproduction thereof, is to be considered a  
4 separate DOCUMENT for purposes of these Requests.

5 9. These Requests shall be deemed continuing in nature, and YOU are under a duty to  
6 supplement YOUR production with all DOCUMENTS that are unavailable upon YOUR initial and  
7 all subsequent productions.

#### 8 **REQUEST FOR PRODUCTION**

##### 9 **REQUEST FOR PRODUCTION NO. 1:**

10 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, sent or received by Jeff Olson  
11 since September 1, 2011, RELATING to SMITH.

##### 12 **REQUEST FOR PRODUCTION NO. 2:**

13 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, sent or received by Deborah  
14 Heisz since September 1, 2011, RELATING to SMITH.

##### 15 **REQUEST FOR PRODUCTION NO. 3:**

16 ALL COMMUNICATIONS between SMITH and Jeff Olson from September 1, 2011, to  
17 the present date.

##### 18 **REQUEST FOR PRODUCTION NO. 4:**

19 ALL COMMUNICATIONS between SMITH and Deborah Heisz from September 1, 2011,  
20 to the present date.

##### 21 **REQUEST FOR PRODUCTION NO. 5:**

22 ALL COMMUNICATIONS between Jeff Olson and Deborah Heisz from September 1,  
23 2011, to the present date RELATING to SMITH.

##### 24 **REQUEST FOR PRODUCTION NO. 6:**

25 ALL COMMUNICATIONS between SMITH and Jeff Olson from September 1, 2011, to  
26 the present date RELATING TO equity ownership in Nerium International, LLC.

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1 **REQUEST FOR PRODUCTION NO. 7:**

2 ALL COMMUNICATIONS between SMITH and Deborah Heisz from September 1, 2011,  
3 to the present date RELATING TO equity ownership in Nerium International, LLC.

4 **REQUEST FOR PRODUCTION NO. 8:**

5 ALL COMMUNICATIONS between Jeff Olson and Deborah Heisz from September 1,  
6 2011, to the present date RELATING TO equity ownership in Nerium International, LLC.

7 **REQUEST FOR PRODUCTION NO. 9:**

8 ALL COMMUNICATIONS between Jeff Olson and Deborah Heisz from September 1,  
9 2011, to the present date RELATING TO SMITH having an equity ownership in Nerium  
10 International, LLC.

11 **REQUEST FOR PRODUCTION NO. 10:**

12 ALL DOCUMENTS RELATING TO SMITH having an equity ownership in Nerium  
13 International, LLC.

14 **REQUEST FOR PRODUCTION NO. 11:**

15 ALL COMMUNICATIONS sent or received by Renee Olson from September 1, 2011, to  
16 the present date RELATING TO equity ownership in Nerium International, LLC.

17 **REQUEST FOR PRODUCTION NO. 12:**

18 ALL COMMUNICATIONS sent or received by Amber Olson Rourke from September 1,  
19 2011, to the present date RELATING TO equity ownership in Nerium International, LLC.

20 **REQUEST FOR PRODUCTION NO. 13:**

21 YOUR membership ledger, INCLUDING ALL DOCUMENTS RELATING TO any  
22 transfer or change of YOUR membership.

23 **REQUEST FOR PRODUCTION NO. 14:**

24 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO expenses paid  
25 by YOU for the benefit of Jeff Olson.

26 **REQUEST FOR PRODUCTION NO. 15:**

27 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO expenses paid  
28 by YOU for the benefit of Renee Olson.

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1 **REQUEST FOR PRODUCTION NO. 16:**

2 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO expenses paid  
3 by YOU for the benefit of Amber Olson Rourke.

4 **REQUEST FOR PRODUCTION NO. 17:**

5 ALL DOCUMENTS RELATING TO Renee Olson's ownership interest in Nerium  
6 International, LLC.

7 **REQUEST FOR PRODUCTION NO. 18:**

8 ALL DOCUMENTS RELATING TO Amber Olson Rourke's ownership interest in Nerium  
9 International, LLC.

10 **REQUEST FOR PRODUCTION NO. 19:**

11 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO any sexual  
12 harassment claims made against Jeff Olson since 2010 by anyone associated with Nerium  
13 International, LLC, INCLUDING past or current employees, independent contractors, distributors,  
14 suppliers, or Brand Partners.

15 **REQUEST FOR PRODUCTION NO. 20:**

16 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO any  
17 discrimination claims made against Jeff Olson since 2010 by anyone associated with Nerium  
18 International, LLC, INCLUDING past or current employees, independent contractors, distributors,  
19 suppliers, or Brand Partners.

20 **REQUEST FOR PRODUCTION NO. 21:**

21 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO any retaliation  
22 claims made against Jeff Olson since 2010 by anyone associated with Nerium International, LLC,  
23 INCLUDING past or current employees, independent contractors, distributors, suppliers, or Brand  
24 Partners.

25 **REQUEST FOR PRODUCTION NO. 22:**

26 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO any legal  
27 claims made against Jeff Olson since 2010 by anyone associated with Nerium International, LLC,  
28 INCLUDING past or current employees, independent contractors, distributors, suppliers, or Brand  
Partners.

1 **REQUEST FOR PRODUCTION NO. 23:**

2 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, if any, which evidence  
3 SMITH's acceptance of YOUR Policies and Procedures, INCLUDING any copies of YOUR  
4 Policies and Procedures purportedly signed by SMITH.

5 **REQUEST FOR PRODUCTION NO. 24:**

6 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, sent or received by Deborah  
7 Heisz RELATING TO the conference call hosted by YOU on February 27, 2018, to address the  
8 filing of the instant action.

9 **REQUEST FOR PRODUCTION NO. 25:**

10 ALL DOCUMENTS, INCLUDING COMMUNICATIONS sent to or received by Deborah  
11 Heisz RELATING TO the "Important Update from Nerium International" notice sent by YOU on  
12 February 27, 2018.

13 **REQUEST FOR PRODUCTION NO. 26:**

14 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING to YOUR  
15 negotiations with SMITH regarding an equity interest in Nerium International, LLC.

16 **REQUEST FOR PRODUCTION NO. 27:**

17 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO the  
18 deactivation of SMITH's Nerium International, LLC, credit cards.

19 **REQUEST FOR PRODUCTION NO. 28:**

20 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO the  
21 deactivation of SMITH's administrative privileges on Nerium International, LLC's Facebook  
22 account.

23 **REQUEST FOR PRODUCTION NO. 29:**

24 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, since January 1, 2018,  
25 RELATING TO SMITH's compensation from Nerium International, LLC.

26 **REQUEST FOR PRODUCTION NO. 30:**

27 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, since January 1, 2018,  
28 RELATING TO SMITH's team and affiliated Brand Partners at Nerium International, LLC.

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1 **REQUEST FOR PRODUCTION NO. 31:**

2 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, since January 1, 2018,  
3 RELATING TO any changes to SMITH's exemption level, INCLUDING any exemptions at the  
4 Gold International Marketing Director level.

5 **REQUEST FOR PRODUCTION NO. 32:**

6 ALL DOCUMENTS RELATING TO distributions, INCLUDING dividends, made by YOU  
7 to Jeff Olson over \$1,000.

8 **REQUEST FOR PRODUCTION NO. 33:**

9 ALL DOCUMENTS RELATING TO distributions, INCLUDING dividends, made by YOU  
10 to Amber Olson Rourke over \$1,000.

11 **REQUEST FOR PRODUCTION NO. 34:**

12 ALL DOCUMENTS RELATING TO distributions, INCLUDING dividends, made to Renee  
13 Olson over \$1,000.

14 **REQUEST FOR PRODUCTION NO. 35:**

15 ALL DOCUMENTS RELATING TO loans to YOU made by Jeff Olson or entities  
16 controlled by Jeff Olson (e.g., JO Products, LLC).

17 **REQUEST FOR PRODUCTION NO. 36:**

18 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO complaints  
19 made to YOU RELATING TO SMITH.

20 **REQUEST FOR PRODUCTION NO. 37:**

21 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO complaints  
22 made in 2018 by YOUR employees regarding actual or potential violations of YOUR Policies and  
23 Procedures.

24 **REQUEST FOR PRODUCTION NO. 38:**

25 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO complaints  
26 made in 2018 by independent contractors or Brand Partners affiliated with YOU regarding actual or  
27 potential violations of YOUR Policies and Procedures.

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1 **REQUEST FOR PRODUCTION NO. 39:**

2 The entire personnel file of SMITH, INCLUDING application records, employment history,  
3 disciplinary records, promotion records, complaint records, education or training history, drug tests,  
4 criminal background checks and any other DOCUMENTS kept in the regular course of business by  
5 YOU.

6 **REQUEST FOR PRODUCTION NO. 40:**

7 ALL agreements between YOU and SMITH.

8 **REQUEST FOR PRODUCTION NO. 41:**

9 ALL time sheets, schedules, or duty rosters for SMITH between September 1, 2011, and the  
10 present date.

11 **REQUEST FOR PRODUCTION NO. 42:**

12 ALL manuals, handbooks, operating guidelines, policies, procedures, pamphlets, memos, or  
13 other DOCUMENTS RELATING TO YOUR employees in effect at any time between September  
14 1, 2011, to present date, INCLUDING ALL prior versions or prior draft DOCUMENTS.

15 **REQUEST FOR PRODUCTION NO. 43:**

16 ALL manuals, handbooks, operating guidelines, policies, procedures, pamphlets, memos, or  
17 other DOCUMENTS RELATING TO independent contractors or Brand Partners affiliated with  
18 YOU in effect at any time between September 1, 2011, to present date, INCLUDING ALL prior  
19 versions or prior draft DOCUMENTS.

20 **REQUEST FOR PRODUCTION NO. 44:**

21 ALL DOCUMENTS sufficient to demonstrate YOUR revenues, expenses, net worth, and  
22 profits from September 1, 2011, to present date, INCLUDING, but not limited to, financial  
23 statements, profit and loss statements, accounting statements, and tax returns.

24 **REQUEST FOR PRODUCTION NO. 45:**

25 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
26 response to SPECIAL INTERROGATORY No. 4.

27 **REQUEST FOR PRODUCTION NO. 46:**

28 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
response to SPECIAL INTERROGATORY No. 5.



1 **REQUEST FOR PRODUCTION NO. 47:**

2 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
3 response to SPECIAL INTERROGATORY No. 6.

4 **REQUEST FOR PRODUCTION NO. 48:**

5 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
6 response to SPECIAL INTERROGATORY No. 8.

7 **REQUEST FOR PRODUCTION NO. 49:**

8 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
9 response to SPECIAL INTERROGATORY No. 10.

10 **REQUEST FOR PRODUCTION NO. 50:**

11 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
12 response to SPECIAL INTERROGATORY No. 11.

13 **REQUEST FOR PRODUCTION NO. 51:**

14 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
15 response to SPECIAL INTERROGATORY No. 13.

16 **REQUEST FOR PRODUCTION NO. 52:**

17 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
18 response to SPECIAL INTERROGATORY No. 15.

19 **REQUEST FOR PRODUCTION NO. 53:**

20 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
21 response to SPECIAL INTERROGATORY No. 16.

22 **REQUEST FOR PRODUCTION NO. 54:**

23 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
24 response to SPECIAL INTERROGATORY No. 17.

25 **REQUEST FOR PRODUCTION NO. 55:**

26 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
27 response to SPECIAL INTERROGATORY No. 21.

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1 **REQUEST FOR PRODUCTION NO. 56:**

2 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
3 response to SPECIAL INTERROGATORY No. 25.

4 **REQUEST FOR PRODUCTION NO. 57:**

5 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
6 response to SPECIAL INTERROGATORY No. 35.

7 **REQUEST FOR PRODUCTION NO. 58:**

8 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
9 response to FORM INTERROGATORY No. 4.1.

10 **REQUEST FOR PRODUCTION NO. 59:**

11 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
12 response to FORM INTERROGATORY No. 12.3.

13 **REQUEST FOR PRODUCTION NO. 60:**

14 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
15 response to FORM INTERROGATORY No. 12.4.

16 **REQUEST FOR PRODUCTION NO. 61:**

17 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
18 response to FORM INTERROGATORY No. 12.5.

19 **REQUEST FOR PRODUCTION NO. 62:**

20 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
21 response to FORM INTERROGATORY No. 12.6.

22 **REQUEST FOR PRODUCTION NO. 63:**

23 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
24 response to FORM INTERROGATORY No. 13.2.

25 **REQUEST FOR PRODUCTION NO. 64:**

26 ALL DOCUMENTS, INCLUDING COMMUNICATIONS, RELATING TO YOUR  
27 response to FORM INTERROGATORY No. 50.1.

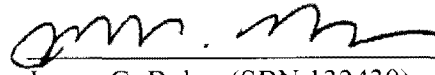
28 ///

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1 Dated: April 10, 2018

BOHM WILDISH & MATSEN, LLP

2  
3 By:



4 James G. Bohm (SBN 132430)

5 Klaus Heinze (SBN 279634)

6 Christopher J. Green (SBN 295874)

7 Attorneys for Plaintiff,

8 MARK SMITH & TAMMY SMITH

**PROOF OF SERVICE**

Smith, et al., v. Nerium International, LLC, et al.  
OCSC Case No. 30-2018-30-2018-00975602-CU-BC-CJC

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Lindsay M. Rivara, declare: I am a citizen of the United States and employed in the City of Costa Mesa, County of Orange, State of California, by the law offices of Bohm Wildish, LLP. I am over the age of 18 years and not a party to the within action. My business address is 695 Town Center Drive, Suite 700, Costa Mesa, California 92626. On April 10, 2018, pursuant to California Rules of Court, Federal Rules of Civil Procedure, and local rules, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED:	<b>MARK SMITH'S REQUEST FOR PRODUCTION TO NERIUM INTERNATIONAL, LLC, SET ONE</b>
SERVED UPON:	Mike Margolis mmargolis@blankrome.com Naki Margolis nmargolis@blankrome.com Ping Zhang pzhang@blankrome.com BLANK ROME LLP 2029 Century Park East, 6th Floor Los Angeles, California 90067 Tel: (424) 239-3400; Fax: (424) 239-3434

☒ [VIA U.S. MAIL] I enclosed the above-referenced documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ [VIA ELECTRONIC MAIL] I caused the above-referenced documents to be electronically transmitted from [lrivara@bohmwildish.com](mailto:lrivara@bohmwildish.com) to all persons at the email addresses listed above. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ [VIA OVERNIGHT MAIL] I enclosed the above-referenced documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with our firm's practices for the collection and processing of correspondence for overnight delivery. On the same day that correspondence is placed

1 for collection and mailing, it is deposited in a box or other facility regularly maintained  
2 by overnight mail service for overnight delivery.

3 ☐ **[VIA PERSONAL SERVICE]** I caused the above-referenced documents to be  
4 personally delivered to the addresses listed above.

5 I declare under penalty of perjury under the laws of the State of California that the above is  
6 true and correct. This proof of service was executed on April 10, 2018, at Costa Mesa, California.

7 

8 

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Lindsay M. Rivara

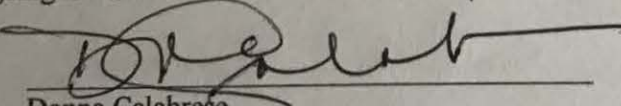
## EXHIBIT 8

### DECLARATION OF DONNA CALABRESE

1. My name is Donna Calabrese. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.
2. I am a Brand Partner for Nerium International, LLC ("Nerium").
3. When I first joined Nerium in March 2016, I decided to reach out to Brand Partners in my area. I sent a message to a Facebook account that appeared to be a Nerium group for my area, explaining that I was a new Brand Partner and wanted to know if there were any upcoming Nerium events where I could get involved.
4. Approximately two years later, on or around March 18, 2018, I received a response to my message from the Nerium group account. The person responding told me that he had left Nerium some time ago and was pursuing a new opportunity with a different direct sales company, which Mark and Tammy Smith and Darin Kidd had joined. On April 19, 2018, when I attempted to retrieve these messages from my Facebook, they were not there, so I believe the person sending them to me has deleted them.
5. On March 19, 2018, I received a Facebook Message from Chic Craddock, which resumed the conversation that I was having with the person using the Nerium group account. True and correct copies of the Facebook messages I exchanged with Craddock on March 19 through 20 and March 26, 2018 are attached to this declaration as Exhibit A.
6. Craddock and I also exchanged text messages on March 19 and 20, 2018. True and correct copies of these text messages are attached to this declaration as Exhibit B.
7. I became familiar with Darin Kidd by watching his online training videos. I met Kidd in person at a Nerium regional event in Pittsburgh, Pennsylvania in November or December 2017. Kidd and I briefly discussed German Shepherd dogs, which I breed. After this event, we have not communicated.

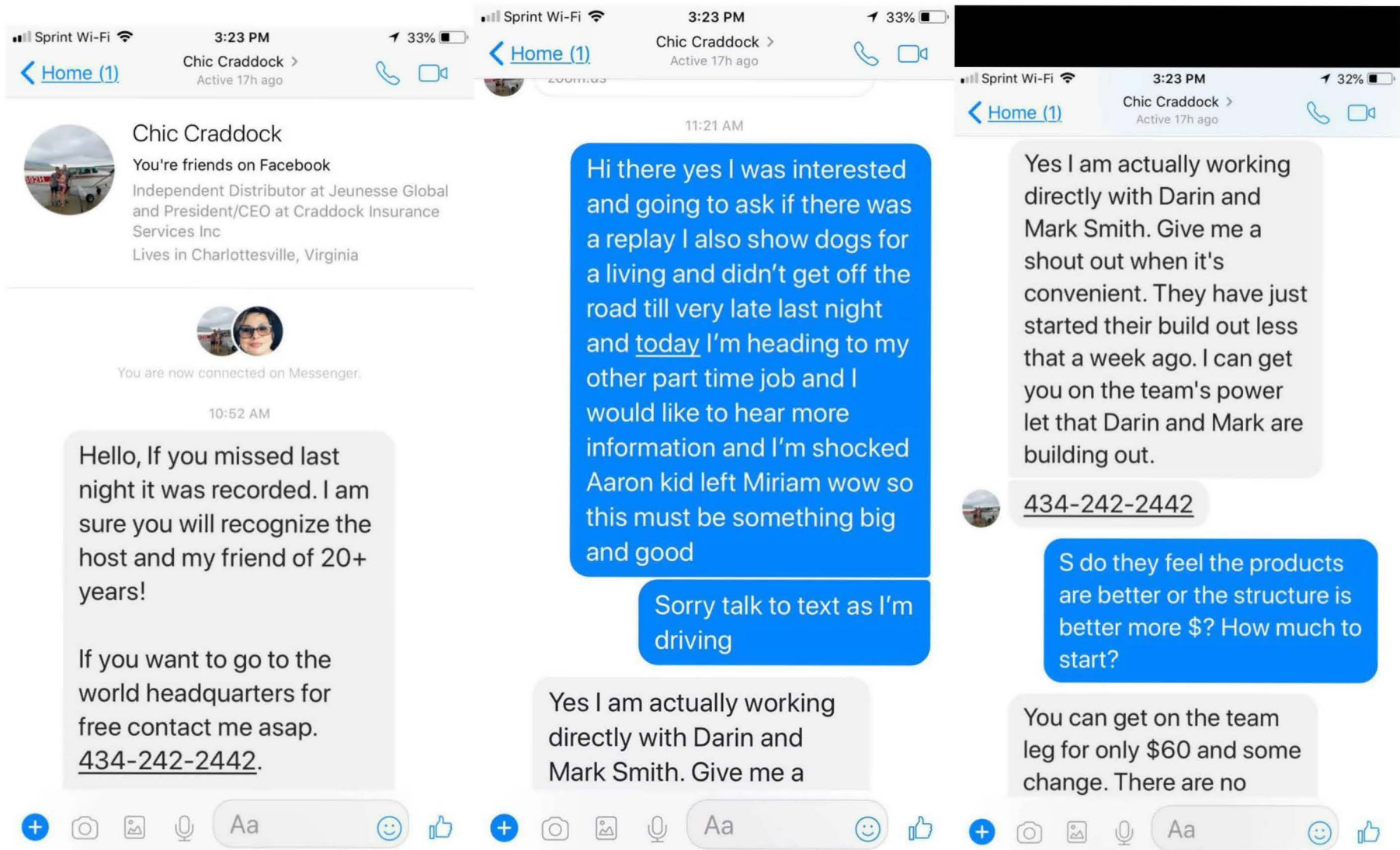
### JURAT UNDER PENALTY OF PERJURY

My name is Donna Calabrese, my date of birth is 9/18/63, and my address is 958 Liberty Furnace Rd. Edinburg, VA. I declare under penalty of perjury that the foregoing is true and correct.

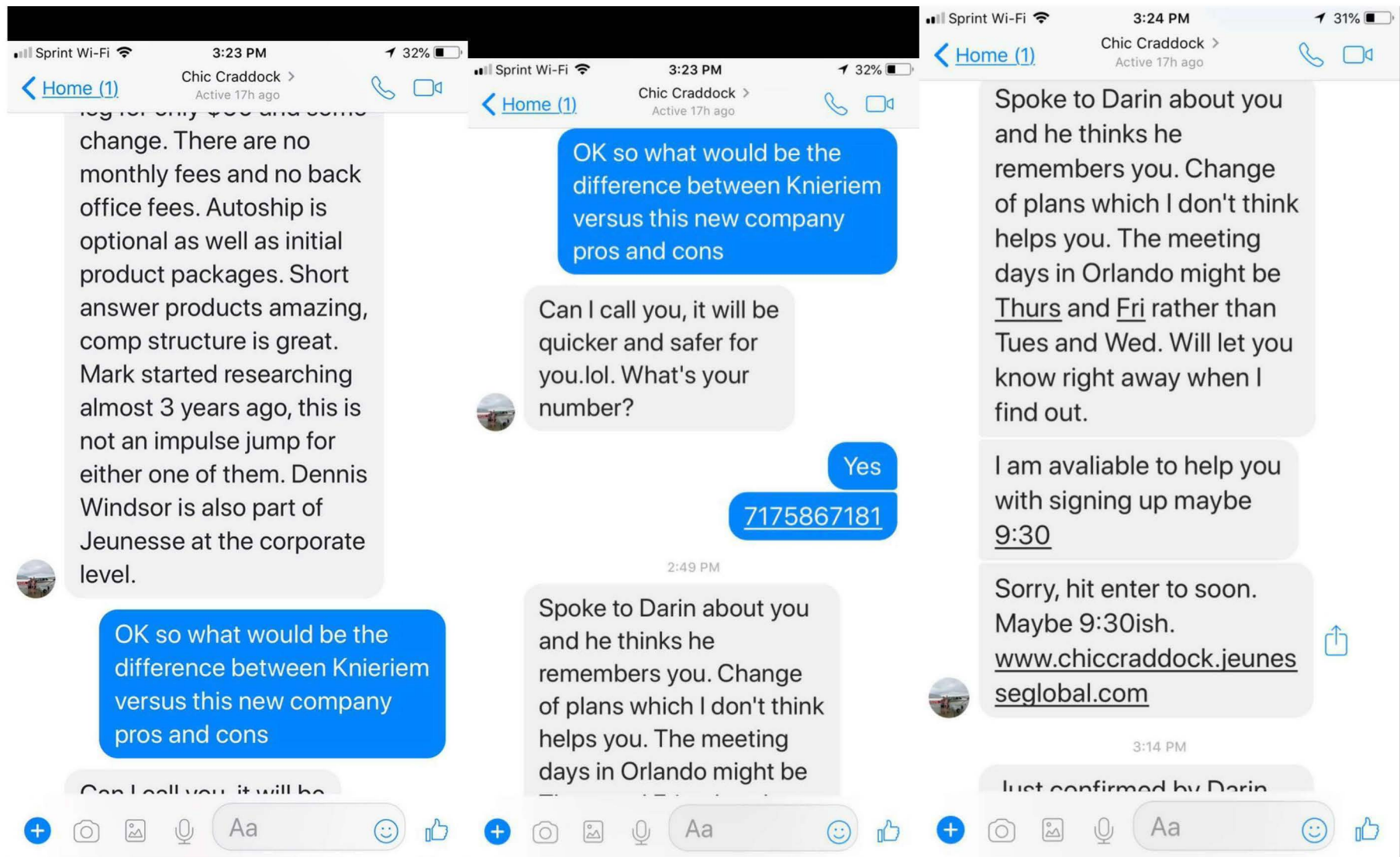
  
Donna Calabrese

Executed in Shenandoah Valley County, State of VA, on 4/19, 2018.

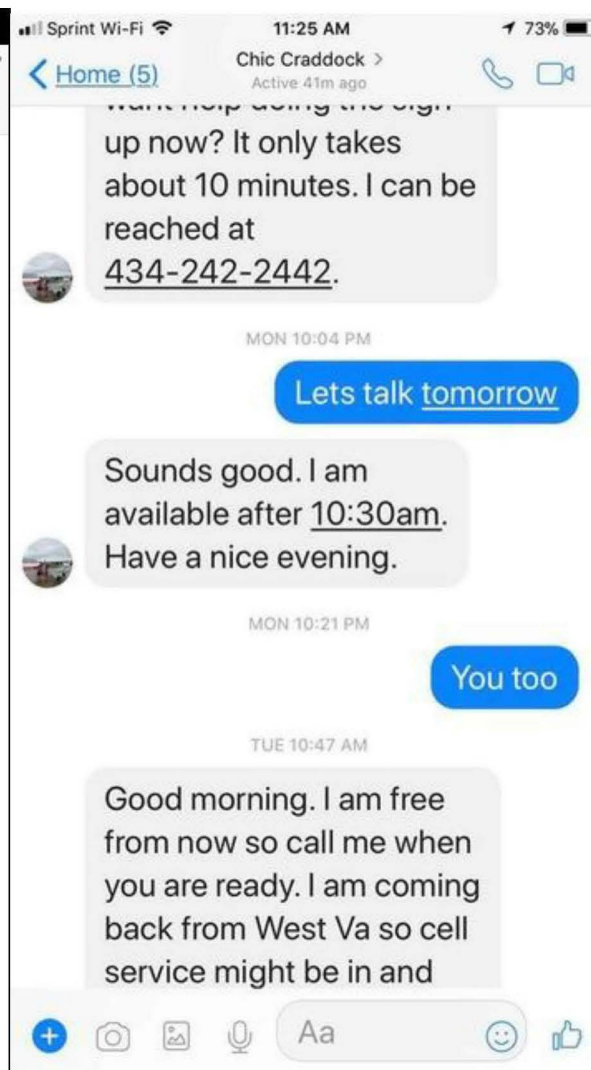
# EXHIBIT A

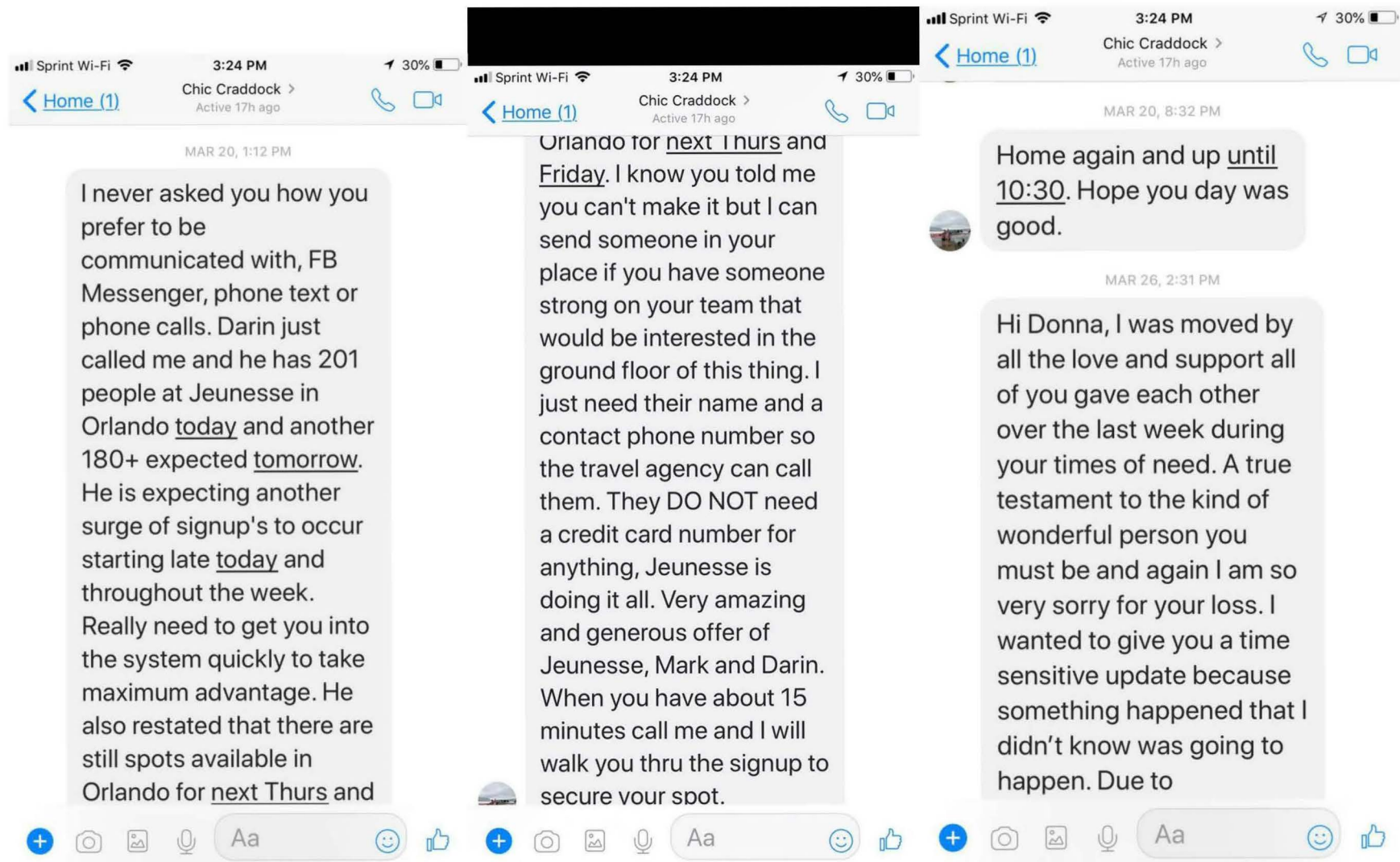






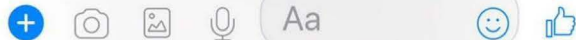








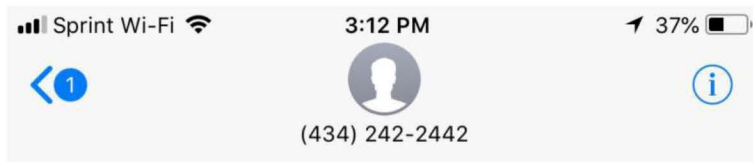
happen. Due to overwhelming success the trips to Orlando have been extended. There are openings for this coming Friday and I do believe the following week as well. If you want to participate in a trip to hear the information straight from the horse's mouth so to speak just let me know and I can have the travel agency contact you. Also, the offer still stands if you just want to lock in a place on our team leg. Since we last talked my team has grown by over 20 people. I also just realized that we are only



you want to participate in a trip to hear the information straight from the horse's mouth so to speak just let me know and I can have the travel agency contact you. Also, the offer still stands if you just want to lock in a place on our team leg. Since we last talked my team has grown by over 20 people. I also just realized that we are only about 70 miles from each other which is wonderful! I wish you well and hope to hear from you soon.  
434-242-2442 or  
chic@thecraddocks.net.



## EXHIBIT B



Text Message  
Mon, Mar 19, 12:00 PM

Sign up link:  
[www.chiccraddock.jeunesseglobal.com](http://www.chiccraddock.jeunesseglobal.com)

Tue, Mar 20, 8:29 PM

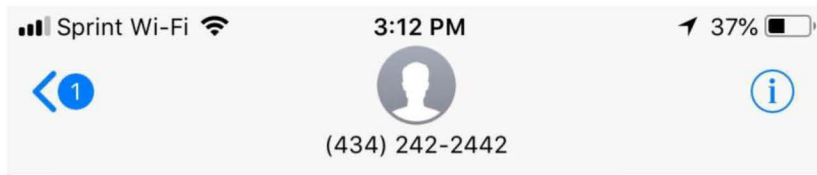
I am home now. Up until  
10:30. Thanks, Chic

We have had a tragedy in  
our family I can't do  
anything right now count  
me or

Out

Oh no I am so very sorry. I  
hope it all turns out alright  
and things get better soon.





Sign up link:  
[www.chiccraddock.jeunesseglobal.com](http://www.chiccraddock.jeunesseglobal.com)

Tue, Mar 20, 8:29 PM

I am home now. Up until  
10:30. Thanks, Chic

We have had a tragedy in  
our family I can't do  
anything right now count  
me or

Out

Oh no I am so very sorry. I  
hope it all turns out alright  
and things get better soon.  
I'll be around when you  
need me. take care and Gob  
bless.





# EXHIBIT 9

Cause No. DC-18-03726

NERIUM INTERNATIONAL, LLC,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
MARK SMITH, MARK & TAMMY	§	
SMITH, LLC, DAVID BYRD, JENNI	§	DALLAS COUNTY, TEXAS
BYRD GRIER, CLAUDIA RANSOM,	§	
JASON RANSOM, DARIN KIDD,	§	
DANNY GASEMY, LORI GASEMY,	§	
DALE MUNGER, VANESSA	§	
MUNGER, CASSIE DANIEL, and TEE	§	
DANIEL	§	
	§	
Defendants.	§	134th JUDICIAL DISTRICT

## DECLARATION OF AMBER OLSON ROURKE

1. My name is Amber Olson Rourke. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.

2. I am the Chief Marketing Officer of Nerium International, LLC. I have been a member of Nerium International's leadership team since the company launched in 2011, and before that I helped found the company and develop its product line. Through my experience and job position at Nerium International, I have personal knowledge of the facts stated here, which are true and correct.

3. Recruiting and retaining salespeople is key to any direct-sales company's success because companies in this industry rely heavily on salespeople. Brand Partners establish critical relationships with customers and other Brand Partners that are the fundamental basis of Nerium's business. Nerium's ability to maintain a motivated sales force of Brand Partners is essential to Nerium's ability to generate income and receive a return on its investment. Once damage to the relationship between Nerium and its Brand Partners has been inflicted, that damage can be difficult

or impossible to repair. Because of Nerium's direct-sales structure, interference with Nerium's relationship with even a single Brand Partner can have uniquely damaging ripple effects and result in far-reaching injury that is difficult to discover and assess.

4. If Defendants Mark Smith, Mark & Tammy Smith, LLC, David Byrd, Jenni Byrd Grier, Claudia Ransom, Jason Ransom, Darin Kidd, Danny Gasemy, Lori Gasemy, Dale Munger, Vanessa Munger, Cassie Daniel, and Tee Daniel (together, "Defendants") are not immediately restrained from continuing to violate, and from assisting and encouraging other Nerium Brand Partners and employees in violating, contractual obligations to Nerium by recruiting Nerium's Brand Partners and employees to become sales representatives and employees for a competing direct-sales company, Nerium will suffer immediate and irreparable injury as a result of Defendants' continued wrongdoing because Nerium's goodwill and confidential and proprietary information will be compromised. It is even more harmful because this information will be used to Nerium's detriment and to directly benefit a competitor.

5. Without the Court's intervention, Nerium will suffer imminent, irreparable harm for which there is no adequate remedy at law. Maintaining a motivated and dedicated salesforce is the lifeblood of Nerium's business. If Defendants succeed in raiding part of Nerium's network of Brand Partners and employees, Nerium may be unable to recover those critical relationships. And given the structure of Nerium's business, the harm Defendants are causing has a ripple effect and infects not only individual Brand Partners, but also their respective networks of associated Brand Partners and customers.

6. The full extent of Nerium's damages, which will continue to occur if Defendants' conduct is not restrained, including lost profits, loss of reputation, and loss of goodwill, is difficult, if not impossible, to assess fully.

**JURAT UNDER PENALTY OF PERJURY**

My name is Amber Olson Rourke, my date of birth is 03/12/85, and my address is 17723 Cedar Creek Canyon Dr, Dallas, TX, USA. I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Amber Olson Rourke

Executed in Collin County, State of Texas, on April 19, 2018.



## EXHIBIT 10

### **REQUESTS FOR PRODUCTION TO THE TCPA DEFENDANTS**

1. From January 1, 2018 to present, all documents exchanged and all documents reflecting communications between You and any person believed by You to be a Nerium Brand Partner, referencing, mentioning, or discussing Jeunesse or Isagenix, any dissatisfaction with or complaints about Nerium, or the possibility that You or they may leave Nerium, or the possibility that You or they might join another multi-level marketing company.
2. From January 1, 2018 to present, all documents concerning the actual or potential enrollment with Jeunesse or Isagenix of any person or entity known or believed by You to be a Nerium Brand Partner, including any document relating in any way to solicitation, encouragement, aiding or inducing any such person or entity do to so (including documents reflecting or relating to bridge payments or agreements), all documents reflecting or relating to the enrollment of any such person or entity with Jeunesse or Isagenix, and all documents reflecting any financial projections or other estimates of revenue associated with any such person or entity.
3. All documents and communications exchanged between You and any other Defendant in this case from January 1, 2018 to present.
4. All applications (or any similar enrollment paperwork) provided to You and/or submitted by You to Jeunesse or Isagenix, whether for yourself or any other person or entity.
5. All documents reflecting the substance of and participants/recipients in or of any meeting, conference, event, call, webinar, blast email, or similar event/communication referencing or relating to Jeunesse or Isagenix, whether or not identified by name, or discussing or explaining Your departure from Nerium.
6. The content of any email, press release, online posting (including blogs, social media, or other platforms for dissemination of information) about Jeunesse or Isagenix, whether or not identified by name, or referring to Your departure from Nerium.
7. All documents discussing or reflecting invitations or arrangements for any Nerium Brand Partners to visit Jeunesse or Isagenix or meet with any representative of Jeunesse or Isagenix.
8. All travel records relating in any way to Jeunesse or Isagenix, for you or any other person.
9. Your phone records (including voice calls, voice messages, and text messages) from January 1, 2018 to present in excel format from the carrier's website—for example, a Verizon customer would select the "download as a spreadsheet" function or an AT&T customer would select "talk" and "text" under "view usage," and download in XLS format.

10. A copy of your Facebook account(s), using the “download my data” function. This request includes any accounts you control or have administrative control over, whether in your personal name or some other name.
11. From January 1, 2018 to present, all documents exchanged and all documents reflecting communications with Thorsten Mueller or Meagan Leckband.

### **INTERROGATORIES TO THE TCPA DEFENDANTS**

1. Identify each Nerium Brand Partner you are aware of having signed up with Isagenix or Jeunesse since January 1, 2018.
2. For each Nerium Brand Partner with whom you have communicated since January 1, 2018 about Jeunesse or Isagenix, or about that person or entity’s potential or actual departure from Nerium, identify: (i) the name of the person or entity you communicated with; (ii) the date(s) of those communications; (iii) the method of those communications (iv) the substance of those communications; and (v) whether the person or entity enrolled at Jeunesse or Isagenix.
3. From January 1, 2018 to present, identify each person or entity known or believed by You to be a current or former Nerium Brand Partner or employee with whom you have discussed or mentioned Jeunesse or Isagenix.
4. Identify all persons who are or have been in your downline at Jeunesse at any point from January 1, 2018 to present.
5. For each person identified in response to the interrogatories 1-4, state that person or entity’s name, phone number(s), address, email address, social media account names, and, if applicable, Nerium Brand Partner ID.
6. From January 1, 2018 to present, identify each method of communications you have used, including: (i) the hardware used (identify the make and model of phone, tablet, desktop computer, etc.); and (ii) each mode of communication (text message, email, phone call, messaging application, social media, webinar/web conference, audio or video conferences, including the name of the service provider or application, telephone number, email address, social media account name, etc.).

## EXHIBIT 11

### **DECLARATION OF MELISSA PULLING**

1. My name is Melissa Pulling. I am over the age of twenty-one (21) years old, suffer no legal or mental disabilities, and am fully competent to make this Declaration.

2. I have been a Brand Partner for Nerium International, LLC (“Nerium”) since December 2015.

3. I met Cassie and Tee Daniel through Nerium. I developed a closer relationship with Tee because we both own businesses outside of Nerium. At Nerium events, we talked shop, discussing both our current businesses and potential new business ventures that we were considering.

4. When Cassie and Tee enrolled at Jeunesse, I made clear to them that I was not interested in leaving Nerium. On March 22, 2018, Tee sent me a text message asking if he was on the “banned call list,” because he wanted me to keep him updated on another business opportunity that we had discussed. I understood Tee’s reference to the banned call list to mean that he thought I would not want to talk to him because he had left for Jeunesse. I responded that I did not “ban” people and that I hoped that all was well with him. On March 29, 2018, Tee followed up with another text message, telling me that had a “biz question” for me. I suspected Tee wanted to talk about Jeunesse, but I decided to talk with him to make sure he did not want to discuss the other business opportunity that he had mentioned in the earlier text message. We agreed to talk that evening. True and correct copies of my text messages with Tee Daniel are attached as Exhibit A.

5. Tee and I spoke by phone on March 29, 2018. Tee did not want to discuss the other business opportunity; instead, he tried to recruit me to enroll with Jeunesse. Tee told me that he wanted to put a litmus test out to me because I was an open minded person. He said that if I shut him down, it would be because there were problems with his pitch for Jeunesse. He

proceeded to express concerns about Nerium and praise Jeunesse. He told me that Jeunesse was flying people in to Orlando to visit its headquarters and promised that the visit would not be a high-pressure sales pitch. I told Tee that I wasn't in a place where I could take notes, and I asked him to send me an email with bullet points on Jeunesse and information about the opportunity to go to Orlando. Instead of sending me the information, Tee asked me to send him an email stating that I had contacted him and that I was the one who requested the information about Jeunesse from him (even though I had not requested the sales pitch he had just given me). After the phone call ended, Tee sent me a text message with his email address. A true and correct copy of this text message is included in Exhibit A.

6. A few days later I informed Tee that I was not interested in an opportunity with Jeunesse.

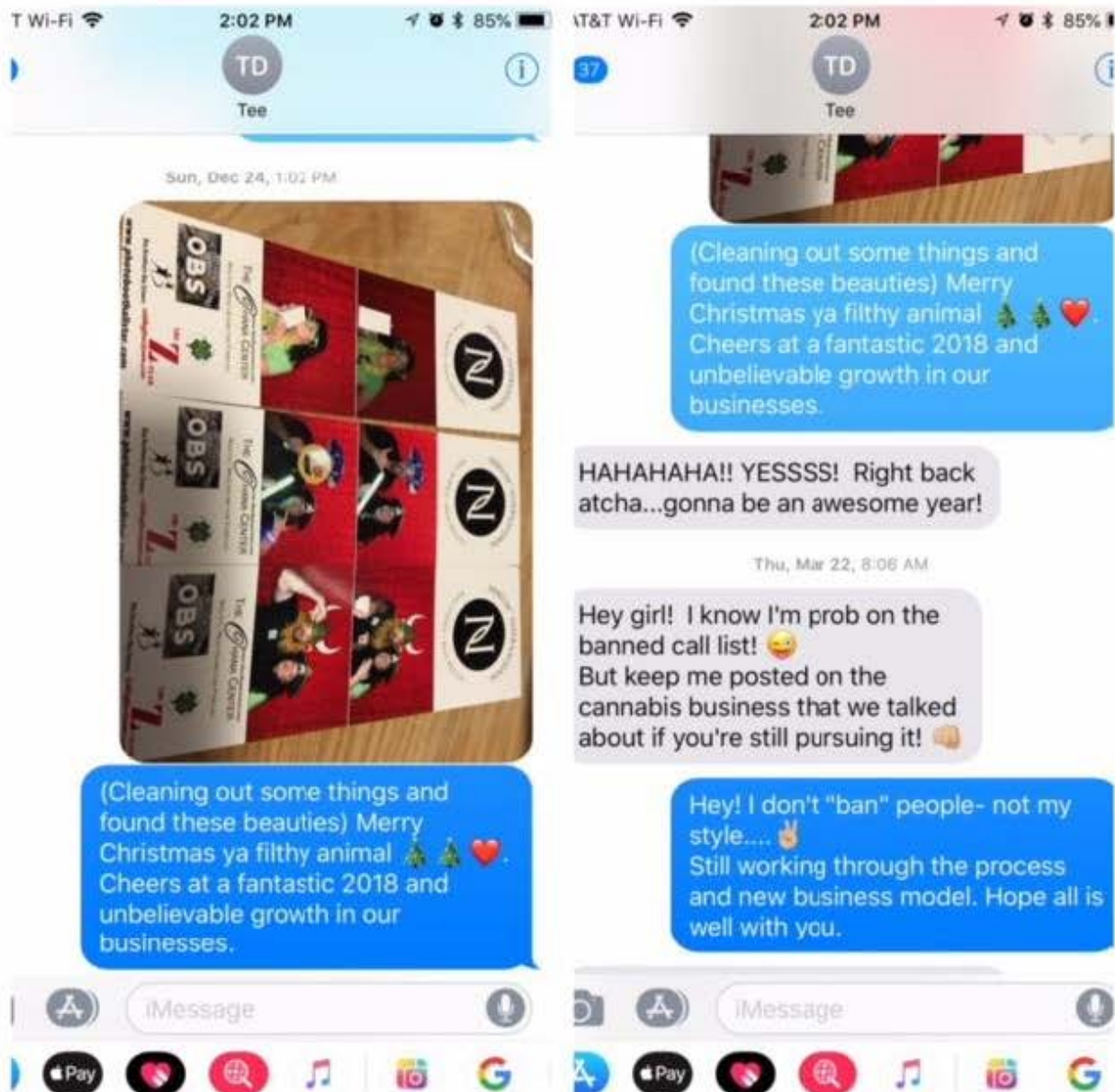
**JURAT UNDER PENALTY OF PERJURY**

My name is Melissa Pulling, my date of birth is September 14, 1972, and my address is 4632 Guam St., Unit B, Virginia Beach, VA 23455, USA. I declare under penalty of perjury that the foregoing is true and correct.

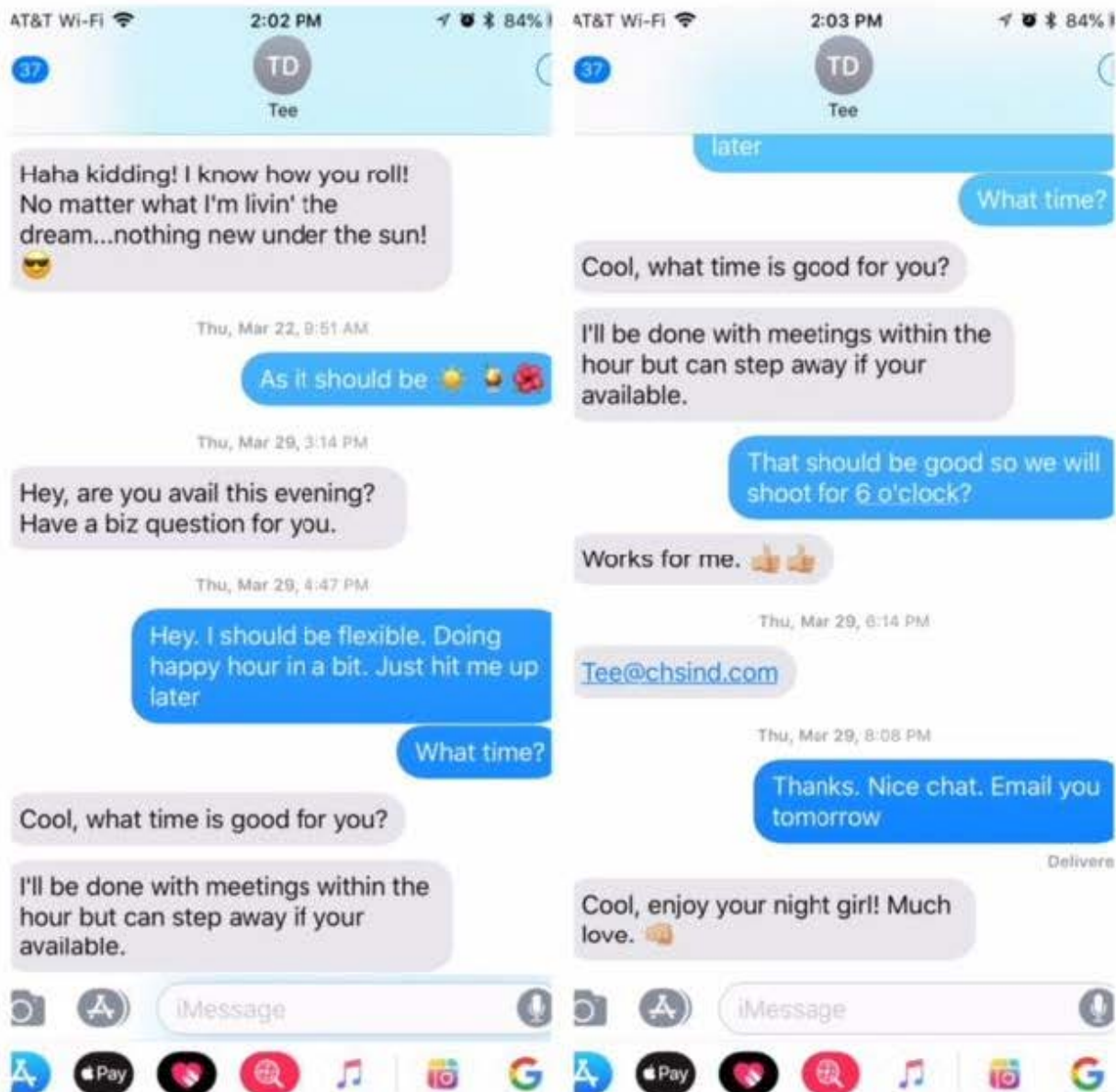
  
\_\_\_\_\_  
Melissa Pulling

Executed in Virginia Beach, an independent city, Commonwealth of Virginia, on April 23, 2018.

# EXHIBIT A



## EXHIBIT A



# EXHIBIT 12

AAA CAUSE NO. 01-18-0002-8613

**NERIUM INTERNATIONAL, LLC; JO  
PRODUCTS, LLC; JEFF OLSON;  
DEBORAH K. HEISZ; and BO SHORT**

**Claimants,**

**v.**

**MARK SMITH, TAMMY SMITH,  
MARK & TAMMY SMITH, LLC,  
CLAUDIA RANSOM, JASON  
RANSOM, DARIN KIDD, DANNY  
GASEMY, LORI GASEMY, DALE  
MUNGER, VANESSA MUNGER,  
CASSIE DANIEL, and TEE DANIEL**

**Respondents.**

**DEMAND FOR ARBITRATION AND STATEMENT OF CLAIMS BY CLAIMANTS  
NERIUM INTERNATIONAL, LLC; JO PRODUCTS, LLC; JEFF OLSON; DEBORAH  
K. HEISZ; AND BO SHORT**

Pursuant to the AAA Commercial Rules and the arbitration agreement between the parties, Claimant Nerium International, LLC (“Nerium”) files this Demand for Arbitration and Statement of Claims against Respondents Mark Smith, Tammy Smith, Mark & Tammy Smith, LLC (“MTS, LLC”), Claudia Ransom, Jason Ransom, Darin Kidd, Lori Gasemy, Danny Gasemy, Dale Munger, Vanessa Munger, Cassie Daniel, and Tee Daniel (together, “Respondents”); and Nerium, JO Products, LLC (“JOP”) Jeff Olson (“Olson”), Deborah K. Heisz (“Heisz”), and Bo Short (“Short”) (together, “Claimants”) file this Demand for Arbitration and Statement of Claims against Respondents Mark Smith, Tammy Smith, MTS, LLC; and respectfully show as follows:

## **I. THE PARTIES**

1. Claimant Nerium International, LLC is an entity headquartered in Dallas, Texas.

2. Claimant JO Products, LLC is an entity headquartered in Dallas, Texas, and is a Member of Nerium.

3. Claimant Jeff Olson is the Co-Chief Executive Officer of Nerium.

4. Claimant Deborah Heisz is the Co-Chief Executive Officer of Nerium.

5. Claimant Bo Short is the President of Nerium

5. Respondent Mark Smith is an individual residing in Mission Viejo, California. He can be served through his counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

6. Respondent Tammy Smith is an individual residing in Mission Viejo, California. She can be served through her counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

7. Respondent Mark & Tammy Smith, LLC is an entity registered in Wyoming and based in California. It can be served through its counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214)-999-6112, Rick.Illmer@huschblackwell.com.

8. Respondent Claudia Ransom is an individual residing in Dana Point, California. She can be served through her counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214)-999-6112, Rick.Illmer@huschblackwell.com.

9. Respondent Jason Ransom is an individual residing in Dana Point, California. He can be served through his counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.



10. Respondent Darin Kidd is an individual residing in Appomattox, Virginia. He can be served through his counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

11. Respondent Lori Gasemy is an individual residing in Mission Viejo, California. She can be served through her counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

12. Respondent Danny Gasemy is an individual residing in Mission Viejo, California. He can be served through his counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

13. Respondent Dale Munger is an individual residing in Trabuco Canyon, California. He can be served through his counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

14. Respondent Vanessa Munger is an individual residing in Trabuco Canyon, California. She can be served through her counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

15. Respondent Cassie Daniel is an individual residing in Mechanicsville, Virginia. She can be served through her counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

16. Respondent Tee Daniel is an individual residing in Mechanicsville, Virginia. He can be served through his counsel, Rick Illmer, Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas, TX 75201, (214) 999-6112, Rick.Illmer@huschblackwell.com.

## **II. VENUE**

17. The governing arbitration agreement requires that this arbitration be conducted in Dallas County, Texas, under the AAA Commercial Rules.

## **III. RELIEF REQUESTED**

18. At this time, Nerium seeks monetary damages from \$300,000 to \$500,000, but reserves the right following discovery to seek additional relief.

19. Nerium, JOP, Olson, Heisz, and Short seek declaratory and non-economic relief as further specified below.

## **IV. FACTUAL BACKGROUND**

20. Nerium sells anti-aging products through a salesforce of independent contractors called “Brand Partners.” Brand Partners sell Nerium’s products and recruit others to join Nerium’s salesforce. Becoming a Nerium Brand Partner requires agreeing to Nerium’s Policies and Procedures, which include an arbitration agreement, attached as **Exhibit 1**. The arbitration agreement encompasses all “disputes, claims or causes of action” between Respondents and the “Company or any of its officers, directors, employees or affiliates.” The Policies and Procedures also include a non-solicitation agreement prohibiting Brand Partners from directly or indirectly recruiting or soliciting any of the company’s other Brand Partners to join any other direct-sales company while at Nerium or for two years after.

21. This arbitration arises out of the efforts of the Respondents, all high-ranking salespeople, to raid Nerium’s salesforce for a competitor. Leading the charge were Mark and Tammy Smith, Nerium’s highest-ranking Brand Partners. Nerium went to great lengths to ensure the success of the Smiths. The Smiths were placed in a highly visible position, given direct

access to Nerium's salesforce, and earned more than \$14 million during their tenure with Nerium. But this was not enough for the Smiths.

22. Greed and ego have led Mark Smith and the other Respondents (all of whom are close friends) to plot a raid of Nerium's salesforce, in direct violation of their non-solicitation agreements. In fact, the plot started with a plan to join a company called Isagenix, and then turned to an Orlando-based company called Jeunesse.

23. To give one example, the Smiths invited a high-ranking Korean Brand Partner and her entire Nerium team to stay at the Smiths' vacation home in Hawaii. Then they flew group-after-group of Nerium Brand Partners (including the Korean team) to Jeunesse's headquarters in Orlando for recruitment events where they were featured speakers. (And Mark Smith admitted that apart from arranging travel and Tammy Smith helping to assist with and coordinate all the details during their visit, he recognized Nerium Brand Partners in the audience at these presentations and still went ahead and made his pitches for Jeunesse). Mark Smith also took the high-ranking Korean Brand Partner and members of her team—other people he knew to be Nerium Brand Partners—to dinner in Orlando and paid for it on his own dime. And, again out of their own pockets, the Smiths reimbursed the Korean Brand Partner for another dinner while her team was in Orlando. Similarly, Mark Smith instructed a leading European Brand Partner on how to do a fly-in of other European Brand Partners to Jeunesse, and the Smiths' assistant coordinated the fly-in. Respondents convinced these high-ranking European and Korean Brand Partner, their teams, and many others to leave Nerium and join Jeunesse.

24. At the same time, the Respondents were hammering Nerium's salesforce with communications about their departures and information about Jeunesse. And they were hounding Nerium salespeople with a blatant sales pitch—sometimes through emails and text messages that

have been produced in the limited discovery so far; sometimes in anonymous messaging apps that we can never recover. For example, Darin Kidd bombarded his thousands of contacts with blast emails touting his opportunity with a new company, promising a first-movers' advantage to pique recipients' interest. Instead of screening his email lists to remove Nerium Brand Partners, he instead included a sham "disclaimer," stating that Nerium Brand Partners were not "authorized recipients" of the emails he sent to them. Kidd also sent numerous Facebook messages to Nerium Brand Partners with links to videos and other promotional materials for Jeunesse, and offering many Brand Partners the opportunity to fly in "anyone you want" to Jeunesse headquarters.

25. Respondent Tee Daniel had no shame in pitching Nerium Brand Partners. For example, when one Brand Partner told Daniel she was sad to see him leaving Nerium, Daniel offered to fly the woman and her team to Orlando. In another instance, after a Brand Partner became upset by Daniel's solicitation of other Brand Partners, Daniel tried to get others to offer that Brand Partner a fly in. Smith even instructed his co-conspirators on various tactics to cover their tracks and conceal their raid from Nerium International. Among other things, Smith encouraged his co-conspirators to not use their real names, and to instruct others to do the same, when they created their Jeunesse log-ins and website URLs so it would be harder to determine what Nerium Brand Partners had joined Jeunesse.

26. Attempting to inflict maximum harm on Nerium in the court of public opinion, the Smiths also sued the Company, JOP and Olson in the Superior Court of California, County of Orange on February 23, 2018, in violation of the arbitration agreement ("California Lawsuit"). The Smiths filed a First Amended Complaint ("FAC") in the California Lawsuit on March 23, 2018 and, after the case was removed to federal court, a Second Amended Complaint ("SAC")

on July 23, 2018, adding Heisz and Short as defendants. Each of the complaints in the California Lawsuit reads more like a press release than a pleading, and consists almost entirely of sensationalized tabloid allegations, meant to alarm Nerium's salesforce. These falsehoods are especially harmful because the Smiths have leveraged their high-ranking former positions at Nerium to imply their allegations stem from insider information.

27. In April 2018, as permitted by the arbitration agreement, Nerium filed suit in Dallas County District Court and sought emergency injunctive relief against Respondents Mark Smith, Mark & Tammy Smith, LLC, Jason Ransom, Darin Kidd, and Tee Daniel. The Court granted a temporary restraining order, and then on May 21, 2018, a temporary injunction against that subset of Respondents, a copy of which is attached as **Exhibit 2**. The conduct that warranted that injunction is obviously just the tip of the iceberg. Now, pursuant to the arbitration agreement, Nerium files this arbitration demand and seeks: (i) damages for Respondents' widespread and blatant breaches of their agreement and tortious interference—including Respondents' unlawful raid on Nerium's salesforce, and the Smiths' breach of the arbitration agreement by suing in California state court; and (ii) a permanent injunction barring the Respondents from breaching their agreements, consistent with the temporary injunctive relief issued by the state trial court.

28. In addition, Nerium, JOP, Olson, Heisz, and Short seek a declaration that (i) the AAA in Dallas County, Texas is the exclusive forum for all disputes relating to the claims asserted by the Smiths in their SAC filed in the California Lawsuit, including without limitation any related claims that MTS, LLC might assert against Nerium, JOP, Olson, Heisz, or Short; (ii) the Smiths' claims in that SAC and any related claims that MTS, LLC might assert are governed

by the laws of Texas; and (iii) the Smiths' and MTS, LLC's agreements with Nerium are governed by Texas law.

#### **V. BREACH OF CONTRACT**

- 29. Nerium and the Respondents entered into legally enforceable agreements.
- 30. Nerium performed its obligations under the agreements.
- 31. Respondents breached the agreements.
- 32. As a result, Nerium has suffered, and will continue to suffer, damages in an amount to be determined by the arbitrator.

#### **VI. TORTIOUS INTERFERENCE**

- 33. There are existing contracts between Nerium and its Brand Partners.
- 34. Respondents committed willful and intentional acts of interference with those contracts, including knowingly inducing one or more Brand Partners to breach their obligations under the contract.
- 35. This conduct caused injury to Nerium.
- 36. As a result, Nerium has suffered, and will continue to suffer, damages in an amount to be determined by the arbitrator.

#### **VII. PERMANENT INJUNCTION**

- 37. Nerium seeks a permanent injunction barring the Respondents from further breaching their agreements, consistent with the temporary injunction that the state court already found was warranted after an extensive evidentiary hearing.

#### **VIII. DECLARATORY RELIEF**

- 38. Nerium, JOP, Olson, Heisz, and Short seek a declaration that (i) the AAA in Dallas County, Texas is the exclusive forum for all disputes relating to the claims asserted by the Smiths in their SAC filed in the California Lawsuit, including without limitation any related

claims that MTS, LLC might assert against Nerium, JOP, Olson, Heisz, or Short; (ii) the Smiths' claims in that SAC and any related claims that MTS, LLC might assert are governed by the laws of Texas; and (iii) the Smiths' and MTS, LLC's agreements with Nerium are governed by Texas law..

#### **IX. ATTORNEY'S FEES**

39. Pursuant to the arbitration agreement, AAA Commercial Rule 47, and Chapters 37 and 38 of the Texas Civil Practice and Remedies Code, Claimants request an award of their attorneys' fees and arbitration fees and costs.

#### **X. CONCLUSION & PRAYER**

40. For these reasons, Nerium, JOP Olson, Heisz, and Short respectfully request that: (1) Respondents be given notice to appear and respond herein; (2) Nerium be awarded damages and attorney's fees against Respondents; prejudgment and post-judgment interest; arbitration costs and expenses; and any additional relief the Arbitrator determines is appropriate; and (3) Nerium, JOP, Olson, Heisz, and Short be awarded a declaration of rights against Respondents the Smiths and MTS, LLC as specified above, and that Nerium, JOP, Olson, Heisz, and Short be awarded their attorney's fees.

Respectfully submitted,

/s/ Monica Latin

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*Attorneys for Claimants Nerium International, LLC,  
JO Products, LLC, Jeff Olson, Deborah K. Heisz,  
and Bo Short*

**CERTIFICATE OF SERVICE**

I certify that I served the attached document on Respondents' counsel by email on July 26, 2018.

/s/ Parker Graham



# EXHIBIT 1

**11.08 Non-Waiver Provision.** No failure of the Company to exercise any power under the Policy Manual or to insist upon strict compliance by Brand Partner with any obligation or provision herein, and no custom or practice of the parties at variance with this Policy Manual, shall constitute a waiver of the Company's right to demand exact compliance with this Policy Manual. The Company's waiver of any particular default by Brand Partner shall not affect or impair the Company's rights with respect to any subsequent default, nor shall it affect any way in the rights or obligations of any other Brand Partner. Nor shall any delay or omissions by the Company to exercise any right arising from a default affect or impair the Company's rights as to that or any subsequent default. Waiver by the Company can be affected only in writing by an authorized officer of the Company.

**11.09 Arbitration.**

- a) Except as expressly set forth herein, all disputes, claims or causes of action relating to or arising from any Independent Brand Partner Application, Nerium International Terms of Agreement, Company's Policies and Procedures, and any other Company policies, products and services, the rights and obligations of Company and Brand Partner or any other disputes, claims or causes of action between Brand Partner and any of its officers, directors, employees or affiliates and Company or any of its officers, directors, employees or affiliates whether in tort or contract, shall be settled totally and finally by arbitration in Dallas, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including the optional rules for emergency measures of protection which Company may use, in addition to or instead of the procedures set forth in section (c) below. The arbitration shall be conducted before a single arbitrator and shall not be conducted on a class-wide, class action or multiple complaining-party basis.
- b) Notwithstanding the foregoing, the arbitrator shall have no jurisdiction over disputes relating to the ownership, validity or registration of any mark or other intellectual property or proprietary or confidential information of the Company without the Company's prior written consent. The Company may seek any applicable remedy in any applicable forum with respect to these disputes and with respect to money owing to the Company. In addition to monetary damages, the Company may obtain injunctive relief against Brand Partner for any violation of the Agreement or misuse of the Company's trademark, copyright or confidential information policies.
- c) Nothing in this rule shall prevent the Company from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, preliminary injunction and/or other injunctive or emergency relief available to safeguard and protect the Company's interests prior to the filing of or during or following any arbitration or other proceeding or pending the handing down of a decision or award in connection with any arbitration or other proceeding. Brand Partner hereby agrees that violation of the prohibition on use or disclosure of trade secrets, proprietary or confidential information or the prohibition of the non-solicitation and non-disparagement provisions herein stated will cause Company irreparable injury for which there is no adequate remedy at law and hereby agrees to the entry of an *ex parte* temporary restraining order, preliminary and permanent injunction or any other emergency remedy necessary to prevent said violation.
- d) Nothing contained herein shall be deemed to give the arbitrator any authority, power or right to alter, change, amend, modify, add to or to subtract from any of the provisions of this Agreement.

**11.10 Entire Agreement.** This Policy Manual is incorporated into the Agreement, along with the Compensation Plan, and constitutes the entire agreement of the parties regarding their business relationship.

**11.11 Governing Law, Jurisdiction and Venue.** The Agreement, including this Policy Manual, shall be governed by the laws of the State of Texas, except that any conflict-of-law rule that may require reference to the laws of some other jurisdiction shall be disregarded. The parties further agree that, subject to and without waiver of the requirements of the agreement to arbitrate contained in paragraph 11.09 above, the state and federal courts located in Dallas County, Texas shall be the exclusive forum for litigation of any dispute between or among Brand Partner and any of its officers, directors, employees or affiliates and Company or any of its officers, directors, employees or affiliates, that is permitted to be litigated in court under paragraph 11.09. The parties irrevocably waive any right any of them may have to assert that venue or jurisdiction for any such litigation should lie elsewhere, including, but not limited to, any objection based on forum non conveniens or personal jurisdiction. The parties intend this provision to be a binding, mandatory and exclusive forum-selection clause, subject to and without waiver of the agreement to arbitrate.

**11.12 Force Majeure.** The Company shall not be responsible for delays or failure in performance caused by circumstances beyond a party's control, such as strikes, labor difficulties, fire, war, government decrees or orders or curtailment of a party's usual source of supply.

# **EXHIBIT 2**

NERIUM INTERNATIONAL, LLC,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
MARK SMITH, MARK & TAMMY	§	
SMITH, LLC, DAVID BYRD, JENNI	§	DALLAS COUNTY, TEXAS
BYRD GRIER, CLAUDIA RANSOM,	§	
JASON RANSOM, DARIN KIDD,	§	
DANNY GASEMY, LORI GASEMY,	§	
DALE MUNGER, VANESSA	§	
MUNGER, CASSIE DANIEL, and TEE	§	
DANIEL	§	
	§	
Defendants.	§	134th JUDICIAL DISTRICT

**TEMPORARY INJUNCTION**

On May 21, 2018, the Court held a hearing on Plaintiff Nerium International, LLC's ("Nerium") Application for Temporary Restraining Order ("Application") against Defendants Mark Smith, Mark & Tammy Smith, LLC, Tee Daniel, and Darin Kidd (collectively the "Injunction Defendants"). The parties appeared and announced ready. Having considered Nerium's Second Amended Petition and Application for Temporary Restraining Order, the other pleadings and briefing on file, the competent evidence, and arguments of all parties, the Court finds the Application should be, and it is hereby, **GRANTED**. The Court sets forth the reasons for issuance of this Injunction:

1. In its Second Amended Petition, Nerium has pleaded causes of action for breach of contract and tortious interference with contract against the Injunction Defendants.
2. Nerium has shown a probable right to the relief sought, and presented evidence that tends to support that: (i) there is a valid contract between Nerium and the Injunction Defendants; (ii) Nerium performed or tendered performance under the contract; (iii) the



Injunction Defendants breached the contract by violating their non-solicitation covenants by directly or indirectly recruiting or soliciting Nerium's Brand Partners; and (iv) Nerium has suffered resulting harm, and will suffer harm absent the Injunction. In addition, Nerium has shown a probable right to the relief sought, and presented evidence that tends to support that: (i) a contract subject to interference exists; (ii) the alleged act of interference was willful and intentional; (iii) the willful and intentional act proximately caused damage; and (iv) actual damage or loss occurred. The Injunction Defendants have been involved in facilitating recruitment of Brand Partners by other Brand Partners, in violation of the same restrictions at issue here.

3. Without this injunction, Nerium will suffer a probable, imminent, and irreparable injury in the interim before a final trial on the merits. The non-solicitation covenants protect Nerium's goodwill, confidential information, and other valuable business interests, including by protecting the company's relationship with its salesforce of independent contractors ("Brand Partners") and customers, and information about them. Because Nerium is a direct-sales company, interference with Nerium's relationship with even a single Brand Partner can have damaging effects that extend to a Brand Partner's network of associated Brand Partners and customers, and imminently threaten far-reaching injury that is difficult to discover and fully assess. Once a Brand Partner is directly or indirectly solicited or recruited, their organization can become destabilized, risking the departure of others as well through further recruitment or otherwise.

4. The evidence demonstrated, among other things, the following: the Injunction Defendants have actively targeted not just individual Brand Partners, but also entire "Teams" of Brand Partners. They have done so through a variety of means, including direct contact with

Brand Partners; posting social media messages; hosting “zoom” calls and sending blast emails that may cause a Brand Partner to inquire about where they have gone or what they are doing or to ask for more information, followed by direct recruitment and solicitation; arranging for Brand Partners to fly to visit Jeunesse headquarters (at no expense) for promotional presentations about joining the company, with featured speakers including the Injunction Defendants; arranging payments to Brand Partners who leave Nerium to join Jeunesse and who recruit other Brand Partners to do the same; and urging Brand Partners to enroll with Jeunesse, while offering special promotions and insisting that time is of the essence.

5. While at Nerium, the Injunction Defendants had an unlimited sales territory, and could sell products and recruit Brand Partners anywhere Nerium did business (currently the U.S. and ten foreign markets), often without leaving their homes in the United States. The Injunction Defendants, like many Brand Partners, have active profiles on social media and Nerium has demonstrated that recruitment and solicitation of Brand Partners often occurs through online and text communications, extending anywhere Nerium does business. In addition, the Injunction Defendants were widely known within Nerium’s salesforce, and absent an injunction can exploit that experience and exposure to recruit and solicit Brand Partners whether previously known or unknown and whether or not they had previously worked together or even were known by them. Because Brand Partners are free to and do have wide-ranging contacts and activities in the countries where Nerium does business with no limitations, and considering the dynamic and wide-reaching nature of digital sales and social-media-based marketing, there is no practical way to protect Nerium’s legitimate interests short of the restriction set forth in the agreement. The potential resulting harm would be difficult, if not impossible, to discover and to fully quantify

with monetary damages. For all these reasons, Nerium will likely suffer immediate and irreparable injury absent this Injunction.

6. Given Nerium's protectable interest set forth above, and the scope of the Injunction Defendants' actual and potential breaches, the Court finds that the requested injunction is reasonable and warranted. The harm to Nerium outweighs any potential harm to the Injunction Defendants because they are free to work in the direct-sales industry, free to solicit or recruit anyone who is not a Nerium Brand Partner, and free to pursue any other endeavors they wish. As such, restraining the Injunction Defendants from recruiting or soliciting Nerium Brand Partners does not impair their chances to fairly build their business at their new company or to make a living.

7. Therefore, to preserve the status quo, it is **ORDERED** that the Injunction Defendants, including their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Injunction by personal service or otherwise (collectively, the "Injunction Restrained Parties") are immediately restrained on the following terms:

**The Injunction Restrained Parties are prohibited from directly or indirectly recruiting or soliciting any of Nerium's Brand Partners to join any other direct-sales, multi-level marketing, or network-marketing company, including but not limited to Jeunesse Global Holdings, LLC.**

8. This Injunction remains in effect until the conclusion of the final trial or final arbitration hearing on the merits. Without waiver of or prejudice to any party's arbitration rights, this case is set for a final trial on the merits with respect to the ultimate relief sought, as an initial matter, on November 8, 2018 @ 9:00 AM. In its Second Amended Petition, Nerium pleaded the existence of an arbitration agreement between it and certain Defendants and attached the agreement to its pleading. Pls.' Second Am. Pet. at p. 25 & 65. The arbitration

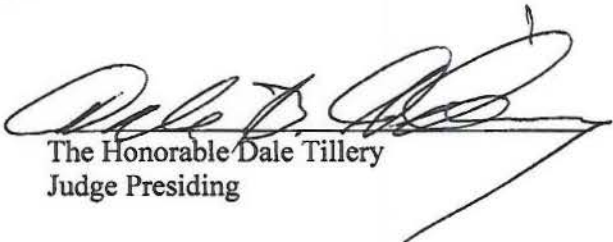


agreement includes a carve-out that permits Nerium to apply for and obtain "a temporary injunction, preliminary injunction and/or other injunctive or emergency relief" in court "to safeguard and protect the Company's interests prior to the filing or during or following any arbitration" proceeding. *Id.* at 65. Accordingly, the Court's trial setting is without prejudice to any party's rights or obligations under the arbitration agreement, including any stay of this proceeding in favor of arbitration that may ultimately supersede the trial setting in this case.

9. The Court finds that <sup>in addition to</sup> the \$5,000 bond previously posted as security for the ~~that Nerium shall post an additional \$25,000.00 to stay~~ temporary restraining order is ~~sufficient and is authorized to and shall continue on and act as~~ security for the temporary injunction.

It is so **ORDERED**.

SIGNED on May 21, 2018 at 7:30 ~~am~~/p.m.

  
The Honorable Dale Tillery  
Judge Presiding