

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

HELEN JIA (AKA JINGMIN ROGERS), an
individual, SARAH SORMILLON, an
individual, and all those similarly situated,

Plaintiffs,

vs.

NERIUM INTERNATIONAL, LLC, a Texas
limited liability company, NERIUM SKIN
CARE, INC., a Texas corporation, NERIUM
BIOTECHNOLOGY, INC., a Texas
corporation, NATURAL TECHNOLOGY,
D/B/A NATURTECH, a Texas corporation,
JEFF OLSON, an individual, RENEE OLSON,
an individual, AMBER OLSON ROURKE, an
individual, MICHAEL SHOURED, an
individual, and DOES 1-10,

Defendants.

Civil Action No. 3:17-cv-03057-S

**MOTION BY DEFENDANTS NERIUM INTERNATIONAL, LLC, JEFF OLSON,
RENEE OLSON, AND AMBER OLSON ROURKE TO REOPEN CASE AND ENTER
DISMISSAL PURSUANT TO SETTLEMENT; BRIEF IN SUPPORT**

I. INTRODUCTION.

Defendants Nerium International, LLC (“Nerium”), Jeff Olson, Renee Olson, and Amber Olson Rourke (collectively, “Defendants”)¹ hereby move this Court to reopen this administratively closed case² and enter dismissal pursuant to Defendants’ settlement with Plaintiffs Helen Jia (“Jia”) and Sarah Sormillon (“Sormillon”) (collectively, “Plaintiffs”). All preconditions to dismissal have been satisfied. Defendants, who have inquired of Plaintiffs’ counsel many times regarding the dismissal of this action but have received no response, have lost touch with Plaintiffs’ counsel. Accordingly, Defendants request the Court dismiss with prejudice Plaintiffs’ respective individual claims in this action and dismiss without prejudice the putative class claims.

II. RELEVANT BACKGROUND.

This Court previously administratively closed this case pending the outcome of the individual arbitrations commenced by Defendants against Plaintiffs. *See* Dkt. No. 144, p. 17 (granting Defendants’ motion to compel arbitration, and “stay[ing] and administratively clos[ing the action] pending the outcome of arbitration”) and Dkt. No. 15, p. 8 (“reopen[ing] the case and ... clarify[ing] the Court’s September 18, 2018, order,” “remand[ing the action] to arbitration on an individual basis,” and “stay[ing] and administratively clos[ing the action] pending the outcome of arbitration”).

Plaintiffs and Defendants entered into an agreement to resolve their respective claims against each other, without admission of fault, liability, or wrongdoing by any party, effective January 28,

¹ Nerium International, LLC recently changed its name to “Neora, LLC.” For convenience, to avoid confusion, and because all the events at issue in this case occurred while (or even before) the company’s name was “Nerium International, LLC,” Defendants will continue to refer to the company as “Nerium.” Defendants Michael Shouhed, Nerium Skincare, Inc., Nerium Biotechnology, Inc., and Natural Technology, Inc. are not parties to the settlement agreement that is the subject of this Motion and, therefore, are excluded from the use of the term “Defendants.”

² Reopening an administratively closed case is permissible when an issue arises that merits the Court’s attention. *See Mire v. Full Spectrum Lending Inc.*, 389 F.3d 163, 167 (5th Cir. 2004).

2020 (the “Settlement Agreement”). (See Declaration of Gail Lane, App-06, at ¶ 2; Declaration of Harrison Brown, App-08, at ¶ 2.) The Settlement Agreement states that within five (5) calendar days following the completion of specified preconditions:

(a) [Plaintiffs] will file dismissals with prejudice of their respective individual claims in the District Court Action and dismissals without prejudice of the putative class claims; (b) Jia will file a dismissal with prejudice of her claims in the Jia Arbitration; (c) Sormillon will file a dismissal with prejudice of her individual claims in the Sormillon Arbitration and dismissals without prejudice of the putative class claims; and (d) the [Defendants] will file dismissals with prejudice of their respective claims in the Jia and Sormillon Arbitrations. [Defendants] will prepare these documents for filing, form to be jointly approved, which approval shall not unreasonably be withheld.

(App-08, at ¶ 3.) The Settlement Agreement contains a confidentiality provision which restricts disclosure except under certain circumstances, including as required by law. (*Id.*)

The final specified precondition to dismissal was completed on April 23, 2020. (App-06, at ¶ 3.) On May 6, 2020, Blake Lindemann, counsel for Plaintiffs, approved the filing of stipulations of dismissal of the individual arbitrations. (App-08 – App-09, at ¶ 4.) The arbitrators granted the stipulations and dismissed each of the individual arbitrations. (*Id.*)

Defendants prepared a Notice of Dismissal Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) (the “District Court Dismissal”) as required by the Settlement Agreement. (App-09, at ¶ 5; App-10 – App-14.) However, Plaintiffs have yet to file the District Court Dismissal. (App-09, at ¶ 6.) Defendants have made multiple requests that Mr. Lindemann and Joe Kendall, his co-counsel, file the District Court Dismissal. These efforts have included emails from Defendants’ outside counsel on May 13, 18, 19, 20, and by phone message from Defendants’ outside counsel on May 19 and 20. (App-09, at ¶¶ 7-8.) Plaintiffs’ counsel have not responded to any of these emails or voicemail messages. (*Id.*) On May 26, Defendants’ in-house counsel contacted Mr. Lindemann by email to inquire about the District Court Dismissal. (App-06, at ¶ 4.) Mr. Lindemann did not respond to this message, either. (*Id.*)

III. ENTRY OF DISMISSAL IS PROPER.

The Court “has inherent power to recognize, encourage, and when necessary enforce settlement agreements reached by the parties” in the case before the Court. *Bell v. Schexnayder*, 36 F.3d 447, 449 (5th Cir. 1994); *accord Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 389 (5th Cir. 1984) (“A District Court has the power to enforce summarily a settlement agreement reached in a case pending before it.”).

All preconditions to entry of dismissal pursuant to the Settlement Agreement have been satisfied. Defendants, who have inquired of Plaintiffs’ counsel many times regarding the District Court Dismissal but have received no response, have lost touch with Plaintiffs’ counsel. Accordingly, Defendants request that the Court reopen this administratively closed case and “[dismiss] with prejudice [Plaintiffs’] respective individual claims ... and dismiss[] without prejudice ... the putative class claims.” (App-08, at ¶ 3.)

IV. CONCLUSION.

For the foregoing reasons, Defendants respectfully request that the Court reopen this administratively closed case, dismiss with prejudice Plaintiffs’ respective individual claims, and dismiss without prejudice the putative class claims.

Dated: June 9, 2020

Respectfully submitted,

By: Harrison M. Brown

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NERIUM INTERNATIONAL, LLC, JEFF OLSON, RENEE
OLSON, and AMBER OLSON ROURKE

CERTIFICATE OF CONFERENCE

On May 26, 2020, Gail Lane, in-house counsel for Defendants Nerium International, LLC (“Nerium”), Jeff Olson, Renee Olson, and Amber Olson Rourke (collectively, “Defendants”) attempted to confer by email with Blake Lindemann, counsel for Plaintiffs Helen Jia (aka Jingmin Rogers) (“Ms. Jia”) and Sarah Sormillon (“Ms. Sormillon”) (collectively, “Plaintiffs”), regarding the foregoing motion and any potential resolution. Mr. Lindemann did not respond. Pursuant to Local Rule 7-1.b.3, the motion is presumed to be opposed.

By: /s/ Harrison Brown
Harrison Brown

CERTIFICATE OF SERVICE

On June 9, 2020, I caused the foregoing document to be electronically submitted to the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have caused all counsel of record to be served electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2), as follows:

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By: /s/ Harrison Brown
Harrison Brown

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Defendants.

**[PROPOSED] ORDER GRANTING MOTION BY DEFENDANTS NERIUM
INTERNATIONAL, LLC, JEFF OLSON, RENEE OLSON, AND AMBER OLSON
ROURKE TO REOPEN CASE AND ENTER DISMISSAL PURSUANT TO
SETTLEMENT**

Upon the Motion to Reopen Case and Enter Dismissal Pursuant to Settlement (“Motion”) by Defendants Nerium International, LLC, Jeff Olson, Renee Olson, and Amber Olson Rourke, the Court, having considered the papers submitted and any oral argument presented by counsel, hereby ORDERS:

1. The Motion is GRANTED.
2. The individual claims of Plaintiffs Helen Jia and Sarah Sormillon are dismissed with prejudice.
3. The putative class claims are dismissed without prejudice.

SO ORDERED.

Dated: _____

By: _____
Hon. Karen Gren Scholer
United States District Judge

CERTIFICATE OF SERVICE

On June 9, 2020, I caused the foregoing document to be electronically submitted to the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have caused all counsel of record to be served electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2), as follows:

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