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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223290
Party	Defendant Nerium Biotechnology, Inc.
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Signature	/Jason W. Whitney/
Date	07/11/2016
Attachments	Nerium Biotechnology Submission of USDC Amended Complaint to TTAB.pdf(136484 bytes) 2016-06-02 Plaintiffs Amended Complaint and Applications for Preliminary Injunctions.pdf(3255385 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application No.: 85/303510 Filed: April 25, 2011 Mark: NERIUM IC: 05	§ § § § §	
NERIUM INTERNATIONAL, LLC Opposer	§ §	Opposition No.: 91223290
v.	§	
NERIUM BIOTECHNOLOGY, INC. Applicant	§ §	

SUBMISSION OF COPY OF AMENDED PLEADING
PURSUANT TO TTAB'S JULY 1, 2016 ORDER

Pursuant to the Board's Order of Suspension dated July 1, 2016, attached is a copy of the Plaintiffs' Amended Complaint and Applications for Preliminary and Permanent Injunctions and to Compel Record Inspection, which was filed with the U.S. District Court for the Northern District of Texas, Dallas Division, on June 2, 2016.

Dated: July 11, 2016.

Respectfully submitted,

HAYNES AND BOONE, LLP

/s/ Jason W. Whitney /s/

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ATTORNEYS FOR APPLICANT AND COUNTER-PETITIONER NERIUM BIOTECHNOLOGY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing *Submission of Copy of Amended Pleading* has been served on Opposer Nerium International, LLC on July 11, 2016 by e-mail per the parties' agreement, to the following counsel of record for Opposer:

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/s/ Jason W. Whitney /s/
Jason W. Whitney

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

NERIUM SKINCARE, INC. on behalf of itself and in a derivative capacity for Nerium International, LLC, and NERIUM BIOTECHNOLOGY, INC.	§	
Plaintiffs,	§	
v.	§	
	§	**Civil Action No. 3:16-cv-1217-B**
JEFF A. OLSON, NERIUM INTERNATIONAL, LLC, and JO PRODUCTS LLC,	§	
Defendants.	§	

PLAINTIFFS' AMENDED COMPLAINT AND APPLICATIONS FOR PRELIMINARY AND PERMANENT INJUNCTIONS AND TO COMPEL RECORD INSPECTION

Plaintiffs Nerium SkinCare, Inc. (on behalf of itself and Nerium International LLC) and Nerium Biotechnology, Inc. file this Amended Complaint and Applications for Preliminary and Permanent Injunctions and to Compel Record Inspection against Jeff A. Olson ("Olson"), Nerium International, LLC ("NI" or "the Company"), and JO Products, LLC (collectively, "Defendants").

INTRODUCTION

1. Plaintiffs seek freedom from their partnership with a man who, while posing as the exclusive distributor of their groundbreaking NERIUM skin care products, actually developed a competitive knockoff which he now sells under the same NERIUM trademarks. Even more, this "partner" has used the parties' shared distribution business as a personal piggy bank while pocketing more than $60 million—depriving Plaintiffs of the fruit of their hard work and threatening their cancer research activities.

2. Plaintiffs Nerium Biotechnology and its subsidiary Nerium SkinCare (collectively, "Nerium") are scientific research and development companies focused on the unique anti-cancer, anti-viral, immune-stimulating and dermal health benefits of the *Nerium oleander* plant. While studying the plant's ability to combat skin cancer, Nerium observed that it also had remarkable age-defying effects when used topically, and saw the potential for a consumer product that could fund its research. Following years of study, hard work, and millions of dollars in investment, Nerium developed its breakthrough age-defying skin cream containing *Nerium oleander* extracts. This product was ready for sale to consumers in 2010.

3. That is when Nerium met Jeff Olson, an acquaintance of a Nerium shareholder. Olson, who had a background in multi-level marketing, seemed enthusiastic about the Nerium product and shared Nerium's belief in its huge potential. He convinced Nerium to partner with and entrust him with "marketing" the Nerium products.

4. Nerium and Olson formed a new company called Nerium International, LLC ("NI" or the "Company") to distribute Nerium products, with Olson as the sole manager. Nerium SkinCare owns 30% of NI. Olson's wholly-owned entity, JO Products, owns the other 70%. Under the Company Agreement, NI would buy products exclusively from Nerium at modest prices sufficient to fund Nerium's research. The bigger return on Nerium's investment would come from its equity stake in the Company, plus bonus payments it would receive when NI reached certain sales milestones. The Company Agreement also made clear that Nerium owned all NERIUM trademarks and NI required a license to use them in connection with the marketing, distribution and sale of Nerium products. The Company Agreement contemplated no license for non-Nerium products.

5. Immediately after NI opened its doors, sales of Nerium products took off. But as sales climbed and began triggering bonus payments, Olson did not allow Nerium to receive any of the fruit. Instead, Olson found creative ways to put more in his own pocket at Nerium's expense. For example, for the nine months ending September 30, 2015, NI managed to allocate $8 million in profits to JO (Olson) while allocating a $985k *loss* to Nerium SkinCare, his 30% partner—a bizarre result without explanation. As another example, NI recorded $450 million in revenue for year ending December 31, 2015, but only $7.9 million in profits. As detailed below, Nerium has reason to believe that much of the balance disappeared into the hands of Olson, his relatives, and his associates through sham entities they created to pose as NI "vendors."

6. Olson also set out to take Nerium's intellectual property and goodwill, quietly diverting Nerium resources (through NI) to develop a knockoff skin care product called Optimera that would compete against Nerium's products using the NERIUM trademarks. The knockoff contained no extracts of the *Nerium oleander* plant, even though the branding and packaging would lead consumers to believe otherwise. Olson's motive was simple: he had a personal financial interest in the knockoff, so this would put more money in his pocket.

7. Nerium was surprised to learn about Olson's knockoff plans, not from him, but from one of the suppliers that Olson solicited for the knockoff. When confronted, Olson hastily explained that the knockoff was only a "placeholder" to be sold in international markets until Nerium obtained regulatory approval in those markets. Olson did not explain why he had chosen to develop the product behind Nerium's back instead of asking Nerium to develop it with him.

8. Olson is a salesman and, for the last two years, has managed to string Nerium along with empty promises to "work together" and "resolve" misunderstandings. But his repeated assurance that he would sell Nerium products in foreign markets after they received

regulatory approval has proven to be false. Nerium products are now fully approved, yet Olson will not sell them. He is intent on selling Optimera and other knockoffs under the NERIUM trademarks because that means more money for him.

9. The situation has grown urgent. Olson's relentless expansion of his knockoff products is irreparably harming the goodwill behind the NERIUM trademarks. And as he pivots the business away from Nerium and toward his knockoff, he causes NI to purchase less and less product from Nerium, while continuing to withhold the equity, cutting off both of Nerium's financial legs.

10. Plaintiffs request a preliminary and permanent injunction to prevent the sale of knockoffs under the NERIUM marks, a declaration of Olson's obligations under the Company Agreement, damages for his financial abuses and mismanagement, and dissolution of the partnership so the parties can go their separate ways.

THE PARTIES

11. Plaintiff Nerium SkinCare is a corporation organized under the laws of the state of Texas and is a member of Nerium International, LLC. Nerium SkinCare asserts claims both in its own capacity and in a derivative capacity on behalf of the Company. Pursuant to Section 101.463(c) of the Texas Business Organizations Code, because the Company is closely held and Plaintiff is a substantial minority member, justice requires that the derivative action be treated as a direct action brought by the member for the member's benefit.

12. Plaintiff Nerium Biotechnology, Inc. is a Canadian corporation doing business in the United States. Nerium Biotech's primary place of business is located at 11467 Huebner Road, Suite 175, San Antonio, Texas 78230.

13. Jeff Olson is an individual who resides in Denton County. Olson has been previously served with process and appeared in this action.

14. Nerium International, LLC is a Texas limited liability company. NI's primary place of business is located at 4004 Belt Line Road Suite 112, Addison, Texas 75001. NI has been previously served with process and appeared in this action.

15. Defendant JO Products, L.L.C. ("JO") is a limited liability company existing under the laws of the state of Texas. It has been previously served with process and appeared in this action.

JURISDICTION AND VENUE

16. This Court has jurisdiction over Nerium Biotech's claims pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 28 U.S.C. § 2201, *et seq.*, and supplemental jurisdiction over the remaining claims under 28 U.S.C. §§ 1338(b) and 1367(a).

17. This Court has personal jurisdiction over Olson. Olson has already appeared and submitted to the jurisdiction of the 161st Judicial District Court, Dallas County, Texas in this action prior to removal.

18. This Court has personal jurisdiction over NI because NI is a resident of Texas and regularly transacts business in the District. NI has already appeared and submitted to the jurisdiction of the 161st Judicial District Court, Dallas County, Texas in this action prior to removal.

19. This Court has personal jurisdiction over JO Products, L.L.C. as it is a resident of Texas and regularly transacts business in the District. JO has already appeared and submitted to the jurisdiction of the 161st Judicial District Court, Dallas County, Texas in this action prior to removal.

20. Venue in this District is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District and Defendants are subject to personal jurisdiction in this District.

THE FACTS

The History of Nerium

21. Nerium Biotech is a research and development company dedicated to science-based product development. In concert with leading medical institutions, Nerium Biotech has focused its research and product development on the anti-cancer, anti-viral, and dermal properties of natural botanical compounds.

22. In the course of its research, Nerium Biotech discovered that the *Nerium oleander* plant has significant anti-aging properties when applied to the skin. Utilizing a patented technology, Nerium Biotech isolated the beneficial properties of this plant, and created an extract called NAE-8®.

23. To facilitate the development and manufacture of products containing NAE-8®, Nerium Biotech formed a division of the company called Nerium SkinCare. The company's vision was to develop a line of skincare products featuring NAE-8®. After extensive testing and research, Nerium SkinCare developed a breakthrough line of skincare products ("the Product Line") that would go on to sell millions of units around the world.

Nerium Develops Intellectual Property

24. Since at least 2008, Nerium has used the NERIUM marks throughout the United States in connection with medical research and product development services, including in the fields of biotechnology, drug discovery, pharmaceuticals, scientific research, medical procedures, and drug therapies; and skin-care and skin-related good and products, including both

medicated and non-medicated skin care preparations, such as creams, lotions, gels, toners, and cleaners. Accordingly, Nerium owns common law trademark rights in the NERIUM Marks.

25. For example, since at least 2008 Nerium has continuously been in the business of providing medical research and product development using the mark NERIUM BIOTECHNOLOGY, INC. in commerce.

26. By further example, since at least as early as 2009, Nerium has continuously been using the mark NERIUM SKINCARE in commerce on or in connection with skin care products, including non-medicated skin-care preparations. Since at least as early as 2009, Nerium has continuously been using the mark NERIUMDERM in commerce on or in connection with skin care products, including non-medicated skin-care preparations.

27. Since at least as early as 2009, Nerium has continuously been using the mark NERIUMCS in commerce on or in connection with skin care products, including non-medicated skin-care preparations.

28. Since at least as early as 2011, Nerium has continuously been using the mark NERIUMAD in commerce on or in connection with skin care products, including non-medicated skin-care preparations.

29. Since at least as early as 2015, Nerium has continuously been using the mark NERIUMRX in commerce on or in connection with skin care products, including medicated skin-care preparations.

30. Since at least 2008, Nerium has labeled these products, and its services, with the NERIUM Marks, establishing common law trademark rights. Nerium went on to register its marks, both in the United States and in many foreign countries. The table below reflects some of the marks Nerium has registered.

Mark	**Date of Filing**	**Registration No.**
NeriumDerm A NATURAL SKIN REPAIR CREAM	25 January 2010	3921445
Nerium SkinCare A DIVISION OF NERIUM BIOTECHNOLOGY, INC.	25 January 2010	3921446
NeriumCS A Natural Cold Sore Relief Serum	25 January 2010	3921447
NERIUMRX	4 October 2010	4768865
NERIUM SKINCARE	4 October 2010	4069528
NERIUMDERM	4 October 2010	4069525
NERIUMCS	4 October 2010	4062274
NERIUMAD	12 July 2011	4219079
Nerium BIOTECHNOLOGY, INC.	6 August 2012	4464657
NERIUM BIOTECHNOLOGY, INC.	25 February 2013	4414257
NERIUMFIRM	30 January 2014	4956348

31. The certificates of registration for the above U.S. federal trademark registrations are attached as **Exhibits A-1 through A-11.** Attached as **Exhibit B** is a list of Nerium's current foreign trademark registrations for the NERIUM Marks.

32. Each of these Nerium Marks is inherently distinctive. Alternatively, the NERIUM Marks have acquired secondary meaning and have become distinctive through Nerium's substantially exclusive and continuous use and widespread and significant promotion and advertising of Nerium's goods and services under the NERIUM Marks. Consumers in the biotechnology and skin care industries recognize the NERIUM Marks as a source identifier for Nerium products and services, and as a symbol of Nerium's goodwill.

The Creation of Nerium International

33. Having developed—and already sold—skincare products featuring the NERIUM Marks, Nerium sought out a partner to bring the Product Line to a wider audience. Eventually, Nerium was introduced to Jeff Olson ("Olson"), an entrepreneur experienced in multi-level marketing organizations. Olson expressed enthusiasm about the potential market for Nerium products, and agreed that part of the Product Line's success would be the inclusion of Nerium's proprietary extract, NAE-8®. Olson noted that because the process for extracting NAE-8® was patented, competitors would be unable to manufacture a similar product from the *Nerium oleander* plant.

34. The parties agreed to form a limited liability company called Nerium International, LLC ("NI"). The company would be devoted to selling the Product Line, using multi-level marketing to bring skincare products backed with real science to a global audience.

35. To formalize this partnership, Nerium SkinCare and Olson negotiated a Company Agreement that would govern NI. The Company Agreement provided that Nerium would own 30% of NI, and JO Products, LLC—a limited liability company owned solely by Olson[1]—would

[1] Although JO Products, LLC owns 70% of NI, Jeff Olson is also a party to the Company Agreement individually. This includes a responsibility to "jointly and severally, unconditionally and absolutely guarantee[] . . . the prompt

own the remaining 70%. The Company Agreement was entered into on April 6, 2011, and was retroactively effective as of October 25, 2010.

The Purpose of NI

36. Section 2.05 of the Company Agreement describes the purpose for which NI was formed. It states that the "primary purposes of the Company shall be the development, purchase, distribution and sale of . . . the Product Line." The same section defines the "Product Line" as "all cosmetic products and over the counter ('OTC') products that have been developed, or are in the future developed" by Nerium.

37. To that end, Section 4.03 the Company Agreement requires Nerium to produce "sufficient quantities of the Product Line to fill all anticipated current and future demand for the Product Line." Nerium is the manufacturer, and NI was appointed the "sole and exclusive worldwide distributor of the Product Line" (with exceptions, e.g., for over-the-counter products and certain regions).

The Importance of Exclusivity

38. But this exclusivity was designed to go both ways: Nerium would not be permitted to sell the Product Line to any other distributors, and NI would not be able to sell any products that would compete with the Product Line. Section 6.03 of the Company Agreement provides that Jeff Olson, in his capacity as Manager of NI, may not "own, manage, operate, control, be employed by, perform services for, consult with, solicit business for, participate in, or be connected with . . . any business which produces or distributes cosmetic products which are materially similar to or competitive with the Product Line."

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and full performance, when due, of all obligations, warranties and covenants of JO (as such term is defined above), fixed or contingent, arising out of, or within, the Company Agreement. . . ."

39. Moreover, as sole manager, Olson was required to advertise the Product Line exclusively. The Company Agreement provides that he would be "delegated the sole authority for the organization, supervision and oversight of the marketing efforts of the Company, and in such capacity shall supervise and manage the Company efforts to: . . . (b) promote and advertise the Product Line . . . (h) plan and coordinate sales and promotional events for the Product Line on a nationwide and, as the markets for the Product Line expand, worldwide basis . . . ."

Licensing Nerium's Intellectual Property

40. To facilitate NI's distribution of the Product Line, the Company Agreement also calls for the execution of a Perpetual Distribution and Licensing Agreement (the "DLA") between the Company and Nerium SkinCare to delineate the exclusive and non-exclusive rights of Company to market the Product Line and to grant certain intellectual property rights to the Company "to the extent reasonably necessary for the marketing, distribution and sale of the Product Line" (emphasis added) (not other products, like Optimera). Despite this, the Company has failed and refused to enter into the DLA which, among other things, has frustrated the purpose of the Company Agreement and caused irreconcilable damage to the parties' relationship.

41. Section 20.01(d)(vii) also details in what context NI would be permitted to use the Product Line's history of scientific development in advertisements. The Agreement states that Nerium's history of research and development "may be relied upon, and utilized by the Company in conjunction with the distribution, marketing and sale of the Product Line." (emphasis added). This would not allow use of the Product Line's history to sell Optimera and other knockoffs. Indeed, that would be deceptive.

42. Pursuant to the Company Agreement, Nerium owns all NERIUM Marks used on or in connection with the skin care products Nerium manufactures as well as the distribution thereof, including marks used in connection with any multilevel marketing, retail, and/or distribution services. For example, and without limitation, Nerium is the rightful owner of the marks identified in the following U.S. trademark applications and registrations for NERIUM Marks, which were improperly filed by NI: the N & design mark in U.S. Trademark Registration No. 4469321; the N & design mark in U.S. Trademark Registration No. 4425567; the N NERIUM INTERNATIONAL & design mark in U.S. Trademark Application Serial No. 86276118; the N NERIUM & design mark in U.S. Trademark Application Serial No. 86276158; the NERIUM mark in U.S. Trademark Application Serial No. 86276183; the THE NERIUM EXPERIENCE mark in U.S. Trademark Application Serial No. 86368419; the THE NERIUM EXPERIENCE mark in U.S. Trademark Application Serial No. 86370727; the N NERIUM & design mark in U.S. Trademark Application Serial No. 86413924; and the N NERIUM & design mark in U.S. Trademark Application Serial No. 86413976.

Nerium's Two Streams of Revenue

43. Under the terms of the Company Agreement, Nerium has two streams of revenue. The first is the profit Nerium makes from the sale of the Product Line to NI. Section 4.03 of the Company Agreement provides that NI will pay "a price determined by the result obtained from a pass-through cost-of-goods sold basis with no overhead mark-ups, plus a profit margin of thirty percent (30%)."

44. The greater return on Nerium's investment in research and development of Nerium products was in its equity stake in the Company. Article V of the Company Agreement provides that profits would be distributed to Nerium and JO "based upon their respective

Percentage Interest." In other words, Olson and Nerium would initially split the profits made from the sale of the Product Line to the public 70/30. But if NI had the level of success the parties expected, and met certain revenue thresholds, Nerium's share would increase in stages up to 40%. Art. 21.04.

45. The terms of the Company Agreement demonstrate how much Nerium trusted Olson. As the sole Manager of NI, he would be solely responsible for selling the Product Line and ensuring that the profits were properly distributed. But Nerium would come to regret placing Olson in this position of trust.

Nerium Develops Trade Dress for the Product Line

46. Beginning at least as early as 2011, Nerium Biotech introduced a line of skin care products under the NERIUMAD brand of the NERIUM Marks, including NERIUMAD day creams, NERIUMAD night creams, and NERIUMAD body firming creams (collectively, the "NERIUMAD Products"). Nerium Biotech expended considerable resources in researching, developing, and manufacturing its NERIUMAD Products. Nerium Biotech manufactured the NERIUMAD Products through its subsidiary, Nerium SkinCare, and NI distributed the NERIUMAD Products.

47. The following table contains images showing the overall appearance of the NERIUMAD Products.

NERIUMAD night cream	NERIUMAD day cream

NERIUMAD body firming cream

48. The overall appearance of each of the NERIUMAD Products is the subject of trade dress protection.

49. The unique and distinctive appearance of each of the NERIUM Products results from a combination of individual features which are shown in the pictures above, including, but not limited to:

a. NERIUMAD night creams: (i) the shape of the bottle, specifically, a cylindrical plastic bottle with curved sides that narrow at the center; (ii) the coloring of the bottle, which is transparent at the base, slate colored through most of the bottle body, reflective metallic or chrome colored at the top, and contains a narrow, light-green circumferential band near the center; (iii) the color, shape, and

position of the leaf design near the top of the bottle; (iv) the word "FACE" printed in white lettering in the narrow, light-green circumferential band; (v) the words "AGE-DEFYING Night Cream" printed in the bottom half of the bottle in white lettering; (vi) the word "Formula" printed after the NERIUMAD trademark in white lettering; (vii) the placement of the volume of the contents "__ ml/__ fl. oz." printed near the base of the bottle; and (viii) the product logo and name in the top half of the bottle in light grey lettering;

b. NERIUMAD day creams: (i) the shape of the bottle, specifically, a cylindrical plastic bottle with curved sides that narrow at the center; (ii) the coloring of the bottle, which is transparent at the base, white through most of the bottle body, reflective metallic or chrome colored at the top, and contains a narrow, light-green circumferential band near the center; (iii) the color, shape, and position of the leaf design near the top of the bottle; (iv) the word "FACE" printed in white lettering in the narrow, light-green circumferential band; (v) the words "AGE-DEFYING Day Cream" printed in the bottom half of the bottle in white lettering; (vi) the word "Formula" printed after the NERIUMAD trademark in black lettering; (vii) the placement of the volume of the contents "__ ml/__ fl. oz." printed near the base of the bottle; and (viii) the product logo and name in the top half of the bottle in light grey lettering;

c. NERIUMAD body firming creams: (i) the shape of the tube, specifically, a trapezoidal plastic tube that narrows toward a cap at the base of the bottle; (ii) the coloring of the tube, which is white through most of the tube body, reflective metallic or chrome colored near the base, with a white cap attached to the base,

and contains a narrow, orange circumferential band near the center; (iii) the word "BODY" printed in white lettering in the narrow, orange circumferential band; (iv) the words "FIRMING Body Contour Cream" printed in the bottom half of the tube in white lettering; (v) the word "Formula" printed after the NERIUMAD trademark in black lettering; (vi) the placement of the volume of the contents "__ ml/__ fl. oz." printed near the base of the bottle; and (vii) the product logo and name in the top half of the tube in light grey lettering.

50. The NERIUMAD Products also form a family of trade dress that is depicted above and includes, but is not limited to, the following elements: (i) the use of uniform color; (ii) the use of reflective metallic or chrome accent at the top or bottom; (iii) a narrow, circumferential band near the center of the product; (iv) a descriptive word for the use of the product printed within the circumferential band (e.g., "FACE" or "BODY"); (v) the words more descriptively describing the product on the bottom half of the product below the circumferential band; (vi) the word "Formula" printed after the NERIUMAD trademark; (vi) the placement of the volume of the contents "__ ml/__ fl. oz." printed near the base of the bottle; and (vii) the product logo and name in the top half of the tube in light grey lettering. By describing its trade dress in words, Nerium Biotech does not waive the right to rely on pictures as depicting the trade dress in question.

51. The overall appearance of the NERIUMAD Products (referred to as the "NERIUM Trade Dress" hereinafter) is inherently distinctive and nonfunctional. Alternatively, through the manufacturing, sales, testing, and promotional efforts by Nerium, the NERIUM Trade Dress has become widely known and recognized, and the NERIUM Trade Dress has acquired secondary meaning.

52. Nerium Biotech is the sole and exclusive owner of all right, title and interest to the NERIUM Trade Dress, which is valid, enforceable, and eligible for protection.

The Knock-Off Products—The Optimera Line

53. Before long, Nerium products had become a global success story, with brand partners selling millions of units of the Product Line. Nerium sought regulatory approval from countries all over the world, so that brand partners in places as distant as Saudi Arabia and Korea could bring the Product Line to customers. Because the *Nerium oleander* extract is the subject of heightened scrutiny in some foreign markets, Nerium modified its products to address regulatory concerns and then spent thousands of hours compiling research and petitioning regulatory agencies to allow their sale. Nerium's efforts were successful and now the Product Line is approved in over 40 countries.

54. From the beginning, Olson was told that this regulatory process would take time, and that he needed to identify which foreign markets he wished to enter first. Jeff Olson was impatient with this constraint, however, and wanted a product without NAE-8® that could be sold in international markets immediately. The problem, however, was that he had signed up to distribute exclusively *Nerium* products.

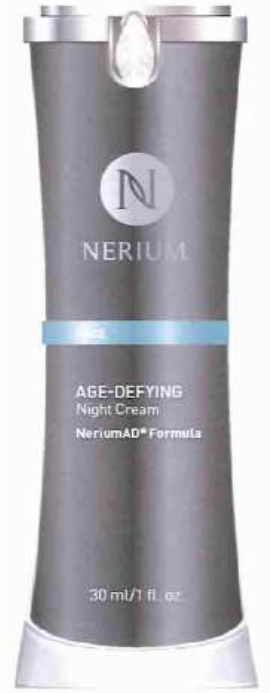
55. Rather than work within the confines of his deal, Olson quietly set out to develop a knockoff behind Nerium's back. He called his product "Optimera," and later added another new product called "EHT" (collectively, the "Optimera Line"). The Optimera Line contained no extracts of the *Nerium oleander* plant. NI began selling the Optimera Line in Canada and Mexico in 2014, Korea in July 2015, and stands on the brink of introducing that line in Japan and Hong Kong. The Optimera Line is also sold in the United States. Olson claims that sales are on

a limited basis to brand partners, but Nerium has reason to believe that Olson is also on the brink of introducing Optimera in the United States.

56. Nerium learned about the Optimera Line after an Olson subordinate contacted Nerium's vendor, asking the vendor to supply product for the knockoff. When confronted, Olson assured Nerium that he would only sell the Optimera Line in countries where the Product Line had not yet been approved for sale. He called it a "placeholder" for the Product Line. To stay within the confines of the Company Agreement, Olson could have worked with his business partner and exclusive manufacturer to develop this "placeholder" product. He chose not to, however, because he had a personal financial interest in Optimera's manufacture. And as it turns out, Olson's claim about Optimera's being a "placeholder" was a ruse. Now that Nerium has obtained all the requisite regulatory approvals in markets where Optimera is sold, he continues to sell Optimera and not Nerium products.

57. Although willing to give up on the authentic NERIUM product, Olson is less willing to give up on the compelling scientific story and results that made NERIUM products successful. The branding and packaging for the Optimera Line are intentionally designed to imitate the NERIUM Product Line, bearing the exact same trade dress and trademarks, even though the Optimera Line does not include any extracts from *Nerium oleander*. Unless a consumer reads the fine print, the Product Line and the Optimera Line appear indistinguishable. Here are some side-by-side comparisons:

The Optimera Line	The Product Line
 Optimera night cream http://www.nerium.ca/products/1051_ca	 NERIUMAD night cream http://www.nerium.com/products/1001_us
The Optimera Line	**The Product Line**
 Optimera day cream http://www.nerium.ca/products/9002_ca	 NERIUMAD day cream http://www.nerium.com/products/1002_us

The Optimera Line	The Product Line
Optimera body firming cream http://www.nerium.ca/products/1054_ca	NERIUMAD body firming cream http://www.nerium.com/products/1003_us
The Optimera Line	**The Product Line**
Optimera night cream	 NERIUMAD night cream

The Optimera Line	The Product Line
Optimera day cream	NERIUMAD day cream

EHT:

58. In 2015, NI itself touted how much the Optimera Line looks like the Product Line. That this similarity would cause consumer confusion about the origin and quality of Optimera is obvious.

> The product line featuring the Optimera™ Formula, which is sold internationally, includes the following two products:
>
> - **Age-Defying Night Cream, Optimera Formula (30 ml/1 fl. oz.):** Nerium 's Optimera Formula is powered by two exclusive ingredients: the patented SIG-1273® and patent-pending SAL-14™, both of which are only available in this propriety formula. Like the Night Cream, NeriumAD Formula, the Optimera Night Cream is distinguished with a slate-colored bottle and a blue band.
> - **Age-Defying Day Cream, Optimera Formula (30 ml/1 fl. oz.):** Nerium's breakthrough Age-Defying Day Cream, Optimera Formula also uses patented, exclusive age-fighting ingredients — including SIG-1273 and SAL-14. Its lightweight, hydrating formula is perfect for daytime use. Like the Day Cream, NeriumAD Formula, the Optimera Day Cream is set apart from the Night Cream by a white bottle with a blue band.

59. Olson actively leads consumers to believe that the Optimera Line is backed by the same science that has made the Product Line such a success. To promote the Optimera Line, NI even uses videos of scientists discussing the authentic Nerium product line without telling consumers that the scientists are talking about something completely different—and that the Optimera Line lacks the key ingredient, NAE-8®, that those scientists find compelling. Further, when entering foreign markets like Canada, Olson touts the sales success of the *Nerium* product line to suggest a likelihood of *Optimera's* success. (Olson compounds this deceit by claiming revenue totals for NI that far exceed the revenue on NI's books.) Olson's efforts to equate Optimera and NERIUM products in the minds of consumers are deceptive.

Olson's Uneven Accounting Practices

60. Besides knocking off Nerium products, Olson has abused his fiduciary position and violated the Company Agreement by allocating profits and distributions in an unfair manner for his own benefit. This is shown on the face of NI's own "equity allocation worksheets" which, despite their dubious completeness and accuracy, demonstrate clearly that Olson is ignoring the Company Agreement to put more money in his pocket.

61. Article V of the Company Agreement requires the Company to allocate profits and make distributions to all Members, on a pro-rata basis, according to the Members' respective Percentage Interest, subject only to the profit sharing regarding Marketing Aids in Section 21.03 of the Company Agreement. The Company Agreement also provides for a percentage *increase* in the distribution in favor of Nerium SkinCare when the Company meets certain thresholds.

62. NI, under Olson's direction, has never allocated to Nerium SkinCare 30% of the Company's self-reported profit. NI's worksheets do not show how this is justified, but they do show a double standard. For example, Nerium SkinCare is openly being charged 30% of the Company's costs for developing the knockoff Optimera Line and EHT products, but receiving only 20% of the profits from those products. To cover their misdealing, Defendants have recently tried to characterize the Optimera Line and EHT products as "Marketing Aids," which are defined in the Company Agreement as "hard good[s] (including, but not limited to, compact discs, videos, manuals, brochures, sale literature, personal development materials) and/or online or computer systems for marketing, training, personal development and/or sales aids, training programs," developed by Olson personally, specifically "for use by, and in conjunction with, the distributors and customers of the Product Line" made by Nerium, and subject to an 80/20 split of Net Profits between Olson and Nerium SkinCare. Section 21.03. This dubious characterization does not justify the Defendants' conduct. Further, NI's policies and procedures provide that Marketing Aids will be sold at NI's cost, which it has not done.

63. Further, Olson has not complied with Section 21.04's requirement of increased revenue to Nerium SkinCare based upon gross cash proceeds from the sale of the Product Line exceeding certain thresholds. The relevant thresholds have been exceeded since August 2013, yet

the Company has not made the requisite payment increases to Nerium SkinCare in violation of Article V and Section 21.04 of the Company Agreement.

64. Additionally, in violation of Article V, Olson has taken money out of the company for himself (JO Products), without making corresponding pro-rata distributions to Nerium SkinCare. These self-serving distributions were made arbitrarily and at Olson's whim, usually to meet whatever personal financial need Olson had at the moment (e.g., to pay a tax bill). To give himself cover, he would send money to Nerium SkinCare after the fact, but never in proportion to his own distributions or with proper notification or computation:

a. In 2013, Olson distributed cash to himself nine times, receiving $20,834,154 total (73.37% of total 2013 cash distributions). He distributed cash to Nerium SkinCare five times, on a sporadic basis, for a total of $7,563,000 (26.63% of total 2013 cash distributions).

b. In 2014, Olson distributed cash to himself eight times. JO Products received $33,000,000 (74% of total 2014 cash distributions). He used a pricing dispute between the parties to avoid paying Nerium SkinCare anything until they settled that dispute. After the settlement, Nerium SkinCare received a single lump payment of $11,475,000 (26% of total 2014 cash distributions).

c. In January 2015, Olson distributed to himself $5,500,000 (79% of total January 2015 distributions), but only $1,500,000 to Nerium SkinCare (21% of total January 2015 distributions)

d. In February 2015, Olson distributed $1,000,000 to JO Products and $1,000,000 to what appears to be his brokerage firm. He distributed $0 to Nerium Skincare.

65. In an apparent attempt to freeze out Nerium SkinCare, Olson has made no distributions to Nerium SkinCare since January 2015.

66. Upon information and belief, the Company has made transfers in excess of $16,000,000 to off-shore accounts resulting in reduced distributions to Nerium SkinCare in violation of the Company Agreement.

Other Fraud & Self-Dealing

67. Olson has used other tactics to take money from the Company, though it is not possible to know the full scope without access to NI's accounting records (which Olson has refused).

68. Olson caused NI to make a "loan" to his ex-spouse that served no business purpose.

69. Olson caused the Company to make so-called "vendor" payments to entities that have apparent ties to Olson or his associates. For example, between 2013–2015, NI paid $164,615 to NEFX. Through its own investigation, Nerium has learned that NEFX is an entity owned by Jeff Branch, an officer of NI. There is no demonstrated business purpose for these transactions. This secret funneling of money to an officer of NI amounts to fraud and self-dealing (or aiding and abetting self-dealing). It also breaches the Company Agreement's provision that no officer will receive more than $500,000 annual compensation without Nerium's approval. *See* Company Agreement § 6.06.

70. Several other suspicious transactions appear on the Company's general ledger. These transactions do not appear to advance NI's business purposes and ownership of the entities remains unknown:

a. Payments totaling $3,590,000 to FARC LLC between 2013–2015

b. Payments totaling $200,000 to Fotobar LLC between 2013–2015

c. Payments totaling $1,448,482 to Paradise Life between 2013–2015

d. Payments totaling $257,016 to Quarter after Three between 2013–2015

e. Payments totaling $253,145 to Stone Enterprises between 2013–2015

f. Payments totaling $188,220 to Stone & Bruce between 2013–2015

g. Payments totaling $210,789 to Graham Bright and Smith between 2013–2015

71. Substantial payments also have been made to individuals who are not NI employees and which apparently do not serve demonstrable business purposes:

a. Payments totaling $164,892 to JL Jamieson between 2013–2015

b. Payments totaling $99,395 to Sree Nalabolu between 2013–2015

c. Payments totaling $435,127 to Don Gardner between 2013–2015

d. Payment of $200,000 to Stuart Johnson in April 2015 along with other routine payments to Stuart Johnson that total at least $410,000.

72. Olson also caused NI to acquire Live Happy, LLC, a magazine that has never been profitable and which was owned by an Olson associate. At the very least, it was a

Fundamental Business Transaction for which Nerium SkinCare's consent was required and which Olson did not try to obtain. *See* Company Agreement § 6.02(a).

73. Plaintiffs believe that many, if not all, of the foregoing transactions are to disguise payments to Olson, his relatives, or his associates. An inspection of NI's books and records is needed to investigate these and other instances of fraud and self-dealing.

CLAIMS FOR RELIEF

CLAIM I
TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT
(Against all Defendants)

74. Nerium incorporates the foregoing paragraphs by reference.

75. Nerium is the exclusive owner of the NERIUM Marks. These marks are valid and protectable. The Defendants used the NERIUM Marks in commerce by affixing them to the Optimera Line, and then selling and offering the Optimera Line for sale. NI did this without Nerium's consent, and in violation of the Company Agreement.

76. Because the Optimera Line is virtually identical to the Product Line, ordinary consumers of both products are likely to be confused, mistaken, or deceived. Consumers are likely to be confused about the source of the goods, because they will likely believe that Nerium researched, developed, and manufactured the Optimera Line, when it did not. Consumers are also likely to be confused about the sponsorship of the goods, because they will likely believe that Nerium stands behind the Optimera Line, when it does not. These actions by NI violate the Lanham Act, 15 U.S.C. § 1114(1)(a).

77. NI had constructive notice of Nerium's registered NERIUM Marks, including the U.S. federal trademark applications that existed before NI's formation. In addition, NI had actual notice of Nerium's registered NERIUM Marks as a result of the execution of the Company

Agreement and, at least, because Nerium contacted NI and requested that it cease using the NERIUM Marks in connection with the sale the Optimera Line.

78. Olson and JO have vicariously infringed Nerium's Marks. Olson, as the Manager of NI, has the right and ability to control NI's actions, including its infringing actions. Further, JO, as the majority owner of NI, also has the ability to control NI's infringing actions. Further, both Olson and JO derive a financial benefit from the infringement.

79. Olson and JO have also contributorily infringed Nerium's Marks. Both Olson and JO know about NI's infringement and act to materially contribute or induce the infringement through their ownership and managerial roles. Further, upon information and belief, both Olson and JO have had a substantial role in developing, designing, marketing, and selling the infringing Optimera Line.

80. The Defendants' activities have harmed Nerium. Accordingly, Nerium is entitled to recover its damages, NI's profits received as a result of the infringing activities and conduct, and the costs of bringing this action pursuant to 15 U.S.C. § 1117. Because NI's activities have been willful, deliberate, and knowingly and intentionally designed to trade upon the goodwill of the NERIUM Marks to cause confusion, mistake, and to deceive the public, Nerium is also entitled to treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

81. Unless restrained by this Court, the Defendants' actions will cause ongoing harm to Nerium. Nerium has no control over the quality or production of the Optimera Line. Any deficiency in the Optimera Line will reflect adversely on Nerium, by whom customers will assume the products were manufactured or endorsed. If the Defendants are allowed to continue using the NERIUM Marks, Nerium will suffer irreparable injury to its reputation. Nerium has no adequate remedy at law for Defendants' violations of 15 U.S.C. § 1114. Because this irreparable

injury cannot be adequately calculated or compensated solely by money damages, Nerium seeks preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

CLAIM II
FALSE DESIGNATION OF ORIGIN; FALSE DESCRIPTIONS OR REPRESENTATIONS UNDER THE LANHAM ACT
(Against all Defendants)

82. Nerium incorporates the foregoing paragraphs by reference.

83. Nerium is the exclusive owner of the NERIUM Marks. These marks are valid and protectable. NI used the NERIUM Marks in commerce by affixing them to the Optimera Line, and then selling and offering the Optimera Line for sale. NI did this without Nerium's consent, and in violation of the Company Agreement. Further, Olson and JO are vicariously and contributorily liable for NI's conduct through Olson's management and JO's ownership of NI. Upon information and belief, both Olson and JO have had a substantial role in developing, designing, marketing, and selling the infringing Optimera Line.

84. Defendants' use of the NERIUM Marks, in commerce and without Nerium's authorization, in connection with the sale of products not from, produced or sponsored by Nerium, namely the Optimera Line, constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact. Because the Optimera Line is virtually identical to the Product Line in appearance, consumers are likely to be confused, mistaken, or deceived as to the nature of the affiliation, connection, or association between the Defendants and Nerium. For the same reason, consumers are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of the Optimera Line by Nerium in violation of 15 U.S.C. § 1125(a)(1)(A).

85. In addition, because the Defendants use the NERIUM Marks in commercial advertising or promotion, and misrepresent the nature, characteristics and qualities of the

Optimera Line by associating it with the Product Line, the Defendants violate 15 U.S.C. § 1125(a)(1)(B).

86. Defendants had constructive notice of Nerium's registered NERIUM Marks, including the U.S. federal trademark applications that existed before Defendants' formation. In addition, Defendants had actual notice of Nerium's registered NERIUM Marks as a result of the execution of the Company Agreement and, at least, because Nerium contacted NI and requested that it cease using the NERIUM Marks in connection with the sale the Optimera Line.

87. The Defendants' activities have harmed Nerium. Accordingly, Nerium is entitled to recover its damages, Defendants' profits received as a result of the infringing activities and conduct, and the costs of bringing this action pursuant to 15 U.S.C. § 1117. Because NI's activities have been willful, deliberate, and knowingly and intentionally designed to trade upon the goodwill of the NERIUM Marks to cause confusion, mistake, and to deceive the public, Nerium is also entitled to treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

88. Unless restrained by this Court, the Defendants' actions will cause ongoing harm to Nerium. Nerium has no control over the quality or production of the Optimera Line. Any deficiency in the Optimera Line will reflect adversely on Nerium, by whom customers will assume the products were manufactured or endorsed. If the Defendants are allowed to continue using the NERIUM Marks, Nerium will suffer irreparable injury to its reputation. Nerium has no adequate remedy at law for Defendants' violations of 15 U.S.C. § 1114. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Nerium seeks preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

CLAIM III
TRADE DRESS INFRINGEMENT UNDER THE LANHAM ACT
(Against all Defendants)

89. Nerium incorporates the foregoing paragraphs by reference.

90. Nerium is the exclusive owner of the NERIUM Trade Dress. This Trade Dress is valid and protectable. NI used the NERIUM Trade Dress in commerce by packaging the Optimera Line in virtually identical trade dress, and then selling and offering the Optimera Line for sale. NI did this without Nerium's consent, and in violation of the Company Agreement. Further, Olson and JO are vicariously and contributorily liable for NI's infringement through Olson's management and JO's ownership of NI. Upon information and belief, both Olson and JO have had a substantial role in developing, designing, marketing, and selling the infringing Optimera Line.

91. Defendants' use of the NERIUM Trade Dress, in connection with the sale of products not from, produced or sponsored by Nerium, namely the Optimera Line, constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact. Because the Optimera Line is virtually identical to the Product Line in appearance, consumers are likely to be confused, mistaken, or deceived as to the nature of the affiliation, connection, or association between the Defendants and Nerium. For the same reason, consumers are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of the Optimera Line by Nerium in violation of 15 U.S.C. § 1125(a)(1)(A).

92. In addition, because the Defendants use the NERIUM Trade Dress in commercial advertising or promotion, and misrepresent the nature, characteristics, and qualities of the Optimera Line by associating it with the Product Line, the Defendants violate 15 U.S.C. § 1125(a)(1)(B).

93. Defendants had constructive notice of Nerium's NERIUM Trade Dress as a result of the execution of the Company Agreement and, at least, because Nerium contacted NI and requested that it cease using the NERIUM Trade Dress in connection with the sale the Optimera Line.

94. The Defendants' activities have harmed Nerium. Accordingly, Nerium is entitled to recover its damages, Defendants' profits received as a result of the infringing activities and conduct, and the costs of bringing this action pursuant to 15 U.S.C. § 1117. Because NI's activities have been willful, deliberate, and knowingly and intentionally designed to trade upon the goodwill of the NERIUM Trade Dress to cause confusion, mistake, and to deceive the public, Nerium is also entitled to treble damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

95. Unless restrained by this Court, the Defendants' actions will cause ongoing harm to Nerium. Nerium has no control over the quality or production of the Optimera Line. Any deficiency in the Optimera Line will reflect adversely on Nerium, by whom customers will assume the products were manufactured or endorsed. If the Defendants are allowed to continue using the NERIUM Trade Dress, Nerium will suffer irreparable injury to its reputation. Nerium has no adequate remedy at law for Defendants' violations of 15 U.S.C. § 1114. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Nerium seeks preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

CLAIM IV
COMMON LAW TRADEMARK INFRINGEMENT
(Against all Defendants)

96. Nerium incorporates the foregoing paragraphs by reference.

97. Nerium is the exclusive owner, and senior user, of the NERIUM Marks. These marks are valid and protectable. The Defendants used the NERIUM Marks in commerce by affixing them to the Optimera Line, and then selling and offering the Optimera Line for sale. The Defendants did this without Nerium's consent, and in violation of the Company Agreement.

98. Because the Optimera Line is virtually identical to the Product Line, ordinary consumers of both products are likely to be confused, mistaken, or deceived. Consumers are likely to be confused about the source of the goods, because they will likely believe that Nerium researched, developed, and manufactured the Optimera Line, when it did not. Consumers are also likely to be confused about the sponsorship of the goods, because they will likely believe that Nerium stands behind the Optimera Line, when it does not.

99. Defendants' use of the NERIUM Marks, in commerce and without Nerium's authorization, in connection with the sale of products not from produced or sponsored by Nerium, namely the Optimera Line, constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact. Because the Optimera Line is virtually identical to the Product Line in appearance, consumers are likely to be confused, mistaken, or deceived as to the nature of the affiliation, connection, or association between the Defendants and Nerium. For the same reason, consumers are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of the Optimera Line by Nerium.

100. Defendants' activities and conduct therefore constitute common law trademark infringement under the laws of the State of Texas.

101. Defendants had constructive notice of Nerium's registered NERIUM Marks, including the U.S. federal trademark applications that existed before Defendants' formation. In addition, Defendants had actual notice of Nerium's registered NERIUM Marks as a result of the

execution of the Company Agreement and, at least, because Nerium contacted NI and requested that it cease using the NERIUM Marks in connection with the sale the Optimera Line.

102. The Defendants' activities have harmed Nerium. Accordingly, Nerium is entitled to recover its damages, Defendants' profits received as a result of the infringing activities and conduct, and the costs of bringing this action. NI has acted with malice and specific intent to cause substantial injury to Nerium. Because NI's activities have been willful, deliberate, and knowingly and intentionally designed to trade upon the goodwill of the NERIUM Marks to cause confusion, mistake, and to deceive the public, Nerium is also entitled to exemplary damages and reasonable attorneys' fees.

103. Unless restrained by this Court, the Defendants' actions will cause ongoing harm to Nerium. Nerium has no control over the quality or production of the Optimera Line. Any deficiency in the Optimera Line will reflect adversely on Nerium, by whom customers will assume the products were manufactured or endorsed. If the Defendants are allowed to continue using the NERIUM Marks, Nerium will suffer irreparable injury to its reputation. Nerium has no adequate remedy at law for Defendants' infringement. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Nerium seeks preliminary and permanent injunctive relief.

CLAIM V
COMMON LAW TRADE DRESS INFRINGEMENT
(Against all Defendants)

104. Nerium incorporates the foregoing paragraphs by reference.

105. Nerium is the exclusive owner of the NERIUM Trade Dress. This Trade Dress is valid and protectable. The Defendants used the NERIUM Trade Dress in commerce by packaging the Optimera Line in virtually identical trade dress, and then selling and offering the

Optimera Line for sale. The Defendants did this without Nerium's consent, and in violation of the Company Agreement.

106. Defendants' use of the NERIUM Trade Dress, in connection with the sale of products not from produced or sponsored by Nerium, namely the Optimera Line, constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact. Because the Optimera Line is virtually identical to the Product Line in appearance, consumers are likely to be confused, mistaken, or deceived as to the nature of the affiliation, connection, or association between the Defendants and Nerium. For the same reason, consumers are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of the Optimera Line by Nerium.

107. Defendants' activities therefore constitute common law trade dress infringement under the laws of the State of Texas.

108. Defendants had constructive notice of Nerium's NERIUM Trade Dress as a result of the execution of the Company Agreement and, at least, because Nerium contacted NI and requested that it cease using the NERIUM Trade Dress in connection with the sale the Optimera Line.

109. The Defendants' activities have harmed Nerium. Accordingly, Nerium is entitled to recover its damages, Defendants' profits received as a result of the infringing activities and conduct, and the costs of bringing this action. NI has acted with malice and specific intent to cause substantial injury to Nerium. Because NI's activities have been willful, deliberate, and knowingly and intentionally designed to trade upon the goodwill of the NERIUM Trade Dress to cause confusion, mistake, and to deceive the public, Nerium is also entitled to exemplary damages and reasonable attorneys' fees.

110. Unless restrained by this Court, the Defendants' actions will cause ongoing harm to Nerium. Nerium has no control over the quality or production of the Optimera Line. Any deficiency in the Optimera Line will reflect adversely on Nerium, by whom customers will assume the products were manufactured or endorsed. If the Defendants are allowed to continue using the NERIUM Trade Dress, Nerium will suffer irreparable injury to its reputation. Nerium has no adequate remedy at law for Defendants' infringement. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Nerium seeks preliminary and permanent injunctive relief.

CLAIM VI
COMMON LAW UNFAIR COMPETITION
(Against all Defendants)

111. Nerium incorporates the foregoing paragraphs by reference.

112. Nerium is the exclusive owner of the NERIUM Marks and NERIUM Trade Dress. These Marks and Trade Dress are valid and protectable. The Defendants used the NERIUM Marks and Trade Dress in commerce by affixing them to the Optimera Line, and then selling and offering the Optimera Line for sale. The Defendants did this without Nerium's consent, and in violation of the Company Agreement.

113. The NERIUM Marks and NERIUM Trade Dress are inherently distinctive or, alternatively, have acquired secondary meaning and have become distinctive through Nerium's substantially exclusive and continuous use, as well as through the widespread and significant promotion and advertising of Nerium's goods and services under the NERIUM Mark and Trade Dress.

114. Defendants' activities and conduct wrongfully use and benefit from Nerium's goodwill and reputation under both the NERIUM Marks and NERIUM Trade Dress. The

Optimera Line is in direct competition with the Product Line. As a result, the Defendants obtain a special advantage over Nerium, because they are burdened with none of the expense incurred by Nerium in building the goodwill associated with the NERIUM Marks and the NERIUM Trade Dress. This constitutes unfair competition under the common law of the State of Texas. As such, Nerium Biotech is entitled to recover any and all remedies provided by the common law.

115. Defendants had constructive notice of the NERIUM Marks and NERIUM Trade Dress as a result of the execution of the Company Agreement and, at least, because Nerium contacted NI and requested that it cease using the NERIUM Marks and NERIUM Trade Dress in connection with the sale the Optimera Line.

116. The Defendants' activities have harmed Nerium. Accordingly, Nerium is entitled to recover its damages, Defendants' profits received as a result of the infringing activities and conduct, and the costs of bringing this action. NI has acted with malice and specific intent to cause substantial injury to Nerium. Because NI's activities have been willful, deliberate, and knowingly and intentionally designed to trade upon the goodwill of the NERIUM Marks and NERIUM Trade Dress to cause confusion, mistake, and to deceive the public, Nerium is also entitled to exemplary damages and reasonable attorneys' fees.

117. Unless restrained by this Court, the Defendants' actions will cause ongoing harm to Nerium. Nerium has no control over the quality or production of the Optimera Line. Any deficiency in the Optimera Line will reflect adversely on Nerium, by whom customers will assume the products were manufactured or endorsed. If the Defendants are allowed to continue using the NERIUM Marks and the NERIUM Trade Dress, Nerium will suffer irreparable injury to its reputation. Nerium has no adequate remedy at law for Defendants' infringement. Because

this irreparable injury cannot be adequately calculated or compensated solely by money damages, Nerium seeks preliminary and permanent injunctive relief.

CLAIM VII
BREACH OF CONTRACT
(Against Olson and NI)

118. Nerium incorporates the foregoing paragraphs by reference.

119. The Company Agreement is a contract governing the relationship between Nerium and the Company, JO, Olson and Nerium.

120. The Company Agreement provides that the purpose of NI is to sell Nerium products and that NI must do so on an exclusive basis. Olson and the Company have breached the contract by selling non-Nerium products.

121. The Company Agreement provides that the Manager will not do any act in violation of the Company Agreement. Olson is the sole manager of the Company and has caused the Company to violate the Company Agreement.

122. The Company Agreement also provides that Olson, in his capacity as Manager, "will not . . . solicit business for . . . any business which produces or distributes cosmetic products which are materially similar to or competitive with" those produced by Nerium. Because NI has solicited business for a competing company by selling the Optimera Line through NI's network of brand partners, it has breached its contract with Nerium. The Optimera Line is materially similar to and competitive with the Product Line.

123. Moreover, as sole manager, Olson was "delegated the sole authority for the organization, supervision and oversight of the marketing efforts of the Company, and in such capacity shall supervise and manage the Company efforts to: . . . (b) promote and advertise the Product Line; . . . (h) plan and coordinate sales and promotional events for the Product Line on a

nationwide and, as the markets for the Product Line expand, worldwide basis; . . .” In violation of this directive, Olson has failed and refused to promote and advertise the Product Line and instead has introduced, promoted and advertised the Optimera Line.

124. Olson and the Company breached their obligation to “use best efforts to promote the[] sale” of the Product Line distributed exclusively by the Company. Tex. Bus. & Comm. Code § 2.306(b).

125. Olson and the Company have breached the Company Agreement by failing to allocate profits and make pro-rata distributions to Nerium SkinCare as required by Article V of the Company Agreement.

126. Olson and the Company have breached Section 21.03 Company Agreement by failing to comply with the profit sharing procedure for Net Profits from Marketing Aids.

127. Olson and the Company have breached Article V and Section 21.04 the Company Agreement by failing to pay increased revenue to Nerium SkinCare based upon gross cash proceeds from the sale of the Product Line exceeding the stated thresholds since August of 2013.

128. Olson and the Company’s material breaches of the Company Agreement have caused and continue to cause injury to Nerium SkinCare, and excuse Plaintiff’s future performance.

129. Plaintiffs seek damages within the jurisdictional limits of this Court, as well as termination of the Company Agreement. In the interim, and in the alternative if necessary, Plaintiffs seek preliminary and permanent injunctions restraining NI from breach of the exclusivity terms of the Company Agreement and to stop selling products that are not authorized by Nerium. Plaintiffs’ damages are not adequate to compensate them for the lost opportunity to grow their product distribution base and revenue and to invest in further cancer and other health

research activities. They also cannot compensate for the harm to Plaintiffs' brand, goodwill and reputation when their exclusive product distributor elects to sell a competing product in Nerium's place.

CLAIM VIII
BREACH OF FIDUCIARY DUTY
(Against Olson, on behalf of NI)

130. Nerium incorporates the foregoing paragraphs by reference.

131. Olson is the sole Manager of the Company and owes fiduciary duties of loyalty, candor, integrity, fair and honest dealing, and full disclosure to the Company. He also owes a duty not to usurp corporate profits for personal gain, and a duty to use uncorrupted business judgment for the sole benefit of the Company.

132. Olson breached these duties in several ways:

a. By causing the Company to make loans and sham "vendor" payments to himself, his relatives, and co-conspirators;

b. By usurping Company profits and making distributions of cash to JO (a company he owns and controls) in excess of JO's percentage share—for his personal enrichment and to the detriment of the Company;

c. By causing the Company to keep incomplete and misleading accounting records that obfuscate his self-dealing;

d. By withholding payments and distributions to Nerium SkinCare in an effort to freeze it out;

e. By causing the Company to make transfers in excess of $16,000,000 to off-shore accounts for his personal benefit, reducing the equity in the Company;

f. By manufacturing and selling the Optimera Line, in which he had a personal financial interest, in favor of the Product Line;

g. By failing to disclose his intent to develop and introduce the Optimera Line, and the transactions related thereto; and

h. By making intentionally false statements to the public which reflect poorly on the Company.

133. Olson's breaches of fiduciary duty injured the Company and Nerium SkinCare.

134. Nerium SkinCare seeks damages. In the interest of justice, pursuant to section 101.463 of the Business Organizations Code, the damages should be paid directly to Nerium.

135. Olson's intentional acts of misconduct entitle Nerium SkinCare to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

136. To remedy Olson's breach of fiduciary duty in this closely-held enterprise, the Court should enter a decree to wind up and terminate the company.

CLAIM IX
FRAUD
(Against Olson)

137. Nerium incorporates the foregoing paragraphs by reference.

138. Olson has caused NI to make payments to entities owned by him, his family members, or associates, for improper purposes while concealing the true nature of those distributions.

139. Olson either omitted to inform Nerium SkinCare of these payments, when he had a duty to do so, or misrepresented the nature of the payments to Nerium SkinCare. This information was material because it affected the financial health of NI and decreased Nerium SkinCare's distributions.

140. Olson misrepresented his intentions regarding the sale of the Optimera Line when he told Nerium that the product would only be a "placeholder." By these omissions and misrepresentations, Olson intended to defraud Nerium, and Nerium relied on the same. Olson knew that Nerium would rely on his statements because Olson was the sole manager of NI. This prevented Nerium from taking immediate action against the sale of Optimera.

141. Plaintiffs are entitled to actual and exemplary damages for Olson's fraud.

CLAIM X
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)
(Against Olson and JO)

142. The Plaintiffs assert a RICO claim pursuant to 18 U.S.C. § 1964(c) because Olson and/or JO has willfully or knowingly engaged in a pattern of racketeering activity involving a separate enterprise that affects interstate commerce.

143. As explained above, Olson and/or JO committed fraud. It was reasonably foreseeable that interstate mail and wire communications would be used in furtherance of this fraud, and the same actually occurred, injuring Nerium in its business and property.

144. As a result, this fraudulent conduct constitutes wire fraud because Olson and/or JO knowingly used wire communications such as interstate telephone calls, internet communications, and interstate bank wire transfers to further a scheme to defraud NI, and by extension Nerium, of money. This same conduct also constitutes mail fraud because Olson and/or JO knowingly used the United States Postal Service to send and deliver various communications across state lines in furtherance of a fraudulent scheme.

145. Olson and/or JO engaged in a pattern of racketeering activity by engaging in wire and mail fraud on an ongoing basis. These fraudulent acts were related, because they were all designed to reduce the money to which Nerium was entitled, thereby increasing the money Olson

and/or JO would receive. As Nerium's claim for fraud indicates, this pattern was a continuous scheme lasting more than two consecutive years and likely to continue.

146. In committing mail and wire fraud, Olson involved two separate enterprises. First, Olson involved JO Products, LLC, a company wholly owned by Olson, which he used to conduct his fraudulent scheme. Second, Olson involved Nerium International, LLC, of which he is the sole Manager, to conduct his fraudulent scheme. Both of these enterprises exist separate and apart from Olson's pattern of racketeering, because both JO Products and Nerium International engage in other business activities. Both of these enterprises are involved in interstate commerce because both directly engage in the production, distribution, or acquisition of goods and services in interstate commerce.

147. In committing mail and wire fraud, JO involved Nerium International, LLC, of which it owns 70%, and which it used to conduct its fraudulent scheme. This enterprise exists separate and apart from JO's pattern of racketeering because Nerium International engages in other business activities. Nerium International is involved in interstate commerce because it directly engages in the product, distribution, or acquisition of goods and services in interstate commerce.

148. Nerium has suffered injury to its business and property as a result of Olson and/or JO's conduct. Nerium requests actual damages, treble damages, costs, lost value of money, and attorneys' fees.

CLAIM XI
JUDICIAL WIND-UP & TERMINATION
(Against All Defendants)

149. Nerium incorporates the foregoing paragraphs by reference.

150. The Court should order the winding up and termination of the Company on legal and equitable grounds.

151. First, it is not reasonably practicable to carry on Company business in conformity with its governing documents, which requires its termination under Texas Business Organizations Code § 11.314. For example, the Company has failed and refused to enter a DLA that is an essential term of the Company Agreement. Further, its growing dependence on knockoff products of inferior quality frustrates the purpose for which it was created, and damages the NERIUM brand. Because the Company has entered into manufacturing agreements with other manufacturers, it is not reasonably practicable for Nerium to remain bound to one customer: the Company. And fundamental differences in strategy between the Manager of the Company and the leadership of Nerium further make business impracticable.

152. The Court should also order the winding up and termination of the Company as a remedy for Defendants' material breach of the Company Agreement, which excuses Plaintiff's future performance.

153. Further, the Court should order the winding up and termination of the Company as an equitable remedy for Olson's breaches of fiduciary duty and other misconduct.

154. Alternatively, if the foregoing grounds are not available, the Court should recognize a common law cause of action to terminate a closely-held company agreement for breach. The Texas Supreme Court has recognized that "the foreseeability, likelihood, and magnitude of harm sustained by minority shareholders due to the abuse of power by those in control of a closely held corporation is significant, and Texas law should ensure that remedies exist to appropriately address such harm when the underlying actions are wrongful." *Ritchie v. Rupe*, 443 S.W.3d 856, 879 (Tex. 2014). It further observed that "a proper case might justify our

recognition of a new common-law cause of action to address a 'gap' in protection for minority shareholders." *Id.* at 890. Shareholders of closely held corporations have a statutory right to terminate for breach of a close corporation agreement, which essentially codifies the grounds for termination that are pleaded above. Tex. Bus. Org. Code § 21.756. Because a parallel provision does not exist for minorities in closely held *LLCs*, a protection gap would exist if none of the above-pleaded grounds for termination applied here.

155. Plaintiff requests that the court appoint a qualified person to carry out the winding up the Company who is not affiliated with any Defendant. *See* Tex. Bus. Org. Code § 11.054.

CLAIM XII
DECLARATORY JUDGMENT
(Against All Defendants)

156. Nerium incorporates the foregoing paragraphs by reference.

157. An actual and immediate justiciable controversy exists between the parties concerning the NERIUM Marks and the NERIUM Trade Dress and, specifically, ownership of those marks. An actual and immediate justiciable controversy also exists as to the effect of the Company Agreement.

158. **Regarding trademark ownership**, Nerium seeks the following judicial declarations:

a. Defendants do not own, either in whole or in part, the NERIUM Marks or the NERIUM Trade Dress;

b. Nerium is the sole and exclusive owner of the NERIUM Marks and the NERIUM Trade Dress used on or in connection with, by way of example and not by way of restriction, skincare products, multi-level marketing, retail, and distribution services.

c. Nerium is the sole and exclusive owner of the marks identified in the following U.S. trademark applications and registrations: the N & design mark in U.S. Trademark Registration No. 4469321; the N & design mark in U.S. Trademark Registration No. 4425567; the N NERIUM INTERNATIONAL & design mark in U.S. Trademark Application Serial No. 86276118; the N NERIUM & design mark in U.S. Trademark Application Serial No. 86276158; the NERIUM mark in U.S. Trademark Application Serial No. 86276183; the THE NERIUM EXPERIENCE mark in U.S. Trademark Application Serial No. 86368419; the THE NERIUM EXPERIENCE mark in U.S. Trademark Application Serial No. 86370727; the N NERIUM & design mark in U.S. Trademark Application Serial No. 86413924; and the N NERIUM & design mark in U.S. Trademark Application Serial No. 86413976.

d. NI is not, and has never been, licensed to place the NERIUM mark on the Optimera Line.

e. NI is not, and has never been, licensed to use NERIUM trade dress on the Optimera Line.

159. **Regarding the sale of products outside the Product Line**, Nerium seeks the following judicial declarations:

a. That the Company Agreement only grants the Company non-exclusive distribution rights in OTC products (with the exception of acne products which are exclusive) and that Nerium has the right to distribute OTC products to third parties other that Company.

b. That the Company Agreement precludes NI from selling, advertising, or endorsing the Optimera Line.

c. That NI's refusal to accept or sell the Product Line, or its failure to use its best efforts in doing so, entitles Plaintiffs to terminate the contract or avail itself of the remedies provided by Tex. Bus. & Comm. Code §§ 2.610, 2.703, 2.703, or 2.711, including without limitation withholding such products, reselling to another buyer, and cancellation.

CLAIM XIII
APPLICATION TO COMPEL INSPECTION OF RECORDS & INFORMATION
(Against NI)

160. Nerium incorporates the foregoing paragraphs by reference.

161. Nerium SkinCare is a member of Nerium International, LLC.

162. Section 101.052(a) of the Business Organizations Code provides that a member of a limited liability company, on written request and for a proper purpose, may examine and copy at any reasonable time: (1) records required under Sections 3.151 and 101.501; and (2) other information regarding the business, affairs, and financial condition of the company that is reasonable for the person to examine and copy. Tex. Bus. Orgs. Code § 101.502.

163. This statutory inspection right is separate and independent from Nerium's discovery rights. *Burton v. Cravey*, 759 S.W.2d 160 (Tex. App.—Houston [1st Dist.] 1988, no writ) (a court will not "engraft discovery notions upon [a party's] statutory right of inspection, which is independent of any right of discovery in litigation"). The right of members to inspect books and records "is only limited by the requirement that the inspection be for any proper purpose." *Shioleno v. Sandpiper Condos. Council of Owners, Inc.*, No. 13-07-00312-CV, 2008 Tex. App. LEXIS 5289, at *12 (Tex. App.—Corpus Christi July 17, 2008, no pet.).

164. On May 10, 2016, Nerium made a written request to examine NI's records and information. *See* **Exhibit C.** The request's purpose was "to evaluate whether the Company's accounting methods and equity allocations comply with the Company Agreement, to determine the correct equity and cost allocations, and to investigate accounting irregularities and suspected self-dealing." *See id.* The request seeks access to records required under Sections 3.151 and 101.501 and other documents related to the financial condition of the Company. *See id.*

165. On May 20, 2016, NI issued a written refusal to comply with Nerium's request to examine its records and information. *See* **Exhibit D.** NI objected that some of the requested information has already been provided to auditors, which was not true. While Nerium's outside auditors reviewed many NI records, this was only to ensure that *Nerium* publicly reported a reasonable fair market value of its investment in NI accompanied by required footnote disclosure of NI's summary financial data on a GAAP basis. The auditors did not try to resolve the concerns Nerium SkinCare expressed in its record request and did not review those records. And while NI was initially cooperative with these auditors in early 2015, that cooperation deteriorated as NI pressed ahead with plans to sell its knockoff product internationally. Ultimately, NI expelled the auditors to prevent them from finding something that would jeopardize its litigation position, although the auditors were not looking for such evidence.

166. NI further objected that a book-and-records demand "is not a way to circumvent discovery proceedings." This objection overlooks that a member's inspection rights are independent of its discovery rights. It also overlooks that NI refuses to provide the same information in discovery. One way or the other, NI must give its member access.

ATTORNEYS' FEES

167. Nerium incorporates the foregoing paragraphs by reference.

168. Nerium SkinCare is entitled to recover reasonable and necessary attorney fees under the Texas Civil Practice and Remedies Code chapter 38 because this suit is for breach of contract and Nerium SkinCare has retained counsel.

169. Nerium SkinCare is entitled to its attorneys' fees under Section 101.461 of the Business Organizations Code because of the substantial benefit this action confers on the Company.

REQUESTED RELIEF

WHEREFORE, the Plaintiff respectfully requests that judgment be entered in its favor and against Defendants and requests relief as follows:

A. Judgment be entered in favor of Nerium Biotech and against each Defendant as to each of the above counts;

B. That Defendants be adjudged to have intentionally infringed and copied Nerium's NERIUM Marks and NERIUM Trade Dress, and to have manufactured, distributed, marketed, advertised, or sold infringing goods, and that Defendants be adjudged to have falsely designated the origin of its goods, and therefore be required to pay, under applicable federal, state, and/or common law:

1. Nerium's actual damages and any profits of Defendants resulting from said infringement, said false designation of origin and false representations, including all profits received by Defendants from sales and revenues of any kind made as a result of its actions;

2. Three times the actual damages of Nerium or profits of Defendants resulting from said infringement;

3. Nerium's reasonable attorney's fees;

4. Nerium's costs and expenses; and

5. Pre-judgment and post-judgment interest;

C. Issuance of a preliminary injunction pursuant to applicable federal, state, and/or common law, enjoining Defendants, their officers, agents, employees, servants, attorneys, successors, and assigns, and all those controlled by, acting on behalf of, in privity with, or acting in concert or active participation with Defendants, from:

1. Advertising, selling, offering for sale, shipping, or transporting any product bearing the mark "Nerium" to be used for skin care, except for those products that Defendants purchase directly from Plaintiffs;

2. Advertising, selling, offering for sale, shipping, or transporting any product bearing the "N" mark to be used for skin care, except for those products that Defendants purchase directly from Plaintiffs; and

3. Advertising, selling, offering for sale, shipping, or transporting any product using the NERIUM Trade Dress to be used for skin care, except for those products that Defendants purchase directly from Plaintiffs.

D. That Nerium be permitted to conduct expedited discovery relating to the requested preliminary injunction, including discovery as to any planned skin care products using the NERIUM Marks or NERIUM Trade Dress, the current countries where the Optimera Line is advertised, offered, and sold, and the persons who have manufactured, distributed, advertised, marketed, imported, or sold the Optimera Line within the United States;

E. Issuance of a permanent injunction pursuant to applicable federal, state, and/or common law, enjoining Defendants, their officers, agents, employees, servants, attorneys, successors, and assigns, and all those controlled by, acting on behalf of, in privity with, or acting in concert or active participation with Defendants, from:

1. Infringing Nerium's NERIUM Marks or NERIUM Trade Dress;

2. Inducing or enabling others to directly or indirectly manufacture, distribute, advertise, market, or sell one or more infringing goods or services under Nerium's NERIUM Marks and NERIUM Trade Dress;

3. Directly or indirectly manufacturing, distributing, advertising, marketing, or selling products in any fashion which would state, imply, or suggest that products not from Nerium, such as the Optimera Line, are associated with or come from the same source as Nerium;

4. Directly or indirectly using or incorporating Nerium's NERIUM Marks or NERIUM Trade Dress, or confusingly similar marks or trade dress, alone or in combination with other words or dress, to identify, market, distribute, advertise, promote, offer for sale, or provide infringing goods or services;

5. Continuing, or inducing others to directly or indirectly commit, the acts of false designation of origin or quality of Defendants' products and unfair trade practices complained-of herein;

6. Making or inducing others to make any false, misleading, or deceptive statement of fact, or representation of fact in connection with the promotion, advertisement, display, sale, offering for sale, manufacture,

production, circulation or distribution of one or more infringing goods or services in such fashion as to suggest that such infringing goods or services are connected with or associated with or sponsored by Nerium or its genuine products identified by the NERIUM Marks and NERIUM Trade Dress;

7. Palming off, or inducing others to palm off, any service or product as a service or product of Nerium Biotech; and

8. Otherwise unfairly competing with Nerium or doing any acts that may cause Defendants' goods to be mistaken for, confused with, or passed off as Nerium's goods.

F. Defendants be ordered to deliver up for destruction all products, labels, signs, plates, packages, dies, wrappers, receptacles, literature, advertisements, and other materials in their possession or under its control, bearing any words, terms, names, symbols, devices, or any combination thereof, which: simulate, reproduce, counterfeit, copy or colorably imitate the NERIUM Marks or NERIUM Trade Dress in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product not from Nerium, including the Optimera Line;

G. An order directing Defendants to take corrective action to correct any erroneous impression the public may have derived from infringement, unfair competition and concerning the source or origin of Defendants' infringing products, including without limitation the placement of corrective advertising;

H. An order compelling NI to submit to an inspection of its records and information;

I. An order directing the wind-up of the Company

J. The appointment of another individual, unaffiliated with any Defendant, to carry out the winding up of the Company;

K. Declaratory judgment on the counts requested herein;

L. Actual and exemplary damages;

M. A declaration that this is an exceptional case;

N. Reasonable and necessary attorney's fees;

O. All costs of suit; and

P. An award of such other relief to Plaintiff as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Nerium hereby demands a trial by jury on all claims that may be tried before a jury.

Respectfully Submitted,

/s/Jonathan R. Mureen
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ATTORNEYS FOR NERIUM SKINCARE, INC. AND NERIUM BIOTECHNOLOGY, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served in accordance with the Federal Rules of Civil Procedure on all counsel of record via the court's ECF system on this 2nd day of June, 2016.

/s/ Jonathan R. Mureen

Exhibit A-1

United States of America

United States Patent and Trademark Office

NeriumDerm
A NATURAL SKIN REPAIR CREAM

Reg. No. 3,921,445

Registered Feb. 22, 2011

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED SKIN CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "A NATURAL SKIN REPAIR CREAM", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLACK, RED, AND GREEN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "NERIUMDERM," WHICH APPEARS IN RED ABOVE THE WORDING "A NATURAL SKIN REPAIR CREAM", WHICH APPEARS IN BLACK. A GREEN LEAF APPEARS ABOVE THE WORDING. TO THE RIGHT OF THE WORDING IS A RED FLOWER.

SER. NO. 76-701,349, FILED 1-25-2010.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit A-2

United States of America

United States Patent and Trademark Office

Nerium SkinCare
A DIVISION OF NERIUM BIOTECHNOLOGY, INC.

Reg. No. 3,921,446

Registered Feb. 22, 2011

Corrected Aug. 27, 2013

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED SKIN CARE PREPARATIONS, NAMELY, CREAMS, LOTIONS, GELS, TONERS, CLEANERS, AND PEELS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKINCARE", "DIVISION", AND "BIOTECHNOLOGY, INC.", APART FROM THE MARK AS SHOWN.

THE COLOR(S) GRAYISH BLACK, RED, GREEN, AND BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "NERIUM SKINCARE", WHICH APPEARS IN RED ABOVE THE WORDING "A DIVISION OF NERIUM BIOTECHNOLOGY, INC.", WHICH APPEARS IN GRAYISH BLACK. TO THE RIGHT OF THE WORDING IS A CIRCLE OUTLINED IN GREEN WITH BLUE SHADING AROUND A RED FLOWER AND GREEN LEAVES.

SER. NO. 76-701,350, FILED 1-25-2010.

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

Acting Director of the United States Patent and Trademark Office

Exhibit A-3

United States of America

United States Patent and Trademark Office

NeriumCS

A Natural Cold Sore Relief Serum

Reg. No. 3,921,447

Registered Feb. 22, 2011

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED LIP CARE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "A NATURAL COLD SORE RELIEF SERUM", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLACK, RED, AND GREEN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "NERIUM CS," WHICH APPEARS IN RED ABOVE THE WORDING "A NATURAL COLD SORE RELIEF SERUM", WHICH APPEARS IN BLACK. A GREEN LEAF AND A RED FLOWER APPEAR ABOVE THE WORDING.

SER. NO. 76-701,351, FILED 1-25-2010.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit A-4

United States of America

United States Patent and Trademark Office

NERIUMCS

Reg. No. 4,062,274

Registered Nov. 29, 2011

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, NAMELY, CREAMS; NON-MEDICATED TOPICAL COLD SORE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-144,355, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit A-5

United States of America

United States Patent and Trademark Office

NERIUMDERM

Reg. No. 4,069,525
Registered Dec. 13, 2011
Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, NAMELY, CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-144,403, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit A-6

United States of America

United States Patent and Trademark Office

NERIUM SKINCARE

Reg. No. 4,069,528

Registered Dec. 13, 2011

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, NAMELY, CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKINCARE", APART FROM THE MARK AS SHOWN.

SER. NO. 85-144,658, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit A-7

United States of America

United States Patent and Trademark Office

NERIUMAD

Reg. No. 4,219,079

Registered Oct. 2, 2012

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: NON-MEDICATED SKIN CARE PREPARATIONS; NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 4-0-2011; IN COMMERCE 8-0-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,526,064, 3,921,447, AND OTHERS.

SN 85-368,685, FILED 7-12-2011.

MICHAEL TANNER, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

Exhibit A-8

United States of America

United States Patent and Trademark Office

NERIUM BIOTECHNOLOGY, INC.

Reg. No. 4,414,257

Registered Oct. 8, 2013

Int. Cl.: 42

SERVICE MARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 75230

FOR: MEDICAL RESEARCH AND PRODUCT DEVELOPMENT IN THE FIELDS OF BIOTECHNOLOGY, DRUG DISCOVERY, PHARMACEUTICALS, SCIENTIFIC RESEARCH, MEDICAL PROCEDURES, AND DRUG THERAPIES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 6-18-2008; IN COMMERCE 6-18-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,526,064.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIOTECHNOLOGY, INC.", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "NERIUM".

SER. NO. 85-858,806, FILED 2-25-2013.

JENNIFER WILLISTON, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

Deputy Director of the United States Patent and Trademark Office

Exhibit A-9

United States of America

United States Patent and Trademark Office

Nerium
BIOTECHNOLOGY, INC.

Reg. No. 4,464,657

Registered Jan. 14, 2014

Int. Cl.: 42

SERVICE MARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: MEDICAL RESEARCH AND PRODUCT DEVELOPMENT IN THE FIELDS OF BIOTECHNOLOGY, DRUG DISCOVERY, PHARMACEUTICALS, SCIENTIFIC RESEARCH, MEDICAL PROCEDURES AND DRUG THERAPIES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 7-31-2011; IN COMMERCE 7-31-2011.

OWNER OF U.S. REG. NOS. 3,526,064, 3,921,447 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIOTECHNOLOGY, INC.", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "NERIUM BIOTECHNOLOGY, INC." WITH THE DESIGN OF AN OPEN OLEANDER FLOWER.

SEC. 2(F) AS TO "NERIUM".

SER. NO. 85-696,521, FILED 8-6-2012.

ALLISON HOLTZ, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

Michelle K. Lee

Deputy Director of the United States Patent and Trademark Office

Exhibit A-10

United States of America

United States Patent and Trademark Office

NERIUMRX

Reg. No. 4,768,865

Registered July 7, 2015

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: MEDICATED SKIN CARE PREPARATIONS, NAMELY, CREAMS, LOTIONS, ALL CONTAINING NERIUM, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 4-29-2015; IN COMMERCE 4-29-2015.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 4,062,274, 4,069,528, AND OTHERS.

SN 85-144,447, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY

Michelle K. Lee

Director of the United States
Patent and Trademark Office

Exhibit A-11

United States of America

United States Patent and Trademark Office

NERIUMFIRM

Reg. No. 4,956,348

Registered May 10, 2016

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)
11467 HUEBNER ROAD, SUITE 175
SAN ANTONIO, TX 78230

FOR: SKIN CARE PREPARATIONS, NAMELY, SKIN AND BODY LOTIONS, CREAMS; COSMETIC PREPARATIONS FOR MOISTURIZING, FIRMING, REDUCING THE APPEARANCE OF CELLULITE, SMOOTHING AND CONDITIONING THE SKIN, NAMELY, FIRMING LOTIONS, FIRMING CREAMS, BODY CONTOUR CREAMS, SKIN TONING CREAMS, LOTIONS AND CREAMS FOR CELLULITE REDUCTION, NON-MEDICATED LOTIONS FOR CONDITIONING OF THE SKIN, NON-MEDICATED CREAMS FOR CONDITIONING OF THE SKIN, ALL CONTAINING OLEANDER PLANT EXTRACTS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 5-1-2014; IN COMMERCE 5-1-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,921,446, 4,069,528, AND OTHERS.

SN 86-180,361, FILED 1-30-2014.

MIDGE BUTLER, EXAMINING ATTORNEY

Michelle K. Lee

Director of the United States
Patent and Trademark Office

Exhibit B

Trademark Report By Title
Search Criteria

Printed: 6/1/2016

Display Options

COUNTRY	REFERENCE #	FILED	APP #	REG DT	REG #	STATUS	CLASSES
NERIUM BIOTECHNOLOGY, INC (and Design - Doves)							
CANADA	46411.00019	2/22/2007	1337492	1/28/2010	TMA758222	REGISTERED	N/A, N/A
NERIUM BIOTECHNOLOGY, INC (and Design-Oleander)							
CANADA	46411.00023	2/4/2013	1612615	12/12/2014	TMA892159	REGISTERED	N/A
NERIUM BIOTECHNOLOGY, INC.							
CANADA	46411.00018	2/22/2007	1337493	2/1/2010	TMA758427	REGISTERED	N/A, N/A
NERIUM SKINCARE							
COSTA RICA	46411.00213	8/6/2014	2014-0006757	1/23/2015	241321	REGISTERED	05
NERIUMAD							
ARGENTINA	46411.00115	3/7/2014	3313379	4/1/2015	2715928	REGISTERED	03
AUSTRALIA	46411.00074	6/25/2013	1570793	1/29/2014	1168156	REGISTERED	03
CHILE	46411.00114	2/10/2014	1094518	10/7/2015	1181899	REGISTERED	03
CHINA	46411.00079	6/25/2013	1168156	9/29/2014	1168156	REGISTERED	03
COLOMBIA	46411.00118	3/7/2014	14-049407	9/29/2014	502931	REGISTERED	03
COSTA RICA	46411.00210	8/6/2014	2014-0006758	1/23/2015	241322	REGISTERED	05
DOMINICAN REPUBLIC	46411.00181	7/14/2014	2014-19997	10/31/2014	215669	REGISTERED	03
ECUADOR	46411.00119	3/19/2014	2014-56958	1/27/2015	549-15	REGISTERED	03
EUROPEAN UNION (EU	46411.00058	6/25/2013	011929585	6/25/2013	011929585	REGISTERED	03
HONG KONG	46411.00182	7/14/2014	303066697	12/22/2014	303066697	REGISTERED	03
JAPAN	46411.00084	6/25/2013	1168156	3/6/2014	1168156	REGISTERED	03
KUWAIT	46411.00263	1/26/2015	162642	3/28/2016	131554	REGISTERED	03

COUNTRY	REFERENCE #	FILED	APP #	REG DT	REG #	STATUS	CLASSES
MEXICO	46411.00089	6/25/2013	1398032	6/25/2013	1168156	REGISTERED	03
NEW ZEALAND	46411.00185	7/14/2014	1001310	1/15/2015	1001310	REGISTERED	03
NORWAY	46411.00186	7/14/2014	201408296	10/30/2014	278616	REGISTERED	03
PERU	46411.00120	3/7/2014	566814	8/4/2014	00213614	REGISTERED	03
PHILIPPINES	46411.00187	7/17/2014	4-2014-008896	12/25/2014	4-2014-008896	REGISTERED	03
RUSSIA	46411.00094	6/25/2013	1168156	6/16/2014	1168156	REGISTERED	03
SAUDI ARABIA	46411.00262	2/16/2015	1436008963	7/5/2015	1436008963	REGISTERED	03
SINGAPORE	46411.00099	6/25/2013	T1312072A	4/16/2014	1168156	REGISTERED	03
SOUTH KOREA	46411.00059	6/28/2013	42718/2013	5/9/2014	1036608	REGISTERED	03
SWITZERLAND	46411.00188	7/15/2014	58231/2014	10/1/2014	664290	REGISTERED	03
TAIWAN	46411.00121	3/7/2014	103012244	9/16/2014	1664821	REGISTERED	03
UKRAINE	46411.00190	7/14/2014	201409679	11/10/2015	205563	REGISTERED	03
VENEZUELA	46411.00122	4/22/2014	2014-004927	5/29/2015	P-347557	REGISTERED	03
VIETNAM	46411.00104	6/25/2013	1168156	6/25/2013	1168156	REGISTERED	03
WIPO	46411.00060			6/25/2013	1168156	REGISTERED	03
WIPO	46411.00244	1/15/2015	1253014	1/15/2015	1253014	REGISTERED	03

NERIUMDERM

ARGENTINA	46411.00294	1/19/2015	3380964	11/20/2015	2770090	REGISTERED	03
CHILE	46411.00292	1/16/2015	1139380	12/3/2015	1187801	REGISTERED	03
COLOMBIA	46411.00220	2/18/2015	15.035.701	6/30/2015	519220	REGISTERED	03
ECUADOR	46411.00291	1/16/2015	IEPI-2015-1715	3/10/2016	3300	REGISTERED	03
JAPAN	46411.00222	2/16/2015	2015-013511	8/7/2015	5784672	REGISTERED	03
KUWAIT	46411.00283	1/26/2015	162641	3/28/2016	131553	REGISTERED	03
MEXICO	46411.00224	2/5/2015	1574437	7/16/2015	1555953	REGISTERED	03
NORWAY	46411.00225	2/6/2015	201501584	7/7/2015	282606	REGISTERED	03
PERU	46411.00290	1/16/2015	603255	4/9/2015	00222960	REGISTERED	03
RUSSIA	46411.00228	2/25/2015	2015704941	3/21/2016	568545	REGISTERED	03
SAUDI ARABIA	46411.00282	2/16/2015	1436008962	7/5/2015	1436008962	REGISTERED	03
SINGAPORE	46411.00229	3/5/2015	40201503679Q	9/16/2015	40201503679Q	REGISTERED	03
SWITZERLAND	46411.00218	2/6/2015	51406/2015	4/28/2015	672456	REGISTERED	03
TURKEY	46411.00230	3/5/2015	2015/19107	12/16/2015	201519107	REGISTERED	03
UKRAINE	46411.00231	2/16/2015	m201501923	4/25/2016	211416	REGISTERED	03

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COUNTRY	REFERENCE #	FILED	APP #	REG DT	REG #	STATUS	CLASSES
AUSTRALIA	46411.00117	3/7/2014	1623230	9/18/2014	1203547	REGISTERED	03
CHILE	46411.00126	7/29/2014	1116813	10/30/2015	1184294	REGISTERED	03
CHINA	46411.00139	3/7/2014	1203547	3/17/2015	1203547	REGISTERED	03
COLOMBIA	46411.00127	3/7/2014	14-049430	9/8/2014	Awaiting	REGISTERED	03
COSTA RICA	46411.00191	7/16/2014	2014-006103	4/13/2015	242814	REGISTERED	03
DOMINICAN REPUBLIC	46411.00192	7/14/2014	2014-19998	12/16/2014	217531	REGISTERED	03
ECUADOR	46411.00128	3/19/2014	2014-56956	1/27/2015	550-15	REGISTERED	03
EUROPEAN UNION (EU	46411.00129	3/6/2014	012667697	10/3/2014	012667697	REGISTERED	03
HONG KONG	46411.00193	7/14/2014	303066688	12/22/2014	303066688	REGISTERED	03
JAPAN	46411.00140	3/7/2014	1203547	3/7/2014	1203547	REGISTERED	03
KUWAIT	46411.00260	1/26/2015	162644	3/28/2016	131556	REGISTERED	03
MEXICO	46411.00141	3/7/2014	1203547	1/26/2015	1507526	REGISTERED	03
NEW ZEALAND	46411.00196	7/14/2014	1001311	1/15/2015	1001311	REGISTERED	03
NORWAY	46411.00197	7/14/2014	201408295	10/30/2014	278615	REGISTERED	03
PERU	46411.00130	3/7/2014	566815	1/13/2015	00220174	REGISTERED	03
RUSSIA	46411.00142	3/7/2014	1203547	4/7/2015	1203547	REGISTERED	03
SAUDI ARABIA	46411.00259	2/16/2015	1436008965	7/5/2015	1436008965	REGISTERED	03
SINGAPORE	46411.00143	3/7/2014	1203547	2/13/2015	1203547	REGISTERED	03
SOUTH KOREA	46411.00131	3/11/2014	16206/2014	5/14/2015	1105763	REGISTERED	03
SWITZERLAND	46411.00199	7/15/2014	58230/2014	10/1/2014	664289	REGISTERED	03
TAIWAN	46411.00132	3/7/2014	103012243	4/1/2015	1698368	REGISTERED	03
UKRAINE	46411.00201	7/14/2014	201409681	12/25/2015	206919	REGISTERED	03
VENEZUELA	46411.00133	4/22/2014	2014-004929	5/29/2015	P-347558	REGISTERED	03
VIETNAM	46411.00144	3/7/2014	1203547	3/7/2014	1203547	REGISTERED	03
WIPO	46411.00134	3/7/2014	1203547	3/7/2014	1203547	REGISTERED	03
WIPO	46411.00240	1/15/2015	1254090	1/15/2015	1254090	REGISTERED	03

NERIUMRX

ARGENTINA	46411.00277	1/19/2015	3380963	11/20/2015	2770089	REGISTERED	05
AUSTRALIA	46411.00075	6/25/2013	1572168	1/29/2014	1168372	REGISTERED	05
CHINA	46411.00080	6/25/2013	1168372	11/21/2014	1168372	REGISTERED	05
COLOMBIA	46411.00253	2/18/2015	15.035.689	11/26/2015	528126	REGISTERED	05
ECUADOR	46411.00275	1/16/2015	IEPI-2015-1717-RE	2/29/2016	2788	REGISTERED	05

COUNTRY	REFERENCE #	FILED	APP #	REG DT	REG #	STATUS	CLASSES
EUROPEAN UNION (EU	46411.00063	6/25/2013	011929668	6/25/2013	011929668	REGISTERED	05
HONG KONG	46411.00203	7/28/2014	303081852	2/11/2015	303081852	REGISTERED	05
JAPAN	46411.00085	6/25/2013	1168372	3/6/2014	1168372	REGISTERED	05
JAPAN	46411.00307	2/16/2015	2015-013512	9/18/2015	5793514	REGISTERED	05
KUWAIT	46411.00269	1/26/2015	162643	3/28/2016	131555	REGISTERED	05
MEXICO	46411.00090	6/25/2013	1168372	3/7/2014	1168372	REGISTERED	05
NEW ZEALAND	46411.00252	2/9/2015	1013682	8/11/2015	1013682	REGISTERED	05
NORWAY	46411.00247	2/6/2015	201501579	7/7/2015	282605	REGISTERED	05
PERU	46411.00274	1/16/2015	603256	4/9/2015	0222961	REGISTERED	05
PHILIPPINES	46411.00251	2/9/2015	4-2015-001416	4/23/2015	4-2015-001416	REGISTERED	05
RUSSIA	46411.00095	6/25/2013	1168372	6/18/2014	1168372	REGISTERED	05
RUSSIA	46411.00304	2/25/2015	2015704942	4/22/2016	572273	REGISTERED	05
SAUDI ARABIA	46411.00268	2/16/2015	1436008964	7/5/2015	1436008964	REGISTERED	05
SINGAPORE	46411.00100	6/25/2013	T13123561	4/30/2014	1168372	REGISTERED	05
SINGAPORE	46411.00308	3/5/2015	40201503683X	3/5/2015	40201503683X	REGISTERED	05
SOUTH KOREA	46411.00064	6/28/2013	42719/2013	5/9/2014	1036613	REGISTERED	05
SWITZERLAND	46411.00246	2/6/2015	51407/2015	4/28/2015	672457	REGISTERED	05
TAIWAN	46411.00204	8/1/2014	103044244	7/16/2015	1716681	REGISTERED	03
UKRAINE	46411.00245	2/16/2015	m201501924	4/25/2016	211417	REGISTERED	05
VIETNAM	46411.00105	6/25/2013	1168372	6/25/2013	1168372	REGISTERED	05
WIPO	46411.00065			6/25/2013	1168372	REGISTERED	05

NERIUMRX (and NRX Design)

MEXICO	46411.00511	8/20/2015	1647371	12/8/2015	1597422	REGISTERED	03
MEXICO	46411.00515	8/20/2015	1647376	11/23/2015	1591458	REGISTERED	05
SAUDI ARABIA	46411.00543	8/19/2015	1436022897	12/9/2015	1436022897	REGISTERED	05
SINGAPORE	46411.00551	8/19/2015	40201514409U	8/19/2015	40201514409U	REGISTERED	05
SWITZERLAND	46411.00563	8/18/2015	59852/2015	11/6/2015	680215	REGISTERED	05

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MEXICO	46411.00264	1/19/2015	1568018	11/11/2015	1588712	REGISTERED	05

END OF REPORT TOTAL ITEMS SELECTED = 105

Exhibit C

SQUIRE PATTON BOGGS

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Jon.Mureen@squirepb.com

May 10, 2016

By Electronic Mail
Monica W. Latin
Parker L. Graham
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main Street, Suite 5500
Dallas, Texas 75202

Re: Member Demand to Examine Records and Information of Nerium International, LLC

Dear Counsel:

On behalf of Nerium SkinCare, Inc., this is a formal demand to examine records and information held by Nerium International, LLC ("NI" or the "Company"). This is being made in Nerium SkinCare's capacity as a member of the Company, pursuant to section 101.502(a) of the Texas Business Organizations Code.

Before May 20, 2016, please produce or make available for inspection and copying the records listed on the attached **Exhibit A**. Our purpose is to evaluate whether the Company's accounting methods and equity allocations comply with the Company Agreement, to determine the correct equity and cost allocations, and to investigate accounting irregularities and suspected self-dealing. Specific explanations are beside each request.

If you have questions or disagreements about a request, please contact me before the production date to try to resolve it.

Very truly yours,

Jon Mureen

44 Offices in 21 Countries

Squire Patton Boggs (US) LLP is part of the international legal practice Squire Patton Boggs, which operates worldwide through a number of separate legal entities.

Please visit squirepattonboggs.com for more information.

Exhibit A

Item and description	Purpose
Annual affiliate and consolidated income statement, balance sheets, statement of cash flows, and changes in members equity (prepared under both a section 704(b) book and GAAP method)	To determine the Company's overall financial condition
Any audit, review or compilation report(s) prepared by NI's outside accountants	To determine the company's overall financial condition and the reasonable accuracy of the company's financial statements
Detailed capital account roll forward for NI's members pursuant to section 4.06 of the company agreement (on both a section 704(b) book basis, as provided by the company agreement, and under GAAP)	To determine if the capital account calculations of the members follows section 4.06 of the company agreement
Detailed profit & loss allocations of normal (70/30) and any special allocations of income, deduction, loss, revenue, bonus or other items that impact the NI members' capital accounts requested above	To determine if the allocations follow the terms of the company agreement
Detailed allocations of any "Marketing Aids" pursuant to section 21.03 of the company agreement (if any)	To determine if the allocations follow section 21.03 of the company agreement
Details of allocations made related to the increased sales of the product line pursuant to section 21.04 of the company agreement	To determine if the allocations follow the company agreement
Details of all member property and money distributions (dates and amounts paid or transferred) that impact the NI members' capital accounts requested above (including copies or other documents of any checks, wires, ACH or other fund transfer means which details both the transferor and transferee of the funds)	To determine if distributions paid follow the terms of section 5.02 and other provisions of the company agreement
Details of any adjusting journal entries (AJEs) or other reclassification book entries to the members' capital or equity accounts, including the original entries, amount, date(s) and reason(s) of adjustment	To determine if distributions paid follow the terms of section 5.02 and other provisions of the company agreement
Complete copies of NI's partnership tax returns (Form 1065)	To review the income tax reporting of the company and the allocation of profits and losses for income tax purposes and to determine if it follows Article XI and other provisions of the company agreement
Details as to any unrepatriated, deferred income from any NI	To understand the income tax

subsidiary (whether domestic or foreign) and the company's analysis of the application of subpart F of the Internal Revenue Code to the company's foreign operations	implications to the members and to determine if it follows Article XI and other provisions of the company agreement
Copies of any transfer pricing studies, reports, or other documents that support intercompany sales between NI and its subsidiaries	To understand the pricing structure between the companies and where profits might be shifted between jurisdictions
Copies of all IRS Forms W-2 and 1099 issued to Jeff Olson and any entity or person owned or controlled (directly or indirectly) by Jeff Olson	To determine if excess compensation has been paid beyond the amount in section 6.06 and other provisions of the company agreement.
Details of any reimbursed expenditures to Jeff Olson and any entity or person owned or controlled (directly or indirectly) by Jeff Olson	To determine of the amount reimbursed are valid, reasonable expenditures allowed by section 6.07 and other provisions of the company agreement, or if there is financial fraud or self-dealing.
A vendor list, detailed general ledger report, and copies of all invoices for good or services provided by any entity or person related to, owned or controlled (directly or indirectly) by Jeff Olson (except for NI and its wholly-owned subsidiaries)	To determine if excess compensation has been paid beyond the amounts allowed for in the company agreement, or if there has been financial fraud or self-dealing.
Detailed general ledger report, and copies of all invoices for goods or services provided by the following entities or persons: NEFX, FARC LLC, Fotobar LLC, Paradise Life, Silpada Design, Quarter after Three, Stone Enterprises, Stone & Bruce, Graham Bright and Smith, Don Gardner, JL Jamieson, Stuart Johnson, and Sree Nalabolu; include a detailed explanation of the goods or services provided to NI	To determine if excess compensation has been paid beyond the amounts allowed for in the company agreement, or if there has been financial fraud or self-dealing.
A vendor list, detailed general ledger report, and copies of all invoices for good or services provided by any entity or person related to, owned or controlled (directly or indirectly) by any officer, director, manager, or employee of NI, or by Jeff, Amber or Renee Olson, Jeff Branch, Jeff Dahl, Steve Bright, Trevor Scofield, Mark or Tammy Smith, or Don Gardner.	To determine if excess compensation has been paid beyond the amounts allowed for in the company agreement, or if there has been financial fraud or self-dealing.
Details of any transaction with the following individuals, or their relatives or non-public entities in which they own an interest: past or present officers or directors of NI, Jeff, Amber or Renee Olson, Jeff Branch, Jeff Dahl, Steve Bright, Trevor Scofield, Mark or Tammy Smith, or Don Gardner.	To determine if excess compensation has been paid beyond the amounts allowed for in the company agreement, or if there has been financial fraud or self-dealing.
Details of any impairments / write-offs of inventory of other property on NI's or any affiliates balance sheet(s)	To determine the appropriateness of any expenditures / valuation

	impairment for company property
Details of the acquisition of Live Happy LLC and any other merger or acquisition of any entity or substantially all of an entities' assets, trade or business, including, but not limited to, closing statement(s), purchase and sale agreement(s), due diligence and valuation material(s), and disclosure of the relationship between NI and the seller(s) (if any)	To determine if a Fundamental Business Transaction complies with the company agreement
Documents reflecting the details of any royalty agreement with any party.	To understand if the Company is unnecessarily duplicating expenses or engaging in self-dealing.
Documents reflecting the details of any royalty agreement with any party.	To understand if the Company is unnecessarily duplicating expenses or engaging in self-dealing.

Exhibit D

CARRINGTON COLEMAN

May 20, 2016

Monica W. Latin
Partner
214.855.3075
mlatin@ccsb.com

Via Certified Mail, R.R.R.
Jon Mureen
SQUIRE PATTON BOGGS (US) LLP
2000 McKinney Ave. Suite 1700
Dallas, Texas 75201

Re: May 10, 2016 Member Demand to Examine Records and Information of Nerium International, LLC

Dear Jon:

On behalf of Nerium International, LLC ("Nerium International"), this responds to your May 10, 2016 letter, entitled "Member Demand to Examine Records and Information of Nerium International, LLC" ("Demand"). In its Demand, Nerium SkinCare, Inc. ("Nerium SkinCare") demands that Nerium International produce or make available for inspection twenty one categories of "records or information." Nerium SkinCare's stated purpose is "to evaluate whether the Company's accounting methods and equity allocations comply with the Company Agreement, to determine the correct equity and cost allocations, and to investigate accounting irregularities and suspected self-dealing."

From a legal perspective, the Demand raises a few threshold problems. Nerium SkinCare has already asserted similar claims in litigation. A books-and-records demand is "not a way to circumvent discovery proceedings, and is certainly not meant to be a forum for the kinds of wide-ranging document requests permissible" under requests for production. *Highland Select Equity Fund, L.P. v. Motient Corp.*, 906 A.2d 156, 165 (Del. Ch. 2006) (construing the comparable Delaware books-and-records statute). Nerium SkinCare's 99 requests for production so far, many of which overlap with the types of information sought in the Demand, suggest the Demand is neither reasonable nor proper. Moreover, while a books-and-records request requires "rifled precision," Nerium SkinCare's Demand takes a shotgun approach that is especially burdensome. *See Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 371-72 (Del. 2011).

From a practical prospective, Nerium International has already provided wide-ranging access to its books and records through the process Nerium SkinCare selected—sending auditors to inspect Nerium International's finances (first annually, then quarterly) since the company's inception. As Nerium SkinCare's Chief Financial Officer summed up the process in an email to Nerium International:

> I wanted to give my compliments and say a very warm thank you for the timeliness of providing documentation to the auditors this quarter. I know there is still more to be done, but you have beat all past records so far!'

See NSC_0001218, July 22, 2015 Email from Lori Jones. Indeed, while Nerium SkinCare was representing to the Court in its March 2016 amended petition that "the Company has failed and

refused to grant Nerium Skincare access to these materials in violation of the Texas Business Organizations Code," the auditors were physically present in Nerium International's offices.

Even so, while Nerium International cannot reasonably agree to three redundant methods (audits, demands, and discovery), it hopes to work together on this issue. As an initial matter, under Texas Business Organization Code Sections 101.502(b)(3) and 101.501(a)(2), Nerium SkinCare is certainly entitled to tax returns for the preceding six years. Nerium International has already provided these documents to Nerium SkinCare over the years. But if Nerium SkinCare would like duplicate copies, Nerium International will promptly produce them, provided an appropriate confidentiality agreement is first confirmed. Please advise.

Other requests (numbers 1-8, 10) seek information about the company's overall financial condition and distributions to Nerium SkinCare. As noted above, Nerium International has been providing that information through Nerium SkinCare's chosen process of conducting quarterly audits. To give one example, the Demand's first request seeks income statements, balance sheets, cash flow statements, and changes in equity. Attached as exhibit A is an audit prep list showing these documents were previously provided (along with numerous others) in an audit. And as summarized in the chart below, Nerium International has already provided nearly all the documents demanded. Nerium International does, however, request additional information relating to these demands: (i) who from Nerium SkinCare or Biotech had in the past and who currently has access to the auditor's drop boxes?; (ii) which process—whether providing the information to the auditors or directly to Nerium SkinCare—does Nerium SkinCare wish to implement going forward?; and (iii) is Nerium SkinCare's purpose for requesting and using the information different from its auditors, and if so, how?

Still other requests (11-21) purport to investigate wrongdoing by the company or its executives. But after a careful review of Nerium SkinCare's pleadings and the Demand, we have not found the factual basis for this allegation.[1] Nor have the auditors indicated any such wrongdoing or "accounting irregularities" to Nerium International or in Nerium Biotechnology's audited financial statements certified by Dennis Knocke and Lori Jones. To the extent any such facts exists, Nerium International requests that information immediately. But if no such credible basis exists, Nerium SkinCare has not stated a proper purpose for reasonable inspection under the statute, and the request therefore would not merit further review.

We look forward to receiving the additional information requested above, and working together to ensure a reasonable process for providing information going forward.

Yours truly,

Monica W. Latin

[1] Nerium SkinCare's Petition notes only "[u]pon information and belief, the Company has made transfers in excess of $16,000,000 to off-shore accounts resulting in reduced distributions to Nerium SkinCare in violation of the Company Agreement."

Summary of Documents Previously Provided

No.	Demand	Summary
1	Annual affiliate and consolidated income statement, balance sheets, statement of cash flows, and changes in members equity (prepared under both a section 704(b) book and GAAP method)	Nerium International has provided this information.
2	Any audit, review or compilation report(s) prepared by NI's outside accountants	Nerium International has no responsive documents.
3	Detailed capital account roll forward for NI's members pursuant to section 4.06 of the company agreement (on both a section 704(b) book basis, as provided by the company agreement, and under GAAP)	Nerium International provided these documents through September 2015. While Nerium International continues providing the raw data underlying these documents, the auditors acknowledged that Nerium International and Nerium SkinCare do not agree on the allocation of profits. The auditors agreed to test these numbers by alterative means, and the documents were not provided with the auditors' agreement.
4	Detailed profit & loss allocations of normal (70/30) and any special allocations of income, deduction, loss, revenue, bonus or other items that impact the NI members' capital accounts requested above	*See* response to request number 3.
5	Detailed allocations of any "Marketing Aids" pursuant to section 21.03 of the company agreement (if any)	*See* response to request number 3.
6	Details of allocations made related to the increased sales of the product line pursuant to section 21.04 of the company agreement	Nerium International has provided this information.
7	Details of all member property and money distributions (dates and amounts paid or transferred) that impact the NI members' capital accounts requested above (including copies or other documents of any checks, wires, ACH or other fund transfer means which details both the transferor and transferee of the funds	Nerium International has provided this information
8	Details of any adjusting journal entries (AJEs) or other reclassification book entries to the members' capital or equity accounts, including the original entries, amount, date(s) and reason(s) of adjustment	Nerium International has provided this information, including an audit of the general ledger.
9	Complete copies of NI's partnership tax	Nerium International has provided this

	returns (Form 1065)	information. Because Nerium International has received an extension to file its 2015 taxes, the 2015 tax returns are not yet available.
10	Details as to any unrepatriated, deferred income from any NI subsidiary (whether domestic or foreign) and the company's analysis of the application of subpart F of the Internal Revenue Code to the company's foreign operations	Nerium International has provided this information.
11	Copies of any transfer pricing studies, reports, or other documents that support intercompany sales between NI and its subsidiaries	Nerium International has no responsive documents on transfer pricing. Nerium International has provided the information on intercompany sales.
12	Copies of all IRS Forms W-2 and 1099 issued to Jeff Olson and any entity or person owned or controlled (directly or indirectly) by Jeff Olson	The stated purpose of this request is to "determine if excess compensation has been paid beyond the amounts allowed for in the company agreement, or if there has been financial fraud or self-dealing." As stated above, Nerium SkinCare has not stated any factual basis for this allegation, nor a proper basis to obtain personal income tax records.
13	Details of any reimbursed expenditures to Jeff Olson and any entity or person owned or controlled (directly or indirectly) by Jeff Olson	Nerium International has provided this information.
14	A vendor list, detailed general ledger report, and copies of all invoices for good or services provided by any entity or person related to, owned or controlled (directly or indirectly) by Jeff Olson (except for NI and its wholly-owned subsidiaries)	Nerium International provided the general ledger report. And to the extent any entity relates to Nerium International or its operations, it would have been included in the information provided to the auditors. The stated purpose of this request is to "determine if excess compensation has been paid beyond the amounts allowed for in the company agreement, or if there has been financial fraud or self-dealing." As stated above, Nerium SkinCare has not stated any factual basis for this allegation.
15	Detailed general ledger report, and copies of all invoices for goods or services provided by the following entities or persons: NEFX, FARC LLC, Fotobar LLC, Paradise Life,	*See* response to request number 14.

	Silpada Design, Quarter after Three, Stone Enterprises, Stone & Bruce, Graham Bright and Smith, Don Gardner, JL Jamieson, Stuart Johnson, and Sree Nalabolu; include a detailed explanation of the goods or services provided to NI	
16	A vendor list, detailed general ledger report, and copies of all invoices for good or services provided by any entity or person related to, owned or controlled (directly or indirectly) by any officer, director, manager, or employee of NI, or by Jeff, Amber or Renee Olson, Jeff Branch, Jeff Dahl, Steve Bright, Trevor Scofield, Mark or Tammy Smith, or Don Gardner.	*See* response to request number 14.
17	Details of any transaction with the following individuals, or their relatives or non-public entities in which they own an interest: past or present officers or directors of NI, Jeff, Amber or Renee Olson, Jeff Branch, Jeff Dahl, Steve Bright, Trevor Scofield, Mark or Tammy Smith, or Don Gardner.	*See* response to request number 14.
18	Details of any impairments / write-offs of inventory of other property on NI's or any affiliates balance sheet(s)	Nerium International has provided this information.
19	Details of the acquisition of Live Happy LLC and any other merger or acquisition of any entity or substantially all of an entities' assets, trade or business, including, but not limited to, closing statement(s), purchase and sale agreement(s), due diligence and valuation material(s), and disclosure of the relationship between NI and the seller(s) (if any)	*See* response to request number 14.
20	Documents reflecting the details of any royalty agreement with any party.	Nerium International refers Nerium SkinCare to the objections and responses asserted to the requests for production of signum documents.
21	Documents reflecting the details of any royalty agreement with any party.	*See* response to request number 20.

EXHIBIT A

NERIUM INTERNATIONAL LLC – Revised 5/8/2015
Q1 2015: PREP LIST

GENERAL

1. Has Nerium International LLC incorporated any new entities during Q1 2015? If so can you please provide the incorporation documents as well as TB and General ledger (See specific requests below). If not please ignore this request. N/A
2. Has Nerium International LLC's subsidiaries begun material operations outside of Canada, Mexico and the United States? If so can you please include the information requested below for those subsidiaries as well? N/A
3. March 31, 2015 trial balance (exported to excel - please note which currency each TB is denominated in. Also ensure that the trial balance is YTD and not since inception) for:
    a. Nerium International – US, Canada and Mexico USE GL LEDGER DETAIL
    b. CGTN C.V USE GL LEDGER DETAIL
    c. CGTN Cooperatieve U.A. Netherlands USE GL LEDGER DETAIL
    d. Nerium International – BV Netherlands USE GL LEDGER DETAIL
    e. Nerium International Asia Pte Ltd USE GL LEDGER DETAIL
    f. Live Happy LLC USE GL LEDGER DETAIL
4. Provide the general ledger detail from January 1, 2015 to March 31, 2015 (exported to excel) for all subsidiaries mentioned above. COMPLETED
5. Equity allocation spreadsheet for the period ending March 31, 2015. In work, will submit by next week.
6. Consolidated income statement and balance sheet workbook for Q1 2015. Please ensure that the consolidation income statement ties directly to the equity allocation spreadsheet. COMPLETED

CASH

7. Bank reconciliation and bank statements for all of the bank accounts as of March 31, 2015 for all subsidiaries listed above. COMPLETED
8. Hyperwallet online statement printouts as of March 31, 2015 for each subsidiaries that uses Hyperwallet COMPLETED
9. PayPal online statement printout as of March 31, 2015 for each subsidiary that currently uses PayPal COMPLETED

MERCHANT ACCOUNTS

10. Provide any updates for each of the merchant accounts since year-end. I.e. were there any new merchant accounts? Any changes to the holdback percentages or merchant cap limits since year-end? N/A

ACCRUED INCOME

11. Provide sales report for the last three days of Q1 2015 (March 29, 30 & 31) for:
    a. NI - US COMPLETED
    b. NI – Canada COMPLETED
    c. NI – Mexico COMPLETED
12. Provide any accrued income schedule for the newly developed subsidiaries, if applicable. N/A

INVENTORY

13. Inventory schedules/stock status reports that agree to the trial balance for all entities with inventory (NI – US, NI-Canada, NI-Mexico and NI-BV). COMPLETED

PREPAID EXPENSES

14. Prepaid expense schedule that agrees to the trial balances COMPLETED

PROPERTY, PLANT & EQUIPMENT COMPLETED

15. Property, plant and equipment and CIP continuity schedule which agrees to the trial balance (only require NI-US unless a material addition was made to other subsidiaries during Q1 2015). The listing should include:
    a. Opening balances for cost, accumulated depreciation and net book value which agrees to the prior year closing.
    b. Current year additions/disposals.
    c. Current year amortization.
    d. Ending balance of Accumulated depreciation and net book value.

ACCOUNTS PAYABLE

16. Accounts Payable aged listing which agrees to the trial balance for the following:
    a. NI- US COMPLETED
    b. NI- Canada COMPLETED
    c. NI- Mexico COMPLETED

ACCRUED LIABILITIES

17. Accrued liabilities listing which agrees to the trial balance for the following:
    a. NI - US COMPLETED
    b. NI – Canada COMPLETED
    c. NI – Mexico COMPLETED
18. Provide the first two weekly paylution commission payout reports that were paid in April 2015 COMPLETED
19. Support schedules providing details for any bonus or legal accruals N/A

REVENUE

20. Provide the monthly sales report from January 1, 2015 to March 31, 2015 for:
    a. NI-US COMPLETED
    b. NI-Canada COMPLETED
    c. NI-Mexico COMPLETED
    d. Live-Happy COMPLETED

21. Detailed listing of product returns during fiscal 2015 in excel format. Please provide the customer type as a field in the schedule (retail customer, preferred customer or Brand partner). Please also show date ordered and date returned and product which it relates to. COMPLETED
22. Please provide a summary of monthly sales for brand partners for YTD to March 31, 2015. COMPLETED

OTHER EXPENSES G&A

23. It is our understanding that the Sanderson Case has been settled. Can you please confirm that there are no ongoing legal fees associated with this case? Please refer to update provided by Eric Haynes , April 2015 for update on 2014
24. Can you please comment if the company is aware of any other existing or potential claims and if so if they have been accrued for? Please refer to update provided by Eric Haynes , April 2015 for update on 2014