

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

CHRISTINA SWIATEK	)	
	)	
Plaintiff,	)	Case No. 4:17-cv-266
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
NERIUM INTERNATIONAL, LLC	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL ON BEHALF OF  
DEFENDANT NERIUM INTERNATIONAL, LLC**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION:

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Nerium International, LLC, submits its Notice of Removal from the Circuit Court of St. Louis City, Missouri, in which this matter is now pending as case No. 1622-CC11482 and styled as “*Christina Swiatek v. Nerium International, LLC*” to the United States District Court for the Eastern District of Missouri, Eastern Division. In support of its Notice, Defendant alleges and states as follows:

**Nature of Action**

1. On December 7, 2016, plaintiff Christina Swiatek filed a Petition for Damages in the St. Louis City Circuit Court alleging injuries from a product known and labeled as “Nerium AD.” The petition alleges Defendant supplied this product as an “age defying treatment” for use as a “night cream.”

2. Pursuant to 28 U.S.C. § 1446(a) and E.D.Mo. L.R. 2.03, the complete file from the Circuit Court of St. Louis City, Missouri, including copies of all process, pleadings, and orders, are attached to this Notice of Removal as **Exhibit A**.

3. A Civil Cover Sheet has been prepared and is attached to this Notice of Removal as **Exhibit B**.

4. An Original Filing Form has been prepared and is attached to this Notice of Removal as **Exhibit C**.

5. A Disclosure of Organizational Interests Certificate will be filed concurrently with this Notice.

#### **Timeliness of Removal**

6. A Summons and the Petition for Damages were served on Defendant Nerium International, LLC, on December 22, 2016.

7. This Notice of Removal is being filed within 30 days after Defendant Nerium International, LLC, received the Petition for Damages and is therefore timely, pursuant to 28 U.S.C. § 1446(b).

#### **Amount in Controversy**

8. Plaintiff brings this action to recover economic and noneconomic damages Plaintiff allegedly experienced from the using the product “Nerium AD.”

9. Plaintiff’s Petition for Damages prays for the following damages:

- a. “That as the direct and proximate result of the aforesaid breach by Defendant, Plaintiff has suffered painful, severe and permanent injuries to her face and neck, has incurred medical bills for treatment, is likely to incur further medical bills for treatment of her injuries, has been disfigured, has experienced and will continue to experience pain and mental anguish and has expended funds for additional ameliorative ointments, creams, and lotions. Plaintiff further suffered a loss of

normal life which will continue into the future.” *See* Exhibit A, Petition, Count I at ¶ 8, Count II, at ¶ 8.

10. Plaintiff prays for a judgment in excess of \$25,000 on Counts I and II of her Petition for Damages. *See* Exhibit A, Petition.

11. Plaintiff also alleges “punitive or aggravated circumstances are warranted” as a result of conduct alleged in Count III of the Petition for Damages and requests an award of punitive damages “in excess of \$25,000.” *See* Exhibit A, Petition, Count III, at ¶ 12.

12. Missouri law does not permit a party to specify damages in its petition other than to indicate a threshold for jurisdiction. *Lindsey v. Dillard’s, Inc.*, 306 F.3d 596, 599 n.4 (8th Cir. 2002). Thus, Plaintiff’s descriptions of alleged damages, as set forth in the preceding paragraphs, are consistent with the requirements of Missouri law.

13. There is no basis to conclude with legal certainty that Plaintiff’s claim is for less than the jurisdictional minimum. *See Kopp v. Kopp*, 280 F.3d 883, 884 (8th Cir. 2002). Indeed, “the district court has subject matter jurisdiction in a diversity case when a fact finder could legally conclude, from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff suffered are greater than \$75,000.” *Id.* at 885.

14. Given Plaintiff’s allegations of severe and permanent injuries, disfigurement, and loss of a normal life, her punitive damage allegations, and Missouri’s prohibition against specifying a damages amount, the amount in controversy clearly exceeds the sum or value of \$75,000, exclusive of interest and costs.

#### **Diversity of Citizenship**

15. Complete diversity exists between the parties in this action.

16. Complete diversity of citizenship exists where no defendant holds citizenship in the same state where any plaintiff holds citizenship. 28 U.S.C. § 1332(a)(1).

17. At the commencement of this action, and at the time of filing this Notice of Removal, Plaintiff was and is a citizen of Illinois. *See* Exhibit A, Petition, Count I at ¶ 1.

18. For purposes of diversity jurisdiction, the citizenship of a limited liability company such as Nerium International, LLC, is determined by the citizenship of its members. *E3 Biofuels, LLC v. Biothane, LLC*, 781 F.3d 972, 975 (8th Cir. 2015).

19. At the commencement of this action, and at the time of filing this Notice of Removal, all members of Nerium International, LLC, were and are citizens of Texas and Florida.

20. The following entities are members of Nerium International, LLC:

a. JO Products, LLC. (At the commencement of this action and at the time of filing this Notice of Removal, JO Products, LLC, was and is a Texas limited liability company whose sole member is Jeff Olson, a Florida citizen.)

b. Nerium SkinCare, Inc. (At the commencement of this action and at the time of filing this Notice of Removal, Nerium SkinCare, Inc., was and is a Texas citizen by virtue of the fact it is incorporated under the laws of Texas and has its principal place of business in San Antonio, Texas.)

21. Since Plaintiff is a citizen of Illinois, and all members of Nerium International, LLC, are citizens of Texas and Florida, complete diversity exists among the parties.

22. Accordingly, pursuant to 28 U.S.C. § 1332(a), complete diversity exists between the parties in this action since the Plaintiff and Defendant are citizens of different states and foreign states.

**Subject Matter Jurisdiction, Notice to Plaintiffs and  
to State Court, and Divisional Venue**

23. The United States District Court for the Eastern District of Missouri, Eastern Division, has original jurisdiction in this matter because there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See E3 Biofuels*, 781 F.3d at 975. Therefore, removal is proper, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441(a).

24. Contemporaneously with the filing of this Notice of Removal, Defendant Nerium International, LLC, has separately filed a Notice to Plaintiff and to State Court informing Plaintiff and the Clerk of the Circuit Court of St. Louis City, Missouri, that this Notice of Removal is being filed in the United States District Court for the Eastern District of Missouri, Eastern Division. A copy of the Notice to Plaintiff and to State Court is attached to this Notice of Removal as **Exhibit D**.

25. Removal to the United States District Court for the Eastern District of Missouri, Eastern Division, is proper under 28 U.S.C. § 105(a)(1) and 28 U.S.C. § 1441(a), because the Circuit Court of St. Louis City, Missouri is located within the Eastern Division of the Eastern District.

WHEREFORE, Defendant Nerium International, LLC, hereby removes case No. 1622-CC11482 and styled as “*Christina Swiatek v. Nerium International, LLC*” from the Circuit Court of St. Louis City, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated January 23, 2017

Respectfully submitted,

/s/ Stephen M. Strum

Stephen M. Strum, #37133MO  
Andrew D. Ryan, #45924MO  
Laura J. Gust, #60945MO  
SANDBERG PHOENIX & VON GONTARD P.C.  
600 Washington Avenue - 15th Floor  
St. Louis, MO 63101  
Tel: 314-231-3332  
Fax: 314-241-7604  
sstrum@sandbergphoenix.com  
aryan@sandbergphoenix.com  
lgust@sandbergphoenix.com

**ATTORNEYS FOR DEFENDANT NERIUM  
INTERNATIONAL, LLC**

**CERTIFICATE OF SERVICE**

TO: Brian M. Wendler, Esq.  
WENDLER LAW, P.C.  
900 Hillsboro Ave., Suite 10  
Edwardsville, IL 62025  
Phone: (618) 692-0011  
Fax: (618) 692-0022

I hereby certify that, on January 23, 2017, I electronically filed the ***NOTICE OF REMOVAL ON BEHALF OF NERIUM INTERNATIONAL, LLC*** with the United States District Court for the Eastern District of Missouri, Eastern Division by using the CM/ECF system, and that I sent a copy by first-class U.S. mail, postage prepaid, to the attorney listed above.

By: /s/ Stephen M. Strum

IN THE CIRCUIT COURT  
TWENTY SECOND JUDICIAL CIRCUIT  
CITY OF SAINT LOUIS, MISSOURI

<b>CHRISTINA SWIATEK,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Cause No.</b>
	)	
<b>v.</b>	)	<b>Div. No.</b>
	)	
<b>NERIUM INTERNATIONAL, LLC</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendant.</b>	)	
	)	
<b>Serve Defendant at:</b>	)	
<b>Nerium International, LLC</b>	)	
<b>4006 Belt Line Road</b>	)	
<b>Addison, TX 75001</b>	)	

PETITION FOR DAMAGES

COUNT I

COMES NOW, the plaintiff, Christina Swiatek, by and through her undersigned counsel, and for her cause of action against the defendant, Nerium International, LLC ("Nerium") states as follows:

1. That at all times relevant hereto the Plaintiff was and remains a resident and citizen of Madison County, Illinois. The injuries in issue were sustained in Madison County, Illinois, from a product supplied in Missouri.
2. That the Defendant, Nerium, is a corporation with its principal place of business in Texas. Nerium does business in St. Louis City. Nerium does not have a registered agent in Missouri and, therefore, venue is proper in St Louis City where Defendant does business and has sales representatives.
3. That defendant, Nerium, supplied, distributed and placed into the stream of commerce for profit or other benefit a product known and labeled as "Nerium AD." Defendant

supplied said product as an “age defying treatment” for use as a “night cream.” The product was supplied to Plaintiff in the same condition as when it left Defendant’s control.

4. That Defendant’s aforesaid product was distributed to Plaintiff by an agent or employee of Defendant while acting the scope of the agency or employee relationship. Said employees and agents of Defendant are also known as “Brand Partners”.

5. That Plaintiff used the aforesaid product as directed and intended.

6. That based upon the above, Defendant owed a duty and to all other similarly situated users of its product to supply a product that was not unsafe, not unreasonably dangerous and not defective.

7. That in violation of the aforesaid duty, Defendant supplied a product that was unsafe, unreasonably dangerous and/or defective in one or more of the following respects:

- a) the product was unduly susceptible to cause chemical burns, irritation, and permanent skin damage when used as directed, intended, and/or in a reasonably foreseeable fashion; or
- b) the product was not supplied with adequate warnings of health consequences or instructions to advise against using as directed and/or to suggest spot testing prior to use.

8. That as direct and proximate result of the aforesaid breach by Defendant, Plaintiff has suffered painful, severe and permanent injuries to her face and neck, has incurred medical bills for treatment, is likely to incur further medical bills for treatment of her injuries, has been disfigured, has experienced and will continue to experience pain and mental anguish and has expended funds for additional ameliorative ointments, creams, and lotions. Plaintiff further suffered a loss of normal life which will continue into the future.

WHEREFORE, Plaintiff prays for a judgement in her favor for an amount in excess of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS) and for costs of this action.



**COUNT II**

COMES NOW, the plaintiff, Christina Swiatek, by and through her undersigned counsel, and for her cause of action against the defendant, Nerium International, LLC ("Nerium") states as follows:

1-5. Plaintiff repeats, realleges, and incorporates herein paragraphs 1-5 of Count I as paragraphs 1-5 of this Count.

6. That based upon the above, Defendant owed a duty to Plaintiff and to all other similarly situated users of its products to test the product prior to sale, to properly train its sales personnel, to supply proper warnings with its products, and/or to supply proper instructions for use with its products.

7. That in violation of the above duties, Defendant:

- a) failed to properly test its product to determine if it was unduly likely to cause damage to the skin of users;
- b) failed to properly train its sales personnel to require such persons provide full and complete warnings and instructions;
- c) failed to supply instructions with its product to advise users they should spot test and/or use initially for a limited duration rather than over-night; and/or
- d) failed to supply warnings with its product to advise users that the product could cause chemical burns, skin damage, and/or other adverse reactions.

8. That as direct and proximate result of the aforesaid breach by Defendant, Plaintiff has suffered painful, severe and permanent injuries to her face and neck, has incurred medical bills for treatment, is likely to incur further medical bills for treatment of her injuries, has been disfigured, has experienced and will continue to experience pain and mental anguish and has expended funds for additional ameliorative ointments, creams, and lotions. Plaintiff further suffered a loss of normal life which will continue into the future.

WHEREFORE, Plaintiff prays for a judgement in her favor for an amount in excess of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS) and for costs of this action.

**COUNT III**

COMES NOW, the plaintiff, Christina Swiatek, by and through her undersigned counsel, and for her cause of action against the defendant, Nerium International, LLC ("Nerium") states as follows:

1-8. Plaintiff repeats, realleges, and incorporates herein paragraphs 1-8 of Count I as paragraphs 1-8 of this Count.

9-11. Plaintiff repeats, realleges, and incorporates herein paragraphs 6-8 of Count II as paragraphs 9-11 of this Count.

11. That at all times relevant hereto, Defendant was aware that users of its product had reported adverse and severe reactions to the product in question. Defendant failed to inform its consumers of such prior reported events and failed to notify its sales representatives of same. Defendant further encouraged its sales representatives to continue supplying the product while Defendant suppressed and/or withheld the adverse reaction reports. Defendant additionally trained or encouraged its sales representatives, a/k/a Brand Partners, to attempt to persuade consumers who experienced adverse reactions to remain silent about such reactions. Defendant did all of the above in conscious disregard for the safety, comfort, and wellbeing of its customers, so that Defendant could continue reaping financial benefits from the sale and distribution of the product. Defendant placed profits above safety.

12. That, based upon the above, punitive or aggravated damages are warranted.

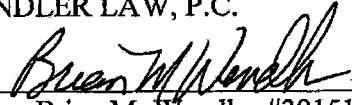
WHEREFORE, Plaintiff prays for a judgment for an amount in excess of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS) in compensatory damages and for an amount in

excess of \$25,000.00 (TWENTY FIVE THOUSAND DOLLARS) in aggravated or punitive damages, for her costs, and for such other or further relief deemed just.

**PLAINTIFF PRAYS FOR TRIAL BY JURY.**

Respectfully Submitted,

WENDLER LAW, P.C.

By: 

Brian M. Wendler #39151  
900 Hillsboro Ave., Suite 10  
Edwardsville, IL 62025  
Ph: (618) 692-0011  
Fx: (618) 692-0022  
*Attorney for Plaintiff*



IN THE 22ND JUDICIAL CIRCUIT COURT OF CITY OF ST LOUIS, MISSOURI


Judge or Division: BRYAN L HETTENBACH	Case Number: 1622-CC11482	
Plaintiff/Petitioner: CHRISTINA SWIATEK	Plaintiff's/Petitioner's Attorney/Address: BRIAN M. WENDLER 900 HILLSBORO SUITE 10 vs. EDWARDSVILLE, IL 62025	Process Server 1
Defendant/Respondent: NERIUM INTERNATIONAL LLC	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Process Server 2
Nature of Suit: CC Pers Injury-Prod Liab		Process Server 3  (Date File Stamp)

**Summons for Personal Service Outside the State of Missouri  
(Except Attachment Action)**

The State of Missouri to: **NERIUM INTERNATIONAL LLC**  
Alias:

4006 BELT LINE ROAD  
ADDISON, TX 75001

**DALLAS COUNTY**

*COURT SEAL OF*  
  
CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

**December 7, 2016**  
Date

*Thomas Kloeppinger*  
Thomas Kloeppinger  
Circuit Clerk

Further Information:

**Officer's or Server's Affidavit of Service**

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state).
- I have served the above summons by: (check one)
  - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
  - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with \_\_\_\_\_, a person of the Defendant's/Respondent's family over the age of 15 years.
  - (for service on a corporation) delivering a copy of the summons and a copy of the petition to \_\_\_\_\_ (name) \_\_\_\_\_ (title).
  - other (describe) \_\_\_\_\_

Served at \_\_\_\_\_ (address)  
in \_\_\_\_\_ County, \_\_\_\_\_ (state), on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

\_\_\_\_\_  
Printed Name of Sheriff or Server

\_\_\_\_\_  
Signature of Sheriff or Server

Subscribed and Sworn To me before this \_\_\_\_\_ (day) \_\_\_\_\_ (month) \_\_\_\_\_ (year)

I am: (check one)  the clerk of the court of which affiant is an officer.  
 the judge of the court of which affiant is an officer.  
 authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)  
 authorized to administer oaths. (use for court-appointed server)

(Seal) \_\_\_\_\_  
Signature and Title

**Service Fees, if applicable**

Summons \$ \_\_\_\_\_  
 Non Est \$ \_\_\_\_\_  
 Mileage \$ \_\_\_\_\_ ( \_\_\_\_\_ miles @ \$ \_\_\_\_\_ per mile)  
 Total \$ \_\_\_\_\_

See the following page for directions to clerk and to officer making return on service of summons.

### **Directions to Clerk**

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

### **Directions to Officer Making Return on Service of Summons**

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The office making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.



318930  
12/17

BEN ADAMCIK  
CONSTABLE PCT. 3,  
DALLAS COUNTY

**PAID**  
-793411

11:43A

IN THE 22ND JUDICIAL CIRCUIT COURT OF CITY OF ST LOUIS, MISSOURI

James Mosley Mang.

Judge or Division: BRYAN L HETTENBACH	Case Number: 1622-CC11482	
Plaintiff/Petitioner: CHRISTINA SWIATEK	Plaintiff's/Petitioner's Attorney/Address: BRIAN M. WENDLER 900 HILLSBORO SUITE 10 EDWARDSVILLE, IL 62025	Process Server 1
Defendant/Respondent: NERIUM INTERNATIONAL LLC	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Process Server 2
Nature of Suit: CC Pers Injury-Prod Liab		Process Server 3 (Date File Stamp)

**Summons for Personal Service Outside the State of Missouri  
(Except Attachment Action)**

14A/321

The State of Missouri to: **NERIUM INTERNATIONAL LLC**  
Alias:  
4006 BELT LINE ROAD  
ADDISON, TX 75001

**DALLAS COUNTY**

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

**December 7, 2016**  
Date

*Thomas Kloepfinger*  
Thomas Kloepfinger  
Circuit Clerk

**COURT SEAL OF CITY OF ST LOUIS**

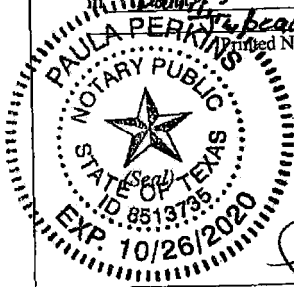
**Further Information: Officer's or Server's Affidavit of Service**

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is Deputy Constable of Dallas County, Texas (state).
- I have served the above summons by: (check one)
  - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
  - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
  - (for service on a corporation) delivering a copy of the summons and a copy of the petition to Nerium International LLC (name) James Mosley Manager (title).
  - other (describe) \_\_\_\_\_

Served at 4006 Beltline Rd. Addison TX 75001 (address) on 12/22/2016 (date) at 11:43A (time) in Dallas County, Texas (state).

Printed Name of Paula Perkins or Server 3210 Signature of Sheriff or Server 3210



Subscribed and Sworn To me before this 22 (day) Dec (month) 2016 (year)

I am: (check one)  the clerk of the court of which affiant is an officer.  the judge of the court of which affiant is an officer.  authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)  authorized to administer oaths. (use for court-appointed server)

*Paula Perkins*

BEN ADAMCIK  
CONSTABLE PCT. 3,  
DALLAS COUNTY

*3210* Deputy Constable Pct 3  
Dallas County  
Texas

Service Fees, if applicable

Summons	\$	
Non Est	\$	
Mileage	\$	<u>480.00</u>
Total	\$	

See the following page for directions to clerk and to officer making return on service of summons.

2016  
DEC 22  
11:03  
DALLAS COUNTY  
CONSTABLE PCT. 3

Electronically Filed - City of St. Louis - January 06, 2017 - 10:04 AM



### Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

### Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.

JS 44 (Rev. 07/16)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p><b>I. (a) PLAINTIFFS</b> Swiatek, Christina</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Madison County, IL</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Brian M. Wendler, 900 Hillsboro Ave., Ste. 10, Edwardsville, IL 62025 (618) 692-0011</p>	<p><b>DEFENDANTS</b> Nerium International, LLC</p> <p>County of Residence of First Listed Defendant <u>Dallas County, TX</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Sandberg Phoenix &amp; von Gontard P.C., 600 Washington Ave. - 15th Floor, St. Louis, MO 63101 (314) 231-3332</p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <p><b>PERSONAL INJURY</b></p> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
28 U.S.C. Sec. 1332

Brief description of cause:  
Alleged personal injury from skin care product

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ in excess of \$75,000    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE 01/23/2017    SIGNATURE OF ATTORNEY OF RECORD /s/ Stephen M. Strum

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

CHRISTINA SWIATEK,	)	
	)	
Plaintiff,	)	Case No. 4:17-cv-266
	)	
v.	)	
	)	<b>ORIGINAL FILING FORM</b>
NERIUM INTERNATIONAL, LLC	)	
	)	<b>JURY TRIAL DEMANDED</b>
Defendant.	)	

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER \_\_\_\_\_ AND ASSIGNED TO THE HONORABLE JUDGE \_\_\_\_\_.

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS \_\_\_\_\_ AND THAT CASE WAS ASSIGNED TO THE HONORABLE \_\_\_\_\_. THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

**The undersigned affirms that the information provided is true and accurate.**

Date: January 23, 2017

/s/ Stephen M. Strum  
Signature of Filing Party

**EXHIBIT C**