

Cause No. DC-18-03726

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

**PLAINTIFF'S FIRST AMENDED PETITION AND**  
**APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE COURT:

Plaintiff Nerium International, LLC ("Nerium") files this First Amended Petition and Application for Temporary and Permanent Injunction against Defendants Mark Smith, Mark & Tammy Smith, LLC ("MTS, LLC"), David Byrd, Jenni Byrd Grier, Claudia Ransom, Jason Ransom, Darin Kidd, Lori Gasemy, Danny Gasemy, Dale Munger, and Vanessa Munger (together, "Defendants") and respectfully shows as follows:

**I. SUMMARY**

1. Nerium's tens of thousands of salespeople are independent contractors who have small businesses selling Nerium's products and recruiting others salespeople to join Nerium's sales force. This lawsuit arises out of the efforts of Nerium's highest-ranking salespeople, the Smiths, to raid Nerium's salesforce for a competitor through their own efforts and the efforts of the co-defendants, consultants to Nerium and other Nerium salespeople. Unless the Court issues

injunctive relief, Nerium, and the Brand Partners whose businesses are affected, will be irreparably damaged.

2. Nerium went to great lengths to ensure the success of the Smiths. The Smiths were placed in a highly visible position, given direct access to Nerium's sales force, and earned millions during their tenure with Nerium. But this was not enough for the Smiths. Greed and ego have led Mark Smith to plot a raid of Nerium's sales force, in direct violation of the Smiths' non-solicitation agreements with Nerium, with the assistance of their co-defendants. The Ransoms, Kidd, the Gasemys, and the Mungers are similarly subject to, and violating, their non-solicitation agreements with Nerium.

3. Defendants have solicited Nerium's salespeople not only through aggressive recruiting efforts but also by spreading falsehoods about Nerium, ranging from untrue statements about the company's financial health and efficacy of its products to baseless personal attacks on its Chief Executive Officer. Nerium therefore seeks emergency relief to preserve the status quo and prevent the Defendants from causing further harm until the Court can consider the merits.

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

4. Nerium intends to conduct discovery under a Level 3 Discovery Control Plan.

5. Pursuant to Texas Rule of Civil Procedure 47, and without waiving its right to arbitrate, Nerium seeks immediate and permanent injunctive relief to prevent irreparable injury. Although Nerium does not know the full extent of its monetary damages, it anticipates seeking monetary relief against Defendants Byrd and Grier of over \$200,000.

## **III. PARTIES**

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

7. Defendant Mark Smith is an individual who can be served with process at 24822 Sauco, Mission Viejo, California 92692, or wherever else he may be found. Smith has been served with citation through his Texas counsel, Rick Illmer, who accepted service by agreement on March 26, 2018.

8. Defendant David Byrd is an individual who can be served with process at 504 Keys Creek Drive, Waco, TX 76708, or wherever else he may be found. Byrd has been served with citation through his counsel, who accepted service by agreement on March 26, 2018.

9. Defendant Jenni Byrd Grier is an individual who can be served with process at 3323 Stocktie Road, Charlotte, North Carolina 28210, or wherever else she may be found. Grier has been served with citation through her counsel, who accepted service by agreement on March 26, 2018.

10. Defendant Mark & Tammy Smith, LLC is a Wyoming LLC with its principal place of business in Costa Mesa, California. MTS, LLC can be served through its registered agent, Tom N. Bass, at 3151 Airway Ave., Suite F 109, Costa Mesa, CA 92626. Mark & Tammy Smith, LLC has been served with citation through its Texas counsel, who accepted service by agreement on March 26, 2018.

11. Defendant Jason Ransom is an individual who can be served with process at 23932 Flores Ave., Laguna Niguel, CA 92677, or wherever else he may be found.

12. Defendant Claudia Ransom is an individual who can be served with process at 23932 Flores Ave., Laguna Niguel, CA 92677, or wherever else she may be found.

13. Defendant Darin Kidd is an individual who can be served with process at 141 Redfields Road, Appomattox, VA 24522, or wherever else he may be found.

14. Defendant Lori Gasemy is an individual who can be served with process at 1017 Cedar Glen Trail, Heath, TX 75032, or wherever else she may be found.

15. Defendant Danny Gasemy is an individual who can be served with process at 1017 Cedar Glen Trail, Heath, TX 75032, or wherever else he may be found.

16. . Defendant Dale Munger is an individual who can be served with process at 24 Hemingway Ct., Trabuco Canyon, CA 92679, or wherever else he may be found.

17. Defendant Vanessa Munger is an individual who can be served with process at 24 Hemingway Ct., Trabuco Canyon, CA 92679, or wherever else she may be found.

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

18. The Court has jurisdiction because the damages sought are within the Court's jurisdictional limits, and further because Smith, MTS, LLC, the Ransoms, the Gasemys, the Mungers, and Kidd consented to jurisdiction in Texas and because Byrd is a resident of Texas. Likewise, the Court has jurisdiction over Defendants because they have purposefully availed themselves of the privileges and benefits of conducting business in Texas. Nerium's claims relate to and arise out of Defendants' forum contacts, specifically their attempt to raid, and assist in the raid of, Nerium's salesforce, which is headquartered in Addison, Texas. Exercising personal jurisdiction comports with traditional notions of fair play and substantial justice. Jurisdiction is also proper under the Texas long-arm statute because Defendants have, on information and belief, committed torts in whole or in part in Texas. TEX. CIV. PRAC. & REM. CODE § 17.042(1).

19. Venue is proper because Smith, MTS, LLC, the Ransoms, the Gasemys, the Mungers and Kidd contractually agreed to venue in Dallas County, Texas. In addition, a substantial part of the acts or omissions giving rise to Nerium's claims occurred in Dallas County, Texas. Venue is further proper pursuant to Tex. Civ. Prac. & Rem. Code § 15.005.

## **V. FACTUAL BACKGROUND**

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

20. Nerium is a direct-sales company (also called direct-marketing or multi-level marketing) that sells anti-aging and other products through independent distributors called “Brand Partners,” collectively referred to as the “field.” Nerium’s Brand Partners earn money by selling Nerium’s products, often through social media and personal contacts, and by recruiting new Brand Partners to do the same. A Brand Partner’s personal recruits, and those people’s recruits, and so on, are called the Brand Partner’s “downline.” Brand Partners receive commissions both on their own sales and on sales in their downline. The “upline” is the person who recruited the Brand Partner, and the people who recruited that person, and so on. Nerium supports its Brand Partners by providing superior products, commissions and bonuses, training, corporate-level advertising, back-office support, confidential information about customers and sales data, access to a highly sophisticated sales structure, and various other benefits.

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

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

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

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

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

salesforce. They were also given a “seat at the table” with Nerium’s executive team, essentially representing Nerium’s salesforce.

25. Also, to support their role as the “top” Brand Partner, the Smiths were given substantial confidential information and trade secrets belonging to Nerium. Among other things, the Smiths were privy to information about Nerium’s business plans, including international expansion and product strategy, and had access to contact information and detailed information about the organizations of every current and former Brand Partner in Nerium’s history.

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

27. In mid-2017, Nerium implemented a requirement that each Brand Partner review a notice that Nerium’s “Policies and Procedures” (“P&P”) (the document governing the Brand Partner’s relationship with the company) had been amended. After this requirement was enabled, the next time each Brand Partner logged into their “back office” account,<sup>1</sup> the Brand Partner was automatically redirected to a screen stating that Nerium International had changed its P&P. The Brand Partner was required to scroll through the pages of the amended P&P, and at the end of the document, the Brand Partner had to click to check a box next to the statement “I accept the new Policies and Procedures.” The Brand Partner could then click on “Continue” and was directed into their back office account. A Brand Partner could not access his or her back office without going through this process. Nerium requires all Brand Partners to agree to the Policies and Procedures.

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<sup>1</sup> The back office is the online account center each independent Brand Partner uses to manage his or her distributorship business.

28. Through the process detailed above, Mark and Tammy Smith were shown the amended P&P, and accepted them on July 7, 2017. Thereafter, they continued as Brand Partners, until they resigned their positions in March 2018.

29. Section 11.06 of the P&P provides:

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

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

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

(Emphasis added.) The Ransoms, the Gasemys, the Mungers and Kidd have accepted the terms of the P&P.

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

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

31. As detailed above, the Smiths had success at Nerium handed to them on a silver platter when they were installed as the "top" Brand Partner. But they were not content with the



extremely advantageous position they were given or the tremendous financial consideration they reaped. They continued to demand more advantages, more perks, and more money from Nerium.

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

33. Jeff Olson did not dismiss the Smiths’ demands. And because of the prominent and powerful position the Smiths held, with access to all of Nerium’s tens of thousands of Brand Partners, it was important to the Nerium organization to maintain harmony with valued team members like the Smiths. Olson therefore entered into negotiations with the Smiths. But any arrangement needed to be mutually advantageous for the Smiths and Nerium, so Nerium could continue growing its sales and network of Brand Partners with assurances that the Smiths were committed to the company’s lasting success.

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

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

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

36. The Smiths began spreading falsehoods about Nerium and Olson, ranging from attempting to spread alarm about the company's financial condition, to false criticisms about the quality of certain Nerium products, to vicious personal attacks on Olson himself. Meanwhile, the Smiths continued to make demands, including demands that Nerium "buy them out" or even that Olson sell the entire company to him. The implication of what the Smiths had planned as their "or else" was clear—litigation, and a raid.

37. Word started to spread among Brand Partners that the Smiths were leaving Nerium. Nerium's corporate office set up a call with several leading Brand Partners to dispel the rumor, but the Smiths failed to appear on the call and have never dispelled the rumor. Mark Smith later revealed to another Brand Partner that he was unavailable for the call because he was meeting with a competitor. The Smiths also failed to show up at certain large Nerium events where Brand Partners would expect to see them. And these were more than mere rumors—the Smiths were talking to a competing direct-sales company called Isagenix, and apparently intended to join the company. Meanwhile, company representatives began reaching out to Brand Partners associated with the Smiths. There can be no doubt as to the source of those contacts.

Fortunately for Nerium, the Smiths' plan hit a snag. On information and belief, Isagenix got cold feet and declined to move forward with the Smiths. Undeterred, the Smiths have now decided to join Jeunesse Global, another direct sales company

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

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

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

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

amount of cash set aside to orchestrate the move Smith was plotting. Smith also told Mueller that leading European Brand Partners were being contacted to get them to fly to Orlando with the intent of having them join Jeunesse.

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

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

44. The Smiths have used David Byrd, and his daughter, Jenni Byrd Grier, to spread fear and uncertainty, and help encourage Brand Partners to leave Nerium. Byrd and Grier are popular and well-respected coaches paid by Nerium to work with Nerium Brand Partners to develop more effective sales and recruiting strategies. Indeed, it was Mark Smith who convinced Nerium to hire Byrd Consulting to serve as personal coaches for leaders in the Nerium salesforce. Nerium agreed, and hired the firm (consisting of David Byrd, Jenni Byrd Grier, and her husband Rob Grier), paying them millions of dollars to serve as confidantes for numerous high-ranking Brand Partners. Over the years, they have developed deep personal relationships with and knowledge about hundreds of Nerium's leaders, and are looked to by leading Brand Partners as a trusted resource. Byrd and Grier appear to be working closely with the Smiths, using their position of trust and confidence to employ underhanded techniques to help facilitate the Smiths' raid on Nerium, sowing seeds of doubt among the leadership. Jenni was even featured as a speaker on a leadership call the day before Byrd and Grier abruptly resigned

(claiming falsely they had not been paid, before later acknowledging in writing this was untrue). On information and belief, they are actively communicating with Nerium's Brand Partners on behalf of the Smiths.

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

**VI. CAUSE OF ACTION FOR BREACH OF CONTRACT  
(AGAINST SMITH, MTS, LLC, JASON RANSOM, CLAUDIA RANSOM, DALE  
MUNGER, VANESSA MUNGER, LORI GASEMY, DANNY GASEMY, AND KIDD)**

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

47. Nerium entered enforceable contracts with Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd that contain covenants relating to their competitive activities. Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd received valuable consideration for the execution of these contracts, and the contract are valid and enforceable.

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

49. Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd have breached one or more of the covenants in the contracts by recruiting Nerium's Brand Partners to become sales representatives for Isagenix, and later Jeunesse, both through their own direct efforts and the efforts of third parties working on their behalf, including Byrd and Grier.

50. As a result, Nerium has been damaged in an amount within this Court's jurisdictional limits and will be imminently and irreparably harmed if Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd are not enjoined from further breaches of the contracts.

#### **VII. TORTIOUS INTERFERENCE WITH CONTRACT (AGAINST ALL DEFENDANTS)**

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

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

53. Defendants Byrd and Grier are further interfering with Nerium's agreements with the Smiths and MTS, LLC, facilitating their breaches of their nonsolicitation covenants described above. Nerium seeks monetary damages against Byrd and Grier.

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

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

55. As set forth in more detail above, there is no question Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy, and Kidd breached their obligation to refrain from soliciting Nerium's Brand Partners, and that they, in active concert and participation with Byrd and Grier, solicited and facilitated solicitation of other Brand Partners. Defendants have also tortuously interfered with Nerium's contracts with its Brand Partners and employees. Nerium has therefore established, at the very least, a probable right to the relief it seeks upon final hearing.

56. If Defendants are not immediately restrained from continuing to violate, and from assisting and encouraging other Nerium Brand Partners and employees in violating, contractual obligations to Nerium by recruiting Nerium's Brand Partners and employees to become sales representatives and employees for a competing direct-sales company, Nerium will suffer immediate and irreparable injury as a result of Defendants' continued wrongdoing because Nerium's goodwill and confidential and proprietary information will be compromised. Worse, this information will be used to Nerium's detriment and to directly benefit a competitor. The impact of Defendants' wrongful use would be difficult or impossible to fully discover and assess.

57. Without the Court's intervention, Nerium will suffer imminent, irreparable harm for which there is no adequate remedy at law. Maintaining a motivated and dedicated salesforce is the lifeblood of Nerium's business. If Defendants succeed in pillaging a portion of Nerium's network of Brand Partners and employees, Nerium may be unable to recover those critical relationships. And given the structure of Nerium's business, the harm Defendants are causing has a ripple effect and infects not only individual Brand Partners, but also their respective networks of associated Brand Partners and customers.

58. The full extent of Nerium's damages, which will continue to occur if Defendants' conduct is unabated, including lost profits, loss of reputation, and loss of goodwill, are difficult—if not impossible—to assess fully. It is vitally important that this wrongful conduct be stopped and Defendants' be prohibited from further wrongdoing. In particular, this harm comes as no surprise to Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd, who expressly agreed in the P&P that violating the non-solicitation provision would cause Nerium "irreparable injury for which there is no adequate remedy at law and hereby agrees to the entry of an ex[]parte temporary restraining order [and] preliminary and permanent injunction." The only adequate, effective, and complete relief for Nerium is to restrain Defendants from further engaging in certain proscribed activities, as set forth below.

59. No bond should be necessary for the issuance of the requested temporary injunction because Nerium is merely seeking to enjoin the Defendants from actions that are clearly prohibited under the contracts with Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd and under statutory and common law. Nerium is, however, willing to post a bond if the Court deems it necessary and appropriate.

60. For all these reasons, pursuant to Texas Rule of Civil Procedure 680 et seq. and Texas Civil Practice and Remedies Code § 65.001 et seq., and to preserve the status quo during the pendency of this action, Nerium respectfully requests, upon hearing, a temporary and permanent injunction, ordering and restraining and Defendants, including their agents, representatives, and all other persons in active concert or participation with them who receive



actual notice of the order by personal service or otherwise (collectively, the “Restrained Parties”) on the following terms:

**Defendants are prohibited from directly or indirectly recruiting or soliciting any of Nerium’s Brand Partners and employees to join any other direct-sales, multi-level marketing, or network-marketing company, including but not limited to Jeunesse Global Holdings, LLC.**

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

61. Nerium’s agreements with Smith, MTS, LLC, Claudia Ransom, Jason Ransom, Dale Munger, Vanessa Munger, Lori Gasemy, Danny Gasemy and Kidd include an arbitration provision. These arbitration provisions expressly provide that the Company may seek injunctive relief in a Court to protect the Company’s rights. Nerium fully reserves and does not waive herein the terms of its arbitration agreement or its right to proceed with arbitration for damages against the Defendants.

#### **X. ATTORNEY’S FEES**

62. Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code and the relevant agreements, Nerium is entitled to and hereby requests its attorney’s fees.

#### **XI. CONCLUSION & PRAYER**

For these reasons, Nerium respectfully requests that Defendants Claudia Ransom, Jason Ransom, Darin Kidd, Danny Gasemy, Lori Gasemy, Dale Munger, and Vanessa Munger be cited to appear and answer herein, and that: (i) without waiving its right to arbitrate, Nerium be awarded temporary and permanent injunctive relief to prevent irreparable injury; (ii) that Nerium be awarded damages against Defendants Byrd and Grier in an amount to be determined by the trier of fact, plus prejudgment and postjudgment interest, and (iii) for such other and further relief to which Nerium may be justly entitled.

Respectfully submitted,

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*Attorneys for Plaintiff Nerium International, LLC*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record in the above cause in accordance with the Texas Rules of Civil Procedure on this 30th day of March, 2018:

/s/ Brent M. Rubin

Rick Illmer

rillmer@huschblackwell.com

*Attorneys for Defendants Mark Smith,  
Mark & Tammy Smith, LLC, David  
Byrd, and Jenni Byrd Grier*