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5 Attorneys for Plaintiff
6 Public Interest Alliance LLC

ENDORSED
FILED
ALAMEDA COUNTY

JUL 10 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 THE PUBLIC INTEREST ALLIANCE, LLC, a) Case No. RG13697992
13 California limited liability company)
14 Plaintiff,) **[PROPOSED] JUDGMENT UNDER**
15 vs.) **PROPOSITION 65 SETTLEMENT AND**
16 ACCESS BUSINESS GROUP LLC, et al.) **CONSENT JUDGMENT AS TO**
17 Defendants.) **DEFENDANT AUBREY ORGANICS, INC.**
18)
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Date: July 10, 2014
Time: 2:30 p.m.
Dept: 17
Res'n No. R-1525422

Action Filed: October 3, 2013

1 In the above-captioned action, plaintiff Public Interest Alliance LLC, and defendant Aubrey
2 Organics, Inc. (“Aubrey”), having agreed through their respective counsel that Judgment be entered
3 under the terms of their settlement in the form of the proposed consent judgment (the “Consent
4 Judgment”), and following this Court’s entry of an Order approving the Consent Judgment on July __,
5 2014:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, under Health & Safety Code
7 section 25249.7, subsection (f)(4), and Code of Civil Procedure section 664.6, judgment is entered in
8 accordance with the terms of the Consent Judgment attached hereto as Exhibit A and by this reference
9 incorporated herein. The Court shall maintain jurisdiction under Code of Civil Procedure section 664.6
10 to resolve any allegations by Aubrey or PIA that the other has breached any terms of the Consent
11 Judgment, as provided in Section 4 of the Consent Judgment.

12 **IT IS SO ORDERED:**

13
14 Dated: July 10, 2014

15 **GEORGE C. HERNANDEZ, JR.**
16 _____
17 JUDGE, SUPERIOR COURT
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EXHIBIT A

1 Jeffrey M. Judd (SBN 136358)
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 2 JUDD LAW GROUP LLP
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5 Attorneys for Plaintiff
 Public Interest Alliance LLC
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7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF ALAMEDA
 10 UNLIMITED CIVIL JURISDICTION
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12 THE PUBLIC INTEREST ALLIANCE, LLC, a 13 California limited liability company 14 Plaintiff, 15 vs. 16 ACCESS BUSINESS GROUP LLC, et al. 17 Defendants.)) Case No. RG13697992) [PROPOSED] CONSENT JUDGMENT –) AUBREY ORGANICS, INC.) (Cal. Health & Safety Code section 25249.6 <i>et</i>) <i>seq.</i>
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 19 1. INTRODUCTION

20 1.1 **Parties.** This [Proposed] Consent Judgment is entered into by and between plaintiff
 21 PUBLIC INTEREST ALLIANCE LLC (“PIA”) and AUBREY ORGANICS, INC. (“Aubrey”), with
 22 PIA and Aubrey collectively referred to as the “Parties.”

23 1.2 **Public Interest Alliance LLC.** The Public Interest Alliance LLC is a California limited
 24 liability company dedicated to improving human health, preserving the natural environment, and
 25 promoting compliance with environmental and consumer disclosure laws.

26 1.3 **Aubrey Organics, Inc.** Aubrey employs ten or more persons and is a “person in the
 27 course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of

1 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

2 **1.4 General Allegations**

3 1.4.1 PIA alleges the following: Aubrey manufactured, imported, sold and/or
4 distributed for sale in California, cosmetic and personal care powders that contain Titanium dioxide
5 ("TiO2"). During use, some TiO2 is released into the air, exposing consumers to unbound TiO2
6 particles of respirable size without the health hazard warnings that Proposition 65 requires. A list of
7 such products is identified on Exhibit A attached hereto (the "Covered Products"). TiO2 is a chemical
8 widely used as a whitening agent in a wide range of consumer products, including, without limitation,
9 paper, paints, printers' inks, toothpaste, cosmetics, and personal care products. In 2010, the
10 International Agency for Research on Cancer ("IARC") issued Monograph 93, which concluded that
11 TiO2 is "possibly carcinogenic" to humans when inhaled.

12 1.4.2 Pursuant to Proposition 65, on September 2, 2011, California identified and
13 listed Titanium Dioxide (airborne, unbound chemicals of respirable size) as a chemical known to cause
14 cancer. TiO2 became subject to the "clear and reasonable warning" requirements of the Act one year
15 later on September 2, 2012. Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8,
16 25249.10(b).

17 1.4.3 Titanium Dioxide (airborne, unbound chemicals of respirable size) is hereinafter
18 referred to as the "Listed Chemical." PIA alleges that the Listed Chemical is released into the air when
19 the Covered Products are applied to the skin by brush, pad or sponge, leading to human exposures.

20 1.5 **Notice of Violation.** On or about June 21, 2013, PIA served Aubrey and certain
21 requisite public enforcement agencies with a Proposition 65 60-Day Notice of Violation (the "NOV")
22 that provided the recipients with notice of alleged violations of Proposition 65 based on Aubrey's
23 alleged failure to warn customers and consumers, workers and other individuals that the Covered
24 Products exposed users in California to the Listed Chemical. To the best of the Parties' knowledge, no
25 public enforcer has commenced or is diligently prosecuting the allegations set forth in the NOV.

26 1.6 **Complaint.** On October 3, 2013, PIA filed a Complaint in the Superior Court in and for
27 the County of Alameda styled, *PIA v. Access Business Group, LLC, et al.*, Case No. RG13697992,

1 alleging violations of Proposition 65 arising from unwarned exposures to the Listed Chemical when
2 the Covered Products are used (the "Complaint").

3 1.7 No Admission. Aubrey denies the material factual and legal allegations contained in the
4 NOV and Complaint and maintains that all products it has manufactured, imported, distributed, and/or
5 sold in California, including the Covered Products, have been and are in compliance with all laws.
6 Nothing in this Consent Judgment shall be construed as an admission by Aubrey of any fact, finding,
7 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
8 constitute or be construed as an admission by Aubrey of any fact, finding, conclusion, issue of law, or
9 violation of law. This section shall not, however, diminish or otherwise affect Aubrey's obligations,
10 responsibilities, and duties under this proposed Consent Judgment.

11 1.8 Consent to Jurisdiction. For purposes of this proposed Consent Judgment only, the
12 Parties stipulate that this Court has jurisdiction over Aubrey as to the allegations contained in the
13 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter
14 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of
15 Civil Procedure § 664.6.

16 2. DEFINITIONS

17 2.1 California Customers. "California Customer" shall mean (i) any consumer that
18 Aubrey reasonably understands is located in California; (ii) any customer that has a California
19 warehouse or distribution center; or (iii) any customer that maintains a retail outlet in California or has
20 made any internet sales into California between September 2, 2012, and the Effective Date, inclusive.

21 2.2 Effective Date. "Effective Date" shall mean the date that the Court enters an order
22 granting a motion to approve this proposed Consent Judgment.

23 2.3 Reformulated Products. "Reformulated Products" shall mean Covered Products that
24 contain no Titanium Dioxide that was intentionally included as a product ingredient.

25 2.4 Retailer. "Retailer" means an individual or entity that offers a Covered Product for
26 retail sale to consumers in the State of California.

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1 3. COVENANTS IN LIEU OF INJUNCTION

2 3.1 Reformulation Covenant. Commencing on the Effective Date, Aubrey shall not
3 distribute or sell to California Customers, manufacture or import for distribution or sale to California
4 Customers or cause to be manufactured or imported for distribution or sale to California Customers,
5 any Covered Products that are not Reformulated Products or unless and until Aubrey complies with the
6 provisions of Paragraph 3.5., below (Product Warnings) (the "Reformulation Covenant").

7 3.2 Intentionally Deleted.

8 3.3 Intentionally Deleted.

9 3.4 Intentionally Deleted.

10 3.5 Product Warnings

11 3.5.1 Product Labeling. Any warning provided under this Consent Judgment shall be
12 (1) affixed to the exterior packaging of such product or (2) affixed to the product itself in immediate
13 proximity to any marketing, ownership or pricing tags or labels or, if none, to a surface of the product
14 that would be immediately visible to a purchaser or user upon inspection or use. Each warning shall be
15 of such size, color and font and shall be prominently placed with such conspicuousness as compared
16 with other words, statements, designs, or devices as to render it likely to be read and understood by an
17 ordinary individual under customary conditions before purchase. Each warning shall be provided in a
18 manner such that the consumer or user understands to which specific product the warning applies, so
19 as to minimize the risk of consumer confusion. A warning provided pursuant to this Consent Judgment
20 shall state:

21 **WARNING:** This product contains a chemical known to the State of
22 California to cause cancer.

23 3.5.2 Internet Website Warning. A warning shall be given in conjunction with any
24 sale of Covered Products to California residents via the internet, which warning shall appear on each
25 product display page and on a link prominently displayed on a checkout page, which link must be
26 accessed by the purchaser prior to completion of checkout process along with electronic confirmation
27 of the purchaser's review of the link. The following warning statement shall be used and shall appear

1 in the same type size or larger than the Product description text:

2 **WARNING:** This product contains a chemical known to the State of
3 California to cause cancer.

4 **4. MONETARY PAYMENTS**

5 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b).** In settlement of all
6 the claims referred to in this Consent Judgment, Aubrey shall pay a civil penalty in the amount of Zero
7 Dollars (\$ 0.00) in accordance with this Section.

8 **4.1.1 Additional Penalty for Unreasonably Incorrect Representation Of Sales**
9 **Data.** Aubrey understands that the sales data it provided to PIA was a material factor upon which PIA
10 has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code §
11 25249.7 in this Consent Judgment. After a reasonable inquiry and diligent review, Aubrey represents,
12 to the best of its knowledge, that the sales data provided by it to PIA are full and complete, and are a
13 true and accurate reflection of sales of the Covered Products in California during the relevant period.
14 If, within nine months after the Effective Date, PIA discovers and presents to Aubrey evidence that
15 prior to execution of this Consent Judgment the Covered Products were distributed by Aubrey in sales
16 volumes materially different than those identified by Aubrey prior to execution of this Consent
17 Judgment, then Aubrey shall be liable for an additional penalty amount as well as additional attorney
18 fees expended by PIA in the public interest. In the event PIA presents affirmative evidence that any of
19 the Covered Products have been distributed by Aubrey in sales volumes materially different than those
20 identified by Aubrey, PIA shall provide Aubrey with a written demand for additional penalties and
21 attorney fees under this Section. After service of such demand, Aubrey shall have 30 days to meet and
22 confer with PIA about the demand and agree on the amount of such payment to PIA. Should this 30-
23 day period pass without any such resolution between the Parties, PIA shall be entitled to file a noticed
24 motion and will bear the burden of proof, and the prevailing party shall be entitled to all reasonable
25 attorney fees and costs relating to that motion. Any additional penalty or attorney fee payments must
26 be approved by the Court and comply with Title 11, California Code of Regulations section 3000, et
27 seq., including provision of at least 45 days' notice to the Attorney General's Office prior to the

1 4.3.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA shall
2 be mailed, simultaneous with payment, to Judd Law Group LLP at the address set forth in Section
3 4.3.1(a) above, as proof of payment to OEHHA.

4 4.3.3 **Tax Documentation.** Aubrey shall issue a separate 1099 form for each payment
5 required by this Section to: (a) PIA (EIN 46-3826361), to the address set forth in Section 4.3.1(a)
6 above; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard
7 Assessment" (EIN 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010,
8 Sacramento, CA 95814, and (c) "Judd Law Group LLP" (EIN: 90-0789749) to the address set forth in
9 Section 4.3.1(a) above.

10 **5. CLAIMS COVERED AND RELEASED**

11 5.1 **PIA's Release of Proposition 65 Claims.** PIA, acting on his own behalf and in the
12 public interest, releases Aubrey, its parents, subsidiaries, directors, officers, attorneys, affiliated
13 companies, shareholders, owners, agents, representatives, and employees, and each entity to whom
14 Aubrey directly or indirectly distributed or sold Covered Products, including, but not limited, to
15 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
16 licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the
17 Effective Date based on unwarned exposures to the Listed Chemicals in the Covered Products, as set
18 forth in the NOV and Complaint. Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 with respect to exposures to the Listed Chemicals from the Covered
20 Products, as set forth in the NOV. The Parties further understand and agree that this Section 5.1 release
21 shall not extend upstream to any entities, other than affiliates of Aubrey.

22 5.2 **Aubrey's Release of PIA.** Aubrey, on behalf of itself, its past and current agents,
23 representatives, attorneys, successors, and assignees, hereby waives any and all claims against PIA and
24 its attorneys and other representatives, for any and all actions taken or statements made (or those that
25 could have been taken or made) by PIA and its attorneys and other representatives, whether in the
26 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
27 with respect to the Covered Products.

1 6. **PRESERVATION OF COMPETITIVENESS.** The intent of this Section 6 is to protect the
2 competitive interests of Aubrey arising from PIA's claims and to ensure that by settling the allegations
3 in the NOV and the Complaint, Aubrey is not disadvantaged with respect to its competitors.
4 Specifically, the parties agree that should any agreement or consent judgment be entered into by PIA,
5 the California Office of Environmental Health Hazard Assessment, or the California Attorney
6 General's Office concerning personal care products similar to the Covered Products that contains
7 provisions that would materially impact the terms of this Agreement, such benefits shall accrue to
8 Aubrey and this Agreement shall be amended by a stipulation and proposed order, a copy of which
9 shall be provided to the Attorney General's office at least five (5) business days prior to submission to
10 the Court, to provide Aubrey the benefit thereof. Further, should there be a court decision involving
11 any other person or entity that received a Proposition 65 60-Day Notice of Violation alleging Titanium
12 Dioxide in personal care products similar to the Covered Products and such decision is in whole or in
13 part favorable to the defendant(s) in such action, then that decision shall be incorporated into this
14 Agreement by a stipulation and proposed order, a copy of which shall be provided to the Attorney
15 General's office at least five (5) business days prior to submission to the Court. Further, should any
16 consent judgment establish a "No Significant Risk Level" for Titanium Dioxide (airborne, unbound
17 particles of respirable size) and provide for other parties to opt-in, any payments Aubrey has made
18 pursuant to this Agreement shall be offset against any opt-in payment requirements of such consent
19 judgment. Should PIA in the future become aware of facts or circumstances that have not been
20 publicly disclosed that, in PIA's opinion affect Aubrey's competitiveness, it shall so notify Aubrey's
21 counsel by email within forty-five (45) days after PIA becomes aware of such non-public facts or
22 circumstances. PIA shall prepare all such stipulations and proposed orders, at PIA's sole expense, and
23 shall make reasonable efforts to obtain the parties' signatures thereto.

24 7. **COURT APPROVAL.** This Consent Judgment is not effective until it is approved and entered
25 by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
26 within one year after it has been fully executed by all Parties. If the Court does not approve the
27 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal

1 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in
 2 its normal course on the Court's trial calendar. If the Court's approval is ultimately overturned by an
 3 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
 4 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall proceed in
 5 its normal course on the Court's trial calendar.

6 8. **SEVERABILITY**. If, subsequent to the Court's approval and entry of this Consent Judgment,
 7 any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of
 8 the enforceable provisions remaining shall not be adversely affected.

9 9. **GOVERNING LAW**. The terms of this Consent Judgment shall be governed by the laws of
 10 the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
 11 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
 12 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
 13 rendered inapplicable by reason of law generally as to the Covered Products, then Aubrey may make a
 14 formally noticed motion to this Court for relief from this Agreement or provisions of this Agreement,
 15 with the requisite written notice to PIA, and shall only have no further obligations pursuant to this
 16 Consent Judgment to the extent of any Court order so excusing or eliminating such obligation. Nothing
 17 in this Consent Judgment shall be interpreted to relieve Aubrey from any obligation to comply with
 18 any pertinent state or federal law or regulation.

19 10. **NOTICES**. Unless specified herein, all correspondence and notices required to be provided
 20 pursuant to this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
 21 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other
 22 party at the following addresses:

23 To Aubrey:

24 Mr. Curt Valva
 25 Aubrey Organics, Inc.
 26 5046 W. Linebaugh Avenue
 27 Tampa, FL 33624

To PIA:

Public Interest Alliance, LLC
 c/o Jeffrey M. Judd
 222 Sutter Street, Suite 600
 San Francisco, CA 94108

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With a copy to:

Anne E. Kearns, Esq.
Keller, Sloan, Roman & Holland LLP
555 Montgomery Street, 17th Floor
San Francisco, CA 94111

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

11. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES. This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or PDF signature shall be as valid as the original.

12. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f). PIA and its attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

13. POST EXECUTION. PIA and Aubrey each agrees to mutually employ its best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which PIA shall draft and file, and Aubrey shall join. If any third party objection to the noticed motion is filed, PIA and Aubrey shall work together to file a joint reply and appear at any hearing before the Court. The Court shall maintain jurisdiction under Code of Civil Procedure § 664.6 and, if after entry of a Consent Judgment, either party determines that the other is in breach of this Consent Judgment, such party shall provide to the other written notice of such alleged breach pursuant to Section 10, above, and the noticed party shall thereafter have thirty (30) days within which to attempt to cure or otherwise resolve the alleged breach (the "Cure Period"). If the alleged breach is not resolved or cured to the reasonable satisfaction of the noticing party during the Cure Period, the noticing party may thereafter bring a noticed motion to have the Court resolve the dispute by order, including, as applicable, an order awarding the prevailing party reasonable attorney fees and costs

1 incurred in connection with the motion. This provision is a material component of the Consent
2 Judgment and shall be treated as such in the event of a breach.

3 14. MODIFICATION. This Consent Judgment may be modified only: (1) by written agreement of
4 the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a
5 successful motion of any party and entry of a modified Consent Judgment by the Court.

6 15. AUTHORIZATION. The undersigned are authorized to execute this Consent Judgment on
7 behalf of their respective parties and have read, understood, and agree to all of the terms and
8 conditions of this Consent Judgment.

9 Dated: May __, 2014

PUBLIC INTEREST ALLIANCE LLC

11 By:

12 Daniel P. Madison
13 Managing Member

14 Dated: May __, 2014

AUBREY ORGANICS, INC.

15 By:

16 Curt Valva
17 President and CEO

18 Approved as to form:

JUDD LAW GROUP LLP

19 Dated: May __, 2014

20 By Jeffrey M. Judd

21 Attorneys for Plaintiff
22 PUBLIC INTEREST ALLIANCE LLC

23 Approved as to form:

24 KELLER, SLOAN, ROMAN & HOLLAND LLP

25 Dated: May __, 2014

26 By Anne E. Kearns

27 Attorneys for Defendant
28 AUBREY ORGANICS, INC.

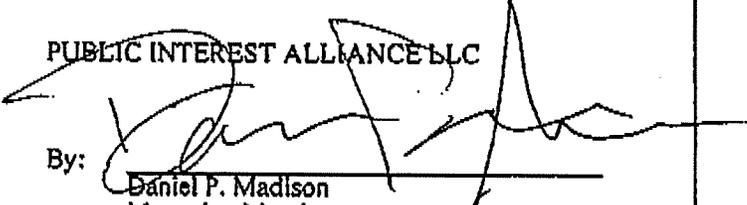
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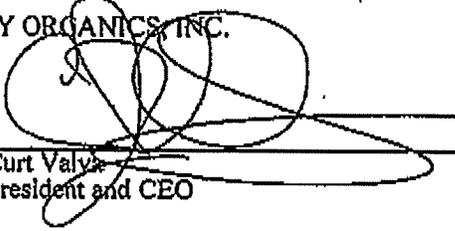
9 Dated: May 27, 2014

PUBLIC INTEREST ALLIANCE LLC

10
11 By: 
12 Daniel P. Madison
Managing Member

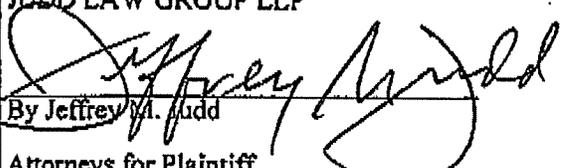
13 Dated: May 27, 2014

AUBREY ORGANICS, INC.

14
15 By: 
16 Curt Valva
President and CEO

17 Approved as to form:

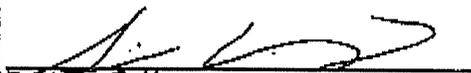
18 JUDD LAW GROUP LLP

19 
20 By Jeffrey A. Judd Dated: May 27, 2014

21 Attorneys for Plaintiff
PUBLIC INTEREST ALLIANCE LLC

22 Approved as to form:

23 KELLER, SLOAN, ROMAN & HOLLAND LLP

24 
25 By Anne E. Kearns Dated: May 27, 2014

26 Attorneys for Defendant
27 AUBREY ORGANICS, INC.

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EXHIBIT A

COVERED PRODUCTS

- Silken Earth Powder Blush – Bronzed Earth Peach
- Silken Earth Honey Bronze
- Silken Earth Starlight Pink
- Silken Earth Body Shimmer