

## RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") is entered by and between THE PUBLIC INTEREST ALLIANCE LLC, a California limited liability company ("PIA"), and Eminence Organic Skin Care ("Eminence"). Collectively, Eminence and PIA are referred to as the "Parties."

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts:

A. The Public Interest Alliance LLC is a California limited liability company whose mission is to improve human health, preserve the natural environment, and promote compliance with environmental and consumer disclosure laws.

B. On or around June 12, 2013, PIA served a 60-Day Notice of Violation of Proposition 65 re: Titanium Dioxide (airborne, unbound particles of respirable size) on Eminence (the "NOV"). Among other things, PIA alleged in the NOV that Eminence had exposed California consumers to Titanium Dioxide (airborne, unbound particles of respirable size) through the sale and use of certain cosmetic and personal care powders (the "Products").

C. Prior to expiration of the 60-day notice period, and before PIA filed an enforcement action, the Parties agreed to explore settling the claims alleged in the NOV without resort to litigation.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises contained herein, the Parties hereto agree as follows:

1. **Effective Date.** The effective date of this Settlement Agreement (the "Effective Date") is November 20, 2013.
2. **No Admission.** This Settlement Agreement resolves claims that are denied and disputed by Eminence. The Parties enter into this Settlement Agreement pursuant to a full and final settlement of claims between the Parties for the purpose of avoiding prolonged litigation.

Eminence denies the material factual and legal allegations contained in the NOV, and maintains that all of the products that it has manufactured, imported, distributed and/or sold in the State of California, including the Products, have been, and are, in compliance with all laws, and are completely safe for use despite the alleged presence of Titanium Dioxide. Nothing in this Settlement Agreement shall be construed as an admission by Eminence of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Eminence of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Eminence. This Section shall not, however, diminish or otherwise affect Eminence's obligations, responsibilities and duties under this Settlement Agreement.

3. **Settlement Payment.** Within ten (10) business days of the Effective Date, for and in consideration of the total payment of Twenty Thousand and No/100 Dollars (\$20,000.00) (the "Settlement Payment"), as allocated below, the Parties hereby agree that all claims asserted by PIA against Eminence in the NOV concerning the Products will be fully settled and resolved. Payment shall be made by check or wire transfer to a Client Trust Account maintained by PIA's counsel, the Judd Law Group LLP.

a. *Payment to PIA.* Of the total Settlement Payment identified in Section 3 above, Five Thousand Dollars and No/100 Dollars (\$5,000.00), shall be payable to Judd Law Group LLP in trust for The Public Interest Alliance LLC; and

PIA  
Bounty

b. *Payment to Judd Law Group LLP.* Of the total Settlement Payment identified in Section 3 above, Fifteen Thousand and No/100 Dollars (\$15,000.00) shall be payable to the Judd Law Group LLP.

Atty  
Fees

4. **Agreement to Reformulate.** As of the Effective Date, Eminence agrees to only manufacture for sale to California consumers Products that do not contain Titanium Dioxide as

an ingredient or which bear a Proposition 65 warning as set forth below; provided, however, in the event that PIA or the Attorney General's Office enters into an agreement or consent judgment with any other person or entity that received a 60-Day Notice of Violation of Proposition 65 alleging Titanium Dioxide in similar personal care products, where such agreement or consent judgment establishes a No Significant Risk Level ("NSRL") or otherwise allowable level for Titanium Dioxide without a Proposition 65 warning, or at such time, if ever, that the California Office of Health Hazard Assessment establishes an NSRL for Titanium Dioxide that permits the sale of Products without a Proposition 65 Warning that conform to the NSRL, then that allowable level shall be deemed incorporated into this Agreement, and Eminence shall be permitted to distribute, sell or offer to sell to California consumers any personal care products it sells without a Proposition 65 Warning so long as such products comply with the NSRL or otherwise allowable level for Titanium Dioxide. Should PIA in the future enter into any such agreement or consent judgment it shall notify Eminence of such within 30 days after such agreement has been fully executed. Should a Court of Appeal hold that similar personal care products with specified levels of Titanium Dioxide sold without a warning do not violate Proposition 65, or adopt an NSRL for Titanium Dioxide, then that level or NSRL shall be deemed incorporated into this Agreement, and Eminence shall be permitted to distribute, sell or offer to sell to California consumers any personal care products it sells without a Proposition 65 Warning so long as such products comply with the NSRL or otherwise allowable level for Titanium Dioxide.

**5. Product Warnings.**

a. *Product Labeling.* Any warning provided under this Agreement shall be either (i) affixed to any invoice or shipping document delivered with the Product to California, or (ii) affixed to the Product itself in immediate proximity to any marketing, ownership, or pricing tags

or labels or, if none, to a surface of the product that would be readily visible to a purchaser or user upon inspection or use of the Product. Each warning shall be of such size, color, and font, and shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion. A warning provided pursuant to this Agreement shall state:

**CALIFORNIA PROPOSITION 65 WARNING:** This product contains Titanium Dioxide, which when used may expose the consumer to Titanium dioxide (airborne, unbound particles of respirable size), a chemical known to the State of California to cause cancer.

Or

**CALIFORNIA PROPOSITION 65 WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

b. *Internet Website Warning.* A warning shall be given in conjunction with any sale by Eminence of the Products to California residents via the internet, which warning shall appear on each product display page and on a link prominently displayed on a checkout page, which link must be accessed by the purchaser prior to completion of the checkout process, along with electronic confirmation of the purchaser's review of the link. The following warning shall be used and shall appear in the same type size or larger than the Covered Product description text:

**CALIFORNIA PROPOSITION 65 WARNING:** This product contains Titanium Dioxide, which when used may expose the consumer to Titanium dioxide (airborne, unbound particles of respirable size), a chemical known to the State of California to cause cancer.

Or

**CALIFORNIA PROPOSITION 65 WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

6. Releases.

a. *PIA's Release of Eminence.* PIA, its past and current agents, members, representatives, attorneys, successors, and/or assignees, acting on their own behalf, hereby release Eminence and each of its shareholders, members, heirs, successors, predecessors, assigns, conservators, directors, officers, employees, representatives, subsidiaries, parent companies, affiliates, agents, partners, joint venturers, insurers, attorneys, and sureties, if any, and each entity to whom Eminence directly or indirectly distributed or sold the Products, including, but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively "Releasees"), from any and all claims, for violations of Proposition 65 based on unwarned exposures to Titanium Dioxide (airborne, unbound particles of respirable size) (hereafter, "TiO<sub>2</sub>") from Products manufactured prior to the Effective Date, as set forth in the NOV. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to TiO<sub>2</sub> from the Products, as set forth in the NOV. PIA's release shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of PIA of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to TiO<sub>2</sub> in the Products manufactured, imported, distributed, or sold by Eminence prior to the Effective Date. Eminence further understands and agrees that this Paragraph 6 release shall not extend upstream to any entities. Nothing in this Paragraph 6 shall affect PIA's rights to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products. The foregoing

releases are expressly conditioned on confirmation of receipt of funds in the amount of the Settlement Payment in a Judd Law Group LLP bank account.

b. *Eminence's Release of PIA.* Eminence, on behalf of itself, its past and current shareholders, members, heirs, successors, predecessors, assigns, conservators, directors, officers, employees, representatives, subsidiaries, parent companies, affiliates, agents, partners, joint venturers, insurers, attorneys, and sureties, if any, hereby waives, releases and forever discharges any and all claims against PIA and its attorneys, members, and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by PIA and its attorneys, members, and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

7. **Waiver.** Both Parties provide a full and final Release applying to all unknown and unanticipated injuries or damages relating to or arising out of the claims from Eminence's sale of the Products, as well as those now known, whether or not disclosed, and the Parties do hereby relinquish and waive all rights or benefits conferred upon them by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

8. **Post Execution Conversion to Consent Judgment.**

At any time within twelve months after the execution of this Agreement, Eminence may send PIA a written request to draft and file a complaint, incorporating the terms of this Agreement into a proposed consent judgment, and to seek court approval of such consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed

by law. If so requested, in furtherance of obtaining approval of the consent judgment, PIA and Eminence and their respective counsel agree to mutually employ their best efforts to support the entry of the proposed consent judgment and obtain approval of the consent judgment by the Court in a timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Eminence will reimburse PIA and its counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting the Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the consent judgment, in an amount not to exceed \$8,000, exclusive of fees and costs incurred on appeal, if any. Eminence will remit payment to The PIA within fifteen days after its receipt of monthly invoices from PIA's counsel for work performed under this Section 8.

9. **Warranties.**

a. *PIA.* PIA warrants and represents that PIA is competent to give this complete Release, and has fully authorized the signatory below to give this complete release and discharge on PIA's behalf.

b. *Eminence.*

i. *Due Authority.* Eminence warrants and represents that it is competent to give this complete Release, and has fully authorized the signatory below to give this complete release and discharge on Eminence's behalf.

ii. *Accuracy of Information Provided to PIA.* Eminence warrants and represents that, to Eminence's best knowledge, the information provided to PIA regarding the sales volume of Products during the period between September 2, 2012 and the Effective Date

(the "Relevant Time Period") is complete and accurate.

**10. Attorneys' Fees.** PIA and Eminence each acknowledge and agree that each will bear its own costs, expenses and attorneys' fees arising out of and/or connected with the NOV, and the negotiation, drafting and execution of this Agreement.

**11. Notices.** Unless otherwise specified in this Agreement, all correspondence and notices required to be provided under this Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class registered or certified mail, return receipt requested; or (c) overnight courier to any party by the other party at to the following addresses:

To PIA: Jeffrey M. Judd  
Judd Law Group LLP  
222 Sutter Street, Suite 600  
San Francisco, CA 94108

To Eminence: Attila Koronczay  
Eminence Organic Skin Care  
300-530 West Broadway Street  
Vancouver, BC V5Z1E9

With a Copy to: J. Robert Maxwell  
ROBERT JOSEPH O'DONNELL  
311 California St., 10th Floor  
San Francisco, CA 94104

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

**12. Construction of Agreement.** This Agreement is the product of negotiation and joint preparation by and between PIA and Eminence and their respective attorneys; therefore, PIA and Eminence expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or the other, or by either party's respective attorneys, and will be construed accordingly.

**13. Governing Law.** This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.



14. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of PIA and Eminence and each party's respective spouses, heirs, members, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents, subsidiaries, attorneys, affiliated and related entities, officers, directors, principals, shareholders, agents, employees, servants, representatives, and all persons, firms, associations, and/or corporations connected with them, including without limitation, their insurers and sureties.

15. **Severability.** If any provision of this Agreement is for any reason held invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and enforceable.

16. **Modification.** This Agreement may be amended or modified only by a written agreement duly executed by PIA and Eminence at the time of such amendment or modification.

17. **Headings.** The paragraph headings are solely for the convenience of the parties and shall not be utilized in the construction of any of the terms of this Agreement.

18. **Miscellaneous.**

a. *Entire Agreement.* This Agreement contains the entire agreement between PIA and Eminence. PIA and Eminence each warrants and represents that no other promise or inducement has been offered or received, except as herein recited for the releases of PIA and Eminence.

b. *Consultation With Attorneys.* PIA and Eminence each acknowledges and warrants that each has consulted in this matter with his, her, or its attorney, and each warrants that he, she, or it executes this Settlement Agreement with the advice of his, her, or its attorney.

c. *Signatories.* Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Agreement.

d. *Counterparts.* This Release and Settlement Agreement may be signed in

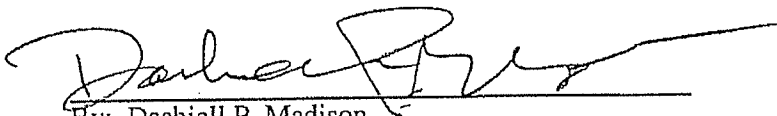
counterparts and a PDF or facsimile signature shall have the same force and effect as an original signature.

19. Covenant Not to Sue. Except as otherwise provided in Paragraph 8 above, PIA and its counsel, and Eminence agree that they will not file, or permit to be filed, in his, her, or its name or on his, her, or its behalf any lawsuit based on any of the matters released herein. This Release and Settlement Agreement may be pled as a full and complete defense of any action, proceeding or claim, or as a basis for abatement of or injunction against such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE PUBLIC INTEREST ALLIANCE LLC

Dated: November 20, 2013

  
By: Dashiell P. Madison  
Title: Managing Member

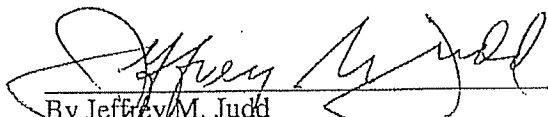
EMINENCE ORGANIC SKIN CARE

Dated: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

JUDD LAW GROUP LLP

  
By Jeffrey M. Judd  
Attorneys for PIA

Dated: November 20, 2013

ROGERS JOSEPH O'DONNELL

Dated: \_\_\_\_\_, 2013

By J. Robert Maxwell  
Attorneys for Eminence Organic Skin Care

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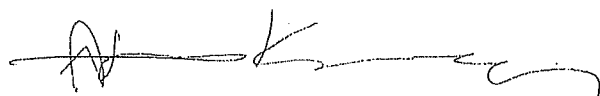
THE PUBLIC INTEREST ALLIANCE LLC

Dated: November 20, 2013

By: Dashiell P. Madison  
Title: Managing Member

EMINENCE ORGANIC SKIN CARE

Dated: Nov 26, 2013

  
By: ATTILA KORONCZAY  
Title: General Manager

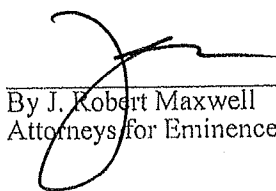
Approved as to form:

JUDD LAW GROUP LLP

Dated: November 20, 2013

By Jeffrey M. Judd  
Attorneys for PIA

ROGERS JOSEPH O'DONNELL

  
By J. Robert Maxwell  
Attorneys for Eminence Organic Skin Care

Dated: 11/25, 2013