

RELEASE AND SETTLEMENT AGREEMENT

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THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") is entered as of this 4th day of October 2013 (the "Effective Date") by and between THE PUBLIC INTEREST ALLIANCE LLC, a California limited liability company ("PIA"), and NEOSTRATA COMPANY INC. ("NSC").

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings, and intentions, which they represent and warrant are:

A. The Public Interest Alliance LLC is a California limited liability company whose stated mission is to improve human health, preserve the natural environment, and promote compliance with environmental and consumer disclosure laws. PIA is comprised of three members whose names are being provided in a list to counsel for NSC contemporaneously with PIA's execution of this Agreement, which list is incorporated by reference into this agreement as if fully set forth, and which list shall remain in the possession of NSC's counsel and kept confidential except as may be necessary, and only to the extent necessary for the purposes of enforcing, or obtaining relief from the breach of, this Agreement.

B. On or around June 21, 2013, PIA served a 60-Day Notice of Violation of Proposition 65 re: Titanium Dioxide (airborne, unbound particles of respirable size) on NSC (the "NOV"). Among other things, PIA alleged in the NOV that NSC had exposed California consumers to Titanium Dioxide (airborne, unbound particles of respirable size) through the sale and use of NSC Coverblend® Anti-Aging Finishing Powder (the "Noticed Product"). NSC denies the allegations in the NOV.

C. Titanium Dioxide (airborne, unbound particles of respirable size) was added to California's Proposition 65 list on September 2, 2011, and compliance with Proposition 65's consumer notice requirements became effective as of September 2, 2012.

D. NSC produced one product (in two shades), Coverblend® Anti-Aging Finishing Powder, which is alleged by PIA to fall within the definition of Noticed Products provided in the NOV. The manufacture of the Noticed Products ceased as of January 2013, although an

estimated total of 539 Noticed Products remain available for sale in inventory worldwide until exhausted. However, NSC has ceased sales of the Noticed Products in California. During the period between September 2, 2012, and until the stock of Noticed Products is exhausted, NSC estimates in good faith using prior sales patterns that it has sold approximately 271 units of the Noticed Products to California consumers, constituting total revenue to NSC of \$3,200.40.

E. Before PIA filed a Proposition 65 enforcement action, NSC expressed to PIA, through counsel, that it denied the allegations in the NOV but was nonetheless interested in settling the claims alleged in the NOV outside the context of a lawsuit, with the understanding that such settlement would only resolve PIA's claims (and those of its members) against NSC with respect to the Noticed Products, and that this Agreement would not preclude another person from suing NSC in the public interest for any or all claims alleged in the NOV pertaining to the Noticed Products, although the settlement is in the public interest insofar as it includes a civil penalty that is to be paid in part to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") as provided in the Health and Safety Code.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties and the foregoing representations by each of them of the above facts within their control, the parties hereto agree as follows:

1. Settlement Payment. For and in consideration of the payment of Eight Thousand Five Hundred and No/100 Dollars (\$8,500.00) (the "Settlement Payment"), to be paid and distributed as described in the next Paragraph, the parties hereby agree that all claims asserted by PIA against NSC in the NOV will be fully settled, resolved, and released as set forth more fully below. Payment shall be made within five (5) business days after the Effective Date by check or wire transfer to Judd Law Group LLP, and Judd Law Group LLP will disburse the funds in accordance with this settlement agreement promptly thereafter.

2. Settlement Payment Allocation and Distribution. The Settlement Payment shall be allocated and delivered by NSC to Judd Law Group as follows:

a. *Attorneys' Fees*. One check made payable to Judd Law Group LLP in the sum

of \$6,500 for attorneys' fees (the "JLG Payment"); \$

b. *Penalty Payment.* Pursuant to Health & Safety Code §25249.7(b), NSC shall pay \$2,000.00 as a civil penalty (the "Penalty Payment"), to be apportioned in accordance with California Health & Safety Code § 25192, with Seventy-five percent (75%) of the Penalty Payment to be remitted to the State of California's OEHHA, and the remaining Twenty-five percent (25%) of the Penalty Payment to be remitted to PIA as provided by California Health & Safety Code §25249.12(d). NSC shall issue two separate checks for the Penalty Payment:

- i. One check made payable to the California Office of Environmental Health Hazard Assessment, in the amount of \$1,500.00; and
- ii. One check to Judd Law Group LLP in trust for PIA in the amount of \$500.00.

Judd Law Group LLP shall be responsible for delivering the OEHHA Payment to the OEHHA. NSC shall issue three separate 1099s for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 in the amount of the OEHHA Payment. The second 1099 shall be issued to PIA in the amount of the PIA Payment, whose address and tax identification number shall be provided contemporaneously with the execution copy of this Agreement. The third 1099 shall be issued to Judd Law Group LLP in the amount of the JLG Payment, whose address and tax identification number shall be provided contemporaneously with the execution copy of this Agreement.

3. NSC's Covenants in Lieu of Injunction. NSC hereby covenants and agrees as follows:
- a. *Formulation Covenant.* NSC no longer distributes, sells, or offers to sell to California consumers the Noticed Products identified on Exhibit A, attached hereto and by this reference incorporated herein. NSC will not distribute or sell to California consumers the Noticed Products in the future, unless and until such Noticed Products have been reformulated by deleting Titanium

Dioxide as an ingredient of such Noticed Products or otherwise are made to comply with Proposition 65. Notwithstanding the foregoing, PIA recognizes that nothing contained herein prevents NSC from continuing to sell its existing inventory of Noticed Products outside of California until such inventory has been exhausted.

- b. *Noticed Products No Longer in NSC's Control.* Except as otherwise expressly stated herein, NSC is not aware of any Noticed Products currently being sold in California by any third party. Notwithstanding the foregoing, PIA recognizes that nothing contained herein prevents entities other than NSC from continuing to sell existing inventory of Noticed Products until exhausted.
- c. *Current Inventory.* Commencing on the Effective Date, NSC shall not sell or otherwise distribute any Noticed Products in California or to a California consumer unless such product (i) has been certified by the vendor to have been reformulated as provided in Paragraph 3.a above or (ii) contains a clear and reasonable warning as provided in Paragraph 3.d below.
- d. *Noticed Product Warnings.* Any warning provided under this Agreement shall comply with the obligations imposed by Proposition 65 and the implementing statutes and regulations as they may exist, and be amended or repealed from time to time as applicable at the time and at the place of the manufacture, labeling, distribution, or sale of the Noticed Product.

4. Releases.

a. *PIA's Release of NSC.* PIA, on its own behalf and on behalf of its members individually, releases NSC 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 NSC directly or indirectly distributed or sold Noticed 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 through the Effective Date based on unwarned exposures to Titanium Dioxide (airborne, unbound particles of respirable size) (hereafter, "TiO₂") from the Noticed Products, as set forth in the NOV. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to TiO₂ from the Noticed Products, as set forth in the NOV. This 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 any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to TiO₂ in the Noticed Products manufactured, imported, distributed, or sold by NSC prior to the Effective Date. NSC further understands and agrees that this Paragraph 4.a release shall not extend upstream to any entities. Nothing in this Paragraph 4.a shall affect PIA's rights to commence or prosecute an action under Proposition 65 against a Releasee that does not involve a Noticed Product. The foregoing releases are expressly conditioned on the following:

- i. Confirmation of receipt of funds in the amount of the Settlement Payment by Judd Law Group LLP for JLG Payment, the OEHHA Payment, and the PIA Payment;
- ii. Except as to acts to be performed in the future, if any, performance of the covenants described in Paragraph 3.a through 3.d, above; and
- iii. Certification by a duly authorized officer of NSC, in the form attached hereto as Exhibit B, to the following facts: (a) During the time between September 2, 2012, and the Effective Date, NSC estimates in good faith that it sold approximately 271 units of the Noticed Products to consumers in California, for which it received total revenues of approximately \$3,200.40; (b) As of the Effective Date, NSC no longer manufactures the Noticed Products; and (c) As of the Effective Date, NSC no longer sells the Noticed Products in California or to California consumers.

b. *NSC's Release of PIA.* NSC, 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 by PIA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against NSC in this matter with respect to the Noticed Products other than as set forth herein.

5. Waiver. This is a full and final Release applying to all unknown and unanticipated injuries or damages relating to or arising out of the claims alleged in the NOV, as well as those now known, whether or not disclosed, pertaining to or arising from the Noticed Products, and PIA and NSC on behalf of themselves and those on whose behalf this release is entered into and for whose benefit it is intended 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.

6. No Admission of Liability. PIA understands the liability alleged in the NOV is disputed by NSC herein released; that this Agreement is a compromise and shall not be construed as an admission of liability, and NSC expressly denies all material factual and legal allegations contained in the NOV or related thereto, and maintains that all products it has manufactured, imported, distributed, and/or sold in California, including the Noticed Products, have been and are in compliance with all laws.

7. Compliance With Health & Safety Code § 25249.7(f). PIA and Judd Law Group agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

8. 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. *NSC.*

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

ii. *Accuracy of Information Provided to PIA.* NSC warrants and represents that the information provided to PIA regarding its sales volume of Noticed Products during the period between September 2, 2012, and the Effective Date (the "Relevant Time Period") is, to NSC's best knowledge, complete and accurate.

9. *Attorneys' Fees.* PIA and NSC 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 other than as set forth herein.

10. *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 NSC Brian T. Foley, Esq.
Vice President & General Counsel
NeoStrata Company, Inc.
307 College Road East
Princeton, NJ 08540

With a copy to: Michael A. Geibelson
ROBINS, KAPLAN, MILLER & CIRESI LLP
2049 Center Park East, Suite 3400
Los Angeles, CA 90067

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.

11. Construction of Agreement. This Agreement is the product of negotiation and preparation by and between PIA and NSC and their respective attorneys; and that, therefore, PIA and NSC each 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.

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

13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of PIA and NSC and each party's respective spouses, heirs, members, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, members, 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.

14. 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 fully enforceable.

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

16. 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.

17. Miscellaneous.

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

recited to be released herein, and PIA and NSC further warrant that this Release and Settlement Agreement is executed without reliance on any statement or representation by PIA or NSC, persons or entities recited to be released herein, or any of their representatives, attorneys, investigators, agents, experts, consultants, adjusters or insurers, concerning the nature and extent of the damages which may have been sustained, if at all, or concerning the rights of PIA and NSC, or of the legal liability therefore, or the rights, duties or obligations of any party, person or entity recited to be released herein.


- b. *Consultation With Attorneys.* PIA and NSC each acknowledge and warrant that each has consulted at length in this matter with his, her, or its attorney, and each warrants that he, she, or it executes this Agreement pursuant to said agreement, and with the advice of his, her, or its attorney that he, she, or it do so.
- c. *No Fraud, Duress, or Undue Influence.* PIA and NSC each further warrant that he, she, or it executes this Release and Settlement Agreement freely, voluntarily and without fraud, duress or undue influence.
- d. *Signatories.* Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Agreement.
- e. *Counterparts.* This Release and Settlement Agreement may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

18. Covenant Not to Sue. PIA and NSC agree that he, she, or it will not file, or permit to be filed, in his, her, or its name or on his, her, or its behalf, or on behalf of any of PIA's members, 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.

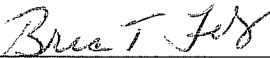
THE PUBLIC INTEREST ALLIANCE LLC

Dated: October 7, 2013

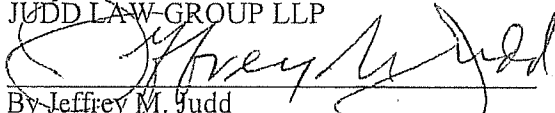

By: ANDY BARISH
Title: Managing Member

NEOSTRATA COMPANY INC.

Dated: October 9, 2013


By: BRIAN T. FOLEY
Title: V.P. & GENERAL COUNSEL

Approved as to form:
JUDD LAW GROUP LLP


By: Jeffrey M. Judd
ROBINS, KAPLAN, MILLER & CIRESI LLP

Dated: 10/7, 2013

By Michael A. Geibelson

Dated: _____, 2013

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: _____, 2013

By:
Title: Managing Member

NEOSTRATA COMPANY INC.

Dated: _____, 2013

By: _____
Title: _____

Approved as to form:
JUDD LAW GROUP LLP

By Jeffrey M. Judd
ROBINS, KAPLAN, MILLER & CIRESI LLP

Dated: _____, 2013

Michael Geibelson

By Michael A. Geibelson

Dated: 10/9, 2013

**EXHIBIT A
NOTICED PRODUCTS**

Item Numbers 8776 and 8777

EXHIBIT B

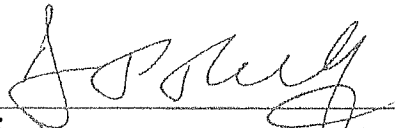
FORM OF CERTIFICATION

The undersigned, having been duly authorized to make this Certification on behalf of NEOSTRATA COMPANY INC. ("NSC"), and after reasonable inquiry and diligent search, certifies that to NSC's best knowledge, the following facts are true, correct, and complete: (a) during the period between September 2, 2012 and the date below, NSC estimates in good faith that it sold approximately 271 units of NSC item numbers 8776 and 8777 (the "Noticed Product"), for which it received total revenues of approximately \$3,200.40; and (b) as of the date below, NSC no longer manufactures the Noticed Product although worldwide there are approximately 539 units of Noticed Product in its inventory and available for sale elsewhere in the world.

Signed this ___ day of October 2013, in Princeton, New Jersey , under penalty of perjury under the laws of the State of California.

NEOSTRATA COMPANY INC.

By: _____
Name:
Title:


Dennis P. Reilly

Dennis P. Reilly
Chief Financial Officer