

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2001

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission file number 001-12421

Nu Skin Enterprises, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware 87-0565309  
(State or Other Jurisdiction (I.R.S. Employer  
of Incorporation or Organization) Identification No.)

75 West Center Street, Provo, Utah 84601  
(Address of Principal Executive Offices) (Zip Code)

(801) 345-6100  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

As of April 30, 2001, 33,506,599 shares of the Company's Class A Common Stock, \$.001 par value per share, and 50,069,955 shares of the Company's Class B Common Stock, \$.001 par value per share, were outstanding.

NU SKIN ENTERPRISES, INC.

2001 FORM 10-Q QUARTERLY REPORT - FIRST QUARTER

TABLE OF CONTENTS

	Page
Part I. Financial Information	----
Item 1. Financial Statements:	
Consolidated Balance Sheets.....	2
Consolidated Statements of Income.....	3
Consolidated Statements of Cash Flows.....	4
Notes to Consolidated Financial Statements.....	5
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	9
Item 3. Quantitative and Qualitative Disclosures about Market Risk..	14
Part II. Other Information	
Item 1. Legal Proceedings.....	14
Item 2. Changes in Securities.....	15
Item 3. Defaults upon Senior Securities.....	15
Item 4. Submission of Matters to a Vote of Security Holders.....	15
Item 5. Other Information.....	15
Item 6. Exhibits and Reports on Form 8-K.....	16
Signatures.....	17

Nu Skin, Pharmanex, Big Planet, Nu Skin 180° and LifePak are trademarks of Nu Skin Enterprises, Inc. or its subsidiaries.

**PART I. FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

**Nu Skin Enterprises, Inc.**

**Consolidated Balance Sheets**

(in thousands, except share amounts)

	(Unaudited) March 31, 2001 -----	December 31, 2000 -----
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 51,537	\$ 63,996
Accounts receivable	20,793	18,191
Related parties receivable	12,668	13,176
Inventories, net	79,164	82,015
Prepaid expenses and other	40,016	44,513
	-----	-----
	204,178	221,891
Property and equipment, net	61,614	60,562
Other assets, net	301,310	308,350
	-----	-----
Total assets	\$ 567,102	\$ 590,803
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Accounts payable	\$ 14,816	\$ 15,837
Accrued expenses	60,541	74,199
Related parties payable	8,062	9,020
	-----	-----
	83,419	99,056
Long-term debt	76,908	84,884
Other liabilities	41,239	40,130
	-----	-----
Total liabilities	201,566	224,070
	-----	-----
Stockholders' equity		
Class A common stock - 500,000,000 shares authorized, \$.001 par value, 31,616,912 and 31,338,676 shares issued and outstanding	32	31
Class B common stock - 100,000,000 shares authorized, \$.001 par value, 52,300,254 and 53,408,951 shares issued and outstanding	52	54
Additional paid-in capital	100,453	106,284
Retained earnings	315,071	306,458

Deferred compensation	(168)	(747)
Accumulated other comprehensive income	(49,904)	(45,347)
	-----	-----
	365,536	366,733
	-----	-----
Total liabilities and stockholders' equity	\$ 567,102	\$ 590,803
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

**Nu Skin Enterprises, Inc.**  
**Consolidated Statements of Income (Unaudited)**  
(in thousands, except per share amounts)

	Three Months Ended March 31, 2001	Three Months Ended March 31, 2000
	-----	-----
Revenue	\$ 210,259	\$ 213,625
Cost of sales	42,515	34,291
	-----	-----
Gross profit	167,744	179,334
	-----	-----
Operating expenses		
Distributor incentives	81,834	82,795
Selling, general and administrative	72,898	74,997
	-----	-----
Total operating expenses	154,732	157,792
	-----	-----
Operating income	13,012	21,542
Other income (expense), net	6,959	1,689
	-----	-----
Income before provision for income taxes	19,971	23,231
Provision for income taxes	7,389	8,363
	-----	-----
Net income	\$ 12,582	\$ 14,868
	=====	=====
Net income per share (Note 2):		
Basic	\$ .15	\$ .17
Diluted	\$ .15	\$ .17
Dividends per share (Note 3)	\$ .05	\$ --
Weighted average common shares outstanding:		
Basic	84,092	86,542
Diluted	84,934	87,196

The accompanying notes are an integral part of these consolidated financial statements.

**Nu Skin Enterprises, Inc.****Consolidated Statements of Cash Flows (Unaudited)**

(in thousands)

	Three Months Ended March 31, 2001	Three Months Ended March 31, 2000
	-----	-----
Cash flows from operating activities:		
Net income	\$ 12,582	\$ 14,868
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	7,898	7,553
Amortization of deferred compensation	579	1,662
Changes in operating assets and liabilities:		
Accounts receivable	(2,602)	(3,380)
Related parties receivable	508	1,570
Inventories, net	2,851	(4,980)
Prepaid expenses and other	(4,481)	(7,749)
Other assets, net	3,288	(1,882)
Accounts payable	(1,021)	(6,641)
Accrued expenses	(13,658)	(13,422)
Related parties payable	(958)	(1,930)
Other liabilities	1,109	--
	-----	-----
Net cash provided by (used in) operating activities	6,095	(14,331)
	-----	-----
Cash flows from investing activities:		
Purchase of property and equipment	(4,569)	(4,873)
Payments for lease deposits	--	(13)
Receipt of refundable lease deposits	--	619
	-----	-----
Net cash used in investing activities	(4,569)	(4,267)
	-----	-----
Cash flows from financing activities:		
Exercise of distributor and employee stock options	24	31
Payments on long-term debt	--	(55,678)
Dividend	(3,969)	--
Repurchase of shares of common stock (Note 5)	(5,856)	(2,447)
	-----	-----
Net cash used in financing activities	(9,801)	(58,094)
	-----	-----
Effect of exchange rate changes on cash	(4,184)	(339)
	-----	-----
Net decrease in cash and cash equivalents	(12,459)	(77,031)
Cash and cash equivalents, beginning of period	63,996	110,162
	-----	-----
Cash and cash equivalents, end of period	\$ 51,537	\$ 33,131
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

## **1. THE COMPANY**

Nu Skin Enterprises, Inc. (the “Company”) is a leading, global direct selling company that develops and distributes premium-quality, innovative personal care products and nutritional supplements and technology and telecommunications products and services. The Company distributes products throughout the world. The Company’s operations are divided into four segments: North Asia, which consists of Japan and South Korea; North America, which consists of the United States and Canada; Southeast Asia, which consists of Australia, Hong Kong (including Macau), New Zealand, the PRC (China), the Philippines, Singapore, Taiwan and Thailand; and Other Markets, which consists of the Company’s markets in Brazil, Europe, Guatemala and Mexico (the Company’s subsidiaries operating in these countries are collectively referred to as the “Subsidiaries”). The Company was incorporated on September 4, 1996 as a holding company.

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of the Company’s financial information as of March 31, 2001 and for the three-month period ended March 31, 2001. The results of operations of any interim period are not necessarily indicative of the results of operations to be expected for the fiscal year. For further information, refer to the consolidated financial statements and accompanying footnotes included in the Company’s annual report on Form 10-K for the year ended December 31, 2000.

## **2. NET INCOME PER SHARE**

Net income per share is computed based on the weighted average number of common shares outstanding during the periods presented. Additionally, diluted earnings per share data give effect to all dilutive potential common shares that were outstanding during the periods presented.

## **3. DIVIDENDS PER SHARE**

In February 2001, the board of directors authorized the Company to declare a quarterly cash dividend of \$0.05 per share for all classes of common stock. This initial quarterly cash dividend of approximately \$4.0 million was paid on March 28, 2001, to stockholders of record on March 12, 2001. Management believes that cash flows from operations will be sufficient to fund future dividend payments.

## **4. DERIVATIVE FINANCIAL INSTRUMENTS**

The Company has adopted Statement of Financial Accounting Standards No. 133 (“SFAS 133”), Accounting for Derivative Instruments and Hedging Activities. The statement requires companies to recognize all derivatives as either assets or liabilities, with the instruments measured at fair value. Changes in the fair value of derivatives are recorded each period in current earnings or other comprehensive income, depending on the intended use of the derivative and its resulting designation. The adoption of SFAS 133 did not have a significant impact on the Company’s consolidated financial statements.

The Company’s Subsidiaries enter into significant transactions with each other and third parties which may not be denominated in the respective Subsidiaries’ functional currencies. The Company seeks to reduce its exposure to fluctuations in foreign exchange rates through the use of foreign currency exchange contracts and through certain intercompany loans of foreign currency. The Company does not use such derivative financial instruments for trading or speculative purposes. The Company regularly monitors its foreign currency risks and periodically takes measures to reduce the impact of foreign exchange fluctuations on the Company’s operating results. Gains and losses on certain intercompany loans of foreign currency are recorded as other income and expense in the consolidated statements of

income.

At March 31, 2001 and December 31, 2000, the Company held forward contracts designated as foreign currency cash flow hedges with notional amounts totaling approximately \$58.4 million and \$28.9 million, respectively, to hedge foreign currency intercompany items. The net gain on foreign currency cash flow hedges recorded in current earnings was \$1.6 million for the three-month period ended March 31, 2001. Prior to the adoption of SFAS 133, the Company held foreign currency forward contracts which were marked to market and recorded a net gain in other income of \$1.1 million for the three-month period ended March 31, 2000. Those contracts held at March 31, 2001 have maturities through February 2002 and accordingly, all unrealized gains on foreign currency cash flow hedges included in other comprehensive income at March 31, 2001 will be recognized in current earnings over the next twelve-month period.

## 5. REPURCHASE OF COMMON STOCK

During the three-month periods ended March 31, 2001 and 2000, the Company repurchased approximately 847,000 and 287,000 shares, respectively, of Class A common stock for approximately \$5.9 million and \$2.4 million, respectively.

## 6. COMPREHENSIVE INCOME

The components of comprehensive income, net of related tax, for the three-month periods ended March 31, 2001 and 2000, were as follows (in thousands):

	Three Months Ended March 31, 2001 -----	Three Months Ended March 31, 2000 -----
Net income	\$ 12,582	\$ 14,868
Other comprehensive income, net of tax:		
Foreign currency translation adjustments	(7,530)	84
Net unrealized gain on foreign currency cash flow hedges	3,992	--
Net gain reclassified into current earnings	(1,019)	--
	-----	-----
Comprehensive income	\$ 8,025	\$ 14,952
	=====	=====

## Nu Skin Enterprises, Inc.

### Notes to Consolidated Financial Statements

## 7. SEGMENT INFORMATION

As described in Note 1, the Company's operations throughout the world are divided into four reportable segments: North Asia, Southeast Asia, North America and Other Markets. Segment data includes intersegment revenue, intersegment profit and operating expenses and intersegment receivables and payables. The Company evaluates the performance of its segments based on operating income. Information as to the operations of the Company in each of the four segments is set forth below (in thousands):

	Three Months Ended March 31, 2001 -----	Three Months Ended March 31, 2000 -----
Revenue		
North Asia	\$ 129,959	\$ 140,373
Southeast Asia	65,659	76,721
North America	103,156	102,176
Other Markets	6,075	4,487
Eliminations	(94,590)	(110,132)
	-----	-----
Totals	\$ 210,259	\$ 213,625
	=====	=====
Operating Income		
North Asia	\$ 10,489	\$ 7,219
Southeast Asia	5,795	8,508

North America	(2,523)	9,361
Other Markets	(1,356)	(1,920)
Eliminations	607	(1,626)
	-----	-----
Totals	\$ 13,012	\$ 21,542
	=====	=====
	As of	As of
	March 31,	December 31,
	2001	2000
	-----	-----
Total Assets		
North Asia	\$ 70,580	\$ 83,941
Southeast Asia	73,182	76,279
North America	466,044	471,221
Other Markets	13,100	13,039
Eliminations	(55,804)	(53,677)
	-----	-----
Totals	\$ 567,102	\$ 590,803
	=====	=====

Information as to the Company's operations in different geographical areas is set forth below (in thousands):

### Revenue

Revenue from the Company's operations in Japan totaled \$121,841 and \$134,613 for the three-month periods ended March 31, 2001 and 2000, respectively. Revenue from the Company's operations in Taiwan totaled \$17,576 and \$22,218 for the three-month periods ended March 31,

7

## Nu Skin Enterprises, Inc.

### Notes to Consolidated Financial Statements

2001 and 2000, respectively. Revenue from the Company's operations in the United States (which includes intercompany revenue) totaled \$101,527 and \$101,485 for the three-month periods ended March 31, 2001 and 2000, respectively.

### Long-lived assets

Long-lived assets in Japan were \$20,658 and \$23,782 as of March 31, 2001 and December 31, 2000, respectively. Long-lived assets in Taiwan were \$2,625 and \$3,235 as of March 31, 2001 and December 31, 2000, respectively. Long-lived assets in the United States were \$311,564 and \$313,415 as of March 31, 2001 and December 31, 2000, respectively.

## 8. SUBSEQUENT EVENTS

On May 4, 2001, the Company entered into a \$60.0 million revolving credit agreement (the "Revolving Credit Facility") with Bank of America, N.A. and Bank One, NA for which Bank of America, N.A. acted as agent. The proceeds may be used for working capital, capital expenditures and other purposes including repurchases of the Company's outstanding shares of Class A common stock. At the time of closing, there were no outstanding balances relating to the Revolving Credit Facility.

The Revolving Credit Facility bears interest at a rate equal to the London Inter-Bank Offer Rate (LIBOR) or the Japanese yen LIBOR, plus an applicable margin. The maturity date for the Revolving Credit Facility is three years from the borrowing date and will be reduced by \$15.0 million on each of the first two anniversaries of the closing. The Revolving Credit Facility contains other terms and conditions and affirmative and negative financial covenants customary for credit facilities of this type.

8

**2001 compared to 2000**

**Revenue** decreased 1.5% to \$210.3 million for the three-month period ended March 31, 2001 from \$213.6 million for the same period in 2000. The decrease in revenue on a year-over-year basis was due primarily to a weakening in foreign currencies and was largely offset by constant currency revenue growth in each of the Company's operating regions combining for overall constant currency growth of approximately 6.0% as compared to the prior year.

Revenue in North Asia decreased 7.4% to \$130.0 million for the three-month period ended March 31, 2001 from \$140.4 million for the same period in 2000. This decrease in revenue was due to revenue in Japan decreasing 9.5% to \$121.8 million for the three-month period ended March 31, 2001 from \$134.6 million for the same period in 2000. This decrease is directly attributable to a 10.4% weakening in the Japanese yen. In local currency, revenue in Japan was constant in the first quarter of 2001 versus the same prior-year period, which benefited from a convention held in Japan during the prior-year period. The decline in revenue in Japan in U.S. dollar terms was partially offset by an increase in revenue in South Korea of 39.7% to \$8.1 million for the three-month period ended March 31, 2001 from \$5.8 million for the same period in 2000. In local currency terms, revenue in South Korea was 59.4% higher in the first quarter of 2001 versus the same prior-year period. The revenue increase in South Korea is primarily due to continued growth following significant new product launches including Pharmanex's weight management products and Nu Skin 180° skin therapy system in the second and third quarters of 2000.

Revenue in Southeast Asia remained nearly constant at \$30.8 million for the three-month period ended March 31, 2001 from \$30.4 million for the same period in 2000. Revenue results in Taiwan decreased 20.7% to \$17.6 million for the three-month period ended March 31, 2001 from \$22.2 million for the same prior-year period. In local currency, revenue in Taiwan declined 16.4% during the first quarter of 2001 versus the same prior-year period. The Company's operations in Taiwan have continued to suffer the impact of increased competition and an overall decline in sales in the direct selling industry in Taiwan. In addition, direct selling as a distribution channel has significantly penetrated the Taiwanese market. This decline in revenue in Taiwan of \$4.6 million was offset by the opening of the market in Singapore late in 2000. The Company's business model for distributors encourages top leaders to assist in opening new markets. Management believes the decline in revenue in Taiwan was in part due to top leaders from that market focusing on Singapore in early 2001. Revenue in Singapore was \$4.7 million during the first quarter of 2001.

Revenue in North America, consisting of the United States and Canada, increased 13.0% to \$43.4 million for the three-month period ended March 31, 2001 from \$38.4 million for the same period in 2000. This increase in revenue is due to a successful convention held in the United States in February 2001, which generated approximately \$5.0 million in revenue in sales to international distributors attending the convention, as well as additional new business development revenue which provided an additional \$5.0 million in revenue. Without the impact of this additional revenue, revenue in the North America region would have decreased approximately 13.0% during the first quarter of 2001 versus the same prior-year period, but only decreased approximately 2.0% on a sequential basis. Management believes that the Company's operations in the United States have been negatively impacted by distributor uncertainty relating to the Company's divisional strategies.

Revenue in the Company's other markets, which include its European, Latin American and Brazilian operations, increased 35.6% to \$6.1 million for the three-month period ended March 31, 2001 from \$4.5 million for the same period in 2000. This increase in revenue is due to a 42.0% increase in revenue in Europe in U.S. dollar terms. In local currency terms, revenue in Europe increased approximately 52.0% during the first quarter of 2001 versus the same prior-year period.

**Gross profit** as a percentage of revenue decreased to 79.8% for the three-month period ended March 31, 2001 from 83.9% for the same prior-year period. The decrease in the gross profit percentage resulted from the weakening of the Japanese yen and other currencies relative to the U.S. dollar, the increased revenue, which is expected to continue, relating to the new business development efforts recorded in the Big Planet division that carry a very low gross margin as well as logo merchandise sold as part of the first quarter U.S. convention which also have lower gross margins. The Company purchases a significant majority of goods in U.S. dollars and recognizes revenue in local currencies. Consequently, the Company is subject to exchange rate risks in its gross margins.

**Distributor incentives** as a percentage of revenue remained nearly constant at 38.9% for the three-month period ended March 31, 2001 compared to 38.8% for the same prior-year period. In the later part of 1999, the Company restructured a portion of its compensation plan for distributors, adding short-term, division-focused incentives, which increased compensation to the Company's entry-level distributors.

Selling, general and administrative expenses as a percentage of revenue decreased slightly to 34.7% the three-month period ended March 31, 2001 compared to 35.1% for the same prior-year period. In U.S. dollar terms, selling, general and administrative expenses decreased to \$72.9 million for the three-month period ended March 31, 2001 compared to \$75.0 million for the same period in the prior year. This decrease was due primarily to a weaker Japanese yen in 2001 as well as the Company's cost-saving initiatives such as lower

headcount and occupancy costs. Offsetting these lower expenses were the costs incurred during the first quarter of 2001 for the Company's convention in the United States which added approximately \$5.0 million in selling, general and administrative expenses.

**Other income (expense), net** increased \$5.3 million for the three-month period ended March 31, 2001, compared to the same period in the prior year primarily as a result of the foreign currency gains resulting from a weaker Japanese yen in 2001.

**Provision for income taxes** decreased to \$7.4 million for the three-month period ended March 31, 2001 from \$8.4 million for the same prior-year period. This decrease is largely due to the decrease in operating income as compared to the same prior-year period, offset by an increase in the effective tax rate from 36.0% in the first quarter of 2000 to 37.0% in the first quarter of 2001.

**Net income** decreased to \$12.6 million for the three-month period ended March 31, 2001 from \$14.9 million for the same prior-year period. Net income decreased primarily because of the factors noted above in revenue and gross profit and was somewhat offset by the factors noted in selling, general and administrative, other income (expense), net and provision for income taxes above.

## Liquidity and Capital Resources

Historically, the Company's principal needs for funds have been for distributor incentives, working capital (principally inventory purchases), operating expenses, capital expenditures and the development of operations in new markets. The Company has generally relied on cash flow from operations to meet its business objectives without incurring long-term debt to unrelated third parties to fund operating activities.

The Company typically generates positive cash flow from operations due to favorable gross margins, the variable nature of distributor commissions which comprise a significant percentage of operating expenses and minimal capital requirements. During the first and third quarters of each year, however, the Company pays significant accrued income taxes in many foreign jurisdictions including Japan. These large cash payments often more than offset significant cash generated in these quarters. The Company generated \$6.1 million from operations during the three-month period ended March 31, 2001 compared to using \$14.3 million during the same prior-year period. This increase in cash generated from operations in 2001 compared to the same prior-year period is primarily related to reduced cash

payments to vendors for purchases of inventory resulting from increased efficiencies in the Company's management of inventory as well as reduced foreign taxes paid in 2001 versus 2000.

As of March 31, 2001, working capital was \$120.8 million compared to \$122.8 million as of December 31, 2000. Cash and cash equivalents at March 31, 2001 and December 31, 2000 were \$51.5 million and \$64.0 million, respectively. The decrease in cash and cash equivalents is related primarily to stock repurchases of approximately \$5.9 million and dividends paid in the first quarter of 2001 of approximately \$4.0 million.

Capital expenditures, primarily for equipment, computer systems and software, office furniture and leasehold improvements, were \$4.6 million for the three-month period ended March 31, 2001. In addition, the Company anticipates additional capital expenditures in 2001 of approximately \$23.0 million to further enhance its infrastructure, including enhancements to computer systems and Internet related software in order to expand the Company's Internet capabilities.

In March 1998, the Company completed the acquisition of Nu Skin International, Inc. (the "NSI Acquisition"). Pursuant to the terms of the NSI Acquisition, Nu Skin International, Inc. ("NSI") and the Company are required to pay certain contingent payments if specific earnings growth targets are met. The Company and NSI did not meet specific earnings growth targets for the years ended December 31, 1999 and 2000. Contingent upon NSI and the Company meeting specific earnings growth targets during 2001, the Company may pay up to \$75.0 million in cash over the next year to the stockholders of NSI. However, management believes it is unlikely that such contingency payments will be made.

On October 12, 2000, the Company refinanced the \$87.1 million balance of its existing credit facility with the proceeds of a private placement of 9.7 billion Japanese yen of ten-year senior notes (the "Notes") to The Prudential Insurance Company of America. The Notes bear interest at an effective rate of 3.03% annually and become due October 2010 with principal payments beginning October 2004. As of March 31, 2001, the outstanding balance on the Notes remained at 9.7 billion Japanese yen, or \$76.9 million.

During 2000, the Company renewed a \$10.0 million revolving credit agreement with ABN-AMRO, N.V. Advances are available under the agreement through May 18, 2001 with a possible extension upon approval of the lender. There were no outstanding balances under this credit facility at March 31, 2001.

Since August 1998, the board of directors has authorized the Company to repurchase up to \$50.0 million of the Company's outstanding shares of Class A common stock. The repurchases are used primarily to fund the Company's equity incentive plans. During the three-month period ended March 31, 2001, the Company repurchased approximately 847,000 shares for an aggregate price of approximately \$5.9 million. As of March 31, 2001, the Company had repurchased a total of approximately 5,022,000 shares for an aggregate price of approximately \$45.9 million.

In February 2001, the board of directors authorized the Company to declare a quarterly cash dividend of \$0.05 per share for all classes of common stock. This initial quarterly cash dividend of approximately \$4.0 million was paid on March 28, 2001, to stockholders of record on March 12, 2001. Management believes that cash flows from operations will be sufficient to fund future dividend payments.

The Company had related party payables of \$8.1 million and \$9.0 million at March 31, 2001 and December 31, 2000, respectively. In addition, the Company had related party receivables of \$12.7 million and \$13.2 million, respectively, at those dates. These balances are largely related to the Big Planet Acquisition and the Nu Skin USA transactions completed during 1999.

Management considers the Company to be sufficiently liquid to be able to meet its obligations on both a short- and long-term basis. Management currently believes existing cash balances together with future cash flows from operations will be adequate to fund cash needs relating to the implementation of the Company's strategic plans.

### Seasonality

In addition to general economic factors, the direct selling industry is impacted by seasonal factors and trends such as major cultural events and vacation patterns. For example, Japan, Taiwan, Hong Kong, South Korea and Thailand celebrate their respective local New Year in our first quarter. Management believes that direct selling in Japan, the United States and Europe is also generally negatively impacted during the month of August, which is in the Company's third quarter, when many individuals traditionally take vacations.

### Distributor Information

The following table provides information concerning the number of active and executive distributors as of the dates indicated. Active distributors are those distributors who were resident in the countries in which the Company operated and purchased products during the three months ended as of the date indicated. An executive distributor is an active distributor who has achieved required personal and group sales volumes.

	As of March 31, 2001		As of March 31, 2000	
	Active(1)	Executive	Active(1)	Executive
North Asia	287,000	14,994	291,000	14,830
Southeast Asia	104,000	3,110	98,000	3,234
North America	52,000	2,506	56,000	2,972
Other	23,000	839	17,000	472
<b>Total</b>	<b>466,000</b>	<b>21,449</b>	<b>462,000</b>	<b>21,508</b>

(1) The Big Planet representatives do not necessarily place product orders with the Company for resale to retail customers. Big Planet representatives sign up retail customers for Internet, telecommunications and other services with the Company or its service providers for all products. Therefore, the active distributors for 2001 and 2000 do not include approximately 43,000 and 26,000 Big Planet representatives who have residual sales volume on a three month rolling basis, respectively, for service provided by the Company or its service providers.

### Currency Risk and Exchange Rate Information

A majority of the Company's revenue and many of the Company's expenses are recognized primarily outside of the United States except for inventory purchases which are primarily transacted in U.S. dollars from vendors in the United States. Each subsidiary's local currency is considered the functional currency. All revenue and expenses are translated at weighted average exchange rates for the periods reported. Therefore, the Company's reported sales and earnings will be positively impacted by a weakening of the U.S. dollar and will be negatively impacted by a strengthening of the U.S. dollar.

Given the uncertainty of exchange rate fluctuations, the Company cannot estimate the effect of these fluctuations on the Company's future business, product pricing, results of operations or financial condition. However, because a majority of the Company's revenue is realized in local currencies and the majority of the Company's cost of sales is denominated in U.S. dollars, the Company's gross profits will be positively affected by a weakening in the U.S. dollar and will be negatively affected by a strengthening in the U.S. dollar. The Company seeks to reduce its exposure to fluctuations in foreign exchange rates through the use of foreign currency exchange contracts, through intercompany loans of foreign currency and through its Japanese yen denominated debt. The Company does not use such derivative financial

instruments for trading or speculative purposes. The Company regularly monitors its foreign currency risks and periodically takes measures to reduce the impact of foreign exchange fluctuations on the Company's operating results.

The Company's foreign currency derivatives are comprised of over-the-counter forward contracts with major international financial institutions. As of March 31, 2001, the primary currency for which the Company had net underlying foreign currency exchange rate exposure was the Japanese yen. Based on the Company's foreign exchange contracts at March 31, 2001 as discussed in Note 4 of the Notes to the Consolidated Financial Statements, the impact of a 10% appreciation or 10% depreciation of the U.S. dollar against the Japanese yen would not represent a material potential loss in fair value, earnings or cash flows against such contracts. This potential loss does not consider the underlying foreign currency transaction or translation exposures of the Company.

### **Note Regarding Forward-Looking Statements**

With the exception of historical facts, the statements contained in Management's Discussion and Analysis of Financial Condition and Results of Operations, are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 (the "Reform Act") which reflect the Company's current expectations and beliefs regarding the future results of operations, performance and achievements of the Company. These statements are subject to risks and uncertainties and are based upon assumptions and beliefs that may not materialize. These forward-looking statements include, but are not limited to, statements concerning:

- the Company's belief that existing cash and cash flow from operations will be adequate to fund cash needs;
- the expectation that the Company will spend \$23.0 million for capital expenditures during the remainder of 2001; and
- the anticipation that cash will be sufficient to pay future dividends.

In addition, when used in this report, the words or phrases, "will likely result," "expects," "anticipates," "will continue," "intends," "plans," "believes," "the Company or management believes," and similar expressions are intended to help identify forward-looking statements.

The Company wishes to caution readers that the risks and uncertainties set forth below, and the other risks and factors described herein and in the Company's other filings with the Securities and Exchange Commission (which contain a more detailed discussion of the risks and uncertainties related to the Company's business) could cause (and in some cases in the past have caused) the Company's actual results and outcomes to differ materially from those discussed or anticipated. The Company also wishes to advise readers not to place any undue reliance on such forward-looking statements, which reflect the Company's beliefs and expectations only as of the date of this report. The Company assumes no obligation to update or revise these forward-looking statements to reflect new events or circumstances or any changes in its beliefs or expectations. Important factors, risks and uncertainties that might cause actual results to differ from those anticipated include, but are not limited to, the following:

- a. Because a substantial majority of the Company's sales are generated from the Asian regions, particularly from Japan and Taiwan, significant variations in operating results including revenue, gross margin and earnings from those expected could be caused by
  - renewed or sustained weakness of Asian economies or consumer confidence, or

- weakening of foreign currencies, particularly the Japanese yen in light of current economic and political conditions in Japan.
- b. Many of the initiatives and strategies that have helped stabilize revenue in Japan have only been recently introduced and there is still uncertainty concerning the long-term effect of these initiatives. There can be no assurance that such initiatives will continue to be successful or that planned initiatives will have a similar impact. In addition, there is a risk that the continued refinement and implementation of the Company's divisional strategy, Internet initiatives and promotions could create renewed confusion or uncertainty among distributors and not increase distributor productivity. In addition, costs associated with these initiatives, particularly the Internet and related technology initiatives, may be greater than anticipated.
- c. The ability of the Company to retain its key and executive level distributors or to sponsor new executive distributors is critical to the Company's success. Because the Company's products are distributed exclusively through its distributors, the Company's operating results could be adversely affected if the Company's existing and new business opportunities and products do not generate sufficient economic incentive to retain its existing distributors or to sponsor new distributors on a sustained basis, or if the Company receives adverse publicity.

d. Risks associated with the Company's new product offerings and initiatives planned for 2001 and launched at its global convention, including:

- the risk that such products will not gain market acceptance or meet the Company's expectations,
- the risk that sales from such product offerings could reduce sales of existing products and not generate significant incremental revenue growth or help increase distributor numbers and productivity,
- technological problems could delay or adversely affect the Company's Interent and technology initiatives; and
- any legal or regulatory restrictions that might delay or prevent the Company from offering its new products into all of its markets or limit the ability of the Company to effectively market such products.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The information required by Item 3 of Part I of Form 10-Q is incorporated herein by reference from the section entitled "Currency Risk and Exchange Rate Information" in "Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations" of Part I and also in Note 4 to the Financial Statements contained in Item 1 of Part I.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

For information on the Company's legal proceedings reference is made to the Company's Annual Report on Form 10-K for the year ended December 31, 2000.

The following is an update on legal proceedings involving Pharmanex v. Donna Shalala.

14

On April 2, 2001, the Company received notice that the district court had ruled in favor of the FDA. As a result of the decision, the Company has ceased selling Cholestin in the United States. The Company currently does not anticipate that the decision will impact the ability of the Company to sell Cholestin in foreign markets where such products are not currently restricted. The Company continues to evaluate its options relating to an appeal.

### **ITEM 2. CHANGES IN SECURITIES**

None.

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

### **ITEM 5. OTHER INFORMATION**

None.

15

### **ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits  
Regulation S-K  
Number

Description

10.1	Service Agreement with Grant Pace
10.2	Settlement Agreement Between Plaintiff Natalie Capone and Defendants Nu Skin International, Inc.

(b) Reports on Form 8-K. No current Reports on Form 8-K were filed during the quarter ended March 31, 2001.

16

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 15th day of May, 2001.

NU SKIN ENTERPRISES, INC.

By: /s/Corey B. Lindley

Corey B. Lindley

Its: Chief Financial Officer

(Principal Financial and Accounting Officer)

17

**EXHIBIT INDEX**

10.1	Service Agreement with Grant Pace
10.2	Settlement Agreement Between Plaintiff Natalie Capone and Defendants Nu Skin International, Inc.

18

## AMENDED AND RESTATED SERVICE AGREEMENT

This Amended and Restated Service Agreement (the "Agreement") is entered into as of the 1<sup>st</sup> day of January, 2000 by and between Nu Skin Enterprises, Inc., a corporation organized and existing under the laws of the State of Delaware, U.S.A., with its principal office located at 75 West Center Street, Provo, Utah 84601, or its successor (hereinafter referred to as "NSE"), and Mr. Grant F. Pace, a U.S. citizen (hereinafter referred to as "Pace").

### WITNESSETH:

WHEREAS NSE's predecessor and Pace entered into a Service Agreement in 1997 related to Pace's employment as NSE's Vice President, Southeast Asia and Greater China,

WHEREAS NSE and Pace desire to amend and restate the original Service Agreement to designate Pace as President of Nu Skin Personal Care upon the terms and conditions set forth hereinafter;

NOW, THEREFORE, in consideration of the mutual promises, undertakings and covenants set forth hereinafter, the parties hereto mutually agree as follows:

1. Appointment - NSE hereby agrees to appoint Pace as President, Nu Skin Personal Care, and Pace hereby agrees to such appointment to perform the functions and carry out the duties and responsibilities as President, Nu Skin Personal Care on the terms and conditions set forth hereinafter.

The duties and responsibilities of Pace's position will include but are not limited to the Position Specifications attached hereto as Exhibit A. Pace will be notified verbally or in writing of changes or additions in his responsibilities during the course of this Agreement.

In the event Pace is asked to assume responsibilities with NSE that differ materially from those set forth on Exhibit A hereto, the terms of this Agreement may be renegotiated at the election of either party.

The parties agree that if Pace is asked to assume a role with NSE or another Nu Skin affiliate outside the scope of his role as President, Nu Skin Personal Care, then this Agreement will be terminated and renegotiated.

2. Direction - Pace will be subject to and act in accordance with the directions, rules, regulations and instructions issued from time to time by the Board of Directors and the President and Chief Executive Officer of NSE.

3. Compensation - Pace will receive the following compensation and benefits for services rendered to NSE. No other compensation or benefit, direct or indirect, other than allowances specifically mentioned in this Agreement, will be paid to or received by Pace.

- a. Base Salary: Effective January 1, 2000 Pace will receive a gross annual salary of US\$265,000 divided into twenty-six (26) equal bi-weekly installments.
- b. Adjustments to Base Salary. The base salary will be increased by no less than twelve percent (12%) per year for calendar years 2001 and 2002. The increases will be effective on January 1 of each year. Thereafter, the base salary will be reviewed and adjusted annually by the NSE's Chief Executive Officer or a Committee of the Board of Directors charged with the responsibility of establishing and administering management compensation.
- c. Incentive Bonus: Pace will be eligible to participate in a Bonus Incentive Plan (based on profitability, cost efficiencies, sales, etc.), as such plan may be employed by NSE from time to time (the "Bonus Plan"). The extent of the incentive bonus and the factors and measurements used to determine the incentive bonus will be determined from time to time by the Board of Directors of NSE and will be based upon the performance of those operations which Pace oversees and the performance of NSE overall. The Bonus Plan will enable Pace to qualify for annual cash bonuses of up to the maximum amount permitted by the plan for Division Presidents. The Company agrees that, during the term of this Agreement, the bonuses received by Mr. Pace under the Bonus Plan shall not be less than \$\_\_\_\_\_ per year.
- d. Signing Bonus. In consideration for execution of this Agreement, NSE will pay to Pace the sum of \$30,000, which shall be subject to appropriate withholdings.
- e. Stock Grant. NSE hereby agrees to make a stock bonus award of that number of shares of NSE Class A Common Stock as has a fair market value (as quoted on the New York Stock Exchange) of \$50,000 with the shares being awarded on September 22, 2000 and with the valuation per share being set as of the same date. In addition, NSE acknowledges its obligation to finalize a similar stock bonus of \$50,000 of shares that was deliverable to Pace as of September 22, 1999 but which has not yet been finalized. If Pace so requests, a portion of the shares to be issued under the terms of this paragraph may be converted to a cash payment (at the same valuation used to determine the number of shares issued hereunder) sufficient to cover the federal and state income tax consequences of the balance of the stock grant hereunder.
- f. Stock Option Incentives.
  - (I) Upon execution of this Agreement, Pace shall receive a fully vested option to acquire 30,000 shares of NSE Class A common stock at an exercise price of \$12.00/share.
  - (II) Pace shall also be eligible to participate in an annual Stock Option Plan implemented for key employees of NSE or for key management of Nu Skin Personal Care.
  - (III) In addition, Pace shall receive a stock option for the purchase of 75,000 shares of common stock that shall vest annually and ratably over a three-year period beginning January 1, 2000. The exercise price of this option shall be \$6.50 per share.
- g. Relocation Expenses. NSE agrees to reimburse Pace for reasonable actual expenses associated with relocation of his primary residence from the Philippines to the Provo, Utah area. Pace shall provide copies of receipts relating to such relocation expenses.
- h. Employee Benefit Plans. As an employee of NSE, Pace will be entitled to participate in any employee benefit plans made available to NSE employees generally, including health, dental, life and disability insurance, and 401(k) profit sharing plans.

- i. Severance. In the event Pace's employment hereunder is terminated "without cause," as defined in Section 8b below, he shall be entitled to the severance benefits set forth in Section 8c below.
- j. Tax Preparation Assistance. As long as Pace has significant foreign tax ramifications to his personal U.S. Federal income tax return, the Company will reimburse Pace the cost of tax return preparation, up to a maximum of \$500 per year.

4. Service Hours – Pace's regular service hours are 40 hours per week Monday through Friday. It is understood that in light of his positions, he will likely be required to provide services or engage in travel that will extend well beyond normal service hours. It is further agreed that Pace's remuneration has been set with this fact in mind and that Pace has no right to ask for additional compensation for such extra services.

5. Confidentiality - Without the written approval of NSE, Pace will not copy, use or disclose to others (or cause any copying, use or disclosure), for Pace's own benefit or otherwise, any information, knowledge or data that Pace receives or develops during his period of employment which is proprietary to NSE or any of their affiliates or which is confidential, including information contained in formulas, business plans, financial data, vendor lists, product and marketing plans, distributor lists and other trade secrets or information that any of NSE or its affiliates has generated or which is has received in confidence from others. The confidentiality obligation set forth herein shall survive termination of this Agreement and shall therefore be applicable to Pace after termination of his employment. In addition to this provision, Pace agrees to execute and become bound by the terms of any Confidentiality Agreement used by NSE with its employees generally. A copy of the current form of Confidentiality Agreement is attached hereto as Exhibit C.

6. Non-Competition - Pace hereby agrees that he will not, during the term of this Agreement, and until the earlier of (i) one year immediately after the termination of this Agreement, or (ii) the date as of which NSE ceases to pay to Pace, either as an employee or an independent contractor, a sum equal to the monthly base salary payable to Pace hereunder (unless Pace is terminated "for cause," as defined in Section 8b below, in which case only the one-year period set forth in clause (i) above shall apply) directly or indirectly, by any means or device whatsoever, for himself or on behalf of or in conjunction with any person, partnership, or corporation, do any one or more of the following:

- a. provide services to, or be affiliated with any enterprise which provides services or products similar to NSE's services or products through multi-level marketing channels;
- b. divert, take away, or attempt to take away any NSE or other Nu Skin distributors, employees with whom NSE or another Nu Skin affiliate has a non-competition agreement, or accounts which Pace may have become aware of through information furnished to or generated by Pace in connection with his employment or by any employee or agent or former employee or agent of NSE or its affiliates; or
- c. compete with NSE or render services for a competitor of NSE involved in multi-level marketing.

This non-competition provision shall not relate to those companies specifically identified on Exhibit D hereto within the scope of activities described for each company. Pace acknowledges that the one-year period during which he cannot be involved in any activities which compete directly or indirectly with NSE after termination of this Agreement is a justifiable and acceptable period of time in light of the significance of the scope of Pace's employment hereunder, and that the terms of this Agreement and the remuneration and benefits payable to Pace hereunder are sufficient consideration for such agreement. Should NSE elect to enforce this non-competition provision following termination, it shall inform Pace of such election within thirty days of termination of Pace's employment.

7. Assignment of Work Product. Pace agrees to promptly disclose to NSE, and hereby assigns to NSE, free from any obligation to Pace, all right, title and interest in and to any and all ideas, concepts, processes, improvements, and inventions made, conceived or disclosed or developed by Pace during the term of this Agreement which relate to the business of NSE or resulting from or suggested by any work Pace may do for NSE. Pace shall have the right to retain the copyright to any books, articles or publications unrelated to NSE's business of multi-level marketing generally.

#### 8. Term of Agreement

- a. This Agreement will be effective as of January 1, 2000 and continue in full force and effect until terminated as set forth in section 8b below.
- b. NSE may terminate this Agreement for any reason at any time by giving Pace 60 days advance notice. The Agreement may be terminated without notice by NSE "for cause" if Pace (1) breaches his duties as set forth in this Agreement, or (2) has been negligent or dishonest in the discharge of his duties, or (3) has become incapable of carrying out his duties for any reason, or (4) is subject to any event or activity outside the scope of his employment, which event or activity is not in keeping with the image and values of NSE. The decision as to whether to terminate Pace for cause will be made in the sole discretion of the NSE Board of Directors.
- c. In the event NSE terminates this Agreement for cause, it will be liable only for compensating Pace through the date of his termination, unless termination for cause is the result of an accident or illness that has rendered Pace incapable of carrying out his duties (i.e., Pace will not be eligible to receive any contractual severance benefits nor the payments that might otherwise be payable to him hereunder during the one-year non-competition period). In the event NSE terminates this Agreement without cause, NSE will be liable only for compensating Pace for remuneration specified in Section 3a and 3b above for a period of six months following the date of termination, provided that NSE may elect to continue to pay Pace the sums due under Sections 3a and 3b above to enforce the one-year non-competition provision set forth in Section 6 above.
- d. This Agreement shall be automatically terminated in the event Pace accepts employment with a Nu Skin affiliate other than NSE. The terms of employment with the Nu Skin affiliate shall be negotiated and confirmed in a replacement Service Agreement.

9. Entire Agreement - This Agreement contains the entire agreement between the parties relating to the subject matter hereof. No modification, alteration or amendment of this Agreement and no waiver of any provision hereof may be made unless such modification, alteration, amendment, or waiver is set forth in writing signed by the parties hereto.

10. Governing Law - This Agreement will be construed in accordance with and governed by the laws of Utah. Any action brought hereunder shall be brought in an appropriate state or federal court located within the State of Utah, to which both parties hereto consent to jurisdiction.

11. Prevailing Language - This Agreement may be executed in counterparts, in the English language, each of which will be deemed an original but which, taken together, will constitute one and the same instrument.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto and/or their duly authorized representatives have executed this Agreement as of the date first above written.

Nu Skin Enterprises, Inc.

/s/ M. Truman Hunt  
Name: M. Truman Hunt  
Title: General Counsel & Vice President

Grant F. Pace

/s/ Grant F. Pace  
Signature

#### EXHIBIT A

##### DUTIES AND RESPONSIBILITIES AS PRESIDENT, NU SKIN PERSONAL CARE

1. Report to NSE's Chief Executive Officer in developing and implementing the strategic and operational plans for Nu Skin Personal Care globally.
2. Develop and implement the operating and capital budget necessary to support the Nu Skin Personal Care overall strategic plan.
3. Oversee and support local GMs in their efforts to train, motivate, support, encourage and monitor the activities of all distributors working within the local markets. Focus on developing relationships with distributor leaders operating in the local country to engender confidence in the Company's commitment to their success. Plan distributor activities and training including event time-line calendars, list of participants, activities, courtesy calls, open-houses, press conferences, etc.
4. Proactively manage the development and introduction of appropriate Nu Skin products, sales aids, and distributor incentive programs for local distributors.
5. Direct the design and implementation of quality assurance and performance measurement standards.
6. Design and implement methods and strategies for improving market share and profitability.
7. Ensure that the strategic plan is implemented in an efficient and effective manner which will maximize a return on investment.
8. Ensure that all aspects of local operations comply with appropriate government regulations and all aspects of licensing, wholesale distribution and other intercompany agreements.
9. Conduct quality assurance and personal performance appraisals as needed.
10. Meet with government and senior business or DSA officials and with the press as needed with a view to maintaining healthy and favorable relationships with regulators, the business community and the press.
11. Keep CEO and his designees informed at all time of trends.
12. Oversee the hiring, training and performance of all Nu Skin Personal Care GMs globally.
13. Follow established Nu Skin policies and procedures in ensuring that an efficient, profitable and service-oriented company is being operated.
14. Assist the General Managers and Regional Controllers in the development of operating budgets for Nu Skin Personal Care for each country annually.
15. Ensure that each country follows corporate policies and procedures. Where unclear, work with NSE to develop necessary policies and procedures.

16. Ensure that the local operations of Nu Skin Personal Care are properly complying with all relevant government regulations.
17. Report status, in a timely manner, of all relevant matters for each country entity, the regional office and any trends, concerns, changes in regulations or operations which might affect Nu Skin operations, competitors, or significant others within the region to NSE headquarters.
18. Conduct personal performance appraisals on at least an annual basis with all general managers and relevant regional staff in connection with Nu Skin Personal Care.

#### EXHIBIT C

#### CONFIDENTIALITY AGREEMENT

#### EXHIBIT D

#### PRE-EXISTING RELATIONSHIPS AND IDEAS

The following are pre-existing ideas, concepts, and relationships that belong to Grant F. Pace:

1. All products or concepts or sales opportunities arising out of the laboratories of independent contractors of Cooke Pharma Inc. or any affiliates or related companies.
2. All products or concepts in conjunction with or related to the Solex product of Bayer A.G. laboratories wherever located, or any related insect termination products.
3. All relationships or products opportunities arising from or in relationship with Cutco International, or Vector Marketing, as long as no such products or opportunities compete directly with Nu Skin in Nu Skin's product categories or in multi-level marketing generally.

Nothing herein shall relieve Pace of his fiduciary duties of loyalty as an officer of Nu Skin Enterprises, Inc.

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Attorneys for Defendants  
NU SKIN CANADA, INC., NU SKIN  
INTERNATIONAL, INC., and BLAKE M. RONEY

[Additional Counsel Appear on Signature Pages]

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

NATALIE CAPONE, On Behalf Of Herself and  
All Others Similarly Situated,

Case No. 2:93-CV-00285 ST

Plaintiff,

v.

NU SKIN CANADA, INC., NU SKIN  
INTERNATIONAL, INC., BLAKE RONEY,  
CLARA MCDERMOTT, and RICHARD  
KALL,

Defendants.

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFF NATALIE CAPONE  
AND DEFENDANTS NU SKIN INTERNATIONAL, INC.,  
NU SKIN CANADA, INC., BLAKE M. RONEY, CLARA MCDERMOTT  
AND RICHARD KALL**

This Settlement Agreement is made as of this 14th day of February 2001, by and among: (1) Plaintiff Natalie Capone, and (2) Defendants Nu Skin International, Inc., Nu Skin Canada, Inc., (together "Nu Skin"), Blake M. Roney ("Roney"), Clara McDermott (McDermott) and Richard Kall ("Kall").

**W H E R E A S**

- A. On March 22, 1993, Natalie Capone filed this putative class action (the "Capone Action") against Defendants. Capone brought this action on behalf of herself and a purported class of all other Canadian residents who were Nu Skin distributors within a period alleged therein, excluding Defendants and their affiliates. Capone alleges that Nu Skin had operated a pyramid scheme, and asserted claims for alleged violations of the Securities Act of 1933 and the Securities Exchange Act of 1934, common law fraud, and violations of the Utah Consumers Sales Practices Act.
- B. On April 18, 1994, the Court denied Nu Skin's motion to dismiss the Complaint on the grounds that the Court lacked subject matter jurisdiction, the doctrine of forum non conveniens required the case be brought in Canada, and the applicable statutes of limitations had expired.
- C. On March 27, 1997, the District Court denied Nu Skin's motion for summary judgment on the grounds that whether Nu Skin's distributorships are securities for purposes of the federal securities laws are facts that should be determined by a jury. The court held that Capone's securities claims were not time-barred.
- D. On June 2, 1997, the District Court denied Plaintiff's motion to certify a class on the bases that individual questions of fact predominated over common questions, and that the existence of these significant individual issues made the proposed class unmanageable and, therefore, not superior to other means available for adjudication.

E. On June 16, 1997, Plaintiff filed a request to amend the complaint to add a claim under the Utah Uniform Securities Act. On May 13, 1998, the District Court denied Plaintiff's motion to amend.

F. On January 23, 1998, another former Nu Skin Canada distributor, William Kerr, filed a motion to intervene and expand the section 12(1) subclass from one year to seven years and to add a Utah Uniform Securities Act claim. On May 13, 1998, the District Court denied Kerr's motion to intervene.

G. On May 13, 1998, The Honorable David Sam granted reconsideration of his previous June 2, 1997 denial of class certification, and certified a plaintiff class for the two non-reliance-based claims, for alleged violation of section 12(1) of the Securities Act of 1933 and the Utah Consumer Sales Practices Act.

H. On October 1, 1999, Capone filed a motion for confirmation of the class definition and approval of a form of class notice.

I. On October 28, 1999, Nu Skin filed a counter-motion for decertification of the class or, in the alternative, for limited discovery of all purported class members, through a questionnaire, to determine the viability of Plaintiff's federal securities claim. Defendant Richard Kall joined in Nu Skin's counter-motion.

J. On December 1, 1999, this case was reassigned to The Honorable Ted Stewart.

K. During the course of this litigation, the parties engaged in discovery, exchanging written discovery requests and over 50,000 pages of documents. The depositions of the Plaintiff Capone and Defendant Richard Kall have been completed.

L. As a result of settlement discussions among the parties, agreement has been reached to resolve the Capone Action in the manner set forth herein.

M. Capone's Counsel consider the settlement of the claims asserted against Defendants in the Capone Action, upon the terms and conditions hereafter set forth, to be beneficial.

2

N. Notwithstanding their continuing denial of each and every claim and contention of the Plaintiff, Defendants nevertheless desire to settle the Action and the claims described herein on the terms and conditions hereafter set forth, for the purpose of avoiding the burden, expense and uncertainty of continuing litigation thereof, and for the purpose of putting to rest the controversies engendered thereby.

O. Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Plaintiff. The Defendants have repeatedly asserted and continue to assert many defenses thereto, and have expressly denied any wrongdoing or legal liability arising out of any of the conduct alleged in the Capone Action. Neither this Settlement Agreement, nor any document referred to herein nor any action taken to carry out this Settlement Agreement is, or may be construed as, or may be used as, an admission by or against the Defendants of any fault, wrongdoing or liability whatsoever. There has been no final adjudication by any court as to the merits of the allegations made against the Defendants.

P. Neither this Settlement Agreement, nor any document(s) referred to herein, nor any action to carry out this Settlement Agreement is, or may be construed as, or may be used as an admission by or against the Plaintiff of the validity of any claim, contention or defense raised by Defendants, including as to class certification or liability.

NOW, THEREFORE, on the basis of the foregoing, it is hereby stipulated and agreed as follows:

## **I. DEFINITIONS**

A. "Court" shall mean the United States District Court for the District of Utah, Central Division.

B. "Defendants" means Nu Skin International, Inc., Nu Skin Canada, Inc., Blake M. Roney, Clara McDermott and Richard Kall.

C. The "Early Distributor Group" or the "Offerees" is defined as all persons who participated or attempted to participate in the Nu Skin network marketing program as part of

3

Nu Skin Canada's distributor force during the time period beginning March 1, 1990 through December 31, 1991, and who (i) sponsored one or more distributors; (ii) incurred a Net Economic Loss as defined below; (iii) purchased from Nu Skin Canada between March 1, 1990 and December 31, 1991, Nu Skin Canada products or sales aids with a net aggregate value of \$1,000 or more; and (iv) are not presently Nu Skin distributors.

D. "Early Distributor Group Members," as used in this Agreement, refers to members of the Early Distributor Group, that is each of the persons or entities which falls within the Early Distributor Group definition at the time of the execution of this Agreement.

E. "Effective Date" means (a) the date on which the Court's dismissal order and judgment, becomes final, i.e., 30 days after the entry of the dismissal order and judgment if no appeal is filed or motion under Rule 24 of the Federal Rules of Civil Procedure is then pending; (b) if the judgment is appealed the date of the final affirmance on appeal, or if a motion under Rule 24 of the Federal Rules of Civil Procedure is brought prior to or after the occurrence of the Effective Date, the date on which the resolution of the Rule 24 motion is completed.

F. "Kall" means Defendant Richard Kall.

G. "McDermott" means Defendant Clara McDermott.

H. "Net Economic Loss" means 20% of the documented net economic loss incurred by a member of the Early Distributor Group, as reflected in a completed claim form submitted in accordance with the terms and conditions of the Refund Offer described below at Section V.A., and accompanied by tax returns reporting the loss, audited, third-party financial statements, or verifiable third party receipts sufficient to establish to a reasonable certainty that the claim is genuine and the losses claimed were actually incurred by the claimant.

I. "Nu Skin" means Nu Skin International, Inc., a Utah corporation and Nu Skin Canada, Inc., and/or either of them.

4

J. "Person" as used in this Settlement Agreement, means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any other type of legal entity.

K. "Plaintiff" for purposes of this Agreement, shall be individual and representative plaintiff Natalie Capone.

L. "Plaintiff's Counsel" means Gilman and Pastor, LLP, Donald Joseph Purser & Associates P.C., Goodman, Chesnoff & Keach, and D. Gilbert Athay. "Plaintiff's Lead Counsel" means Gilman and Pastor, LLP.

M. "Refund Offer" as used in this Agreement, refers to the program of refunding a portion of the price of returned Nu Skin products and sales aids, or refunding a portion of a net economic loss, as set forth in Paragraph 5 herein.

N. "Roney" means Defendant Blake M. Roney.

O. "Settled Claims" means any and all claims, actions, causes of action, rights or liabilities, known or unknown, the Plaintiff may possess against the Defendants arising out of or in any way connected with or related to such person's participation in Nu Skin's network marketing program through purchases of Nu Skin products or sales aids, including "Unknown Claims" as defined in Paragraph 1.P., but not including any claims of the members of the putative class alleged in the Complaint filed March 22, 1993.

P. "Unknown Claims," as used in the definition of Settled Claims in Paragraph I.N, means any Settled Claims which Plaintiff does not know or does not suspect to exist in her favor at the time of the release of the Defendants which, if known or suspected by her, might have affected her settlement with and release of the Defendants. With respect to any and all Settled Claims, the parties, hereto stipulate and agree that, upon the Effective Date, Plaintiff shall expressly waive and, by operation of the Judgment, shall have expressly waived, any and all provisions, rights, or benefits conferred by any law of any state or territory of the United States,

5

or principle of common law, which is similarly comparable, or equivalent to California Civil Code §1542, which states:

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.

Plaintiff may hereafter discover facts in addition to or different from those which she now knows or believes to be true with respect to the subject matter of the Settled Claims, but Plaintiff shall expressly, upon the Effective Date, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Settled Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff acknowledges, and shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

## **II. JURISDICTION**

The Court has jurisdiction, and shall have continuing jurisdiction, over the parties hereto, to make any such orders as may be proper and necessary to effectuate, consummate, and enforce, on a continuing basis, the terms and conditions of this Settlement Agreement, to resolve any controversies which may arise over the implementation of the Refund Offer, to approve the payment of attorneys' fees to Plaintiff's Counsel, and to supervise the administration of the Refund Offer. Any dispute or question relating to or concerning the interpretation or enforcement of this Settlement Agreement shall be presented to the Court for resolution.

6

## **III. VOLUNTARY DISMISSAL WITH PREJUDICE OF CAPONE ACTION**

Upon the execution of this Agreement, Plaintiff will promptly move to dismiss this action with prejudice under the standards relating to the voluntary dismissal of class actions pursuant to Rules 23(e) and 41(a)(2) of the Federal Rules of Civil Procedure.

## **IV. ORDER AND JUDGMENT TO BE ENTERED BY THE DISTRICT COURT APPROVING DISMISSAL WITH PREJUDICE OF THE CAPONE ACTION**

Upon approval by the Court of the dismissal with prejudice of the Capone action, a Judgment will be entered by the Court, which will, inter alia:

A. Approve the dismissal of this action pursuant to Rules 23(e) and 41(a)(2) and order the parties to carry out the provisions of this Settlement Agreement.

B. Dismiss in their entirety and with prejudice Plaintiff's claims against the Defendants, without costs to any party against any other party except as otherwise provided herein.

C. Adjudge that Plaintiff shall be conclusively deemed to release any rights, claims or causes of action against Defendants and their predecessors and successors, parents, shareholders, subsidiaries and affiliates, and all their present and former officers, directors, partners, insurers, employees, associates, agents, attorneys, assigns, representatives, and administrators arising out of, based upon, or otherwise related to the Settled Claims.

D. Bar and permanently enjoin Plaintiff from prosecuting against the Defendants and their predecessors and successors, shareholders, parents, subsidiaries and affiliates, and all their present and former officers, directors, partners, insurers, employees, associates, agents, attorneys, assigns, representatives, and administrators, any and all individual or class claims which she had, has may have in the future, arising out of, based upon, or otherwise related to any of the Settled Claims.

7

E. Vacate the May 13, 1998 order of the Honorable David Sam granting reconsideration of this Court's June 2, 1997 denial of class certification, and approve the dismissal of the Capone Action on the terms contemplated herein.

F. Reserve continuing jurisdiction (a) over implementation of the settlement pursuant to further orders of the Court; (b) over the action until the Effective Date and each and every act agreed to be performed by the parties hereto shall have been performed pursuant to this Settlement Agreement, including the implementation of the Refund Offer; (c) over enforcement, construction and interpretation of this Settlement Agreement and the related agreements; and (d) over the administration of the Refund Offer.

G. Determine the Judgment to be final.

## V. SETTLEMENT CONSIDERATION

As settlement consideration for the release and dismissal provided herein, Nu Skin will implement the Refund Offer. The Refund Offer will be subject to the following provisions and conditions:

### A. Refund Offer

1. Defendant Nu Skin will refund to each Early Distributor Group Member, 90% of each dollar's worth of products and sales aids sold by Nu Skin and purchased by the Early Distributor Group Member from Nu Skin, provided that: (a) the products and sales aids were purchased by the Early Distributorship Group Member from Nu Skin Canada product and sales aid offerings between March 1, 1990 and December 31, 1991; (b) prior to returning any products and sales aids, the returning Early Distributor Group Member will contact Nu Skin indicating possession of proper documentation that the materials returned were purchased during the stated period and will receive a return authorization number for the return; (c) such materials are returned to Nu Skin in reasonably sound, unopened, unaltered condition and are accompanied by documentation of the purchase in the stated period. Shipping costs of the returning products and sales aids pursuant to this paragraph will be borne by the returning Early Distributorship Group

8

Member. The refund described in this subparagraph shall be in lieu of any refund payable under any subparagraph V.A.3. of this Agreement, and any and all persons submitting refund requests to Defendant Nu Skin pursuant to this paragraph expressly agrees to submit to the jurisdiction of the United States District Court for the District of Utah, Central Division.

2. The net refund payable to each Early Distributor Group Member who returns products to Nu Skin will be reduced by an amount equal to any commissions paid to the Early Distributor Group Member on the sales of any product with respect to which a refund is sought.

3. Defendant Nu Skin will refund to each Early Distributor Group Member who no longer has products or sales aids available to return to Nu Skin, but who timely submits a verified claim form, twenty percent of the Net Economic Loss of such Early Distributor Group Member, as defined herein. The refund described in this subparagraph shall be in lieu of any refund payable under subparagraph V.A.1. of this Agreement, and any and all persons submitting refund requests to Defendant Nu Skin pursuant to this paragraph expressly agree to submit to the jurisdiction of the United States District Court for the District of Utah, Central Division. 4.ab The net refund payable to each Class Member who participates in the Refund Offer described in paragraphs V.A.1. and 3. of this Agreement will not be reduced by any award of attorneys' fees and costs approved by the Court.

5. The Refund Offer shall be implemented and administered in accordance with the provisions of the Refund Offer Procedures, to be agreed upon by the parties, submitted to and approved by the Court as Exhibit A hereto, and incorporated herein by this reference.

6. If any party fails to carry out its obligations or comply with the terms of this Settlement Agreement, any other party may seek relief from the Court.

7. Following the Effective Date, Nu Skin shall send notice of the Refund Offer to Early Distributor Group Members identified in their records by first class mail in the form attached hereto as Exhibit B. Nu Skin will attempt to forward all notices returned as undeliverable.

9

## VI. COSTS AND ATTORNEYS' FEES

A. Attorneys' Fees, Expenses, And Costs. Seven (7) days after the Effective Date, subject to and to the extent of Court approval, the Nu Skin Defendants will pay Plaintiff's Lead Counsel a sum for attorneys' fees, expenses, and costs incurred by Plaintiff's Counsel in connection with this litigation, in an amount as set forth in the letter agreement dated February 12, 2001 and submitted under seal pursuant to the Court's Order ("Fees And Costs"). Nu Skin's payment of the Fees And Costs shall fully discharge any liability of Defendants for such attorneys' fees, expenses, and costs, notwithstanding the fact that Plaintiffs' Counsel claim to have incurred attorneys' fees, expenses, and costs in an amount greater than the Fees and Costs. The allocation of the Fees And Costs among Plaintiff's Counsel, and any other person

who might assert a claim thereto ("Allocation"), shall be the sole responsibility of Plaintiff's Lead Counsel. Defendants shall have no interest in, responsibility for, or liability of any kind arising from the Allocation. Upon Defendants' payment of the Fees And Costs, neither Plaintiff nor Plaintiff's Counsel shall assert any claim against Defendants or any of their affiliates related in any way to attorneys' fees, expenses, or costs incurred by Plaintiff or Plaintiff's Counsel in connection with this litigation, including any claim based on the Allocation.

B. Refund Offer Costs. The costs relating to the administration, allocation and distribution of refunds pursuant to the Refund Offer, including costs of producing and mailing notice of the Refund Offer to the Early Distributor Group, shall be borne by the Nu Skin Defendants.

## **VII. FINALITY OF SETTLEMENT AGREEMENT**

A. The finality of this Settlement Agreement is expressly conditioned upon the occurrence of the Effective Date.

10

B. If this Settlement Agreement should become null and void by reason of the failure to occur of any conditions set forth herein, or for any other reason, this action and all issues herein, to the extent affected by this Settlement Agreement or any order entered herewith, shall thereupon be deemed to have reverted to its status as of the date and time immediately prior to the execution of this Settlement Agreement. The action shall proceed in all respects as if this Settlement Agreement and related orders and papers had not been executed or issued, and any costs or expenses incurred in connection with the settlement shall be borne by the party incurring such costs.

## **VIII. RELEASE**

A. Subject to the satisfaction of all conditions precedent herein and the occurrence of the Effective Date, Plaintiff hereby acknowledges, as of the Effective Date, full and complete satisfaction of, and does hereby fully, finally and forever settle, release, and discharge Defendants and their respective parent companies, shareholders, subsidiaries, affiliates and all their respective officers, directors, partners, insurers, employees, subcontractors, successors, assigns, and attorneys with respect to all Settled Claims.

B. Nothing in this Agreement shall be deemed to constitute or effect a release of claims by any person other than the Plaintiff in her individual capacity. Early Distributor Group Members will be required to execute a release of all claims only if they elect to participate in the Refund Offer described above at Section V.A.

## **IX. RECITALS**

The recitals contained in the preamble to this Settlement Agreement are hereby made a part of the terms and provisions of this Settlement Agreement, and shall be binding on the parties as if fully set forth herein.

11

## **X. NOTICES**

All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing, and shall be delivered personally or mailed, postage prepaid, by first class mail to the undersigned persons at their respective addresses as set forth herein:

### **Plaintiff's Counsel**

Kenneth G. Gilman  
Douglas M. Brooks  
GILMAN and PASTOR, LLP  
Stonehill Corporate Center  
999 Broadway, Suite 500  
Saugus, Massachusetts 01906

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### **Counsel for Defendants**

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Attorneys for Defendants Nu Skin International, Inc., Nu Skin Canada, Inc. and Blake M. Roney

and

Casey K. McGarvey  
E. Scott Savage

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Attorneys for Defendant Richard Kall

12

David W. Scofield  
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185 South State, Suite 700  
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Telephone: (801) 363-4300  
Facsimile: (801) 363-4378

Attorneys for Clara McDermott

**XI. ENTIRE SETTLEMENT AGREEMENT**

This Settlement Agreement supersedes any and all other agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or in writing or implied, between the parties with respect to such matters, and each party to this Settlement Agreement acknowledges that no representations, inducements, promises, or statements, oral or otherwise, have been made by any party or by anyone acting on behalf of any party which are not embodied or incorporated by reference herein, and further agrees that no other agreement, covenant, representation, inducement, promise or statement not set forth in writing in this Settlement Agreement shall be valid or binding. Each of the parties hereto hereby acknowledges that it has been represented by counsel or has had counsel available to it, throughout all negotiations which preceded the execution of this document and that this document has been executed with the consent and advice of said counsel.

**XII. MODIFICATION OR AMENDMENT**

This Settlement Agreement may not be modified or amended except in writing, signed by the respective counsel of record for the parties hereto, or by the party or parties, as the case may be.

**XIII. MATERIALITY**

The parties agree that each and every provision of this Settlement Agreement is a material provision and that any failure to comply fully with any provision of this Settlement Agreement shall constitute a material breach of this Settlement Agreement.

13

**XIV. FURTHER ASSURANCE AND DOCUMENTS**

The parties hereto agree to execute any and all additional documents, and to do all things, reasonably necessary or convenient to carry out and implement the provisions of this Settlement Agreement.

**XV. CONSTRUCTION AND INTERPRETATION**

This Settlement Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Utah and shall be subject to the continuing jurisdiction, construction, and interpretation of the District Court. This Settlement Agreement shall be construed and interpreted to effectuate the intent of the parties as if it were drafted by each party hereto.

**XVI. COUNTERPARTS**

This Settlement Agreement, and any other documents required or contemplated to be executed in order to consummate this Settlement Agreement, may be executed in one or more counterparts, each of which shall be deemed an original agreement. All counterparts of any such document together shall constitute one and the same instrument.

**XVII. BINDING EFFECT**

This Settlement Agreement is binding upon, and shall inure to the benefit of the parties hereto, their parent companies, their respective agents, attorneys, insurers, employees, representatives, officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in interest and shareholders.

**XVIII. ATTORNEYS' FEES, COSTS AND EXPENSES**

In the event it shall become necessary for any party to this Settlement Agreement and Release to employ any attorney to assist in the enforcement of any of the terms hereof, or to sue for damages for the breach hereof, the prevailing party in any such dispute or action filed shall be entitled to a reasonable sum as attorneys' fee, plus costs incurred.

**XIX. INCORPORATION OF EXHIBITS**

All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

**XX. PRESS RELEASES**

Neither Plaintiff nor Plaintiff's Counsel may issue any statement or release to the press regarding this Settlement Agreement or the terms contained herein without prior written consent from Defendants.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, by and through their respective counsel, the undersigned, as of the day and year first written above.

DATED: February \_\_\_\_, 2001

Kenneth G. Gilman  
Douglas M. Brooks  
**GILMAN and PASTOR, LLP**

By: /s/ Kenneth G. Gillman  
KENNETH G. GILMAN

Stonehill Corporate Center  
999 Broadway, Suite 500  
Saugus, Massachusetts 01906  
Telephone: (781) 231-7850  
Facsimile: (781) 231-7840

DATED: February 14, 2001

Donald J. Purser  
**DONALD JOSEPH PURSER  
& ASSOCIATES P.C.**

By: /s/ Donald J. Purser  
DONALD J. PURSER

2735 East Parleys Way, Suite 303  
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Facsimile: (801) 537-1212

DATED: February 14, 2001

D. Gilbert Athay  
**ATTORNEY AT LAW**

By: /s/ D. Gilbert Athay  
D. GILBERT ATHAY

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Facsimile: (801) 364-3232

DATED: February 14, 2001

David Z. Chesnoff  
Eckley M. Keach  
**GOODMAN, CHESNOFF & KEACH**

By: /s/ David Z. Chesnoff  
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520 South Fourth Street  
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Facsimile: (702) 598-1425

Plaintiff's Counsel

DATED: February 12, 2001

Daniel C. Girard  
Anthony K. Lee  
A. J. De Bartolomeo  
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16

DATED: February \_\_\_\_, 2001

John D. Shuff  
**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

By: /s/ John D. Shuff  
JOHN D. SHUFF

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Attorneys for Defendants Nu Skin Canada, Inc., Nu Skin  
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DATED: February 13, 2001

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**BERMAN, GAUFIN, TOMSIC & SAVAGE**

By: /s/ Casey K. MCGarvey  
CASEY K. MCGARVEY

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Attorneys for Defendant Richard Kall

DATED: February 13, 2001

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Ronald Price, Esq.  
**PARSONS, DAVIES, KINGHORN & PETERS**

By: /s/ David W. Scofield  
DAVID W. SCOFIELD

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17