

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: HAIR RELAXER MARKETING)
SALES PRACTICES AND)
PRODUCTS LIABILITY)
LITIGATION)**

**Case No. 23 C 818
MDL No. 3060**

This document relates to all cases

MDL CASE MANAGEMENT ORDER NO. 1

By order dated February 6, 2023, the Judicial Panel on Multidistrict Litigation (JPML) has transferred to this Court the civil actions listed in Attachment A to this Order, under MDL Case No. 3060. The JPML has subsequently entered conditional transfer orders in other cases, and it is expected that additional cases will be transferred to this Court hereafter. It appears to the Court that these cases merit special attention as complex litigation. For these reasons, the Court enters the following order:

1. Applicability of order. Pending further order by this Court, this order shall govern the practice and procedure in the actions that the JPML has transferred and is transferring to this Court as part of MDL No. 3060. This Order also applies to all cases filed in the Northern District of Illinois that have been or will be reassigned to the undersigned judge as part of MDL No. 3060. The Order will also apply to any "tag-along" actions later filed in, removed to, or transferred to this Court.

2. Consolidation of actions. All actions that have been or are hereafter transferred to the undersigned judge as part of MDL No. 3060, whether originally filed in this district or elsewhere, are consolidated for pretrial purposes. Any actions later filed in, removed to, or transferred to this Court will be consolidated automatically with this

action, without the need for a motion or entry of an order by the Court. This consolidation does not constitute a determination that the actions should be consolidated for trial, and it does not have the effect of making anyone or any entity a party to any action in which he, she, or it has not been named as a party.

3. Filing. The Clerk is maintaining a master case file under the heading "In re Hair Relaxer Marketing, Sales Practices, and Product Liability Litigation," Case Number 23 C 818. All filings with the Clerk should be made under that caption and case number. When a party intends that something it is filing applies to all of the consolidated actions, the party should indicate that by using the words "This Document Relates to All Cases" in or just after the case caption. When a party intends that something it is filing applies only to some of the consolidated actions, the party making the filing should file it both under Case Number 23 C 818 and under the individual case number assigned to the particular case. The party making such a filing should indicate that by using the words "This Document Relates to *[fill in case number]*" in or just after the case caption.

4. Service list. This order is being served upon the counsel whose appearances are currently listed on the docket of Case Number 23 C 818 as of the date the order is docketed. Counsel who receive this order via electronic filing are requested to forward a copy to any other attorneys who have filed appearances in cases that have been or are being transferred to this Court.

5. Extension and stay.

a. Responses to complaints. Any defendant that has not yet responded to a complaint in which it is named as a defendant is granted an

extension of time for responding to the complaint until a date to be set later by this Court, a topic that the Court will address at the initial conference.

b. Discovery. Pending the initial conference and until further order of this Court, all outstanding discovery is stayed, and no further discovery may be initiated. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

c. Pending motions. All pending motions that predate transfer of any action are hereby terminated and must be refiled in this Court.

6. Initial conference. The Court sets the MDL proceeding and all transferred cases for an initial status hearing and scheduling conference, to be held on **March 2, 2023 at 2:00 p.m.** central time. The hearing will be conducted in person in Judge Rowland's courtroom, Room 1225, at 219 South Dearborn Street, Chicago Illinois. This appearance requires in-person attendance to be heard. For later status and scheduling conferences, the Court will (a) will work with counsel to arrange for attendance via WebEx for counsel who will wish to be heard; and (2) permit those who cannot attend in person to listen via teleconference.

At the March in-person status it will likely be impracticable to permit attorneys for each and every plaintiff to speak during the hearing. Plaintiffs with similar interests should attempt to agree, to the extent practicable, on an attorney who will speak on their joint behalf. Any such designation will have no effect on any later determination by the Court regarding leadership or steering committee

status. In addition, by designating another party's attorney to represent its interests at the initial hearing, a party will not be precluded from other representation during the litigation. Attendance at and participation in the initial hearing will not waive objections to jurisdiction, venue, or service.

a. Other participants. Persons and entities who are not named as parties in this litigation but who may later be joined as parties, or who are parties in related litigation pending in other federal and state courts, are invited to attend the initial hearing in person or by counsel.

7. Purposes of initial hearing. The initial hearing set for March 2, 2023 will be held for the purposes specified in Federal Rules of Civil Procedure 16(a), 16(b), 16(c), and 26(f) and will be subject to the sanctions prescribed in Rule 16(f). The subjects to be addressed at the initial hearing include, but may not be limited to, the following:

- consideration of whether any complaint or complaints consolidating currently separate cases should or will be filed, and the timing for any such filings;
- consideration of a deadline for responses to the existing complaints or to any consolidated or amended complaints that are likely to be filed;
- entry of orders directing preservation of evidence and a protocol for discovery of electronically stored information (ESI);
- consideration of a process for appointment of, to the extent appropriate, of lead counsel and/or a steering committee for plaintiffs; and

- subject to time limitations, any other topics considered appropriate for discussion by any party. Any party that wishes to address a topic not on the Court's list must file, by no later than February 28, 2023, a "Request for Inclusion on March 2 Agenda" that describes the topic in reasonable detail.

8. Lead counsel, liaison counsel, and plaintiffs' steering committee. One of the topics the Court intends to discuss at the March 2 hearing is a process for appointment of, to the extent appropriate, lead counsel and/or a steering committee for plaintiffs, as well as liaison counsel for plaintiffs and defendants. Any such counsel will have the responsibilities described in the Manual for Complex Litigation, Fourth Edition, § 10.22, subject to modification by the Court. The main criteria for such appointments will be: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; (c) professional experience in this type of litigation; (d) access to sufficient resources to advance the litigation in a timely manner; and (e) diversity. The Court will consider only attorneys who have filed an action that is part of this case.

Counsel should be prepared to discuss at the initial hearing the appropriate structure for plaintiffs' leadership in light of the fact that the MDL includes both individual actions and putative class actions and includes both cases involving claims of personal injury and cases involving claims of consumer fraud/unjust enrichment and similar claims.

The Court does not intend to select a leadership structure at the March hearing but will do so promptly thereafter in order to avoid undue delay in the litigation.

9. Preservation of evidence. Pending entry of an order regarding preservation of evidence, all plaintiffs and all defendants shall take reasonable steps preserve all documents, data, ESI, and tangible things containing information potentially relevant to the subject matter of the litigation. All counsel are directed to make reasonable efforts to identify and notify parties and nonparties (including employees of corporate or institutional parties) of this directive.

Counsel are expected to familiarize themselves with the Manual for Complex Litigation, Fourth Edition, and are to be prepared to propose procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.

10. Federal Rule of Civil Procedure 7.1 and Local Rule 3.2. All parties subject to the requirements of Federal Rule of Civil Procedure 7.1 and/or Local Rule 3.2 are directed to make their disclosures required by those Rules in a form that complies with the requirements of Paragraph 3 of this order.

11. Orders entered by transferor courts. The Court hereby vacates all orders entered by transferor courts imposing deadlines for pleading, pretrial disclosures, or discovery.

Date: February 16, 2023

Enter:



Mary M. Rowland
United States District Judge

Filed date: 2/9/2023
Presiding Judge: Mary M. Rowland
Magistrate Judge: Sheila M. Finnegan
Lead Case No. 23-cv-818
PH

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: HAIR RELAXER MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION

MDL No. 3060

TRANSFER ORDER

Before the Panel: Plaintiffs in four actions pending in the Northern District of Illinois and the Northern District of California move under 28 U.S.C. § 1407 to centralize this litigation in the Northern District of Illinois. The litigation consists of nine actions pending in four districts, as listed on Schedule A. Since the filing of the motion, the Panel has been notified of 44 related federal actions pending in an additional fifteen districts.¹ Plaintiff in the Northern District of Illinois *Smith* action supports the motion. Plaintiffs in twenty-four potential tag-along actions filed briefs or Notices of Presentation or Waiver of Oral Argument supporting centralization and variously suggesting the Northern District of Illinois, the Western District of Missouri, the Southern District of Ohio, the Eastern District of New York, the Southern District of New York, the Central District of California, the Northern District of California, or the District of South Carolina as the transferee district. All of them, however, indicated in their filings or at oral argument that they support or do not oppose transfer to the Northern District of Illinois at least in the alternative. All responding defendants² oppose the motion but, in the event of centralization, request centralization in the Southern District of New York or, alternatively, in the Northern District of Illinois.

On the basis of the papers filed and the hearing session held, we find that these actions involve common questions of fact, and that centralization in the Northern District of Illinois will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. On October 17, 2022, a study led by the National Institutes of Health (NIH) reported findings that women who frequently used chemical hair straightening or hair relaxer products were

¹ These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1 and 7.2.

² Four sets of defendants responded to the motion: L'Oréal USA, Inc., L'Oréal USA Products, Inc., SoftSheen-Carson LLC, and SoftSheen-Carson (W.I.), Inc. (collectively, the L'Oréal defendants); Dabur International Ltd. and Namasté Laboratories, LLC; Strength of Nature, LLC, Strength of Nature Global, LLC, and Godrej SON Holdings, Inc.; and House of Cheatham. Two additional defendants named in certain of the actions, PDC Brands and Parfums de Coeur, Ltd., did not enter an appearance.

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more than twice as likely to develop uterine cancer as women who did not use such products. These actions, filed shortly thereafter, share common questions of fact arising from allegations that defendants' hair relaxer products contain phthalates, including di-2-ethylhexylphthalate, or other endocrine-disrupting chemicals (EDCs), and that the use of such products caused or increased the risk of developing uterine, ovarian, or breast cancer, endometriosis, uterine fibroids, or other injuries to the reproductive system. All actions share common issues of fact regarding whether exposure to phthalates or other EDCs causes injury to the reproductive system, whether and when defendants knew or should have known of the alleged risks posed by hair relaxer products, and whether defendants engaged in adequate testing and post-market surveillance. Plaintiffs assert overlapping products liability claims and consumer protection claims.

Centralization will obviate the risk of duplicative discovery and inconsistent rulings on pretrial issues such as what level of exposure to phthalates or other EDCs poses a risk of reproductive injury, and what obligation, if any, defendants had to disclose the presence of such chemicals in their hair relaxer products. The parties in all actions are likely to use many of the same experts, particularly with respect to the risks of exposure to phthalates and other EDCs. Centralization will minimize duplication of this expert discovery as well as pretrial motion practice related to expert issues. It also will prevent inconsistent rulings with respect to class certification.³

Defendants argue that the actions involve numerous disparate questions of fact and that centralization will provide few efficiencies. They point out that the actions name multiple competing defendants who manufactured and sold different lines of hair relaxer products, and that plaintiffs allege multiple different injuries. They contend as well that plaintiffs have not identified a single EDC common to all hair relaxer products that is alleged to have caused the injuries at issue. We acknowledge that, to some extent, the claims against the various defendants may turn on facts specific to the defendants and their products, and that in some instances we have been hesitant to centralize litigation against competing defendants that marketed, manufactured, and sold similar products. In the circumstances presented here, however, we conclude that centralization will allow this litigation to be managed most efficiently and will best serve the convenience of the parties, witnesses, and courts. Since the filing of the motion, this litigation has grown from nine actions pending in four districts to 53 involved actions in nineteen districts. Most of the actions name multiple sets of defendants, and nearly all name the L'Oréal defendants. In addition, most plaintiffs allege exposure to multiple different product lines. According to movants, this is because women who use hair relaxers typically use different product lines over the course of their lives; hence, any future related actions are likely to involve multiple defendants and product lines as well. As such, declining to centralize this litigation would not resolve the complexities presented by managing cases involving multiple defendants and products; rather, judges in nineteen (or more) different districts would be required to manage such cases, while addressing overlapping parties, facts, and claims. *See In re January 2021 Short Squeeze Trading Litig.*, MDL No. 2989, 2021 WL 1258399, at *3 (J.P.M.L. Apr. 2, 2021) (noting that denying

³ While there is only one putative class action included in the motion, there are eight class actions among the potential tag-along actions. All nine are on behalf of overlapping putative classes.

centralization would not alleviate trade secret or confidentiality concerns where multiple defendants are named in many of the involved cases); *In re ARC Airbag Inflators Prods. Liab. Litig.*, MDL No. 3051, 2022 WL 17843061, at *2 (J.P.M.L. Dec. 15, 2022) (same).

Our decision here is in keeping with past decisions in similar circumstances. For example, in *In re Androgel Products Liability Litigation*, 24 F. Supp. 3d 1378 (J.P.M.L. 2014), we centralized actions against multiple competing manufacturers, noting that, “in the actions and potential tag-along actions already filed, a number of plaintiffs used more than one testosterone replacement therapy,” and that centralization of only certain claims or the attempt to separate claims against separate manufacturers would “prove too procedurally complicated” and in any event “might result in a *de facto* industry-wide centralization as cases involving multiple drugs become part of the MDL.” *Id.* at 1379. *See also In re Incretin Mimetics Prods. Liab. Litig.*, 968 F. Supp. 2d 1345, 1346 (J.P.M.L. 2013) (centralizing actions against competing manufacturers of four similar diabetes drugs that allegedly caused pancreatic cancer where “[s]everal plaintiffs took more than one of the drugs at issue”).⁴

We conclude that the Northern District of Illinois is an appropriate transferee district. Sixteen of the involved actions are pending there and the district is not opposed or is supported, at least in the alternative, by all responding plaintiffs and is supported, in the alternative, by all responding defendants. The Honorable Mary M. Rowland, to whom we assign the litigation, presides over two of the involved actions and is a highly capable jurist with the ability and willingness to manage the proceedings efficiently. We are confident that she will steer this matter on a prudent course.

⁴ No party has suggested that the Panel create defendant-specific MDLs, nor would that appear to be a workable option. Plaintiffs assert indivisible claims against the defendants, and it would be impossible to sever the claims against the various defendants and transfer them to separate MDLs.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the Northern District of Illinois are transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable Mary M. Rowland for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

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**IN RE: HAIR RELAXER MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 3060

SCHEDULE A

Northern District of California

1:23-cv-821 BHONOPHA v. L'OREAL U.S.A., INC., ET AL., C.A. No. 3:22-06395

Southern District of Georgia

1:23-cv-823 GAMBLE v. STRENGTH OF NATURE GLOBAL, LLC, ET AL., C.A. No. 4:22-00256
1:23-cv-825 LEE v. STRENGTH OF NATURE GLOBAL, LLC, ET AL., C.A. No. 4:22-00257

Northern District of Illinois

MITCHELL v. L'OREAL USA, INC., ET AL., C.A. No. 1:22-05815
GORDON v. L'OREAL USA, INC., ET AL., C.A. No. 1:22-06033
SMITH v. L'OREAL USA, INC., C.A. No. 1:22-06047
WILLIAMS, ET AL. v. L'OREAL USA, INC., ET AL., C.A. No. 1:22-06110
GRANT v. L'OREAL USA, INC., C.A. No. 1:22-06113

Southern District of New York

1:23-cv-827 TERRELL v. REVLON CONSUMER PRODUCTS CORP., ET AL.,
C.A. No. 1:22-09008