

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE: HAIR RELAXER MARKETING SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	MDL No. 3060 Case No. 23 C 818 Judge Mary M. Rowland This document relates to: All Cases
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**JOINT STATUS REPORT FOR
MARCH 7, 2024 CASE MANAGEMENT CONFERENCE**

Co-Lead Counsel for Plaintiffs and counsel for Defendants provide this joint status report in advance of the status conference scheduled for March 7, 2024.

1. **Status of Pending Briefs/Motions¹:**

- a. **Plaintiff Leadership Committee's Proposed Cases Management Order Re: Common Benefit Fund:** As requested by the Court's Minute Order dated December 11, 2023 (*see* ECF No. 326), the PLC filed their position statement on December 22, 2024. Keller Postman filed their objections on January 12, 2024 (*see* ECF No. 377). The PLC filed their response on January 24, 2024 (*see* ECF No. 411). On January 25, 2024, Keller Postman then filed a Motion to Strike the PLC's response due to the response being in excess of the page limitations (*see* ECF No. 412). On January 26, 2024, the PLC responded to this motion (*see* ECF No. 418) and the court denied Keller Postman's Motion to Strike (*see* ECF No. 419).
- b. **Interrogatory Limits:** As requested by the Court during the January 25, 2024 CMC and memorialized in the minute order issued by the Court immediately following the conference (*see* ECF No. 417), Defendants filed a Joint Response to Plaintiffs' Discovery Brief Regarding Interrogatory Limits on January 31, 2024 (*see* ECF No. 422). Plaintiffs filed their Reply in Opposition to Defendants' Request to Limit Plaintiffs Collectively to 25 Additional Interrogatories on February 2, 2024 (*see* ECF No. 430).

¹ Plaintiffs anticipate that resolution of several of these issues pertaining to individual defendants will inform the resolution of similar issues with other Defendants. Plaintiffs believe that the Court's orders will inform their discussions on related issues with other defendants.

- c. **L'Oréal USA's Position on Producing Batch-Testing Documents:** As requested by the Court during the January 25, 2024 CMC and memorialized in the minute order issued by the Court immediately following the conference (*see* ECF No. 417), L'Oréal USA filed their brief on whether they object to producing batch-testing documents related to products manufactured by L'Oréal Canada on February 1, 2024 (*see* ECF No. 424). As L'Oréal USA agreed to produce documents related to batch-testing, Plaintiffs believe this issue to be resolved and did not submit further briefing.
- d. **L'Oréal USA's Position on Document Production:** As requested by the Court during the January 25, 2024 CMC and memorialized in the minute order issued by the Court immediately following the conference (*see* ECF No. 417), L'Oréal USA filed their briefing on their position that it has produced documents "as they are kept in the usual course of business" under FRCP 34(E)(i) and that they are not required to identify Bates ranges (*see* ECF No. 423). Plaintiffs filed their response on February 2, 2024 (*see* ECF No. 426).
- e. **L'Oréal's Motion for Reconsideration:** On February 20, 2024, L'Oréal USA filed a Motion for Reconsideration of the Court's Order Regarding Production of Documents in Possession of L'Oréal USA's Foreign Parent or Alternative Relief (*See* ECF No. 461). Plaintiffs oppose this motion and filed their responsive briefing on February 28, 2024 (*see* ECF 472). L'Oréal USA intends to file a Reply by March 7, 2024, which will address the timeliness of its Motion and other issues raised by Plaintiffs.²
- f. **Paul Mitchell's Motion to Dismiss:** Defendant Paul Mitchell filed a motion to dismiss on February 6, 2024 (*see* ECF No. 438). As requested in the Court's February 7, 2024 minute order, the PSC will be prepared to address how to proceed on this motion.
- g. **Motion to Quash NIH Subpoena:** On February 14, 2024, Defendant Revlon served a notice of subpoena on the National Institutes of Health seeking a wide variety of documents related to the 2021 White et al. study and the 2022 Chang et al. study. The PLC intends to file a Motion to Quash this subpoena before the return date of March 15, 2024. Defendants first became aware of the PLC's intention to move to quash the NIH subpoena during the preparation of this Report. Defendants have neither seen nor been served with a motion to quash.
- h. **Consolidated Class Action Complaint:** As requested by the Court during the November 17, 2023 CMC and memorialized in the Minute Order issued by the

² L'Oréal USA also informs the Court that its lead counsel, Dennis S. Ellis, who will handle any argument allowed regarding the Motion for Consideration, will not be able to attend the March 7, 2024 hearing due to an unavoidable family conflict.

Court immediately following the conference (*see* ECF No. 301), Defendants filed a proposed briefing schedule (*see* ECF No. 307), which was adopted by the Court in the Minute Order dated December 1, 2023 (*see* ECF No. 308). Defendants filed their Joint Motion to Dismiss the Consolidated Class Action Complaint and Joint Motion to Strike Class Allegations and Request for Punitive Damages on February 5, 2024 (*See* ECF No. 432). Revlon filed a separate Motion to Strike Class Allegations Under Rule 23(d)(1)(D) and Dismiss the Consolidated Class Action Complaint on February 5, 2024 (*See* ECF No. 434). Plaintiffs' Oppositions to the Motions to Dismiss and Oppositions to the Motions to Strike are due on March 11, 2024, and Defendants' Replies in Support of the Motions to Dismiss and Replies in Support of the Motions to Strike are due on April 8, 2024.

- i. **Revlon Update:** Plaintiffs have met and conferred with Revlon's counsel regarding their motion to strike (ECF No. 434) and related issues concerning the presentation of claims in the MDL in connection with restrictions imposed by the bankruptcy court.

2. *Plaintiffs' Requests for Dismissals without Prejudice and Attorney Withdrawals:*

Plaintiffs' Position:

With the advent of the Short Form Complaint and Plaintiff Fact Sheet process, counsel of individual plaintiffs have encountered clients whose cases they seek to dismiss without prejudice. This includes, but is not limited to, plaintiffs who are not able to provide responses to fact sheets at this time. Defendants have taken a wholesale position that they will not agree to any dismissals without prejudice in this litigation, asserting that the Master Answer that was served to the Master Complaint operates as responsive pleadings to individual complaints for purposes of Rule 41 of the Federal Rules of Civil Procedure.

CMO 8 does not provide support for the Defendants' collective position. Plaintiffs did acquiesce to Defendants' request that they not be required to provide an individual answer to an individual SFC unless and until that case was selected for the bellwether process. See CMO 8, Sec. IV(g). The purpose of that agreement, however, was to alleviate the burden on the Defendants on filing answers to each complaint; it was not to provide Defendants with the opportunity to obstruct the normal and courteous course of MDL practice by thwarting Plaintiff's ability to file dismissals without prejudice in appropriate cases. Furthermore, Plaintiffs have reason to believe that the Defendants will use a similar argument to object to Plaintiffs amending their Short Form Complaints to add new Defendants and new products to their cases.

Plaintiffs submit that they should be allowed pursuant to FRCP 41(a)(1)(A)(i) to voluntarily dismiss their complaint without prejudice and/or pursuant to FRCP 15(a)(1)(A) and (B) amend a complaint as a matter of right before a Defendant has filed an answer in

their case. Indeed, Defendants' position is both illogical and contrary to the FRCP; under Defendants' interpretation of CMO 8, no Plaintiff would ever have any opportunity to dismiss her case without prejudice or amend her complaint because the Answers to the Master Complaint are deemed filed in each individual case the moment it has been filed with the Court, thereby immediately ending *all* Plaintiffs' opportunity to dismiss her case or amend her complaint to correct any errors without the permission of all named defendants.

The problem also presents a practical problem for the Court. Instead of the dismissals without prejudice that are standard in MDL practice, each individual Plaintiff will have to file a motion with the Court for a dismissal without prejudice. It is not difficult to see that the Defendants' proposal will create a significant amount of unnecessary motion practice, wasting the Court's time and the time of all counsel.

To cure this issue, Plaintiffs request one of two things: (1) an amendment to CMO 8 that requires Defendants to serve individual answers (including affirmative defenses) to all individual Short Form Complaints within the time prescribed by the Federal Rules; or (2) entry of a Case Management Order to clarify and address this issue, which is attached as Exhibit A..

Plaintiffs believe that either of these solutions would present no prejudice to the Defendants and would simplify the burden on the Court and litigants. Simply, a plaintiff should be permitted to dismiss her case without prejudice and a plaintiff should be permitted leave to amend her complaint before the Defendants have served an answer (with affirmative defenses) to the claims she raises specifically in her Short Form Complaint.

Defendants' hyperbole that the "cost and consequences of without prejudice dismissals at this time in the litigation for Defendants is enormous" is completely without merit. There is far, far more cost – financially, as well as human resources – to the Defendants if they have to engage in the processes set forth in CMO 9 for resolving PFS issues and then have to file motions, respond to motions and argue motions on cases that the Plaintiffs are willing to simply submit a Dismissal without Prejudice on (something that would require no time or effort or cost from any of the Defense lawyers). The easiest, cheapest, and least time intensive solution to this issue is to enter the CMO attached as Exhibit A.

Instead, Defendants true aim appears to be to skew or otherwise manipulate the bellwether order and bellwether pool. As this Court will recall, the Defendants have requested that no bellwether pool be set until a certain percentage of PFSs are "substantially complete". The problem with the Defendants' delay tactics is it artificially skews the pool by inflating the denominator by including cases that are not under any circumstances going to be part of the first BW pool. This type of artificial manipulation of the pool should not be permitted.

Despite the above proposal and language being in the draft Joint Status Report since Tuesday, February 27, 2024 at 11am Central, Defendants inserted their arguments below for the first time at 4:15 pm Central the day this Joint Status Report is due. As such, Plaintiffs intend to utilize the process set forth by the Court at the January 25, 2024 status conference to respond to issues that were first raised by the Defendants at 4:30 p.m. on the date that this JSR was due. However, this issue was from last minute, Plaintiffs provided the Defendants with a draft of the proposed CMO on February 23, 2024 and invited a meet and confer. Defendants would not engage in that process, instead quibbling with Plaintiffs over whether procedurally the proposed CMO should be submitted with this JSR (Defendants' position) or filed as a separate Motion (Plaintiffs' Position). Plaintiffs subsequently agreed to include it with the JSR and, in the multiple drafts of the JSR that were traded between the parties, failed to raise any of the purported legal precedent for requiring that cases that are dismissed without prejudice to be refiled, if at all, only in this MDL. Because Defendants did not meet and confer or even raise this issue, or the case law, until the evening upon which the JSR is due, Plaintiffs have not been afforded the opportunity to review the case law and respond accordingly and as necessary prior to the filing of the final JSR. Accordingly, Plaintiffs will respond to these newly raised arguments by Wednesday, March 6, 2024 at 2:00 p.m.

Defendants' Position:

The Federal Rules expressly address the requirements for the filing and service of a complaint, the filing and service of an answer and the dismissal of cases before and after service of the complaint and the answer. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), a plaintiff has the right to dismiss his or her case without prejudice before the defendant answers or moves for summary judgment in the action. *Madison St. Props., LLC v. Marcus Corp.*, No. 3:20-cv-50471, 2022 U.S. Dist. LEXIS 197451, at *4 (N.D. Ill. Oct. 31, 2022). However, once a defendant answers the complaint, a plaintiff can only dismiss a case without prejudice with consent by all defendants who answered that complaint. It is axiomatic that, without consent by all defendants who answered the complaint, a plaintiff is not permitted to dismiss a case without prejudice. Per CMO No. 8 – which was negotiated between the Parties and entered without objection by the Court - Defendants' Master Answers to the Master Complaint “shall constitute their answer to any SFC to which the Master Complaint applies.” CMO 8 ¶III. Thus, for purposes of Rule 41, any Plaintiff must secure consent from each answering Defendant named in a case in order to obtain a voluntary dismissal without prejudice.

Despite the express language of Rule 41 and CMO 8, coinciding with the first two waves of Plaintiff Fact Sheets (“PFS”) coming due, a significant number of plaintiffs began requesting dismissals without prejudice or filed dismissals without prejudice on their own without securing consent from Defendants, even though a majority of Defendants answered the Master Complaint on January 12, 2024, prior to those requests and dismissals. Without knowledge of the lack of any request to and/or consent from Defendants, the Court granted

several dismissals without prejudice. Plaintiffs' pursuit of dismissals without prejudice will have long lasting consequences in this litigation, described below.

To date, approximately 40 plaintiffs have sought dismissal without prejudice,³ presumably to avoid having to submit a PFS, at least in most instances. In each case in which consent was sought, Defendants informed the requesting plaintiffs that Defendants could not agree to a dismissal without prejudice, but would agree to a dismissal with prejudice. While at first blush this may seem like a mere housekeeping issue, the repercussions are significant for docket management and for the bellwether process. As a matter of practicality, permitting a Plaintiff to dismiss her case without prejudice would allow the Plaintiff to circumvent MDL 3060 procedures and subvert its very purpose. A "without prejudice" dismissal would permit a Plaintiff to take a number of potential alternative avenues, including: (1) avoid the current deadline within which to serve a PFS, and refile the same case again in the MDL, which will have a new PFS deadline and the case will be outside the bellwether eligibility criteria; or (2) refile their case in any number of state courts, creating a separate ongoing litigation without the guidelines and PFS obligations already negotiated by the parties and entered by the Court in this MDL.

The cost and consequences of without prejudice dismissals at this time in the litigation for Defendants is enormous. It would limit the discovery Defendants are entitled to obtain from Plaintiffs, unfairly shape (and narrow) the potential bellwether selection pool, and take cases out of the MDL where those Plaintiffs chose originally to file their case. No plaintiff has agreed to a dismissal with prejudice to date, even where the stated purpose is because plaintiff "no longer desires to pursue her filed hair relaxer claim." (*See, e.g.*, Email from B. Smith dated February 22, 2024, attached as Ex. B).

Still, other Plaintiffs' counsel have taken a different approach and chosen to move to withdraw or stated their intent to withdraw as counsel in response to Defendants' denial of their request for a dismissal without prejudice. Defendants would not oppose such a motion and request that the Court allow the process to run its course. With or without counsel, the plaintiffs must comply with the Court's established PFS process, or the bellwether selection process will be put at risk. The parties have a lot of work to do in the coming months for that process to happen. Threats of withdrawal of counsel should not be allowed to interfere with the process set forth by the Court for MDL 3060, nor should they preclude dismissal with prejudice if a plaintiff fails to meet her discovery obligations.

Defendants object to Plaintiffs' proposal of entering a CMO to "to clarify and address this issue." Any CMO that would allow the filing of dismissals without prejudice without

³ This number does not include cases in which Revlon is the only named defendant. Given its unique posture, Revlon consented to dismissals without prejudice only as to Revlon. Given the requirements established to assert hair straightener claims by the Bankruptcy Court for the Southern District of New York, once a Plaintiff withdraws her complaint against Revlon, she is precluded from commencing a new action against Revlon unless the new action independently satisfies the plan's procedures for filing an action to pursue a hair straightening claim. Therefore, unlike other defendants in the MDL, a dismissal without prejudice as to Revlon is highly unlikely to result in a case being refiled against Revlon, whether in this MDL or in any state court.

explanation or showing of good cause would be inconsistent with the Court's prior order and likely to cause inefficiency and interfere with the processes and procedures already put in place for this MDL.

Here, the Court should require that, if a dismissal without prejudice is granted, the plaintiff may only be permitted to re-file their case within the MDL. *Cf. In re Paraquat Prods. Liab. Litig.*, No. 3:21-md-3004-NJR, 2022 U.S. Dist. LEXIS 166216, at *6 (S.D. Ill. Sep. 14, 2022) (denying the plaintiff's motion to dismiss without prejudice in part because "if this case were dismissed without prejudice, [the p]laintiff could simply refile her case in state court while evading the discovery requirements set by the undersigned"); *Mallory v. Rush Univ. Med. Ctr.*, No. 18 C 4364, 2020 U.S. Dist. LEXIS 209199, at *17 (N.D. Ill. Nov. 9, 2020) (conditionally denying dismissal without prejudice in part because "if [the plaintiff] dismissed her case and then refiled in Illinois state court, she would ensure that her case was not assigned to the Court and the magistrate judge currently overseeing discovery"); *Uhrlaub v. Abbott Labs.*, No. 14-CV-1062-NJR-SCW, 2017 U.S. Dist. LEXIS 75260, at *7-8 (S.D. Ill. May 17, 2017) ("Granting a dismissal without prejudice and allowing Plaintiffs to refile in a different jurisdiction would allow them to forum shop to avoid adverse rulings in motions filed by other [p]laintiffs whose claims have advanced farther in the litigation. . . . To avoid the prejudice caused by an unconditional dismissal without prejudice, if [p]laintiffs seek to reinitiate legal action in connection with or involving *in utero* exposure to Depakote, the action must be filed in the United States District Court for the Southern District of Illinois."). Such an order is fair given the expense Defendants have incurred negotiating the Plaintiff Fact Sheet and identifying deficiencies. *Kapoulas v. Williams Ins. Agency*, 11 F.3d 1380, 1385 (7th Cir. 1993) (no error in denying the plaintiff's motion to dismiss without prejudice in part because "discovery had already been well underway" and because the plaintiffs "intended to refile in state court"); *Williamson v. S.A. Gear Co.*, No. 15-CV-365-SMY-DGW, 2018 U.S. Dist. LEXIS 165421, at *2-3 (S.D. Ill. Sep. 26, 2018) (denying motion to dismiss without prejudice in part because the "[d]efendants ha[d] expended an enormous amount of time and resources defending against [p]laintiff's claims The parties ha[d] engaged in extensive discovery, including voluminous written discovery."). Defendants should not be required to bear the burden of answering another complaint, serving additional discovery, and identifying additional deficiencies merely because Plaintiffs are unwilling to comply with their discovery obligations as ordered by the Court.

Defendants object to the plaintiffs' proposed CMO that would allow the filing of dismissals without prejudice without explanation or a showing of good cause. The proposed CMO is inconsistent with the Court's prior orders and likely to cause inefficiency and interfere with the processes and procedures already put in place for MDL 3060.

3. **Defendant's Statement on Issues Impacting the Bellwether Process:**

As discussed at the January 2024 Case Management Conference, the litigation has progressed to a point in which Defendants are able to simultaneously focus on learning and obtaining as much information as possible about Plaintiffs' cases prior to the bellwether selection process, while they continue to respond to Plaintiffs' general company discovery requests. To that end, several issues have arisen in the first month of Plaintiff Fact Sheet (PFS) deadlines that have an impact on the docket at large, and significant implications for the Bellwether process. They are described by Defendants below.

In the process of preparing the JSR with Plaintiffs, it became clear that Plaintiffs miscomprehend the purpose of the information provided in Defendants' section. At the January 2024 status conference, the Court ordered Defendants to "report in the March JSR . . . the percentage of those fact sheets that are substantially complete. . . . If the percentage of PFS that is substantially complete falls below 65% in any JSR, Defendants are required to identify the deficient PFSs in a spreadsheet for that batch." Rather than work with Defendants to increase compliance with PFS deadlines they negotiated, Plaintiffs object to the Defendants providing the information. Moreover, Plaintiffs misrepresent below when and how Defendants informed them of the PFS and SFC issues. Defendants met and conferred with Plaintiffs' leadership, at Defendants' request, on Zoom video on February 27, 2024 at 1:30 PM. The specific purpose of that session was to address the SFC/PFS warning and deficiency letter data *even though no advance notice was required*. Defendants told plaintiffs leadership exactly what would be in Defendants PFS deficiency data and explained that they were informing Plaintiffs early "so that there were no surprises" in the JSR. Specifically, Defendants advised exactly what would be included in the data section (including 0% substantially complete fact sheets) and that they would populate the JSR with updated MDL Centrality data closer to the JSR deadline – data that *Plaintiffs* actually populate in to MDL Centrality with full realtime access. More importantly, after Defendants made this February 27th disclosure, Plaintiffs attempted to remedy missing fact sheets after the cutoff, forcing Defendants to re-tabulate data for the JSR the day before and day of the JSR deadline. Had Plaintiffs actually met court ordered deadlines, Defendants would not have been required to spend hundreds of hours on warning letters and deficiency notices. Defendants object to any Wednesday filings on these issues.

a. ***SFC Service:***

Defendants' Position:

Pursuant to Federal Rule of Civil Procedure 4(1), a plaintiff must serve the complaint within 90 days of filing. Case Management Order No. 7 [ECF 175] adopted a Short Form Complaint ("SFC"), and directed that "Plaintiffs *shall* file *and serve* a [SFC] in every

action that is directly filed in this MDL.” CMO 7 ¶II.A. (emphasis added). CMO No. 7 further provides that “[n]othing in this Order shall alter or otherwise suspend a Plaintiffs’ requirement to effectuate service on any Defendant . . . as required under Rule 4.” *Id.* ¶II.C. Case Management Order No. 8 [ECF 365] subsequently established a process to “expedite and streamline service of newly filed SFCs” whereby the listed Defendants identified a centralized “email address for the express purpose of accepting service of newly-filed SFCs.” *Id.* ¶IV.B. Thus, service on most defendants is as simple as sending an email, confirmation of which is provided through an automatically generated email response from each served defendant. Nonetheless, because Plaintiffs were concerned that clerical errors may lead to a complaint not being timely served per the federal rules, the parties specifically negotiated a provision in CMO 8 that provides an extra layer of protection to plaintiffs. While CMO 8 does not alleviate the obligation of plaintiffs to serve, the parties agreed after negotiations that a Defendant may not move to dismiss for failure to timely serve a complaint “unless and until that Defendant provides sixty (60) days written notice to plaintiff and provides an opportunity to effectuate service.” *Id.* ¶IV.E.

Thus, pursuant to Fed. R. Civ. P. 4 and CMOs 7 and 8, all Plaintiffs who filed an SFC prior to November 29, 2023 (*i.e.*, ninety (90) days ago as of the date of this JSR) should have effectuated service. However, Defendants know of about 192 SFCs filed on or before November 29, 2023 that have not been served on any Defendant, as of the filing of this JSR. Of the remaining cases filed on or before November 29, 2023, Defendants are aware of at least 509 cases in which at least one named defendant **has been** served while other named defendants **have not** been served. Pursuant to FRCP 4(1), each of these cases were due to be served on all named defendants by now. Moreover, about 1,251 (15% of the 8,133 cases filed on or before November 3, 2023) of SFCs that were due to be served pursuant to FRCP 4(1) by or before February 1, 2024 (cases filed on or before November 3, 2023), have not been served on at least one named defendant. That date is highly relevant to the parties and the Court, as it is the purported cut-off date for plaintiffs to be eligible for bellwether selection. The Court will recall that the eligibility requirement that an SFC be “filed” versus “filed and served” was one of the few issues briefed in advance of the January 25, 2024 CMC. Ultimately, at the time of the CMC and in an effort to make progress towards resolution of the outstanding issues, Defendants orally offered to withdraw their challenge to Plaintiffs’ insistence that eligible cases had to be those that were “filed and served.” *See* Minute Order [ECF 415]. At that time, however, Defendants did not and could not have appreciated that about 1,251 Plaintiffs would fail to timely serve their SFC on at least one defendant in contravention of the federal rules and this Court’s Orders, effectively taking those unserved cases out of the potential bellwether eligibility pool.

The implications for the bellwether process are considerable. Most importantly, there would be significantly fewer cases in the selection pool than was anticipated by the parties, or at least by the Defendants, at the time of negotiations, should the “filed and served” language remain in the ultimate case management order regarding the bellwether process.

Further, the limitation as to complaints being “served” confuses, rather than simplifies, the analysis of the docket, as this only appears now as a bellwether requirement. Plaintiffs, for example, whose cases were filed (but not served) before December 19, 2023 (the date of entry for CMO 9), must still complete a PFS, and Defendants must promptly review and identify deficiencies in those PFSs, even though, arguably right now, those cases would not be eligible for bellwether selection. (*Compare, e.g.*, CMO 9 ¶¶I.2(a), (b), (c) (setting deadlines for cases “filed, removed, or transferred” into MDL) with ¶I.2(d) (calculating due date for PFS from date of service of first Defendant for later filed SFCs). Accordingly, Defendants ask the Court to revisit this issue of “filed” versus “filed and served” prior to finalizing the bellwether selection process and deadlines.

Plaintiffs’ Position:

Defendants identified this issue for the JSR in in an initial draft of the JSR simply as “SFC Service.” However, Defendants failed to provide their position, as set forth in detail above, until the day before the JSR was due. As noted from the prior Case Management Conference and the Court’s Minute Order immediately following the conference (*see* ECF No. 415), the bellwether pool would be defined by plaintiffs with cases filed and served by February 1, 2024. Therefore, if cases were not filed and served, they were not in the bellwether mix and Defendants are trying nothing more to re-argue this agreed to point.

Nevertheless, what is most troubling, is that as of today, the day this report is due, the Defendants stated language in the draft JSR as of 4:15 pm Central on February 29, 2024 remained:

Thus, pursuant to Fed. R. Civ. P. 4 and CMOs 7 and 8, all Plaintiffs who filed an SFC prior to November 29, 2023 (*i.e.*, ninety (90) days ago as of the date of this JSR) should have effectuated service. However, Defendants are aware of at least XXX SFCs filed on or before November 29, 2023, that, as of the filing of this JSR, have not been served on any Defendant. Moreover, XXX of SFCs that were due to be served pursuant to FRCP 4(l) by or before February 2, 2024, have not been served. That date is highly relevant to the parties and the Court, as it is the purported cut-off date for plaintiffs to be eligible for bellwether selection. The Court will recall that the eligibility requirement that an SFC be “filed” versus “filed and served” was one of the few issues briefed in advance of the January 25, 2024 CMC. Ultimately, at the time of the CMC and in an effort to make progress towards resolution of the outstanding issues, Defendants orally offered to withdraw their challenge to Plaintiffs’ insistence that eligible cases had to be those that were “filed *and served*.” *See* Minute Order [ECF 415]. At that time, however, Defendants did not and could not have appreciated that XXX Plaintiffs would fail to timely serve their SFC in contravention of the federal rules and this Court’s Orders, taking those unserved cases out of the potential bellwether eligibility pool.

Most troubling is that Plaintiffs' counsel had no idea if this was two or twenty-two complaints not properly served. Defendants began issuing on February 16, 2024, for the first time since CMO 8 was entered, notices alleging deficiencies both with the SFCs and service of same. These notices ranged in detail and content but indicated Defendants' intention for the email and/or letter communication to take the place of their meet-and-confer obligations under CMO 8 and provided a 30-day window to respond before Defendants would move for dismissal for failure to cure the described deficiencies. It appears as if the timing of these notices is intentionally designed to further interfere with the upcoming and ongoing PFS deadlines as the timing overlaps with the February 20 and March 18 PFS deadline and the majority of the SFC Deficiency Warnings have been without merit. Plaintiffs' counsel are still working thru the hundreds of SFC and SFC service notices sent by Defendant in the past two weeks but have identified trends of voluntarily dismissed cases (no service needed), voluntarily amendment to dismiss a party (no service required on that defendant) or other service provided (via formal process rather than affidavit) receiving SFC deficiency notices. As Plaintiffs' counsel are still responding to the flurry of deficiencies, this information will continue to be updated as will the numbers being reported to the court.

Further troubling is Defendants' conduct in this regard is that they are manufacturing disputes for this JSR or they are withholding information until hours before this report is due. Thus they either knew the number of cases that had deficiencies and withheld them or they manufactured the argument to fill in the details later.... Whatever the case, these are all not valid arguments and moreover, should have been made previously at or in advance of the last Case Management Conference when they agreed to this provision.

But moreover, it should be of no moment because of the thousands of cases that have been filed and served, Defendants are seizing on some tiny fraction of cases that were not served by a deadline. This will have no impact on the selection of representative cases for bellwether work-up and ultimate trials in this MDL.

Further, Plaintiffs' counsel are revisiting an earlier proposal to revise the CMO 8 service process to align with the CMO 9 Plaintiff Fact Sheet service process and further utilize the Third Party Vendor. Discussions between the parties are ongoing and a draft Order will be submitted prior to the Case Management Conference on March 7, 2024.

b. *Defendants' PFS Update:*

Pursuant to the Court's minute order [Dkt. 415], Defendants report the status of the Plaintiff Fact Sheet ("PFS") discovery process as follows:

At the January 25, 2024 Case Management Conference discussion of the bellwether selection process, Defendants stated that potential trial pool cases should not be selected

until at least 75% of the PFSs due by June 2024 are “substantially complete.”⁴ In response, Plaintiffs raised a concern that Parties would not know whether that 75% threshold had been met until the proposed June 2024 deadline. Therefore, the Court ordered Defendants to report in the March Joint Status Report (“JSR”) the percentage of those PFSs that are substantially complete. A similar schedule applies to subsequent waves of PFS submissions. The Court further ordered that if the percentage of PFSs that are substantially complete falls below 65% in any JSR, “Defendants are required to identify the deficient PFSs in a spreadsheet for that batch.” Dkt. 415.

As of February 26, 2024, two waves of PFS deadlines and submissions have occurred—one on February 2, 2024 and one on February 20, 2024—and a few PFSs for plaintiffs who entered the MDL after December 19, 2023 have come due.⁵ CMO 9 [Dkt 343] at 2–3. Unfortunately, while every PFS submitted and reviewed to date has significant deficiencies such that none (0%) are without deficiencies that Plaintiffs need to cure. Data currently reflects that even by a conservative assessment, as of the date of this JSR, only about 12% (22 / 179) of PFSs that were due on either February 2 or February 20 can be considered substantially complete under CMO 9.

Notably, only 66% (796 out of 1,205) of all PFSs due were timely submitted for Defendants’ review, meaning 34% of PFSs due were not even submitted. Because only 12% (fewer than 65%) of the PFSs that were due are substantially complete, Defendants attach Exhibit C, which identifies the Plaintiffs with a deficient PFS. Plaintiffs’ lead counsel in this MDL were copied on every PFS warning and deficiency letter that was sent, so that they were aware in real-time of the status and these data points.

The next sets of PFSs are due on March 18th and April 17th. Additionally, plaintiffs who enter the MDL after December 19, 2023 have 45 days from the date of service to serve a substantially complete PFS. CMO 9 at 2–3. These deadlines are identified in the below table (and this table will be populated going forward in each JSR):

Date Case	PFS Due Date	Total PFSs Due	PFSs Received	Cases in which Any Authorizations	Cases in which Any PFS-	Total SFCs Served of at Least One
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⁴ Pursuant to Case Management Order 9 (“CMO 9”), Section I. 3, for a PFS to be “substantially complete,” the plaintiff must:

- 1) “Answer every question contained in the PFS to the best of his or her ability, providing as much information as he or she can, including by consulting non-privileged documents in his or her custody, possession, or control;”
- 2) “produce all Documents;”
- 3) “produce all applicable, completed, and executed authorizations;” and
- 4) “sign and date the declaration.”

⁵ This data is dynamic. Data contained in this report is current as of Monday, February 26, 2024. Defendants will have updated data available to the Court at the Case Management Conference.

Entered MDL			by Deadline	Received by Deadline	Responsive Documents Received by Deadline	Defendant in Cases with PFS Deadline ⁶
By Jun 30, 2023	February 2, 2024	217	162 (75%)	141 (65%)	148 (68%)	181/215 (84%)
Jul 1 – Aug 31, 2023	February 20, 2024	967	623 (64%)	568 (59%)	560 (58%)	878/924 (95%)
Sept 1 – Dec 19, 2023 for Plaintiffs with last names beginning A-L	March 18, 2024	3,903	31 (Deadline has not passed)	43 (Deadline has not passed)	39 (Deadline has not passed)	2,681/2,869 (93%)
Sept 1 – Dec 19, 2023 for Plaintiffs with last names beginning M-Z	April 17, 2024	3,214	14 (Deadline has not passed)	23 (Deadline has not passed)	22 (Deadline has not passed)	2,142/2,316 (92%)
After Dec 19, 2023	Within 45 days of service of SFC and receipt of the first defendant's responsive acknowledgement	21 with due dates Feb 4-26 (39 with due dates Mar 2-17; 92 additional without calculable due dates)	11 (52%)	9 (43%)	9 (43%)	21/21 (100%)

⁶ These numbers are calculated to the best of Defendants' understanding. Defendants have not included in this calculation cases wherein Revlon is the only named defendant and acknowledges there are at least 7 cases that are not accounted for within this data.

In accordance with CMO 9, a plaintiff who fails to serve a PFS or any authorizations will receive a Warning Letter. Once the Warning Letter is sent, the receiving plaintiff has thirty (30) days to cure the default and submit the PFS and/or required authorizations. That plaintiff also has thirty (30) days, running simultaneously, to meet and confer with the Designated Defendant for his/her case. This ability to cure any default was heavily negotiated by Plaintiffs and acts as an automatic thirty-day extension to serve a PFS with no repercussions for missing the deadline.

Once the plaintiff who received a Warning Letter cures the default, the Designated Defendant will assess the submitted PFS and materials for deficiencies. If the Designated Defendant identifies deficiencies in a submitted PFS or accompanying materials, the Designated Defendant will issue a Deficiency Letter. The plaintiff then has thirty (30) additional days to cure the deficiencies identified and meet and confer with the Designated Defendant.

Any plaintiff who fails to correct the identified issue within thirty (30) days of receiving a Warning Letter or Deficiency Letter and fails to serve a substantially complete PFS, required authorizations, and required records will be placed on a the “PFS Compliance Meet-and-Confer List.” This List will be provided to the Plaintiffs’ Compliance Liaison at least seven (7) days before the monthly PFS Compliance Meet-and-Confer, which includes Leadership Counsel and the individual Plaintiffs’ attorneys of record. The PFS Compliance Meet-and-Confer will be held at least ten (10) days prior to the next upcoming Case Management Conference. If the identified issues are not resolved, the violating plaintiff will be placed on the call docket to subject the plaintiff to appropriate court relief, including dismissal with prejudice.

A. Warning Letters

Defendants’ Position:

PFSs due on February 2, 2024

As to the first wave of PFSs due on Friday, February 2, at least 111 plaintiffs failed to serve a PFS and/or any authorization at all by the deadline. Defendants immediately issued Warning Letters for each of these 111 plaintiffs between Sunday, February 4 and Tuesday, February 21, with most going out on or before Tuesday, February 6. Plaintiffs have 30 days from those Warning Letters, or until March 5 through 22 to serve a PFS and/or authorizations and to meet and confer with Defendants. To date, other than requests for dismissals without prejudice, not a single plaintiff has met and conferred regarding a Warning Letter she received and only 14 plaintiffs have served a PFS and 22 plaintiffs have served at least one authorization after receiving a Warning Letter. To summarize:

- To date, Defendants served 111 Warning Letters on Plaintiffs who failed to submit a PFS and/or an authorization.
- 24 (22%) Plaintiffs who received Warning Letters have served a PFS and/or authorizations to date.
- 89 Plaintiffs who received a Warning Letter have not cured the identified default.

PFSs due on February 20, 2024

As to the second wave of PFSs due on Tuesday, February 20, at least 340 plaintiffs failed to serve a PFS and/or any authorization at all by the deadline.⁷ Defendants immediately issued Warning Letters for each of these 340 plaintiffs between Thursday, February 22 and Monday, February 26. Plaintiffs have 30 days, or until March 22 through 27⁸ to serve a PFS and/or authorizations and to meet and confer with Defendants. To date, other than requests for dismissals without prejudice, not a single plaintiff has asked to meet and confer regarding a Warning Letter s/he received. 7 plaintiffs have served a PFS and 68 plaintiffs have submitted at least one missing authorization. To summarize:

- To date, Defendants served 340 Warning Letters on Plaintiffs who failed to submit a PFS and/or an authorization.
- 69 (20%) Plaintiffs who received Warning Letters have served a PFS and/or authorizations to date.
- 271 Plaintiffs who received a Warning Letter have not cured the identified default.

Plaintiffs' Position:

To date, Defendants served Warning Letters on Plaintiffs who failed to submit a PFS and/or an authorization. The 30-day period for the February 2, 2024, PFS submission deadline is still running. Further, Defendants issued Warning Letters on cases (a) voluntarily dismissed prior to the deadline, (b) Class Representatives subject to the Master Class Motion practice and for whom the personal injury PFS is not applicable and (c) plaintiffs who had properly served their PFS and have not confirmed receipt or withdrawn the Warning Letter.

The reporting provided is premature. More specifically, the deadlines by which Plaintiffs' Counsel need to respond to the Warning Letters has not expired.

⁷ The original deadline for Plaintiffs to serve PFSs for this batch was February 17, which is a Saturday. The following Monday was a holiday. Defendants will only begin issuing Warning Letters to Plaintiffs who fail to serve PFSs and/or authorizations by February 20.

⁸ The deadline may fall on March 23 for some plaintiffs but this is a Saturday and the deadline will role to the following Monday, March 25.

No counsel have failed to produce amended PFS to resolve a Warning Letter and/or scheduled a meet-and-confer. Plaintiffs intend to utilize the process set forth by the Court at the January 25, 2024, status conference to respond to issues that were first raised by the Defendants on the date that this JSR was due. Defendants first contacted Plaintiff's counsel regarding the PFS "substantially complete" report at 10:55p.m. on February 22, 2024, requesting call on Monday or Tuesday the following week. During that scheduled meet-and-confer on Tuesday, February 26, 2024, Defendants indicated for the first time that a large volume of PFS were "substantially incomplete" and they would provide detailed numbers for the categories and degree of deficiencies later that evening. Instead, Defendants waited until the evening upon which the JSR is due to provide these details of non-compliance, skewed from their perspective. Plaintiffs have not been afforded the opportunity to review and respond as necessary prior to the filing of the final JSR. Accordingly, Plaintiffs will respond to these newly raised arguments by Wednesday, March 6 at 2:00 p.m.

B. Deficiency Letters

Defendants' Position:

PFSs due on February 2, 2024

As to the first wave of PFSs due on February 2, 162 plaintiffs served a PFS, but they were not *substantially complete* PFSs (including applicable authorizations and PFS-responsive documents), as defined by CMO 9. Defendants' review of these submissions is ongoing. To date, Defendants have issued 113 Deficiency Letters for this wave. Plaintiffs who received a Deficiency Letter from this batch have until March 14 through 27 to serve a substantially complete PFS and meet and confer with Defendants. To date, only one (1) plaintiff has participated in a meet and confer regarding a Deficiency Letter s/he received. Below are additional details regarding the February 2 wave of PFSs due:

- To date, Defendants have served 113 Deficiency Letters.
- Of these, 2 Plaintiffs have responded to schedule a meet and confer, in accordance with CMO 9.
- 0 have produced an amended PFS after receipt of a Deficiency Letter.
- 113 have not produced an amended PFS after receipt of a Deficiency Letter.

PFSs due on February 20, 2024

As to the second wave of PFSs due on February 20, only 568 (59% of the PFSs due) plaintiffs submitted a PFS and at least one authorization by the deadline for Defendants to analyze. Defendants' review of these submissions is ongoing. To date, Defendants have issued 21 Deficiency Letters for this wave of PFSs. Plaintiffs who received a Deficiency Letter from this batch so far have until March 20 through 27 to serve a substantially

complete PFS and meet and confer with Defendants. Below are additional details regarding the February 20 wave of PFSs due:

- To date, Defendants have served 21 Deficiency Letters.
- Of these, 0 Plaintiffs have responded to schedule a meet and confer, in accordance with CMO 9.
- 0 have produced an amended PFS after receipt of a Deficiency Letter.
- 21 have not produced an amended PFS after receipt of a Deficiency Letter.

Plaintiffs' Position:

The reporting provided is premature. More specifically, the deadlines by which Plaintiffs' Counsel need to respond to the Deficiency Letters has not expired.

No counsel have failed to produce amended PFS to resolve a Deficiency Letter and/or scheduled a meet-and-confer. Plaintiffs intend to utilize the process set forth by the Court at the January 25, 2024, status conference to respond to issues that were first raised by the Defendants on the date that this JSR was due. Defendants first contacted Plaintiff's counsel regarding the PFS "substantially complete" report at 10:55p.m. on February 22, 2024, requesting call on Monday or Tuesday the following week. During that scheduled meet-and-confer on Tuesday, February 26, 2024, Defendants indicated for the first time that a large volume of PFS were "substantially incomplete" and they would provide detailed numbers for the categories and degree of deficiencies later that evening. Instead, Defendants waited until the evening upon which the JSR is due to provide these details of non-compliance, skewed from their perspective. Plaintiffs have not been afforded the opportunity to review and respond as necessary prior to the filing of the final JSR. Accordingly, Plaintiffs will respond to these newly raised arguments by Wednesday, March 6 at 2:00 p.m.

C. Next Steps

Defendants' Position:

Based on the details outlined above, and assuming the outstanding PFSs are received, Defendants are expecting to have to review at least 4,465 PFSs and related materials in March alone—3,903 PFSs due in the next batch plus the number of plaintiffs who should be submitting PFSs and/or authorizations following a Warning Letter or Deficiency Letter from the February waves. This does not account for initial deficiency review of PFSs from the February waves that will continue into March, the 39 plaintiffs who entered the MDL after December 19, 2023 whose PFS due dates fall in March, or amendments and supplements Plaintiffs will make as a matter of course. This number will be further compounded in April when 3,214 Plaintiffs' PFSs are due. Additionally, Defendants will be conducting meet and confers with plaintiffs individually and then with the PLC before preparing a call list for the Court.

During a meet-and-confer with Plaintiffs' Leadership on February 27th, Plaintiffs suggested the solution to this issue is to allow non-compliant plaintiffs the opportunity to dismiss without prejudice. For the reasons discussed above, Defendants maintain this is not the appropriate solution to this MDL-wide problem and would allow an unfair skewing of the available bellwether pool. Importantly, having carefully negotiated a PFS process and bellwether protocol that would work together to provide Defendants and the Court with sufficient information to analyze the existing plaintiff pool and identify truly representative cases, allowing plaintiffs to self-select themselves out of the pool—and either allow them to re-enter the MDL at a later date or simply take their litigation elsewhere—would circumvent the purpose of the MDL.

The parties initially accounted for this compounding effect when they negotiated CMO 9 and contemplated a longer period of time to complete this significant deficiency review process. In order for Plaintiffs' truncated timing of the bellwether selection process to succeed, Plaintiffs must meet the PFS deadlines and provide substantially complete responses. Not only did Plaintiffs fail to meet the 75% threshold of substantial completeness of the PFSs, they only provided a PFS in 65% of the cases that have come due so far. The PFSs due in February are only a fraction of the total cases filed and in which PFS deadlines are approaching. If the February results are any indication of what is coming, Plaintiffs are unlikely to meet the threshold requirement to start the bellwether process in June 2024.

Plaintiffs' Position:

Plaintiffs object to “next steps” as this is a topic for a meet and confer, not a last minute JSR insert.

The volume of cases served on or before December 19, 2023, was known to all parties while negotiations for CMO 9 was ongoing. The volume of PFS to be completed by individual Plaintiffs and reviewed by Defendants – along with assorted deficiencies (whether minimal or raising to the level of interfering with substantial completeness) – has been a challenge to be addressed in the implementation order and was thoroughly addressed in negotiations for CMO 9. Revisiting it now is not useful except as a tool by Defendants in further delay.

Given the inaccuracies with the Warning Letter process and the number of PFS due – letters sent for dismissed cases (which should not be considered in the volume considered by this Court), it is unclear whether, with barely 30-days from the first deadline, the situation is as dire as Defendants have purposely described it. Plaintiffs disagree that they are unlikely to meet the threshold requirement to start the bellwether process in June 2024.

D. Degree of Deficiencies

Defendants' Position:

For context for the Court, the deficiencies noted by Defendants relate to critical information. For example, of the PFSs reviewed to date, 1 plaintiff failed to produce any PFS-responsive documents at all, 19% (34/179) failed to provide a validly signed declaration (required to accompany all PFS submissions), and 83% (148/179) submitted deficient authorizations (*e.g.*, names, addresses, and/or signatures missing; authorizations for identified providers not provided; *etc.*). Some Plaintiffs submitted completely blank PFSs and many contradicted themselves regarding what products are at issue, which defendants are relevant, and even what damages they are claiming.

Plaintiffs' Position:

As noted above, the time to respond to alleged deficiencies has not expired. The reporting provided is premature.

No counsel have failed to produce amended PFS to resolve a Deficiency Letter and/or scheduled a meet-and-confer. Plaintiffs intend to utilize the process set forth by the Court at the January 25, 2024, status conference to respond to issues that were first raised by the Defendants on the date that this JSR was due. Defendants first contacted Plaintiff's counsel regarding the PFS "substantially complete" report at 10:55p.m. on February 22, 2024, requesting call on Monday or Tuesday the following week. During that scheduled meet-and-confer on Tuesday, February 26, 2024, Defendants indicated for the first time that a large volume of PFS were "substantially incomplete" and they would provide detailed numbers for the categories and degree of deficiencies later that evening. Instead, Defendants waited until the evening upon which the JSR is due to provide these details of non-compliance, skewed from their perspective. Plaintiffs have not been afforded the opportunity to review and respond as necessary prior to the filing of the final JSR. Accordingly, Plaintiffs will respond to these newly raised arguments by Wednesday, March 6 at 2:00 p.m.

E. Related Issues

Defendants' Position:

No Automatic Warning Letters. As memorialized in CMO 9, the Parties negotiated an automatic Warning Letter that would be generated by the Third-Party Vendor, BrownGreer, through their MDL Centrality platform. In the event a plaintiff fails to serve a PFS or authorization by the applicable deadline, a plaintiff "[would] receive an *automated* Warning Letter from the Third-Party Vendor within thirty (30) days of the deadline to serve the PFS."⁹ But no such system is in place yet. Plaintiffs have thus far refused to agree to take the steps needed to provide the data BrownGreer needs to issue these Warning Letters, namely, the SFCs and registration by every Plaintiff whose case is

⁹ I.2.7(a)

pending in the MDL, which means Defendants must manually issue all Warning Letters. This has delayed the deficiency process and caused a significant tap on resources.

Plaintiffs' Position:

Plaintiffs received Defendants seven-page list of purported grievances the day before the JSR was due. Further, as noted in the attached, this was in large part missing salient details and specific numbers to elicit responses from Plaintiffs prior to 4:15pm Central on February 29, 2024. Plaintiffs have not been afforded the opportunity to review and respond as necessary prior to the filing of the final JSR. Accordingly, Plaintiffs will respond to these newly raised arguments by Wednesday, March 6 at 2:00 p.m.

The Plaintiff Leadership will be prepared to address as needed, but a few salient points:

1. All of these purported PFS “problems” have a means to be cured, addressed, or have cases dismissed under CMO 9 [the PFS CMO]. Indeed, Defendants agreed to the deadlines and the process of the PFS. It is astounding they now complain, yet they have their designed recourse under CMO 9. The Plaintiffs have no such recourse to compel stalled discovery from Defendants. Thus, their JSR missive is nothing more than an effort to complain since they have the means for addressing the alleged deficiencies and missing PFS’s.
2. The Defendants data is wildly inaccurate.
3. The purported deficiencies are wrong in many instances. Further, as noted above there is a process to address these deficiencies or missing PDFs under the CMO 9. The time for counsel to meet-and-confer to resolve these Deficiencies (many of which are contrary to the assertions made by both parties as to what would be raised as “deficiencies” at the November 17, 2023, Case Management Conference (See 11/17/2023 Transcript at pg. 20 thru 27) is still running.
4. Plaintiffs wanted to start the PFS process sooner, but Defendants delayed additional weeks due to selection of a vendor. The PFS Implementation Order could not be put in place until that decision was made and finalized. This is similar to the delays being implemented now with their unwillingness to agree to a Special Master for the ESI matters (relating to disputes due to Defendants’ failures in discovery).

Defendants appear adamant about delaying this litigation; first, in their own discovery obligations which has been atrocious and now, by claiming the individual plaintiff PFS, due less than three weeks ago, are somehow poised to delay this litigation. This is nothing more

than a manufactured argument that is not ripe yet but was clearly crafted in the days before the JSR was due in an effort to suggest to the Court that the bellwether process should be further delayed. This is underscoring the theme of delay-delay-delay.

4. **Newly Added Defendants:**

Plaintiffs' Position:

As requested by the Court during the January 25, 2024 CMC and memorialized in the minute order issued by the Court immediately following the conference (*see* ECF No. 415), Plaintiffs provide the following update on the status of recently named defendants.

Individual Plaintiffs have filed and will continue to file claims against manufacturers of hair relaxers that have led to their injuries. As a result, additional defendants have been and likely will continue to be named in this litigation. Plaintiffs' counsel, across hundreds of law firms across this nation, are bound to represent their clients and to properly name manufacturers and sellers of toxic hair relaxer products that are identified by their clients, irrespective of whether those manufacturers are currently listed on the Long Form Complaints. Through that process, the PLC has learned of numerous other manufacturers of hair relaxer products, and more defendants than just the larger well-known defendants who own a significant portion of the market share. These newly identified Defendants may own a smaller share of the market, but their products have still been used by a significant number of Plaintiffs.

During the pendency of this action, plaintiffs have named 47 additional Defendants who are not listed in the Amended Long Form Complaint or Short Form Complaint, these include: Advanced Beauty Systems, Inc.; Agave Products Inc.; Alfaparf Group; Alfaparf Milano; Arcadia Beauty Lab; Avlon International, Inc.; Beauty Holding, LLC ; Bronner Brothers Beauty Show Atlanta 2024, LLC/ Bronner/ Brothers Manufacturing Company; Bonner Brothers, Inc.; Carol Cosmetics d/b/a Posner Cosmetics; Chapman Products, Inc.; Chapman Products, Co.; Cheatham Chemical Co.; Cheatham Exporting Company, Inc.; Chemco Corporation; Croda Personal Care; Dr. Miracle's Inc.; Dudley Beauty Corp., LLC; Dudley Products, Inc.; Elucence; Essations, Inc.; European Beauty Concepts, LTD d/b/a Linage Italy; Hib, LLC d/b/a Brazilian Blowout; Hollywood Beauty Holdco, LLC; J. Strickland & Co. d/b/a Nature's Protein, Inc.; JBC Distributors, Inc.; John Paul Mitchell Systems; Kenra Professional, LLC d/b/a Elucence Products; Keratin Complex; Keratin Holdings, LLC; L'Oreal, S.A.; Luciano Brothers d/b/a Dominican Magic; Lustrasilk Corporation of America, Inc; Murray's Superior Products Company; Murrays Worldwide, Inc.; Naked by Essation; Nutrine, LTD; PDC Brands; Phytochem USA, Inc.; RNA Corporation; Roux Laboratories; She Bee Stinging, Inc.; Silk Elements, Inc.; Straight Request' Syntonics International LTD; Wella AG; Wella Operations US LLC; Phyto USA; and Zimmer, Inc.

The PLC is working diligently with Plaintiffs' firms to analyze the role of the named defendants in this litigation, and anticipates that it will seek to add the following newly named Defendants on an Amended Long Form Complaint: Roux Laboratories; Advanced Beauty Systems, Inc.; RNA Corporation; Wella Operations US, LLC; Wella AG; Murrays Worldwide, Inc.; John Paul Mitchell Systems,, and Bronner Brothers, Inc. The PLC also anticipates that additional defendants may be added to the LFC in the coming months.

The PLC also understands that the some or all of the firms that have advanced claims against the following Defendants will be dismissing those claims without prejudice at this time: Carole Cosmetics LLC d/b/a Posner Cosmetics; Chapman Products, Inc.; Chapman Products, Co.; Agave Products Inc.; Essations, Inc.; Naked by Essations, Inc.; Syntonics International, LTD; Luciano Brothers LLC d/b/a Dominican Magic; Nutrine, Ltd.; Kenra Professional LLC d/b/a Elucence; JBC Distributors Inc., d/b/a/ Sunny Isle; SHee Bee Stinging, Inc.; Dr. Miracle's Inc., and Straight Request. The PLC will continue to monitor newly filed SFC to determine if any additional Plaintiffs name these Defendants in the future and will be prepared to address that with the Court.

Prior to the March 7, 2024 Case Management Conference, the PLC will provide the Court with an updated report on the newly named Defendants.

Defendants' Position:

Beauty Holding LLC. On February 14, 2024, the Parties filed a joint stipulation requesting the Court to substitute entity “Sally Beauty Supply LLC” in place of the entity named “Beauty Holding LLC.”¹⁰

Silk Elements Inc. Sally Beauty Supply LLC’s counsel have contacted Plaintiffs’ counsel to meet and confer regarding this entity. The parties will likely submit a joint stipulation thereafter.

Overall. The recently added defendants take issue with their inclusion in this MDL proceeding and request the opportunity to address these issues with the Court. These defendants note that plaintiffs concede herein that these defendants “may own a smaller share of the market”. Indeed, these defendants take issue with plaintiffs’ as yet unsupported assertion that “their products have still been used by a significant number of plaintiffs”. These defendants have been listed – almost as an afterthought - in only a handful of Short Form Complaints, many of which have yet to be served.

These defendants are not identified in the Master Long Form or Short Form Complaints. Thus, there is a complete absence of any factual allegations made against them by plaintiffs. These defendants are not similarly situated to the larger defendants and they reject plaintiffs’ suggestion that they are subject to the “principles of joint and several liability”. And, they will certainly oppose the PSC’s anticipated request for leave to amend the Master Long Form and Short Form Complaints. Moreover, these defendants have been deprived of the opportunity to meaningfully participate in key procedural matters, including the development of the discovery process. Continued inclusion of these small defendants in this MDL is a matter these defendants wish to address with the Court.

Several cases against these defendants have not been served within the timeframe under Federal Rule of Civil Procedure 4(m). The plaintiffs appear to be using the 60-day grace period under Case Management Order No. 8 to their tactical advantage, knowing that a defendant cannot move to dismiss the cases against them for lack of service of process without first giving notice. To the extent any of the defendants remain in the MDL, they ask that the Court order that they be served promptly so that they can assess the scope and potential liability of the claims asserted against them. They also ask that, to the extent these cases are not included in the initial bellwether pool, the Court set a schedule for these plaintiffs to provide their Plaintiffs’ Fact Sheets.

Finally, Defendants note that Plaintiffs’ list is not exclusively made up of defendants with a “smaller share of the market.” Plaintiffs also fail to mention numerous retailers who have

¹⁰ The stipulation was filed on the dockets of the following cases: Case Number 1:23-cv-10469; Case Number 1:23-cv-09232; Case Number 1:23-cv-10945; Case Number 1:23-cv-11076; Case Number 1:23-cv-10818; Case Number 1:23-cv-10148; Case Number 1:23-cv-11779; Case Number 1:23-cv-10773; Case Number 1:23-cv-13331.

been named in the short form complaints. Defendants' statement here is provided on behalf of certain of the Defendants referenced in this section but does not purport to include or represent the position of any newly added defendants that have not been served or appeared before this Court.

5. **Discovery Issues:**

Plaintiffs' Position

1. **Discovery Served on Defendants to Date:**

Pursuant to the Court's Minute Order dated December 27, 2023 (ECF No. 301) and as discussed during the January 25, 2024 CMC and memorialized in the Minute Order issued by the Court immediately following the conference (ECF No.417), each Defendant is to finalize its productions in response to Plaintiffs' First Request for Production of Documents and to serve final verified responses to Plaintiffs' First Set of Interrogatories by February 29, 2024.

Furthermore, pursuant to the Court's instruction at the January 25, 2024 Case Management Conference, each Defendant is required to supplement their answers to outstanding Document Requests served by the Plaintiff by February 29, 2024. Defendants have been ordered by the Court to "Respond[] to these document requests and saying 1, 2, or 3: 'We have documents. They are on their way,' 'We don't have any documents,' 'We have documents. We're not turning them over for a variety of good reasons.'" Jan. 29, 2024 Tr. at 131. Those responses are due to the Plaintiffs on the date that this JSR is due; Plaintiffs anticipate that, upon receipt of responses that comply with the Court's directive, they will be in a position to understand whether a meet and confer is necessary and upon which topics and for which Defendants. Plaintiffs will be prepared to update the Court on the status of those responses at the March 7, 2024 status conference. If there are significant issues that arise with respect to any particular Defendants, the Plaintiffs may ask the Court for a discovery hearing in advance of the April 11, 2024 status conference to ensure that the pace of discovery is not unnecessarily slowed.

2. Pace of Discovery:

The following is a chart reflecting the number of documents produced by each defendant as of February 27, 2024. By 5:30 EST on February 29, 2024, several defendants had begun production of additional documents to the Plaintiffs. Because that coincided with the final preparation of this JSR, Plaintiffs have been unable to process and review the documents to determine how many additional documents Defendants produced on the final day for production per the Court's order. Plaintiffs will update this chart to reflect the February 29, 2024 document productions prior to the March 7, 2024 Case Management Conference to include those documents. In the meantime, Plaintiffs note that regardless of the size of those productions, Defendants have failed to produce

documents in the rolling fashion contemplated by the Court at the October 2, 2023 status conference (Oct. 2, 2023 Tr. at 73, lines 9-18).

Defendant	# Documents Produced As Of January 24, 2024	# of Documents Produced as of February 29, 2024	# of Documents Produced Last 34 Days
L'Oreal	1005	1005	0
Revlon	469	755	286
Avlon	286	287	1
Strength of Nature	374	408	34
House of Cheatham	18,445	18,446	1
Sally Beauty	1,401	1871	470
Luster	0	3	3
Namaste	743	6444	5701

One issue that is affecting the pace of production is the failure of certain defendants to comply with the provisions of CMO 4, and specifically the provision of CMO 4, which holds that “the use of a search methodology does not relieve a party from its obligations under Federal Rules 34 and 26 to produce responsive documents. . . “ *See CMO 4 at page 9.*

Furthermore, if any Defendant wishes to use some sort of search methodology to retrieve responsive and relevant documents, it must first comply with the provisions set forth in CMO 4, § VII. By the terms of that CMO, each Defendant must disclose the “search terms, keywords, date limitations, and custodians applied to the data searched” and then must engage in a meet and confer with the Plaintiffs within 14 days. Furthermore, if a Defendant wishes to use search terms, it is required to “provide information regarding search term hit reports recall and precision data for any predictive coding model, or other data points available to provide insight into the validity of the method used.” To date, numerous defendants have not complied with the provisions of CMO 4 in their responses to Requests for Production.

The Plaintiffs request that the Defendants be ordered to provide information required by CMO 4 at the time they provide discovery responses if indeed they intend to use search terms to search for an obtain information that is responsive to Plaintiffs requests.

The following is a list of Defendants to whom this issue applies:

L’Oreal has declined to respond to document requests unless and until a search term protocol is agreed between the parties. It has stated “L’Oréal will produce . . . documents . . . that it is able to locate using the search methodology agreed to by the parties following the meet and confer required by Case Management Order No. 4.” *See, e.g.*, L’Oreal USA’s Objections and Responses to Plaintiffs’ Third Set of Requests for Production of Documents Communications & Hair Relaxer-Related Litigation at Request Nos. 2-10, 12-17; *see also* L’Oreal USA’s Objections and Responses to Plaintiffs’ Second Set of Requests for Production of Documents (Agreements/Manufacturing), L’Oreal USA’s Objections and Responses to Plaintiffs’ Fifth Set of Requests for Production of Documents (Product Design), and L’Oreal USA’s Objections and Responses to Plaintiffs’ Sixth Set of Requests for Production of Documents (Regulatory/Post Market Surveillance).

Sally Beauty responded to numerous Requests by indicating that, subject to objections, it will conduct a “reasonable search” for documents. *See, e.g.*, Defendant Sally Beauty Supply Responses to Plaintiffs’ Third Set of Requests for Production at Requests 2-5, 8. It explains that, “[u]nless otherwise noted, where Sally Beauty states that it will conduct a reasonable search, it is agreeing to produce responsive, non-privileged documents to the extent such documents can be located...after conducting a search likely to identify reasonably accessible documents in accordance with the Court’s Orders...and after the Parties have negotiated and finalized their search and review protocols, including search terms and/or a TAR protocol[.]” *See, e.g.*, Defendant Sally Beauty Supply Responses to Plaintiffs’ Third Set of Requests for Production at Preliminary Statement, Para. 4; Objections to Definitions and Instructions, Para. 1.¹¹

Strength of Nature has indicated it will conduct a “reasonable search” for electronically stored information in response to certain document requests. *See e.g.* Defendant Strength of Nature, LLC’s Objections and Responses to Plaintiffs’ Third Request for Production of Documents at Request Nos. 1, 3-6, 8-10. It states that, “[b]y agreeing to conduct a ‘reasonable search’ in its specific objections and responses, Strength of Nature agrees to meet and confer with opposing counsel pursuant to the ESI Order regarding the appropriate scope, custodians, search terms and/or other reasonable methods to target responsive documents...” *See, e.g.*, Defendant Strength

¹¹ Plaintiffs herein cite only one set of discovery as an example from this Defendant. However, this Defendant provided a similar response across numerous sets of discovery.

of Nature, LLC's Objections and Responses to Plaintiffs' Third Request for Production of Documents at p. 2.¹²

Namasté also has agreed to conduct a "reasonable search" and potentially produce documents that are discovered. It explains that "where Namasté states that it will conduct a reasonable search, it is agreeing to produce responsive, non-privileged documents "to the extent they can be located after a search reasonably likely to identify reasonably accessible documents is [sic] conducted in accordance with the Court's Orders regarding the Qualified Protective Order, the Stipulated Protocol for Producing Documents and Electronically Stored Information, and the Agreed Confidentiality, Privilege and Clawback Order[.]" See, e.g, Defendant Namasté Laboratories, LLC's Response to Plaintiffs' Third Request for Production at pp. 1-2.¹³

While Defendants have attempted to cast this issue as an ESI issue subject to Magistrate Finnegan's authority, Plaintiffs disagree. First, Plaintiffs understand that this Court referred issues related to Plaintiffs' "ESI discovery and related disputes." (See ECF No. 301). The appointment was borne out of a series of disputes that the parties had concerning discovery about the various ESI issues unique to each Defendant, including 30(b)(6) depositions notices that were served more than seven months ago and Plaintiffs Second Set of Interrogatories to Defendants, served as required by the Court on September 15, 2023. The current disputes issue does not involve that discovery.

Furthermore, Plaintiffs believe that Your Honor is the appropriate jurist to decide issue dealing with the substance of discovery requests. Indeed, CMO 4 explicitly provides:

Except as specifically set forth herein, this Order does not: (a) alter or affect the applicability of the Federal Rules of Civil Procedure ("Federal Rules") or any Local Rules of the District Courts ("Local Rules"), as applicable; (b) address, limit, determine, or affect the relevance, discoverability, or admissibility as evidence of any document or ESI, regardless of whether the document or ESI is to be preserved, is preserved, or is produced; or (c) alter or affect the objections to discovery available under the Federal Rules.

¹² Plaintiffs herein cite only one set of discovery as an example from this Defendant. However, this Defendant provided a similar response across numerous sets of discovery.

¹³ Plaintiffs herein cite only one set of discovery as an example from this Defendant. However, this Defendant provided a similar response across numerous sets of discovery.

Plaintiffs continue to believe that those issues – including the issues that have been raised herein – continue to come before Your Honor in discovery disputes or through the Case Management Conference process. Indeed, throughout this litigation, the obligation to provide substantive answers to Requests for Production served pursuant to the Federal Rules of Civil Procedure has historically been reserved for this Court. Taking the Defendants argument to its logical conclusion, very few, if any, discovery disputes would be within the purview of this Court; instead, Defendants could divest this Court of ever addressing a discovery dispute by simply cavalierly tossing around the term “ESI,” as they appear to be doing here.

Defendants’ Position:

Pursuant to ECF No. 301, ESI discovery and related disputes have been referred to the Magistrate Judge Finnegan who has stated her intention to discuss the parties’ disputes over ESI search methodologies at a March 7, 2024 hearing. However, since Plaintiffs raised this issue in the JSR to this Court, Defendants are providing a response here.

The parties spent months negotiating CMO No. 4, Stipulated Protocol For Producing Documents and Electronically Stored Information (“ESI Protocol Order”). (ECF No. 109) In Paragraph VII of the ESI Protocol Order, the Parties and the Court specifically address Search Methodology for ESI, providing that:

“[p]rior to a Party using a search methodology (if any) to identify documents for production, the search terms, keywords, date limitations, and custodians applied to the data searched will be disclosed by the Producing Party to the Requesting Party. Within fourteen (14) calendar days of such disclosure, the Parties must meet and confer regarding such terms, custodians and date culling per VII (A) below.”

(ECF No. 109 at p. 11.) The ESI Protocol Order further provides that if the parties cannot reach agreement on a search methodology, they may submit the dispute to the Court or its designee for resolution. (*Id.* at p. 12.) This is the very dispute currently before Magistrate Judge Finnegan. The Parties are seeking assistance because the Plaintiffs have not agreed on any of the Defendant’s proposed search methodologies and final search term lists are still being negotiated.

Plaintiffs, however, are now taking the unjustifiable position that Defendants must produce documents prior to reaching agreement on “the use of search terms.” This is in direct conflict with the ESI Protocol Order and the parties’ recent discussions with the Court. For example, during the

January 25, 2024 hearing, Plaintiffs' counsel contended that Defendants' responses to Requests for Production Sets Two through Seven contained only objections. Counsel for Defendant Sally Beauty pointed out that this was incorrect, that most (if not all) defendants had responded substantively to the requests, and informed the Court that the parties were still meeting and conferring in an attempt to come to an agreement about the methodology to search for documents. (Jan. 25, 2024 Tr. at 128:10-16.) Plaintiffs' counsel responded that "[t]he search term issue, your Honor, is something that is separate from the requests – that we have under the FRCP." (*Id.* at 129:15-18.) The Court then noted, "That's ESI. That's ESI" and stated the following:

But for document requests *that aren't about ESI*, you have to say, "We don't have any documents," "We're objecting and we don't have any documents," or "We're objecting and we're producing documents with our objection," or "We're objecting, and because of our objections, we're withholding documents. You have to disclose information: "We don't have any," "Here they are," "We're withholding." It's three choices."

(*Id.* at 129:21-130-4) (emphasis added). Plaintiffs' counsel agreed: "And that's, your Honor, what my ask is, is if you can give a date for us to get that." (*Id.* at 130:5-6.) The Court then set February 29, 2024 as the date for Defendants to provide responses consistent with the Court's "three choices" to non-ESI requests. (*Id.* at 131:11-13.)

Most, if not all, Defendants have already complied with the Court's Order and have responded to Plaintiffs' pending Requests for Production notifying Plaintiffs whether they intend to search for and produce non-privileged, responsive documents or whether they are standing on their objections and refuse to search for responsive documents. And as Sally Beauty Discusses above, some Defendants have already begun producing documents responsive to these Request for Production. Obviously, until the parties reach agreement on a search methodology and Defendants complete their review and production, they cannot possibly know if they "don't have any" responsive documents. Accordingly, supplemental responses are not required under the Court's Order barring the outcome of a meet and confer conference between the parties.

Defendants are, uniformly, engaged in significant discovery efforts in response to Plaintiffs seven sets of voluminous and often redundant requests for production. For some Defendants, that includes efforts to identify

documents responsive to specific requests for production using searches tied to those specific requests. But Plaintiffs are still not satisfied and, for the first time, contend that Defendants must also produce a significant volume of documents before agreeing to a search methodology and reviewing ESI for responsive material while, at the same time, objecting that some Defendants have, in fact, produced ESI materials in their productions. For support, Plaintiffs try to rely on language in ESI Protocol Order stating that:

[t]he use of a search methodology does not relieve a party from its obligations under Federal Rules 34 and 26 to produce responsive documents, and accordingly documents or ESI known to be responsive to a discovery request or otherwise subject to production or relevant to the claims or defenses shall be produced without regard to whether it was returned by any search methodology used in accordance with this Order or otherwise agreed upon by the parties unless there is a claim for privilege.

(ECF No. 109 at pp. 10-11.) Defendants have complied and fully intend to comply with this simple proposition—that responsive documents that Defendants locate (regardless of search methodology) cannot be withheld simply because they do not hit a search term.

But that is not the issue here. The issue is that the parties have not agreed, often despite efforts, to the search methodologies to be used by each of the Defendants. Each Defendant is situated differently in this regard. Some have proposed Technology Assisted Review (TAR) in lieu of search terms, while others have proposed the use of search terms. In some instances, Plaintiffs provided close to 600 search terms, most without any modifiers (such as product names), including terms like the name of the Defendant, “cosmetic,” and “scalp.” Defendants are hopeful that the Magistrate can resolve the parties’ disputes so that they can move forward with their review of ESI.

Plaintiffs’ demand that Defendants both produce a significant volume of ESI *before* they even narrow the universe of documents to a reviewable set through a search methodology but also not produce any documents until a search methodology has been agreed to by Plaintiffs is both contrary and unworkable. It does nothing more than confuse the issue and increase the burden and workload on Defendants in a way that is neither reasonable nor productive. Defendants have produced, and will continue to produce, documents responsive to the Plaintiffs’ Requests as those documents are reviewed and made available for production, but will not be able to make

significant progress here or complete their productions until they each have a methodology to which Plaintiffs do not object.

L'Oréal USA Response:

Per the Court's order at the January 25, 2024 Case Management Conference, on February 29, 2024, L'Oréal USA served supplemental responses to Plaintiffs' Second through Seventh Sets of Document Requests, which consisted of 148 document requests. For each request, L'Oréal USA provided a two-part response, one for non-ESI and one for ESI. As to non-ESI, consistent with this Court's instructions during the January 25, 2024 hearing, L'Oréal USA provided one of the following three responses: (1) responsive documents are being produced; (2) responsive documents have not been located; or (3) L'Oréal USA stands on its objections and is not producing documents. As for ESI, which Plaintiffs' counsel acknowledged was a separate issue, L'Oréal USA provided one of two responses: (1) Documents will be produced pursuant to CMO No. 4 or (2) L'Oréal USA stands on its objections and is not producing documents. Once the parties reach agreement on the protocol to be used under CMO No. 4 and L'Oréal USA conducts its ESI searches, it will supplement its responses to state whether responsive ESI has been located and is being produced.

Sally Beauty Response: Sally Beauty was quite surprised to see this last-minute insertion in the JSR because:

- Plaintiffs never mentioned this purported failure to comply with CMO 4 to Sally Beauty before inserting this paragraph into the JSR late in the day on February 28.
- Plaintiffs met and conferred with Sally Beauty earlier on February 28, but Plaintiffs did not even mention this issue.
- During that meet and confer, Sally Beauty expressly told Plaintiffs that Sally Beauty was producing the next day (on February 29) a number of documents responsive to RFP Sets 2-7
- Sally Beauty has, in fact, made that production (*see* section concerning Sally Beauty discovery responses below).
- Moreover, negotiation of search and review protocols is proceeding, and any delay has been caused by Plaintiffs, not Sally Beauty. On December 12, 2023, Plaintiffs sent Sally Beauty a list of 537 overbroad search terms, the vast majority of which had no modifying or limiter terms (such as “within 5” of another term), including “Sally Beauty”. On December 26, 2023, Sally Beauty informed Plaintiffs, pursuant to Section VII(C) of CMO 4, that the search terms were overbroad and unworkable. As a result, instead of using search terms, Sally Beauty intends to use Technology Assisted Review (“TAR”) to locate responsive documents. On December 29, 2023, Sally Beauty sent Plaintiffs a letter with more detail about its intended use of TAR.
- The parties met and conferred on January 5, 2024. At that time, Plaintiffs agreed that this was a good case for TAR, but requested an agreed-upon TAR Protocol. Plaintiffs’ counsel also agreed to send a narrow set of search terms that Sally Beauty would try to incorporate into the draft TAR Protocol. When Plaintiffs still had not sent those proposed narrow search terms a month later, Sally Beauty sent a draft TAR Protocol to Plaintiffs on February 7, 2024, prior to the parties’ next scheduled meet and confer. Plaintiffs, however, canceled that meet and confer.
- On February 19, Plaintiffs finally sent Sally Beauty proposed revisions to the TAR Protocol and proposed search terms to use in conjunction with TAR. However, the search terms were not narrowly tailored, as had been promised. Sally Beauty requested a meet and confer regarding TAR on February 28, but Plaintiffs were unavailable for that discussion. Sally Beauty is continuing to review Plaintiffs’ proposed redlines to the TAR Protocol and proposed search terms, and intends to respond in writing next week. In short, Sally Beauty has been moving the TAR discussions forward and is

in no way delaying production or otherwise slowing the pace of discovery.

There is no current dispute as to Sally Beauty.

Luster Response: Plaintiffs are incorrect regarding the number of documents that Luster has produced. As of January 24, 2024, Luster had produced 2,764 documents. As of February 29, 2024, Luster had produced 8,580 documents.

Namaste Response: Plaintiffs are incorrect regarding the number of documents that Namaste has produced. As of February 29, 2024, Namaste has produced 12,750 documents.

a. **Defendants' Affirmative Discovery to Plaintiffs:**

Defendants' Position:

On August 4, 2023, Defendants served Plaintiffs with Defendants' First Set of Interrogatories to All Plaintiffs, which consisted of fourteen (14) separate interrogatories with no subparts. Thereafter, Defendants and Plaintiffs engaged in extensive discussions concerning when and how individual Plaintiffs would respond to the requested discovery. Ultimately, those discussions revolved around the issue of including the interrogatories in the Plaintiff Fact Sheet (PFS) that the parties were concurrently negotiating. The final PFS, which was attached as Ex. A to Case Management Order No. 9 entered by the Court on December 19, 2023, included only seven (7) of the fourteen (14) interrogatories Defendants served on August 4, 2023.

Defendants now seek to have Plaintiffs answer the interrogatories that were deleted from the PFS. On February 23, 2024, Defendants contacted Plaintiffs asking to re-engage on the unanswered interrogatories. Defendants proposed setting a time to meet and confer regarding when and how individual Plaintiffs would respond to the discovery. To date, Plaintiffs have not responded to Defendants' request. Defendants will be prepared to discuss the outstanding discovery at the March 7, 2024 conference with the Court.

Plaintiffs' Position:

Pursuant to CMO 6, to accomplish any necessary discovery in the individual (non-bellwether) cases, the Parties were instructed to meet and confer regarding a proposed Plaintiff Fact Sheet ("PFS") that would be completed by each individual Plaintiff. *See e.g.*, CMO 6. Plaintiffs did so in good faith and the resulting PFS (which is over 100 pages long) reflects the results of the parties' extensive negotiations—including those relating to Defendants' First Set of Interrogatories. Pursuant to CMO 9, the negotiated

PFS was to be answered “*in lieu of interrogatories* and requests for production of documents that Defendants otherwise would have propounded, other than additional discovery contemplated in future phases of litigation and subject to the Court’s approval of same.” CMO 9 at pp. 4-5 (emphasis added).

Further, CMO 9 already addresses the contemplation of additional discovery that may be needed as to *bellwether plaintiffs only*, not all plaintiffs who have filed cases in the MDL. “The parties shall negotiate additional document requests in Phase II [bellwether plaintiffs] that may include a plaintiff and/or defense fact sheet. These may include, but not be limited to, social media and other ESI productions from individual plaintiffs and geographic marketing information production from defendants to the extent it is not produced in general discovery.” CMO 9 at p. 12.

At the time the PFS was being negotiated, Plaintiffs were clear that they would not agree to both answering the PFS and additional interrogatories. Plaintiffs especially objected to responding to Section X of Defendants’ First Set of Interrogatories—which contains premature and unduly burdensome contention interrogatories, interrogatories directed at counsel (and not the plaintiff), and interrogatories directly calling for the disclosure of information protected under the attorney-client privilege and the work product doctrine. Pursuant to those negotiations relating to the PFS, Defendants agreed to withdraw the interrogatories at issue. The claims for more discovery should be rejected or if served will be met with a Protective order

Plaintiffs were willing to brief the impropriety of these interrogatories, that sought discovery from lawyers, at the time that they were withdrawn by Defendants—and remain willing to do so. But given Defendants’ last-minute insertion of this issue into this Joint Status Report, Plaintiffs will more fully respond Defendants arguments in writing by Wednesday, March 6, 2024 should that be necessary.

b. **Defendant Discovery Status:**

Revlon:

The parties continue to meet and confer on outstanding discovery issues, the PSC provides the following update.

Initial Set of Interrogatories: The PSC served their initial sets of interrogatories to Revlon on July 11, 2023. In accordance with the Court’s Minute Order dated July 14, 2023 (*see* ECF No. 161), Revlon provided initial responses to the Product Identification interrogatories (Interrogatory Nos. 2 and 3) on July 18, 2023 and provided verified responses on July 21, 2023.

Revlon provided responses to the remaining interrogatories on September 20, 2023. Revlon has since amended its Responses to Interrogatories 1, 3, 4, and 5-11 on September 8, September 12, August 31, and December 6, 2023.

Second Set of Interrogatories: Pursuant to the Court's Minute Order dated October 2, 2023, (See ECF No. 258), the PSC served interrogatories related to ESI on October 5, 2023. Revlon provided its responses on October 19, 2023. The parties have met and conferred twice regarding the sufficiency of Revlon's responses to the ESI Interrogatories. Revlon supplemented its responses on January 19, 2024. On February 13, 2024, plaintiffs wrote to Revlon noting certain ESI interrogatory requests plaintiffs believe still require dates of use, which Revlon is currently reviewing and assessing. The parties intend to continue the dialogue on any outstanding issues.

Initial Set of Document Requests: The PSC served their initial sets of Requests for Production of Documents to Revlon on July 11, 2023. In response, Revlon, began producing documents beginning on September 20, 2023.

Revlon indicated at January 12, 2024 meet and confer that their rolling production was ongoing and that they intended to provide documents until the Court's February 29, 2024 deadline.

Document Production: Revlon has informed Plaintiffs that they will continue rolling productions up until the Court's February 29, 2024 deadline.

The PSC sent to Revlon on November 7, 2023, a list of potential ESI custodians from whom they would like to collect files. On January 19, 2024, Revlon provided plaintiffs with a preliminary list of ESI custodians. Revlon supplemented the ESI custodians list on February 23, 2024. The parties will continue to meet and confer.

Rule 30(b)(6) Depositions:

Corporate Organization: Deposition of Laurie Sammon was taken on October 31, 2023. Outstanding issues from that deposition include the roles and functions of individuals who work with hair relaxer products. Revlon indicated that they would consider providing that information.

Product ID: Deposition has been suspended pending production of sufficient product identification materials. Production is ongoing through February 29, 2024. Plaintiffs will evaluate after that date whether this deposition needs to go forward.

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

L'Oréal USA:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to L'Oréal USA, Inc., L'Oréal USA Products, Inc., and Softsheen Carson, LLC (collectively "L'Oréal USA") on June 27, 2023. In accordance with the Court's Minute Order dated July 14, 2023

(See ECF No. 161), L'Oréal USA provided initial responses to the Product Identification interrogatories (Interrogatory Nos. 2 and 3) on July 18, 2023, then verified responses on July 21, 2023. L'Oréal USA provided responses to the remaining interrogatories on August 21, 2023 and amended responses on September 11, 2023, November 17, 2023 and February 29, 2024.

Second Set of Interrogatories: The PSC served additional interrogatories related to ESI on September 15, 2023. L'Oréal USA provided their response on October 19, 2023. The PSC and L'Oréal are at an impasse as it relates to L'Oréal providing information about their computer systems over the operative time period relevant to this litigation.

Initial Set of Document Requests: The PSC served their initial set of Requests for Production of Documents to L'Oréal USA on June 27, 2023. L'Oréal USA provided responses on August 21, 2023 and has produced responsive documents.

Document Production: L'Oréal USA represents that it has substantially completed its production of documents responsive to Plaintiffs' First Set of Requests for Production of Documents and First and Second Sets of Interrogatories. This production includes, but is not limited to, product labels, instructions for use, formulas, lab notebooks, patents, testing and education materials for both hair relaxers products as well as component products sold in retail kits with a hair relaxer product, or required by the label of a professional hair relaxer product. L'Oréal USA also has produced standard operating procedures, protocols, guidelines, network map, organizational charts, insurance policies, document retention policies and documents from which Plaintiffs can identify the products sold alongside the hair relaxer products within the hair relaxer kits. Plaintiffs also incorrectly state the number of documents produced by L'Oréal USA. To date, L'Oréal USA has produced 18,179 documents totaling 170,223 pages.

Rule 30(b)(6) Depositions:

Corporate Organization: Deposition of Anne Garrison was taken on September 13, 2023. A follow-up deposition of Kent Weiss was taken on December 14, 2023.

Product ID: Deposition of Noah Yung-Hung was taken on September 12, 2023.

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Avlon Industries, Inc.:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to Avlon Industries, Inc. on June 27, 2023. In accordance with the Court's Minute Order dated July 14, 2023 (See ECF No. 161), Avlon Industries, Inc provided initial responses to the Product Identification interrogatories (Interrogatory Nos. 2 and 3) on July 18, 2023, then verified responses on July 21, 2023. Avlon Industries, Inc. provided responses to the remaining interrogatories on August 21, 2023. Avlon Industries, Inc., provided supplemental responses to Interrogatories Nos. 4-11 on September 26, 2023. Avlon Industries, Inc. provided its second

supplemental responses to the Interrogatories on November 13, 2023. Avlon Industries, Inc. provided its third supplemental responses to the Interrogatories on December 15, 2023.

Second Set of Interrogatories: Pursuant to the Court's Minute Order dated October 2, 2023, (*See* ECF No. 258), the PSC served interrogatories related to ESI on October 5, 2023. Avlon provided their response on October 19, 2023. Plaintiff has identified some deficiencies as it relates to Avlon's responses to these ESI Interrogatories. Plaintiff anticipates those deficiencies will be addressed with the magistrate at the appropriate time.

Initial Set of Document Requests: The PSC served their initial set of Requests for Production of Documents to Avlon Industries, Inc. on June 27, 2023. Avlon Industries, Inc. produced documents in response beginning on August 21, 2023. Avlon Industries, Inc. provided its second supplemental responses to the Requests for Production on November 13, 2023. At that time, Avlon also indicated that its production was substantially complete.

Avlon Industries, Inc. provided its third supplemental responses to the Request for Production on December 15, 2023.

Despite its representation in November 2023 that its production was substantially complete, Avlon has indicated that its productions have been made based on the document source(s) it has reviewed and located to date. However, Avlon has not yet reviewed/categorized/produced approximately 294 banker's boxes of materials and therefore has not produced responsive materials that may appear in those banker's boxes. Avlon also has not reviewed custodial files nor has it produced 220 lab books that were discovered. Avlon indicated that it will produce responsive information once the lab books are digitized, and the parties have reached agreement on search terms.

Avlon reports to Plaintiff that it continues to search for historic testing and research information on its hair relaxers in both paper and electronic format and expects to produce more responsive material once its 294 boxes of uncategorized documents are scanned and search terms are agreed upon by the parties. Originally, Avlon indicated that it will complete its review of these two document sources in response to the first set of discovery by April 2024. However, it is Plaintiffs' understanding that Avlon understands it must comply with the Court's order to finalize its production by February 29, 2024.

Defendants' Position: After collecting documents for production, Avlon has been able to narrow its original estimate of 220 lab books. Avlon has currently located 114 lab books that may be responsive to the Plaintiffs' second set of discovery requests. Avlon will produce those portions of the lab books that have been determined to be responsive to the second set of discovery requests and have been appropriately designated given their sensitive and proprietary nature. Avlon is also in the process of confirming whether additional lab books exist.

Document Production: To date, Avlon Industries Inc. has produced 5,383 documents, totaling 22,585 pages. The meet and confer process is on-going.

Rule 30(b)(6) Depositions:

Corporate Organization: Deposition scheduled for April 12, 2024.

Product ID: Deposition scheduled for April 10, 2024.

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Beauty Bell Enterprises and House of Cheatham, LLC:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to Beauty Bell Enterprises and House of Cheatham, LLC on June 27, 2023. In accordance with the Court's Minute Order dated July 14, 2023 (*See* ECF No. 161), Beauty Bell Enterprises and House of Cheatham, LLC provided initial responses to the Product Identification interrogatories (Interrogatory Nos. 2 and 3) on July 18, 2023, then verified responses on July 21, 2023. Beauty Bell Enterprises and House of Cheatham, LLC provided responses to the remaining interrogatories on August 21, 2023.

House of Cheatham, LLC also submitted amended responses to the initial interrogatories, including the Product Identification interrogatories, on October 17, 2023.

Second Set of Interrogatories: Pursuant to the Court's Minute Order dated October 2, 2023, (*See* ECF No. 258), the PSC served interrogatories related to ESI on October 4, 2023. Beauty Bell Enterprises and House of Cheatham, LLC provided their response on October 19, 2023. The parties met and conferred on Friday, February 23, 2024. House of Cheatham will aim to supplement its responses on or before February 29, 2024.

Initial Set of Document Requests: The PSC served their initial set of Requests for Production of Documents to Bell Beauty Enterprises and House of Cheatham, Inc on June 26, 2023. Beauty Bell Enterprises and House of Cheatham, LLC responded to these requests and began producing documents on August 21, 2023. House of Cheatham, LLC also submitted amended responses on October 17, 2023.

Document Production: To date, Beauty Bell Enterprises has not produced any documents because it maintains it has no responsive documents in its possession. House of Cheatham, LLC has produced approximately 23,800 documents totaling 79,048 pages. During the parties' February 23, 2024 meet and confer, House of Cheatham agreed to supplement its discovery responses and provide Bates Numbers that correlate to the documents responsive to each Request. Additionally, the parties discussed confidentiality designations and will amend its designations to remove confidentiality for any final versions of documents available to the public.

On November 8, 2023, the PSC sent to Bell Beauty Enterprises and House of Cheatham, LLC, a list of potential ESI custodians from whom they would like to collect files. The parties briefly discussed the list on November 14, 2023 and in more detail on Friday, February 23, 2024. House of Cheatham is meeting with its ESI personnel to respond as to its proposed response to Plaintiffs' lists of custodians and key words.

Rule 30(b)(6) Depositions:

Corporate Organization: Depositions of Pete Stanca and Pankaj Talwar were taken on October 18, 2023.

Product ID: N/A

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Namasté Laboratories LLC:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to Namasté Laboratories LLC on June 27, 2023. In accordance with the Court's Minute Order dated July 14, 2023 (*see* ECF No. 161), Namasté Laboratories LLC provided initial responses to the Product Identification interrogatories (Interrogatory Nos. 2 and 3) on July 18, 2023 and provided verified responses on July 21, 2023. Namasté Laboratories LLC provided responses to the remaining interrogatories on August 21, 2023.

Second Set of Interrogatories: Pursuant to the Court's Minute Order dated October 2, 2023, (*see* ECF No. 258), the PSC served interrogatories relating to ESI on October 5, 2023. Namasté Laboratories LLC has provided responses, which the PSC is still reviewing and assessing.

Initial Set of Document Requests: The PSC served their initial set of Requests for Production of Documents to Namasté Laboratories LLC on June 27, 2023. Namasté provided its responses on August 21, 2023 and has begun collecting and producing responsive documents. Namasté has stated that it will complete production of all documents responsive to Plaintiffs' First Request for Production not later than February 29, 2024.

Eighth Set of Document Requests: Defendant Namasté initially took the position that it would not produce any custodial file documents without the PSC first serving a formal request for specific custodial records. In response, the PSC propounded its Eighth Set of Document Requests which sought, without limitation, the "complete custodial files" of fifty-one (51) individuals as well as "[a]ll Namasté Laboratories File Servers and Sharepoints. Namasté responded on January 18, 2024 with blanket objections to each request. Since that time, the parties have engaged met and conferred to resolve the issue. To date, Namasté continues to stand on its objections to Plaintiffs' blanket request for the production of "complete custodial files" of fifty-one (51) individuals as well as "[a]ll Namasté Laboratories File Servers and Sharepoints." Namasté has shared with Plaintiffs, however, that the materials that Namasté has been searching in responding to specific RFPs *include* custodial files. As such, every search for responsive documents necessarily and automatically includes a search of what Plaintiffs have deemed to be custodial files. Given the manner in which Namaste has searched for responsive documents and the fact that "custodial files" are captured in those searches, Namasté objects to separate searches of those files divorced from any connection to an RFP as both unnecessary and unreasonable. However, Namaste has not identified what custodians are included in its searches which means Plaintiffs do not know whether or not the custodial files they have requested are in fact being searched in this process. Plaintiffs have asked Namaste

to identify what custodial files are included in its searches. Namaste has agreed to respond to Plaintiffs' request but has not provided that information at the time of the filing of this report.

Document Production: As of November 13, Namasté had produced 743 documents totaling 9,396 pages. As of January 25, 2024, Namasté has produced approximately 6,440 documents totaling approximately 27,800 pages. As of February 29, 2024, Namaste produced its final set of documents responsive to Plaintiffs' initial document requests totaling an additional 6,306 documents comprising 17,967 pages.

Rule 30(b)(6) Depositions

Corporate Organization: Deposition taken on November 15, 2023

Product ID: N/A

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Strength of Nature LLC:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to Strength of Nature LLC on June 27, 2023. In accordance with the Court's Minute Order dated July 14, 2023 (*See* ECF No. 161), Strength of Nature LLC provided initial responses to the Product Identification interrogatories (Interrogatory Nos. 2 and 3) on July 18, 2023, then verified responses on July 21, 2023. Amended Verified responses were served on August 14, 2023. Strength of Nature LLC provided responses to the remaining interrogatories on August 21, 2023.

Second Set of Interrogatories: Pursuant to the Court's Minute Order dated October 2, 2023, (*See* ECF No. 258), the PSC served interrogatories relating to ESI on October 5, 2023. Strength of Nature LLC provided its responses on November 2, 2023 and the Plaintiffs have formally withdrawn those notices and ESI Interrogatories.

Initial Set of Document Requests: The PSC served its initial set of Requests for Production of Documents to Strength of Nature LLC on June 27, 2023. Strength of Nature LLC responded to the Requests on August 21, 2023.

Document Production: Strength of Nature LLC has produced 374 documents, totaling approximately 9,337 pages, as of November 13, 2023, and, has substantially completed its production of documents responsive to Plaintiffs' First Set of Requests for the Production of Documents ("RFPs") and First Set of Interrogatories ("Interrogatories"). Plaintiffs sent a deficiency letter to Strength of Nature on January 26, 2024, and Strength of Nature responded on February 5, 2024 ("Response"). Strength of Nature's Response identified additional categories of documents it would produce by February 29, 2024 to satisfy its obligations under the Court's January 26, 2024 Minute Order. Plaintiffs have not responded to Strength of Nature's Response or requested any further meet and confer, and Strength of Nature will make the production described in its Response on February 29, 2024.

Rule 30(b)(6) Depositions:

Corporate Organization: Plaintiffs have withdrawn their deposition notice.

Product ID: Plaintiffs have withdrawn their deposition notice.

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Luster Products, Inc.:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to Luster Products, Inc. on September 28, 2023. Luster Products, Inc. provided their responses on October 30, 2023. The parties have continued to meet and confer from December to present. Luster will supplement its responses with final, fulsome answers to all outstanding interrogatories in the initial set no later than February 29, 2024.

Second Set of Interrogatories: Pursuant to the Court's Minute Order dated October 2, 2023 (See ECF No. 258), the PSC served interrogatories relating to ESI on October 4, 2023. Luster Products, Inc provided their responses on November 6, 2023. Luster provided supplemental responses on January 17, 2024. The parties have met and conferred several times and have scheduled a follow-up meet and confer for March 4, 2024. In the interim, agreed to informally continue the dialogue on any outstanding issues.

Initial Set of Document Request. The PSC served their initial set of Requests for Production of Documents to Luster on September 28, 2023. The parties have continued to meet and confer from December to present. Luster will supplement its responses with final, fulsome answers to all outstanding requests for production in the initial set no later than February 29, 2024. To date, Luster Products, Inc. has only served a total of 1,510 pages of documents in response to the PSC's initial set of Requests for Production.

Rule 30(b)(6) Depositions:

Corporate Organization: To be scheduled.

Product ID: To be scheduled.

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Sally Beauty Supply LLC:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to Sally Beauty Supply LLC on August 13, 2023. Sally Beauty Supply LLC provided their responses on September 22, 2023 and supplemental responses on January 2, 2024, and February 29, 2024.

Second Set of Interrogatories: The PSC served additional interrogatories related to ESI on October 5, 2023. Sally Beauty Supply LLC produced its Network Map on November 3, 2023 and sent a letter in lieu of answers on November 8, 2023, which was not responsive to the full set of interrogatories. The parties subsequently had a meet and confer on November 10, 2023, and at which time Sally Beauty said it would provide answers in accordance with the Court's scheduling orders. Sally Beauty supplemented its responses on January 18, 2024.

Initial Set of Document Request. The PSC served their initial set of Requests for Production of Documents to Sally Beauty LLC on August 13, 2023. Sally Beauty provided their responses on September 22, 2023.

Document Production: To date, Sally Beauty Supply LLC has produced 3,126 documents, totaling 13,570 pages. These productions are responsive to plaintiffs' First Set of Requests for Production and Interrogatories served on Sally Beauty Supply LLC and include, as well as subsequent requests for production. The productions include, but are not limited to, Hair Relaxer product studies, communications with regulatory agencies, Hair Relaxer product artwork and instructions, Hair Relaxer material data sheets, Hair Relaxer product safety worksheets, formula review worksheets, organizational charts, a Network Map and Sally Beauty Supply LLC's policies and procedures. Per the agreement of the parties, Sally Beauty agreed to substantially complete its rolling production of documents in response to the First Set of Requests for Production by December 15, 2023 and complied with this deadline.

Rule 30(b)(6) Depositions:

Corporate Organization: The parties are evaluating the need for this deposition pending review of ongoing document production made by Sally Beauty.

Product ID: N/A

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date. The PSC is assessing the responses and productions, and the meet and confer process is on-going.

McBride Research Laboratories, Inc.:

Initial Set of Interrogatories: The PSC served their initial set of interrogatories to McBride Research Laboratories, Inc. on October 5, 2023. McBride Research Laboratories, Inc. served its responses to the PSC's initial set of interrogatories on December 14, 2023.

Second Set of Interrogatories: The PSC served additional interrogatories relating to ESI on October 5, 2023. McBride Research Laboratories, Inc. served its responses to the PSC's second set of interrogatories on December 14, 2023.

Initial Set of Document Request: The PSC served their initial set of Requests for Production of Documents to McBride Research Laboratories, Inc. on October 5, 2023. McBride Research Laboratories, Inc. served its responses to the PSC's initial set of Requests for Production of Documents on December 14, 2023.

Document Production: McBride Research Laboratories, Inc. served its first production of documents to the PSC on December 14, 2023. To date, McBride Research Laboratories, Inc has served a total of 131 pages in response to Plaintiffs' requests.

Rule 30(b)(6) Depositions

Corporate Organization: Deposition scheduled for March 15, 2024.

Product ID: Deposition scheduled for March 14, 2024.

ESI: At the status hearing held on October 2, 2023, the Court noted that no 30(b)(6) deposition will be taken until the written discovery is complete and the Court will address the issue if needed at a later date.

Dated: February 29, 2024

FOR PLAINTIFFS:

Respectfully Submitted,

/s/Edward A. Wallace

Edward A. Wallace

Edward A. Wallace

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EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In Re: HAIR RELAXER MARKETING
SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

MDL NO. 3060

THIS DOCUMENT RELATES TO
ALL CASES

[PROPOSED] CASE MANAGEMENT ORDER NO. __

Notwithstanding the provisions of CMO 8, Section III, a Defendant's Master Answer does not constitute an answer or responsive pleading to an individually filed case / Short Form Complaint for purposes of the Federal Rules of Civil Procedure, including, but not limited to, Rule 41(a)(1)(A)(i) and Rule 15(a)(1)(A) and (B). Instead, the limitations on voluntary dismissals and amendments as a matter of course contained in Rule 41(a)(1)(A)(i) and Rule 15(a)(1)(A) and (B) are triggered with the filing of an Answer to a Short Form Complaint pursuant to CMO 8, Section IV(G).

Ordered this ____ day of _____, 2024.

Mary M. Rowland
United States District Judge

EXHIBIT B

From: Brandon Smith <BSmith@cssfirm.com>
Sent: Thursday, February 22, 2024 9:39 AM
To: Goodman, Mark C
Cc: jhoekstra@awkolaw.com; mabramowitz@dicellolevitt.com; mrm@wallacemiller.com; ben@bencrump.com; ffitzpatrick@motleyrice.com; fu@dicellolevitt.com; kpadden@douglasandlondon.com; eaw@wallacemiller.com; HRLPFS; HRLPFS@sidley.com; PlaintiffHRLPFSDeficiencies@motleyrice.com; Thompson, Barry; Estrada, Christine; Jed Douglas; Brandon Smith; C. Andrew Childers
Subject: RE: HRL MDL: Sebrena Hamilton-Keith - 23-cv-05789 - HRL MDL 3060 PFS Warning Letter

EXTERNAL

Counsel:

My client, Sebrena Hamilton-Keith, no longer desires to pursue her filed hair relaxer claim. I have her permission to dismiss her case without prejudice, and I can file the appropriate notice with the Court once agreed by all. Given the numerous defendants and lack of filed entries of appearance in her specific case by said defendants, please collaborate with and get the consent of all defendants for a dismissal without prejudice in this matter. Upon notification by you, we will then file a Notice of Dismissal Without Prejudice with the Court thereafter to avoid any other delays and/or expenses by all parties.

Please note, I do not and will not have permission to dismiss this matter with prejudice. It can only be without prejudice by agreement, so please understand that fact when discussing the same with all the named defendants. Once we all collectively agree to a dismissal without prejudice, we will formally request the case be dismissed quickly. If all defendants refuse this reasonable request, we will have to let the Court decide this matter as I do not have authority for anything more. But again, to reduce costs and delays to all parties herein, we ask that this request be granted.

Given this position, we will not be submitting her PFS and related materials, as it's a moot point given our dismissal request herein. If you want to talk about it further, please let me know. Thanks and take care.



CHILDERS, SCHLUETER & SMITH, LLC
— THE DANGEROUS DRUG AND DEVICE ATTORNEYS —

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[Learn More About M. Brandon Smith](#)

* Licensed in GA, PA, and WV

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From: Estrada, Christine <Christine.Estrada@bakermckenzie.com> **On Behalf Of** Goodman, Mark C

Sent: Thursday, February 22, 2024 2:58 AM

To: Brandon Smith <BSmith@cssfirm.com>

Cc: jhoekstra@awkolaw.com; mabramowitz@dicellolevitt.com; mrm@wallacemiller.com; ben@bencrump.com; ffitzpatrick@motleyrice.com; fu@dicellolevitt.com; kpadding@douglasandlondon.com; eaw@wallacemiller.com; HRLPFS@shb.com; HRLPFS@sidley.com; PlaintiffHRLPFSDeficiencies@motleyrice.com; Thompson, Barry <Barry.Thompson@bakermckenzie.com>; Goodman, Mark C <Mark.Goodman@bakermckenzie.com>; Estrada, Christine <Christine.Estrada@bakermckenzie.com>

Subject: HRL MDL: Sebrena Hamilton-Keith - 23-cv-05789 - HRL MDL 3060 PFS Warning Letter

You don't often get email from mark.goodman@bakermckenzie.com. [Learn why this is important](#)

Counsel:

Please see the attached Plaintiff Fact Sheet Warning Letter pursuant to CMO 9 for Plaintiff Sebrena Hamilton-Keith.

Regards,

Christine Estrada for Mark C. Goodman

Legal Secretary, Litigation
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**Baker
McKenzie.**

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EXHIBIT C

MDLC Pltf ID	Plaintiff Last Name	Plaintiff First Name	Docket No.	PFS Due Date
1002	Blackwell	Tamara	1:22-cv-07057	2/2/2024
1003	Jones	Chelsey	1:23-cv-01048	2/2/2024
1008	Dunigan	Daphne	1:23-cv-00027	2/2/2024
1012	Rodriguez	Maria	1:23-cv-01916	2/2/2024
1016	Greer	Jacqueline	1:23-cv-02400	2/2/2024
1018	Roberts	Lolita	1:23-cv-02674	2/2/2024
1021	Burden	Janise	1:23-cv-01981	2/2/2024
1022	Donaldson	Sophia Ann	1:23-cv-02166	2/2/2024
1024	Freeman	Denisha	1:23-cv-01058	2/2/2024
1026	Cristal	Michelle	1:23-cv-01059	2/2/2024
1027	Dixon	Shirley	1:23-cv-01050	2/2/2024
1028	Wilson	Brenda	1:23-cv-02564	2/2/2024
1033	Brownlee	Jacqueline	1:23-cv-01077	2/2/2024
1034	Wilson	Karen	1:23-cv-02553	2/2/2024
1038	Jackson	Andrea	1:23-cv-01374	2/2/2024
1039	Moore	Lynn	1:23-cv-01049	2/2/2024
1043	Harris	Dianne	1:23-cv-02732	2/2/2024
1047	LeJune	Calinda	1:23-cv-01640	2/2/2024
1051	Pierre-Louis	Brenda	1:23-cv-02586	2/2/2024
1053	Wanjohi	Lilian	1:23-cv-02817	2/2/2024
1057	Bates	Hermania	1:23-cv-01377	2/2/2024
1060	May	Dorothy	1:23-cv-01054	2/2/2024
1062	Trainor	Leeandrea	1:23-cv-02679	2/2/2024
1063	Francois	Shirlene	1:23-cv-02681	2/2/2024
1064	Williams	Erika	1:23-cv-01380	2/2/2024
1065	Toney	Antoinette	1:23-cv-02572	2/2/2024
1072	Smith	Timika	1:22-cv-06047	2/2/2024
1073	Gordon	Bernadette	1:22-cv-06033	2/2/2024
1074	Clark	Victoria	1:23-cv-00526	2/2/2024
1076	Smith	Fawne	1:23-cv-00177	2/2/2024
1077	Allen	Mary	1:23-cv-00352	2/2/2024
1078	Beagle	Brenda	1:23-cv-01216	2/2/2024
1081	Jones	Angelique	1:23-cv-01379	2/2/2024
1082	Baker	Clara	1:23-cv-01056	2/2/2024
1083	Smith	Arnessa	1:23-cv-02228	2/2/2024
1084	Smith	Alicia	1:23-cv-01068	2/2/2024
1085	Shaw	Sharon	1:23-cv-01093	2/2/2024
1096	Sanders	Sherree	1:23-cv-01181	2/2/2024
1099	Hamilton	Gail	1:23-cv-01326	2/2/2024
1100	Thompson	Elizabeth	1:23-cv-01055	2/2/2024
1104	Altamirano	Librada	1:23-cv-02375	2/2/2024
1105	Bell	Diane	1:23-cv-02398	2/2/2024
1106	Betts	Brittany	1:23-cv-01383	2/2/2024
1107	Burnley	Carlene	1:23-cv-01812	2/2/2024
1108	Johnson	Dorothy	1:23-cv-02379	2/2/2024

1110	Littles	Stephanie	1:23-cv-01811	2/2/2024
1111	Sandidge	Christie	1:23-cv-02071	2/2/2024
1114	Baker	Michele	1:23-cv-03150	2/2/2024
1119	Lundberg Taylor	Geraldine	1:23-cv-03154	2/2/2024
1121	White	Angela	1:23-cv-03164	2/2/2024
1122	Willis	Janice	1:23-cv-03228	2/2/2024
1123	Harris	Gloria	1:23-cv-02484	2/2/2024
1124	Garner	Latonia	1:23-cv-01443	2/2/2024
1125	Kanardy	Barbara	1:23-cv-03790	2/2/2024
1126	White	Yvette	1:23-cv-03823	2/2/2024
1130	Byrd	Tracey	1:23-cv-04005	2/2/2024
1131	Flint	Michelle	1:23-cv-03983	2/2/2024
1133	Perry	Lisa	1:23-cv-03915	2/2/2024
1134	Darkenwald	Karen	1:23-cv-04099	2/2/2024
1135	Reeves	Dana	1:23-cv-03899	2/2/2024
1136	Fleshman	Natalie	1:23-cv-04020	2/2/2024
1138	Browning	Sozana	1:23-cv-04053	2/2/2024
1139	Burns	Kassandra	1:23-cv-04037	2/2/2024
1140	Chatman	Davida	1:23-cv-04027	2/2/2024
1141	Davis	Irene	1:23-cv-04038	2/2/2024
1143	Gardner	Cynthia	1:23-cv-04046	2/2/2024
1144	Goodwin	Sharmia	1:23-cv-04030	2/2/2024
1145	Gordon	Lisa	1:23-cv-04048	2/2/2024
1146	Gross	Elissha	1:23-cv-04049	2/2/2024
1152	Kirby	Sheila	1:23-cv-04036	2/2/2024
1159	Jaqueline	Parrish	1:23-cv-04089	2/2/2024
1163	Sykes	Leslie	1:23-cv-03671	2/2/2024
1167	Banks	Betty	1:23-cv-04173	2/2/2024
1168	Robinson	Denise	1:23-cv-04197	2/2/2024
1169	Scott	Fred	1:23-cv-04175	2/2/2024
1170	Norton	Hope	1:23-cv-04189	2/2/2024
1171	Mack-Williams	Marva	1:23-cv-03794	2/2/2024
1176	Phillips	Maurisa	1:23-cv-04770	2/20/2024
1180	Dean	Patrina	1:23-cv-01047	2/2/2024
1182	Dixon	Katrina	1:23-cv-01203	2/2/2024
1189	Sims	Sondra	1:23-cv-04952	2/20/2024
1191	Johnson	Alicia	1:23-cv-04196	2/2/2024
1193	O'Neal	Rosemary	1:23-cv-03828	2/2/2024
1195	Vincent	Casandra	1:23-cv-02702	2/2/2024
1203	Williams	Floyda	1:23-cv-04108	2/2/2024
1204	Spencer	Anita	1:23-cv-01915	2/2/2024
1205	Buchanan	Shawn	1:23-cv-04026	2/2/2024
1209	Roy	Adrienne	1:23-cv-04106	2/2/2024
1214	McFarlane	Dianna	1:23-cv-03439	2/2/2024
1222	Terrell	Rhonda	1:23-cv-00827	2/2/2024
1223	Lee	Mahogany	1:23-cv-00825	2/2/2024
1226	Ashford	Sharon	1:23-cv-03632	2/2/2024

1227	Batiste	Barbara	1:23-cv-04124	2/2/2024
1229	Hampton	Joy	1:23-cv-01552	2/2/2024
1230	Collins	Angela	1:23-cv-03624	2/2/2024
1232	Parker	Grace	1:23-cv-03684	2/2/2024
1237	Victorian	Yolanda	1:23-cv-03788	2/2/2024
1238	Brooks	Ira	1:23-cv-03821	2/2/2024
1239	McGee	Lulisa	1:23-cv-03817	2/2/2024
1242	Morgan	Alethea	1:23-cv-03919	2/2/2024
1243	McKenzie	Sylvia	1:23-cv-03969	2/2/2024
1244	Mullen	Vickey	1:23-cv-03976	2/2/2024
1245	King	Diane	1:23-cv-04008	2/2/2024
1246	Newson	Annette	1:23-cv-04073	2/2/2024
1248	Bowers	Charlotte	1:23-cv-04167	2/2/2024
1252	Barrett	Ammie	1:23-cv-02223	2/2/2024
1258	Burnette	Whittney	1:23-cv-03610	2/2/2024
1259	Wall	Brenda	1:23-cv-04091	2/2/2024
1260	Smith	Regina	1:23-cv-04085	2/2/2024
1261	Crutcher	Veronica	1:23-cv-03136	2/2/2024
1265	Griffin	Jacqueline	1:23-cv-01911	2/2/2024
1282	Dawson	Carrie	1:23-cv-05904	2/20/2024
1304	Patterson	Latonya	1:23-cv-05498	2/20/2024
1305	Powell	Lutissha	1:23-cv-05499	2/20/2024
1352	Pitts	Deborah	1:23-cv-05815	2/20/2024
1471	Peralta	Ashley	1:23-cv-06380	2/20/2024
2295	Atkins	Barbara	1:23-cv-06001	2/20/2024
2691	Cartwright	Dana	1:23-cv-06161	2/20/2024
2769	Cunningham	Lykesha	1:23-cv-06163	2/20/2024
4188	Castille	Barnadette	1:23-cv-06674	2/20/2024
4190	Clinkscales	Darlene	1:23-cv-06682	2/20/2024
4974	Small	Dessie	1:23-cv-05363	2/20/2024
4977	Thomas	Dorisa	1:23-cv-06143	2/20/2024
5020	Smith	Lasandra	1:23-cv-05631	2/20/2024
5025	Tate	Lillie	1:23-cv-06409	2/20/2024
5043	Pollock	Mary	1:23-cv-05564	2/20/2024
5049	Alford	Misty	1:23-cv-06255	2/20/2024
5065	Trawick	Renata	1:23-cv-05479	2/20/2024
5092	Suggs	Sylvia	1:23-cv-05299	2/20/2024
5688	Bagley	Melissa	1:23-cv-06182	2/20/2024
6759	Black	Racquel	1:23-cv-05863	2/20/2024
6760	Johnson	Debra	1:23-cv-06208	2/20/2024
6806	Cox-Thioube	Melissa	1:23-cv-06080	2/20/2024
6823	Dahmer	Elnora	1:23-cv-06092	2/20/2024
6852	Bobele	Catheline	1:23-cv-06235	2/20/2024
6854	Patterson	Robin	1:23-cv-06233	2/20/2024
6936	Ingram	Crystal	1:23-cv-06271	2/20/2024
6983	White	Gwendolyn	1:23-cv-05896	2/20/2024
6984	Celestine	Audrey	1:23-cv-06157	2/20/2024

6993	Brown	Shelvie	1:23-cv-05899	2/20/2024
6995	Crump	Anita	1:23-cv-04911	2/20/2024
7047	Roacher	Cathy	1:23-cv-06355	2/20/2024
7051	Dent	Kimberly	1:23-cv-06360	2/20/2024
7083	Quinn	Nita	1:23-cv-05712	2/20/2024
7095	Archer	Joi	1:23-cv-05969	2/20/2024
7204	Mayberry	Tracie	1:23-cv-03997	2/2/2024
7205	Marshall	Erica	1:23-cv-03989	2/2/2024
7364	Johnson	Eric	1:23-cv-02617	2/2/2024
7390	Burrel	Dawsolene	1:23-cv-06461	2/20/2024
7497	Harney	Bernice	1:23-cv-02627	2/2/2024
7575	Phelps	Kristi	1:23-cv-06473	2/20/2024
7638	Peterson	Wilhelmenia	1:23-cv-06481	2/20/2024
7654	Clarke	Ada	1:23-cv-06485	2/20/2024
7666	Curlin-Brown	Debra	1:23-cv-06489	2/20/2024
7978	Abel	Joel-Daphna	1:23-cv-06597	2/20/2024
8664	Payne	Marlene	1:23-cv-06712	2/20/2024
9429	Carrington	Fredericka	1:23-cv-06229	2/20/2024