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March 19, 2020

VIA CM/ECF

The Honorable Sherry R. Fallon
District Court of Delaware
J. Caleb Boggs Federal Building
Wilmington, DE 19801-3567

**Re: *University of Massachusetts and Carmel Laboratories, LLC. v. L'Oréal USA, Inc.*,
C.A. No. 17-868-CFC-SRF**

Dear Judge Fallon:

Defendant L'Oréal USA, Inc. ("L'Oréal USA") respectfully requests that this Court order Plaintiffs University of Massachusetts and Carmel Laboratories, LLC ("Carmel Labs") (together, "Plaintiffs") to produce all documents responsive to L'Oréal USA's Request for Production Nos. 11, 30-33, 45, 84, 87, 92, 94, 95, and 100 (the "Requests").

The Requests concern Plaintiffs' allegations regarding the Teresian Carmelites, which are described in Plaintiffs' First Amended Complaint ("FAC") as "a non-profit Christian monastery dedicated to prayer, contemplation, and service to the poor and marginalized." (D.I. 13 at ¶ 14.) Plaintiffs allege that L'Oréal USA's launch of certain skincare products caused financial harm to the Teresian Carmelites and its "wholly-owned for-profit subsidiary," Carmel Labs. (*Id.* at ¶ 3; *see also id.* at ¶¶ 15, 17, 28-29 (alleging that, "[d]ue to public focus on [L'Oréal USA's] adenosine products, projected sales of Easeamine did not materialize, resulting in lost revenue to Carmel Labs, and, ultimately, to Teresian Carmelites," leaving the Teresian Carmelites "unable to pay the monastery's mortgage," "unable to maintain health insurance for its members," and "unable to use the projected Easeamine profits to fund its charitable works," among other things).)

L'Oréal USA served its First Set of Requests for the Production of Documents and Things to Plaintiffs on September 11, 2019. Request Nos. 11, 30-33, 45, 83, 84, 87, 92, 94, 95, and 100 therein sought documents relating to Plaintiffs' allegations regarding the Teresian Carmelites, as well as the organization's relationship with Carmel Labs and its President, Dennis Wyrzykowski. (*See, e.g.*, Ex. A at Request No. 31 ("All Documents and Communications Concerning the obligations undertaken by Teresian Carmelites to finance the development and launch of Your Easeamine Products."), Request No. 45 (requesting documents "sufficient to show Teresian Carmelites' annual, quarterly, and monthly profits and losses from the time it first began its relationship with Carmel Labs to the present"), Request No. 100 (seeking documents "concerning Dennis Wyrzykowski's employment at Carmel Labs and/or Teresian Carmelites").)

On October 11, 2019, Plaintiffs served objections and responses to the Requests, which failed to indicate whether they would be producing any documents in response thereto. The parties met and conferred regarding the Requests on November 4, 2019, and on November 15th, Plaintiffs served supplemental objections and responses. Therein, Plaintiffs indicated that they

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would not be producing any documents responsive to Request Nos. 11, 30-33, 45, 84, 87, 92, and 95, stating that no such production was necessary because Plaintiffs “will not seek to introduce evidence or argument at summary judgment or trial regarding the leveraging of property owned by Teresian Carmelites, Teresian Carmelites’ inability to pay the monastery’s mortgage, Teresian Carmelites’ sale of property to prevent foreclosure on the monastery, Teresian Carmelites’ inability to maintain health insurance for its members, or Teresian Carmelites’ inability to use projected Easeamine profits to fund its charitable works.” (*See* Ex. A.) Plaintiffs also refused to produce any documents responsive to Request No. 100 except insofar as such documents concerned Plaintiffs’ damages claims, or the ownership of the asserted patents. (*Id.* at Supplemental Response to Request No. 100.)

L’Oréal USA understood Plaintiffs’ responses to mean that they would not be introducing any evidence or argument regarding the Teresian Carmelites during summary judgment or at trial. As such, on March 10, 2020, L’Oréal USA requested that Plaintiffs execute a stipulation confirming their position. (*See* Ex. B.) During a meet and confer held on March 12, 2020, Plaintiffs’ counsel indicated that they were amenable to a stipulation but they could not agree to the language proposed by L’Oréal USA. Plaintiffs’ counsel agreed to provide line edits to the stipulation the next day. As of this filing, Plaintiffs’ counsel has not provided any proposed edits to the stipulation. As such, L’Oréal USA respectfully requests that Plaintiffs be ordered to produce all documents responsive to the Requests.

Respectfully,

/s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)

cc: Counsel of Record (via CM/ECF and E-Mail)