



March 20, 2020

The Honorable Sherry R. Fallon
J. Caleb Boggs Federal Building
844 N. King Street
Room 3124, Unit 14
Wilmington, DE 19801-3555

Re: *University of Massachusetts, et al. v. L'Oreal USA, Inc.*, 17-868-CFC-SRF

Dear Judge Fallon:

We write in response to Defendant's letter seeking production of broad categories of financial, corporate, and other documents from Teresian Carmelites, a non-party to this case.¹ D.I. 104. The Federal Rules' standard for relevant discovery is discovery that is "relevant to any party's *claim or defense*." Fed. R. Civ. P. 26(b)(1) (emphasis added). "When a party objects to discovery requests, the burden falls on the party seeking the discovery to show the relevance of the information requested." *Invensas Corp. v. Renesas Elec. Corp.*, 2013 WL 12146531, at *2 (D. Del. 2013) (internal quotation marks omitted). Defendant has not explained why any of the discovery it seeks would be relevant, particularly in light of the substantial number of documents produced in response to these requests insofar as they pertain to Carmel Labs, and in light of Plaintiffs' confirmation that they will not be seeking damages based on a lost profits theory of recovery or asserting financial harm to Teresian Carmelites.

Several of the disputed Requests for Production seek information related to specific allegations in Plaintiffs' complaint concerning Teresian Carmelites. Request No. 30 seeks "[a]ll Documents concerning Your contentions in paragraph 29 of the FAC that 'Teresian Carmelites' plummeting funds left it unable to pay the monastery's mortgage, and to lapse payments on obligations it undertook to finance the launch of Easeamine"; Request No. 32 seeks "[a]ll Documents and Communications Concerning Teresian Carmelites' sale of 'certain properties it owned to prevent foreclosure on the monastery' and its inability to maintain health insurance for its members, as alleged in paragraph 29 of the FAC"; and Request No. 33 seeks "[a]ll Documents and Communications Concerning Teresian Carmelites' inability to use 'the projected Easeamine profits to fund its charitable works, including efforts to benefit the underprivileged through educational and outreach programs,' as alleged in paragraph 29 of the FAC." D.I 104, Ex. A. Other disputed Requests seek information exclusively about Teresian Carmelites—not either of the Plaintiffs. For example, Request No. 11 seeks "[a]ll Documents Concerning Teresian Carmelites"; Request No. 31 seeks "[a]ll Documents and Communications Concerning the obligations undertaken by Teresian Carmelites" to finance Carmel Labs' Easeamine products; Request No. 45 seeks "Documents and Things sufficient to show Teresian Carmelites' annual, quarterly, and monthly profits and losses"; Request No. 84 seeks "[a]ll Documents and Things in Your possession or control, regarding the formation of Teresian Carmelites"; Request No. 87 seeks "[a]ll Documents and Things Concerning all agreements between You and Teresian Carmelites"; Request No. 92 seeks "[a]ll Documents and Things Concerning Teresian

¹ Teresian Carmelites is the parent company of Carmel Labs, one of the two Plaintiffs.

Carmelites' document retention policies"; and Request No. 95 seeks "[a]ll Documents and Things Concerning all agreements between You and any Person Concerning their ownership interest or potential ownership interest in Teresian Carmelites." *Id.*

On November 15, 2019, Plaintiffs served supplemental objections and responses in which Plaintiffs stipulated that "they 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." *Id.* This made clear that Plaintiffs would not introduce evidence of Teresian Carmelites' financial condition, nor evidence related to the specific allegations that Defendant referenced in its Requests. Accordingly, documents that are responsive only to those allegations in the First Amended Complaint, or to Teresian Carmelites' financial condition are irrelevant. Defendant did not object to Plaintiffs' supplemental objections and responses, or request an additional meet and confer, so Plaintiffs proceeded with their document collection and production in line with their stated objections.

For the first time, on March 10, 2020—over a month after the document production deadline, and only in response to Plaintiffs' repeated requests to discuss Defendant's own production deficiencies—Defendant voiced a concern with the scope of Plaintiffs' production. *See* D.I. 103, Ex. B, at 6-7. Defendant asserted that documents responsive to the above requests are relevant because they "relate directly to the allegations in Plaintiffs' FAC"—even though Plaintiffs already stipulated that they would not introduce evidence regarding any of the allegations Defendant cited. *Id.* Defendant did not, and has not, explained how these documents are relevant to any actual claim or defense in this case, as required by the Federal Rules. Defendant suggested that the documents would be relevant if Plaintiffs intend to introduce *any* evidence regarding Teresian Carmelites at trial, and asked Plaintiffs to execute an overbroad stipulation that would preclude Plaintiffs from introducing any evidence of or even *reference* to Teresian Carmelites; any evidence of or reference to Carmel Labs except for its development of Easeamine; and any evidence of or reference to any witness's affiliation with the Teresian Carmelites. D.I. 104, Ex. B. This stipulation goes far beyond the disputed requests about Teresian Carmelites' financial situation and corporate status and would preclude basic background narrative about the parties. Furthermore, as Plaintiffs observed in a subsequent meet and confer, Plaintiffs have produced many documents involving the Teresian Carmelites that go to its relationship with the Plaintiffs, and Defendant has not cited any specific deficiencies. Plaintiffs' objection is to producing irrelevant information about Teresian Carmelites' financial and corporate records that have no bearing on this case.

Two other disputed Requests seek documents that involve both Carmel Labs and Teresian Carmelites. Request No. 94 asks for "[a]ll Documents and Things Concerning all agreements between You and any Person Concerning their ownership interest or potential ownership interest in Carmel Labs." D.I. 104, Ex. A. Plaintiffs agreed to produce any agreements that would be relevant to their claims or potential defenses, and have done so, producing, for example, documents related to business plans and potential investors for Carmel Labs and Easeamine. Defendant has not suggested that this production is deficient, or identified any reason why agreements related only to Teresian Carmelites would be relevant, except to the extent that

Carmel Labs' ownership is referenced in the FAC. *See* D.I. 103, Ex. B, at 7. Request No. 100 seeks “[a]ll Documents Concerning Dennis Wyrzykowski’s employment at Carmel Labs and/or Teresian Carmelites, including but not limited to Mr. Wyrzykowski’s separation from Teresian Carmelites and/or his decision to cease monastic life.” D.I. 104, Ex. A. Again, Plaintiffs responded that they would produce documents relevant to their claims or potential defenses, and have in fact produced these documents, such as communications and documents concerning Mr. Wyrzykowski’s work at Carmel Labs, communications and document regarding the relevant licenses, and financial records for Carmel Labs. Defendant has never identified why other documents covered by this Request—for example, documents related to Mr. Wyrzykowski’s involvement with the Teresian Carmelites monastery that are unrelated to Carmel Labs or the Patents-in-Suit—would be relevant to the case, and said only that Requests No. 98-101 go to “the financial health of the Teresian Carmelites and Carmel Labs” and “the financial success of the Easeamine products.” D.I. 103, Ex. B, at 7. Request No. 100 goes well beyond these financial matters, however, seeking deeply personal—and irrelevant—information such as Mr. Wyrzykowski’s “decision to cease monastic life.”

Plaintiffs have withdrawn their claim for any damages based on lost profits, *see* Ex. M, and months ago agreed that they will not introduce evidence or argument regarding Teresian Carmelites’ financial health. Defendant’s letter does not give any reason whatsoever why each disputed Request seeks relevant information. The only potential basis for relevance even hinted at consists of the FAC’s allegations regarding financial harm to Teresian Carmelites. But because of Plaintiffs’ position with respect to lost profits and financial harm, the Requests cannot possibly be relevant to any claim or defense remaining in this case. In the absence of a relevance showing, Defendant is not entitled to the discovery it seeks. *See, e.g., In re Wilmington Trust Sec. Litig.*, 2017 WL 2457456, at *4 (D. Del. 2017) (denying motion to compel because Defendant “provide[d] no substantive argument in support of their contention” that the discovery sought relevant information).

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant’s motion.

Respectfully submitted,

/s/ Michael J. Farnan

Michael J. Farnan

cc: Counsel of Record (via E-File)