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May 5, 2020

**VIA CM/ECF**

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

CONFIDENTIAL --  
FILED UNDER SEAL

**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") by letter motion hereby requests an 11-day extension, until May 19, 2020, to file Objections to one of the rulings issued by the Court during the April 24, 2020 discovery teleconference. (*See* Ex. A, 126:12-23.) *See* Standing Order for Objections Filed Under Fed. R. Civ. P. 72 (D. Del.) ¶ 6 ("[A]pplications for extension of time to file or respond to objections shall be reviewed by the Magistrate Judge."). L'Oréal USA has asked Plaintiffs to agree to this extension, but they are unwilling to do so.

During the April 24, 2020 discovery teleconference, the Court addressed Plaintiffs' renewed request for documents relating to an FTC investigation involving some of the accused products. The Court granted Plaintiffs' request "to compel the production of documents responsive to requests for production number 65," which the Court viewed as "limited to the single 2014 FTC investigation cited by the plaintiff in their letter brief, including the internal and external communications regarding the specific FTC investigation."<sup>1</sup> (*Id.* at 113:1-8.) The Court ordered that L'Oréal USA produce these documents by May 8, 2020, but "le[ft] it to the parties to meet and confer if L'Oréal is unable to meet that deadline due to global circumstance or national health emergency circumstances beyond its control." (*Id.* at 113:8-14.) The Court also stated that it was not ordering the production of privileged documents. (*Id.* at 113:15-24.)

Pursuant to the Court's instructions, L'Oréal USA reached out to Plaintiffs to discuss the logistical complications related to the production of any responsive documents (which are in the possession of L'Oréal USA's counsel at that time, Debevoise and Plimpton LLP) during the current shelter-at-home orders. L'Oréal USA explained that the current shelter-at-home orders would make it impossible to produce the documents by May 8, 2020. Further, notwithstanding the limitation of the Request to the multi-year FTC investigation that concluded in 2014, the volume of documents implicated by the Order also makes it impossible to complete a review of any documents by L'Oréal USA's current counsel for production by May 8<sup>th</sup>. The Court's ruling may also raise privilege questions that L'Oréal USA would seek to clarify with the Court during

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<sup>1</sup> While Plaintiffs asserted that they were "limiting" their (previously denied without prejudice) Request for Production No. 65 (the "Request") to a single FTC investigation, they did not, in actuality, narrow the Request at all, as the FTC investigation in question is the only investigation that was ever implicated by the Request.

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the upcoming May 18, 2020 discovery teleconference, including the timing for the production of a privilege log, given the vast amount of documents that may need to be reviewed and added to the log. As the discussion with this Court may obviate the need to file Objections, L'Oréal USA requests an extension, until May 19, 2020, to file any such Objections.

Counsel for L'Oréal USA continues to assess the matter, and has shared much information with opposing counsel on the issue. What counsel for L'Oréal USA can say at this time is that it is informed and believes there may be an opportunity to access through L'Oréal USA's former counsel external communications with the FTC regarding the FTC's investigation. L'Oréal USA is willing to produce this correspondence once reviewed, if it can be obtained subject to the protective order. (D.I. 48.) There is also believed to be a collection of documents maintained electronically that are source documents for the aforementioned communications with the FTC that should be able to be accessed by L'Oréal USA's former counsel and transmitted to L'Oréal USA's current counsel for review. We do not presently know the precise volume of these documents, or when they can be received by L'Oréal USA's current counsel for potential review and production. However, we would be in a position to advise the Court of this by the conference on May 18<sup>th</sup>.

We understand counsel for Plaintiffs to be interested in these underlying documents as well as the correspondence, irrespective of the burden of production on L'Oréal USA's current counsel,<sup>2</sup> even if it requires review of hundreds of thousands of pages of material. We would be prepared to represent the magnitude of this review at the time of the conference on May 18<sup>th</sup> as well, so the Court could assist the parties in answering the question of the timing of the completion of that review and the production of any privilege log related thereto.

As such, L'Oréal USA respectfully requests an 11-day extension, until May 19, 2020, to file Objections to one of the rulings issued by the Court during the April 24, 2020 discovery teleconference, and respectfully requests that the Court rule on L'Oréal USA's request prior to the current deadline to file Objections, May 8, 2020.

Respectfully,

*/s/ Frederick L. Cottrell, III*

Frederick L. Cottrell, III (#2555)

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

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<sup>2</sup> Counsel for L'Oréal USA noted the potential "burden to L'Oréal to have to go look for [documents relating to] a six year old investigation" during the April 24<sup>th</sup> discovery teleconference, which has since been determined to be significant. (*See* Ex. A at 111:22-112:11.)