

# EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE DISTRICT OF DELAWARE

3 UNIVERSITY OF MASSACHUSETTS )  
 4 MEDICAL SCHOOL and CARMEL )  
 LABORATORIES, LLC, )  
 5 )  
 Plaintiffs, ) C.A. No.17-868-CFC-SRF  
 6 )  
 v. )  
 7 )  
 L'OREAL S.A. and L'OREAL )  
 8 USA, INC., )  
 )  
 9 Defendants. )

10 Friday, April 24, 2020  
 11 11:00 a.m.

12 844 King Street  
 13 Wilmington, Delaware

14

15 BEFORE: THE HONORABLE SHERRY R. FALLON  
 United States District Court Judge

16

17 APPEARANCES:

18 FARNAN LLP  
 BY: BRIAN FARNAN, ESQ.

19 -and-

20 SUSMAN GODFREY, LLP  
 BY: JUSTIN A. NELSON, ESQ.  
 BY: TAMAR LUSZTIG, ESQ.  
 BY: BEATRICE FRANKLIN, ESQ.

21 Counsel for the Plaintiffs

22

23 Hawkins Reporting Service  
 112 Burning Tree Road - Dover, Delaware 19904  
 (302) 658-6697 FAX (302) 658-8418

24

1 THE COURT: Good morning,  
 2 everyone. It's Magistrate Judge Sherry Fallon.  
 3 I'm prepared to address the discovery dispute in  
 4 U Mass versus L'Oreal. Let me find out who is  
 5 on the call. First, do we have our court  
 6 stenographer, Ms. Gunning?

7 COURT REPORTER: Yes. This is  
 8 Stacy Ingram from Hawkins, Your Honor.

9 THE COURT: Oh, sorry, Stacy. I  
 10 was informed it might be Val Gunning. Thank you  
 11 for being available this morning. Is my law  
 12 clerk, Ms. Polito, on the line?

13 LAW CLERK: Yes, Judge, I'm on the  
 14 line.

15 THE COURT: All right. Thank you.  
 16 And let's start with appearances of counsel for  
 17 the University of Massachusetts, et al. Who is  
 18 on the line starting with Delaware counsel?

19 MR. FARNAN: Good morning, Your  
 20 Honor. Brian Farnan on behalf of the plaintiff  
 21 and with me is Justin Nelson, Tamar Lusztig and  
 22 Beatrice Franklin, all from Susman Godfrey.

23 THE COURT: All right. And who is  
 24 on the line for L'Oreal?

Hawkins Reporting Service  
 112 Burning Tree Road - Dover, Delaware 19904  
 (302) 658-6697 FAX (302) 658-8418

1 APPEARANCES CONTINUED:

2 RICHARDS, LAYTON & FINGER, P.A.  
 3 BY: KATHERINE MOWERY, ESQ.  
 BY: FRED COTTRELL, ESQ.

4 -and-

5 PAUL HASTINGS,  
 6 BY: ISAAC ASHKENAZI, ESQ.

7 -and-

8 BROWNE GEORGE ROSS, LLP  
 BY: KATHERINE MURRAY, ESQ.

9 Counsel for the Defendants

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 MS. MOWERY: Good morning, Your  
 2 Honor. This is Kate Mowery from Richards,  
 3 Layton & Finger on the line for L'Oreal USA. I  
 4 have Fred Cottrell on the line as well from my  
 5 office and then Isaac Ashkenazi from Paul  
 6 Hastings and Katherine Murray from Browne George  
 7 Ross.

8 MS. MURRAY: Good morning, Your  
 9 Honor.

10 THE COURT: Good morning,  
 11 everyone. Just making my notes here. I'll just  
 12 remind everyone, you're probably familiar with  
 13 this from the last time we did the call, but  
 14 please announce your name before you start  
 15 speaking. Since there is a slight delay since  
 16 we're all remotely connected, please speak  
 17 slowly so that the court stenographer can make  
 18 an accurate record of our proceedings today and  
 19 if you're not speaking, keep your phone on mute  
 20 so there aren't any outside or extraneous noises  
 21 interrupting or obscuring the audio on those who  
 22 are speaking. If you're going to cite to any  
 23 particular exhibits, the filings that I received  
 24 for this dispute were rather lengthy, just give

Hawkins Reporting Service

1 you're still looking until it gets to the point  
2 where you've done everything you can to find the  
3 underlying research, the document from the  
4 research conducted by Abella and you cannot find  
5 anything more.

6 MR. ASHKENAZI: Your Honor, I  
7 think that does make sense. I just want to  
8 point out that, you know, it's not as if we  
9 haven't given -- produced any document on  
10 Abella. If there's a document that they said  
11 we've included in our website, I believe one of  
12 the exhibits we were discussing earlier today  
13 referenced the study that was to do with Abella.  
14 It's not as if we haven't produced anything,  
15 they're just asking for more. We will do that.  
16 I believe, Your, Honor a status report that we  
17 could provide to them in two weeks and we will  
18 endeavor to do as much as we can and get it done  
19 as fast as we can to get them the information.

20 THE COURT: All right. Then in  
21 that respect, the request is granted and I'll  
22 instruct L'Oreal to proceed as we've done.

23 MR. ASHKENAZI: Your Honor, if I  
24 can, just on that point, the request that -- the  
Hawkins Reporting Service  
112 Burning Tree Road - Dover, Delaware 19904  
(302) 658-6697 FAX (302) 658-8418

1 governmental investigations to one particular  
2 FTC investigation that included alleged  
3 misstatements on the L'Oreal Paris line and the  
4 Lancome Gentifique line that related to these  
5 anti-aging claims. And as part of the  
6 settlement agreement for any now statement that  
7 they make publicly they have to have a  
8 scientific basis for that. And obviously we  
9 want to explore whether in telling the FTC or in  
10 their internal communications about this  
11 investigation or about their claims for it,  
12 whether they're relying on adenosine to support  
13 anti-aging properties of their lotions. And so  
14 that is what we have specifically narrowed it  
15 down to. We don't think it's cumulative.  
16 Obviously it's relevant to the importance of the  
17 invention, the importance of the products. And  
18 they've not done anything with that and said  
19 they're not going to do it and said it's  
20 cumulative. I think it's actually well  
21 proffered.

22 THE COURT: L'Oreal, response?  
23 MS. MURRAY: This is Kathy Murray,  
24 Your Honor. So based on our meet and confers  
Hawkins Reporting Service  
112 Burning Tree Road - Dover, Delaware 19904  
(302) 658-6697 FAX (302) 658-8418

1 order, just so we're clear on the request, it's  
2 to find additional documents that may be  
3 relevant to the study regarding the Abella  
4 study?

5 THE COURT: The study or the  
6 actual research conducted by Abella.

7 MR. ASHKENAZI: Okay. Thank you  
8 very much.

9 THE COURT: All right. Did I get  
10 that right, Ms. Lusztig?

11 MS. LUSZTIG: Yes, Your Honor.

12 THE COURT: All right. The next  
13 issue is this FTC investigation. Again, I was  
14 concerned about it being overbroad with respect  
15 to agency investigations that were requested by  
16 plaintiffs at the last hearing. I understand  
17 that now plaintiff has made an effort to correct  
18 the concern that the Court had previously. Let  
19 me hear from plaintiffs on what has been done in  
20 that respect and then I'll hear from L'Oreal.

21 MR. NELSON: Yes, Your Honor.  
22 This is Justin Nelson. We, as Your Honor  
23 instructed, went back and took guidance from  
24 Your Honor and narrowed the request from all  
Hawkins Reporting Service

1 what they're looking for is what L'Oreal said  
2 about these products. And that is what we've  
3 given them. We've given them the marketing for  
4 these products, we've given them the underlying  
5 testing that supported those claims. So it's a  
6 burden to L'Oreal to have to go look for a six  
7 year old investigation relating to claims made  
8 about the products and representations made  
9 about the products and the underlying science  
10 behind the products when all those underlying  
11 products have already been produced in the case.

12 MR. NELSON: Response, Your Honor?

13 THE COURT: Go ahead.

14 MR. NELSON: Obviously that goes  
15 to some of the other underlying issue -- what  
16 they say specifically about the FTC  
17 investigation and the misleading claim that's  
18 alleged by the FTC and what supports those  
19 claims is not cumulative of what would be  
20 produced except for what's in that investigation  
21 or communications about that investigation.

22 THE COURT: All right. Anything  
23 further, Ms. Murray?

24 MS. MURRAY: No, Your Honor.  
Hawkins Reporting Service

1 THE COURT: On this request, I  
2 will grant plaintiffs' request to compel the  
3 production of documents responsive to requests  
4 for production number 65 limited to the single  
5 2014 FTC investigation cited by the plaintiff in  
6 their letter brief, including the internal and  
7 external communications regarding the specific  
8 FTC investigation. And I'll order that to be  
9 produced within two weeks of the date of this  
10 conference. Again, leaving it to the parties to  
11 meet and confer if L'Oreal is unable to meet  
12 that deadline due to global circumstances or  
13 national health emergency circumstances beyond  
14 its control. That is my ruling.

15 MS. MURRAY: Could I clarify?

16 THE COURT: Go ahead.

17 MS. MURRAY: It wouldn't include  
18 any privileged issues, any privileged documents.

19 THE COURT: Any privileged  
20 documents create a privilege log. No, I'm not  
21 saying there's a waiver of privilege without  
22 knowing what documents, if any, additional  
23 exist. I'm not making any -- I'm not previewing  
24 any waiver of privilege.

Hawkins Reporting Service  
112 Burning Tree Road - Dover, Delaware 19904  
(302) 658-6697 FAX (302) 658-8418

1 I'm not inclined to, you know, rule on whether  
2 or not the defendant should have done it sooner  
3 or if they do it now it should be precluded.  
4 I'd rather, you know, if this is still an issue,  
5 if the parties can't work out what narrow  
6 background information, whatever that consists  
7 of plaintiff is to produce about the carmelites  
8 and any subsequent discovery that issues,  
9 there's going to be a response to it at some  
10 point and if there are deficient -- allegations  
11 of deficiencies in that response, shouldn't the  
12 Court take it up in that time rather than this  
13 time? I mean technically discovery hasn't  
14 closed, so even if the defendants didn't pursue  
15 that discovery in the time frame the Court  
16 originally had in mind, technically there's time  
17 to do it before discovery closes or maybe not.  
18 I don't know what the official deadline is in  
19 May, if there's a 30-day turnaround time for the  
20 discovery to be answered, but this is a  
21 long-winded way of saying I don't think this  
22 issue is ripe for me. And I addressed it at the  
23 last conference. What is the problem still?  
24 Let me hear from L'Oreal.

Hawkins Reporting Service  
112 Burning Tree Road - Dover, Delaware 19904  
(302) 658-6697 FAX (302) 658-8418

1 MS. MURRAY: Okay.  
2 MR. NELSON: Thank you, Your  
3 Honor.  
4 THE COURT: All right. Then that  
5 leads us to, I guess, an issue back to the  
6 Teresian Carmelites, which honestly I read with  
7 both sides on this and I thought I had fixed  
8 this at the last conference and then I guess  
9 L'Oreal, and again, I'll hear from the parties  
10 if I'm paraphrasing incorrectly. The way I read  
11 the papers was L'Oreal never quite took up my,  
12 you know, offer, I suppose you could call it  
13 that, or direction, to send a more streamlined  
14 request for what it was seeking to the, you  
15 know, to kind of frame what the plaintiff might  
16 possibly want to introduce when the plaintiffs  
17 referred to just simple background information  
18 at trial. And now, having plaintiffs brought  
19 it -- having it be brought to the attention of  
20 the Court again by the plaintiffs, defendants  
21 say, well, you know, now we'll go ahead and, you  
22 know, take the Court up on its directive to give  
23 you another request for production. Where does  
24 this stand? Because I don't think it's ripe and

Hawkins Reporting Service

1 MS. MURRAY: This is Kathy Murray.  
2 I think we can just give you a quick response.  
3 We put it in here because the Court wanted to  
4 know what was lingering from the last to give  
5 you a status check, but basically we did reach  
6 out, we agreed to edit the stipulation. We sent  
7 that, but they pulled back a lot on what they're  
8 willing or not willing to do with the  
9 stipulation. So, you know, they want to be able  
10 to say talk about Teresian carmelites as trial,  
11 but they don't want it to go into other issues  
12 about Teresian Carmelites, so they want to be  
13 able to say what's helpful to them, but prevent  
14 us from taking discovery. So we're at an  
15 impasse on the stipulation. And we did, because  
16 we -- and we were trying to reach an agreement  
17 on the stipulation. It didn't happen. As a  
18 result of that, we did serve a discovery. We  
19 didn't serve it immediately because we were  
20 hoping to reach agreement on a stip, but it just  
21 didn't happen. So we have served that  
22 discovery. If they want to bring Teresian  
23 Carmelites to trial, then we want to get  
24 discovery on those issues. We served that

Hawkins Reporting Service

1 time, availability on May 15th, which is a  
2 Friday three weeks from now.  
3 MR. ASHKENAZI: Your Honor, this  
4 is Isaac Ashkenazi for L'Oreal. I just wonder  
5 if we're going to be submitting stuff to them by  
6 Friday the 8th, if we're going to -- the 15th,  
7 you know, makes sense, it's a week later, except  
8 when we have to brief things and then that means  
9 we're going to be briefing things before there's  
10 meet and confers. It just doesn't make much  
11 sense. I think we go into the beginning of the  
12 following week.

13 THE COURT: Monday the 18th?

14 MR. NELSON: This is Justin Nelson  
15 again. That works for plaintiffs, Your Honor.  
16 Thank you.

17 THE COURT: All right.

18 MR. ASHKENAZI: I should ask my  
19 colleague, Ms. Murray, if the 18th makes sense.

20 MS. MURRAY: Yeah, that's fine.

21 THE COURT: Okay. Same time,  
22 should we start at 11?

23 MR. ASHKENAZI: That works with  
24 plaintiffs. We're at the discretion of Your

Hawkins Reporting Service  
112 Burning Tree Road - Dover, Delaware 19904  
(302) 658-6697 FAX (302) 658-8418

1 Honor.  
2 THE COURT: I'll put it down for  
3 11. This way it gives the parties some time in  
4 the morning to continue to talk if there's some  
5 issues that can come off. So 11 seems to be a  
6 time that's available on my calendar, so May  
7 18th at 11. And if the parties don't need it,  
8 then I invite all of you to tip me off and let  
9 me know that it can come off the calendar but it  
10 is -- if it's needed it will be Monday, May 18th  
11 at 11 and I'll put a note on the docket.

12 Otherwise, as you're familiar with  
13 all my rulings from the bench on this transcript  
14 are made under rule 72A of the federal rules of  
15 civil procedure. They are non-dispositive  
16 rulings and the parties may take up timely  
17 objections to Judge Connolly and he will review  
18 my orders to determine whether they're clearly  
19 erroneous or contrary to law. I will not be  
20 issuing a separate written memorandum opinion  
21 and order. My bench rulings will be stated as  
22 they are on the transcript and that will serve  
23 as the order of the Court. So with that, is  
24 there anything further from plaintiffs?

Hawkins Reporting Service

1 MR. ASHKENAZI: No, Your Honor,  
2 thank you.

3 THE COURT: Anything further from  
4 the defendants?

5 MS. MURRAY: No, Your Honor.  
6 Thank you.

7 THE COURT: All right. Everyone  
8 continue to be safe, take your precautions and  
9 perhaps we'll be discussing issues again on May  
10 18th. Take care. We're adjourned.

11 (End at 1:32 p.m.)  
12

Hawkins Reporting Service  
112 Burning Tree Road - Dover, Delaware 19904  
(302) 658-6697 FAX (302) 658-8418

1 State of Delaware)  
2 )  
3 New Castle County)  
4

5 CERTIFICATE OF REPORTER  
6

7 I, Stacy M. Ingram, Certified Court Reporter  
8 and Notary Public, do hereby certify that the  
9 foregoing record, Pages 1 to 128 inclusive, is a true  
10 and accurate transcript of my stenographic notes  
11 taken on April 24, 2020, in the above-captioned  
12 matter.

13  
14 IN WITNESS WHEREOF, I have hereunto set my  
15 hand and seal this 24th day of April 2020, at  
16 Wilmington.

17  
18  
19 /s/ Stacy M. Ingram  
20 Stacy M. Ingram, CCR

Hawkins Reporting Service