

Exhibit A

From: [Nick Carullo](#)
To: [Kasaraneni, Karthik](#); [Davida Brook](#); "[bfarnan@farnanlaw.com](#)"; "[mfarnan@farnanlaw.com](#)" ([mfarnan@farnanlaw.com](#)); [Bill Carmody](#); [Justin A. Nelson](#); [Tamar Lusztig](#); [Beatrice Franklin](#); [Rodney Polanco](#)
Cc: [Cottrell, Fred](#); [Modi, Naveen](#); [Palys, Joseph E.](#); PH-UMASS v. L'Oreal USDC; [Dittmann, Eric W.](#); [Ashkenazi, Isaac S.](#); [Tymoczko, Nicholas](#); [dellis@bgrfirm.com](#); [Katherine F. Murray](#); [Serli Polatoglu](#); [Maggie Icart](#); [Mowery, Katharine Lester](#)
Subject: RE: University of Massachusetts v. L'Oreal USA, Inc., C.A. No. 17-868-CFC-SRF
Date: Friday, June 12, 2020 9:56:00 AM
Attachments: [Proposed Adenosine Search Terms.pdf](#)
[image001.png](#)

Counsel,

Thank you for your email. We reserve the right to raise issues with L'Oreal's responsiveness review for documents hitting on the term "75156", which this process has called into question. As I explained in my email last night, we disagree that the licensing agreements Plaintiffs produced—agreements that Defendants never requested—are "highly relevant", and in any event they are irrelevant to the dispute we are currently trying to resolve.

We have proposed a way forward if L'Oreal continues to refuse to produce documents that hit on the term "adenosine", but you have not responded to our proposal. Are you willing to provide a random sampling of documents along the lines we proposed in our May 29 email, so that the parties can move towards a solution as the Court has instructed? If not, please confirm today on our meet and confer that you refuse to do so. We'll note that although you have cited some vague categories of non-responsive documents that the term "adenosine" may hit on, you have provided us with no information to determine whether the categories you mention make up a substantial—or even a notable—portion of the hit count.

Although it is still Plaintiffs' position that L'Oreal should produce all documents that hit on the term "adenosine", please find attached some proposed limiters that should bring the parties towards a compromise. Plaintiffs propose that L'Oreal run these terms with "adenosine", e.g. ("adenosine" AND "wrinkle"). In addition, L'Oreal should run "adenosine" on any documents before 2012.

We are still waiting for a response to our June 2 email that described the insufficiencies in your searches for marketing and strategy documents and provided a list of specific questions you should have no difficulty answering.

Also, Ms. Gill testified at her deposition that she and her team did not search for any documents related to Vichy Myokine or Meokine as part of Defendants' document collection in this case, including Vichy Myokine marketing materials. J. Gill Depo. Tr. (Rough) 71:1-5; 73:23-74:4. Please confirm that Defendants will collect and produce these documents.

- Nick Carullo

From: Kasaraneni, Karthik <karthikkasaraneni@paulhastings.com>
Sent: Thursday, June 11, 2020 12:00 AM
To: [Davida Brook](#) <DBrook@susmangodfrey.com>; ['bfarnan@farnanlaw.com'](#) <bfarnan@farnanlaw.com>; ['mfarnan@farnanlaw.com'](#) (mfarnan@farnanlaw.com) <mfarnan@farnanlaw.com>; [Bill Carmody](#) <bcarmody@susmanGodfrey.com>; [Justin A. Nelson](#) <jnelson@susmanGodfrey.com>; [Tamar Lusztig](#) <TLusztig@susmangodfrey.com>; [Beatrice Franklin](#) <BFranklin@susmangodfrey.com>; [Rodney Polanco](#) <RPolanco@susmangodfrey.com>
Cc: [Cottrell, Fred](#) <Cottrell@RLF.com>; [Modi, Naveen](#) <naveenmodi@paulhastings.com>; [Palys, Joseph E.](#) <josephpalys@paulhastings.com>; PH-UMASS v. L'Oreal USDC <PH-UMass-LOreal-USDC@paulhastings.com>; [Dittmann, Eric W.](#) <ericdittmann@paulhastings.com>; [Ashkenazi, Isaac S.](#) <isaacashkenazi@paulhastings.com>; [Tymoczko, Nicholas](#) <nicholastymoczko@paulhastings.com>; [dellis@bgrfirm.com](#); [Katherine F. Murray](#) <kmurray@bgrfirm.com>; [Serli Polatoglu](#) <spolatoglu@bgrfirm.com>; [Maggie Icart](#) <micart@bgrfirm.com>; [Mowery, Katharine Lester](#) <Mowery@rlf.com>; [Nick Carullo](#) <NCarullo@susmangodfrey.com>
Subject: RE: University of Massachusetts v. L'Oreal USA, Inc., C.A. No. 17-868-CFC-SRF

Counsel,

We disagree with your accusations regarding the two produced documents, and that they have any relevance to the claims or defenses in this case. As you are well aware, we produced those documents based on a new, overbroad requested search using the term "75156" in a good-faith effort to avoid continued disputes and move forward with depositions. This is in stark contrast to Plaintiffs' recent production of *roughly one thousand pages* of highly relevant license agreements a few days before the deposition of their 30(b)(6) witness for all licensing topics, among many other discovery abuses set forth in the attached e-mail. While unnecessary, again in the spirit of avoiding disputation, L'Oreal USA hereby confirms that an attorney reviewed all of the documents returned by the above-mentioned search, all but two of which were either identical to documents already produced or non-responsive. Unlike Plaintiffs, L'Oreal USA has more than fulfilled its discovery obligations, and any further document-related requests are wasteful and inappropriate.

Plaintiffs' continued requests with respect to the 50,000+ "adenosine" documents only confirms that they seek to improperly burden L'Oréal USA while the parties are in the midst of conducting 25+ fact depositions. As we have repeatedly explained, this case is not about adenosine. Instead, the patents-in-suit involve, according to Plaintiffs, applying particular concentrations of adenosine to a particular skin location. Plaintiffs' assertion that certificates of analysis for raw adenosine are somehow "relevant to the *Georgia Pacific* factors" demonstrates that their ever-expanding requests are both misguided and fail to heed the Court's denial of Plaintiffs' motion to compel during the May 18 discovery conference.

L'Oréal USA will not permit Plaintiffs to divert attention from their own failure to produce documents in a timely manner by continuing to burden it with unreasonable requests that are completely untethered from any issue in this case, and believes the parties should focus their efforts on completing fact depositions to keep this case on schedule.

Regards,
Karthik

From: Davida Brook <DBrook@susmangodfrey.com>

Sent: Friday, June 5, 2020 7:23 PM

To: Kasaraneni, Karthik <karthikkasaraneni@paulhastings.com>; 'bfarnan@farnanlaw.com' <bfarnan@farnanlaw.com>; 'mfarnan@farnanlaw.com' (<mfarnan@farnanlaw.com>)' <mfarnan@farnanlaw.com>; Bill Carmody <bcarmody@SusmanGodfrey.com>; Justin A. Nelson <jnelson@SusmanGodfrey.com>; Tamar Lusztig <TLusztig@susmangodfrey.com>; Beatrice Franklin <BFranklin@susmangodfrey.com>; Rodney Polanco <RPolanco@susmangodfrey.com>

Cc: Cottrell, Fred <Cottrell@RLF.com>; Modi, Naveen <naveenmodi@paulhastings.com>; Palys, Joseph E. <josephpalys@paulhastings.com>; PH-UMASS v. L'Oréal USDC <PH-UMass-LOréal-USDC@paulhastings.com>; Dittmann, Eric W. <ericdittmann@paulhastings.com>; Ashkenazi, Isaac S. <isaacashkenazi@paulhastings.com>; Tymoczko, Nicholas <nicholastymoczko@paulhastings.com>; dellis@bgrfirm.com; Katherine F. Murray <kmurray@bgrfirm.com>; Serli Polatoglu <spolatoglu@bgrfirm.com>; Maggie Icart <micart@bgrfirm.com>; Mowery, Katharine Lester <Mowery@rlf.com>; Nick Carullo <NCarullo@susmangodfrey.com>

Subject: [EXT] Re: University of Massachusetts v. L'Oréal USA, Inc., C.A. No. 17-868-CFC-SRF

Counsel,

Thank you for your email.

The two documents produced last night are yet the latest example of plainly relevant documents that L'Oréal has inexplicably withheld, in this case until **four months** after the original document production deadline. These documents are (1) one of L'Oréal's first tests showing the effect of adenosine on human skin as compared to a placebo, and (2) a chart that collects testing information for adenosine and several other anti-aging actives, discussing their efficacy. Both documents contain the word "adenosine" in addition to the code 75156. We do not understand how it is possible that these documents were not previously produced. Either they were not previously collected and reviewed, which confirms Plaintiffs' belief that L'Oréal's collection to date has been totally inadequate. Or they were reviewed and withheld, which confirms Plaintiffs' belief that L'Oréal is withholding responsive documents based on some undisclosed and improper theory of relevance. Whichever is the case, it is apparent that L'Oréal's collection, review, and production methods are severely flawed. Our proposal for a way forward is below. We further note that the production of these two French documents at the eleventh hour has necessitated a rush translation job to prepare them for depositions next week, and trust L'Oréal will pay for that expense as it is of its own making.

On the 75156 search, we think L'Oréal should simply produce all documents that hit on this term. Again, the documents produced last night give us zero comfort that L'Oréal's definition of responsiveness is appropriate. Assuming L'Oréal will not do this, please confirm:

- An attorney has reviewed all the documents that hit on the 75156 search.
- When you say documents are duplicative you mean they are copies of **identical** documents already produced. This may be what you are saying, but it is not clear to me from your email whether you mean that, or mean that the documents are duplicative of similar – but not identical – documents already produced. If the latter is true, any so-called "duplicative" documents should obviously be produced as L'Oréal has itself conceded their responsiveness.

- The types of documents that hit on 75156 that L’Oreal contends are not responsive.

On the adenosine search, it is a non-starter to say that our request is untimely or the like when it was ordered by the Court, who also instructed the parties to work together to find a solution for these documents. Regarding the accusation that we are trying to slam L’Oreal, I can assure you that we genuinely wish L’Oreal had produced these responsive materials months ago when they were first requested so that **Plaintiffs** would not be prejudiced in having to go into depositions without these responsive materials. Again we think L’Oreal should simply produce all documents that hit on this term. Assuming L’Oreal will not do this, please confirm:

- L’Oreal is unwilling to provide a sample of these documents, as suggested by Plaintiffs every 50th document totaling 1,000 documents, so that the parties can work together to narrow the term adenosine as appropriate.
- L’Oreal is itself unwilling to provide any suggestions for how to narrow the hit counts to exclude allegedly nonresponsive material.
- The types of documents in this data set that hit on the term adenosine that L’Oreal contends are not responsive. We note that the only specific example you offer below goes to communications with L’Oreal’s suppliers of adenosine and – to the extent it includes pricing information or any description of the importance of the purchased product – has obvious relevance to the *Georgia Pacific* factors.

Please respond with L’Oreal’s position no later than June 10th.

Thank you,
Davida

From: "Kasaraneni, Karthik" <karthikkasaraneni@paulhastings.com>

Date: Thursday, June 4, 2020 at 4:11 PM

To: Davida Brook <DBrook@susmangodfrey.com>, "bfarnan@farnanlaw.com" <bfarnan@farnanlaw.com>, "'mfarnan@farnanlaw.com' (mfarnan@farnanlaw.com)" <mfarnan@farnanlaw.com>, Bill Carmody <bcarmody@SusmanGodfrey.com>, Justin Nelson <jnelson@SusmanGodfrey.com>, Tamar Lusztig <TLusztig@susmangodfrey.com>, Beatrice Franklin <BFranklin@susmangodfrey.com>, Rodney Polanco <RPolanco@susmangodfrey.com>

Cc: "Cottrell, Fred" <Cottrell@RLF.com>, "Modi, Naveen" <naveenmodi@paulhastings.com>, "Palys, Joseph E." <josephpalys@paulhastings.com>, "PH-UMASS v. L’Oreal USDC" <PH-UMass-L’Oreal-USDC@paulhastings.com>, "Dittmann, Eric W." <ericdittmann@paulhastings.com>, "Ashkenazi, Isaac S." <isaacashkenazi@paulhastings.com>, "Tymoczko, Nicholas" <nicholastymoczko@paulhastings.com>, "dellis@bgrfirm.com" <dellis@bgrfirm.com>, "Katherine F. Murray" <kmurray@bgrfirm.com>, Serli Polatoglu <spolatoglu@bgrfirm.com>, Maggie Icart <micart@bgrfirm.com>, "Mowery, Katharine Lester" <Mowery@rlf.com>

Subject: RE: University of Massachusetts v. L’Oréal USA, Inc., C.A. No. 17-868-CFC-SRF

Counsel,

While unnecessary in light of our extensive document collection and production efforts to date, in the spirit of cooperation, we have collected and reviewed the documents from MILOR returned by our search for “75156.” Out of an overabundance of caution, we will be producing two documents from that collection tonight. The remaining documents were either non-responsive or duplicative of our production to date. We trust that this good-faith gesture will put this matter to rest.

Regarding the term “adenosine,” your request is untimely, unduly burdensome, and a thinly veiled attempt to prejudice L’Oréal USA at a critical moment in the case schedule. As an initial matter, your purported “shock” is unwarranted, and your assertion that we have not conveyed a basis for the irrelevance of an untargeted “adenosine” search on MILOR is wrong. We advised you during the parties’ May 5 meet and confer—a month ago—that MILOR is a general database and, as such, the search would return tens of thousands of documents that are wholly unrelated to the claims at issue in this case, which, as you know, relate to particular concentrations of adenosine applied to the skin. As examples, we pointed to certificates of analysis for raw adenosine purchased from suppliers and other documents unrelated to skin care. We advised you of our position that L’Oréal USA is not required to conduct such a broad, irrelevant, and unduly burdensome collection and review. We memorialized that call in an email to Plaintiffs

on May 8, and we advised you (again) and the Court of that position in our May 14 briefing (D.I. 164 at 3 & n.4) and during the May 18 conference (where we reiterated that the search would return tens of thousands of documents).

Moreover, L'Oréal USA is focused on completing fact depositions and submitting expert reports. It is far too late in the schedule for L'Oréal USA to entertain further requests regarding this unfocused and overbroad search. Nor is the course you now suggest rational. Fundamentally, Plaintiffs are still asking that L'Oréal USA produce a large number of documents that merely include the word "adenosine"—indeed, without even reviewing them for responsiveness or privilege. L'Oréal USA has already bent over backwards to comply with Plaintiffs' ever-expanding searches, and your request appears to be no more than an attempt to prejudice L'Oréal USA by distracting it from fact depositions and expert reports.

Karthik

From: Davida Brook <DBrook@susmangodfrey.com>
Sent: Friday, May 29, 2020 12:47 PM
To: Kasaraneni, Karthik <karthikkasaraneni@paulhastings.com>; 'bfarnan@farnanlaw.com' <bfarnan@farnanlaw.com>; 'mfarnan@farnanlaw.com' (<mfarnan@farnanlaw.com>)' <mfarnan@farnanlaw.com>; Bill Carmody <bcarmody@SusmanGodfrey.com>; Justin A. Nelson <jnelson@SusmanGodfrey.com>; Tamar Lusztig <TLusztig@susmangodfrey.com>; Beatrice Franklin <BFranklin@susmangodfrey.com>; Rodney Polanco <RPolanco@susmangodfrey.com>
Cc: Cottrell, Fred <Cottrell@RLF.com>; Modi, Naveen <naveenmodi@paulhastings.com>; Palys, Joseph E. <josephpalys@paulhastings.com>; PH-UMASS v. L'Oreal USDC <PH-UMass-L'Oreal-USDC@paulhastings.com>; Dittmann, Eric W. <ericdittmann@paulhastings.com>; Ashkenazi, Isaac S. <isaacashkenazi@paulhastings.com>; Tymoczko, Nicholas <nicholastymoczko@paulhastings.com>; dellis@bgrfirm.com; Katherine F. Murray <kmurray@bgrfirm.com>; Serli Polatoglu <spolatoglu@bgrfirm.com>; Maggie Icart <micart@bgrfirm.com>; Mowery, Katharine Lester <Mowery@rlf.com>
Subject: [EXT] Re: University of Massachusetts v. L'Oréal USA, Inc., C.A. No. 17-868-CFC-SRF

Karthik,

Thank you for clarifying.

Truth be told, we find it fairly shocking that at this late stage in the case there are more than 50,000 documents – in the MILOR database alone – that hit on the term adenosine that L'Oreal has not reviewed for responsiveness. For all the reasons we have discussed, these documents are likely to be highly relevant to this case, and Plaintiffs are no doubt prejudiced as they are being forced to head into depositions without these materials. Moreover, we disagree that the returned results – which come out to a little over 300 documents per accused product – are necessarily disproportionate to the needs of this case, and again request that L'Oreal promptly produce these documents. We also request that L'Oreal promptly produce the 858 results hitting on the ingredient number, as surely there can be no complaint about burden there.

Assuming L'Oreal's position is that it is unwilling to produce the adenosine hits, then we need to work together to come to a different solution. To that end, we suggest L'Oreal produce a random sampling of 1,000 documents from this set: say, every 50th document. The parties can then use this random sampling to determine a set of mutually agreeable limitations on the term adenosine that would zero in on the most relevant documents. For example, if there are a slew of documents discussing some issue that has no bearing on this case – something we find unlikely – we can determine a search to capture those documents, and exclude them from the set to be produced. But simply telling us, without any basis, or at least without any basis you have conveyed, that a review of these documents is unlikely to unearth highly relevant materials bearing on important issues at stake in this action, is plainly insufficient.

Please let us know by COB on Tuesday, June 2nd whether you are agreeable to this approach. Of course, if you have an alternative solution we are happy to consider that as well.

Thank you,
Davida

From: "Kasaraneni, Karthik" <karthikkasaraneni@paulhastings.com>
Date: Tuesday, May 26, 2020 at 4:50 PM
To: Davida Brook <DBrook@susmangodfrey.com>, "'bfarnan@farnanlaw.com'" <bfarnan@farnanlaw.com>, "'mfarnan@farnanlaw.com' (<mfarnan@farnanlaw.com>)" <mfarnan@farnanlaw.com>, Bill Carmody <bcarmody@SusmanGodfrey.com>, Justin Nelson <jnelson@SusmanGodfrey.com>, Tamar Lusztig

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