

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNIVERSITY OF MASSACHUSETTS
and CARMEL LABORATORIES, LLC,

Plaintiffs,

v.

L'ORÉAL USA, INC.,

Defendant.

Case No. 1:17-cv-00868-CFC-SRF

[PROPOSED] PROTECTIVE ORDER

WHEREAS, Plaintiffs University of Massachusetts (“UMass”) and Carmel Laboratories, LLC (“Carmel Labs”) and Defendant L’Oréal USA, Inc. (“L’Oréal USA”) (each Plaintiff and Defendant each a “Party” and collectively, the “Parties”) believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, non-public confidential or commercially sensitive information, trade secrets or sensitive personally identifying information, including but not limited to confidential or commercially sensitive information of the producing Party or a Third Party to whom the producing Party reasonably believes it owes an obligation of confidentiality with respect

to such information, or information that the producing Party is under a legal obligation to maintain as confidential (“Protected Material”). Protected Material designated as CONFIDENTIAL shall be information (regardless of how it is generated, stored, or maintained) and/or tangible things that the producing Party believes in good faith qualifies for protection under standards developed under Rule 26(c) of the Federal Rules of Civil Procedure as non-public confidential, sensitive and/or proprietary information, whether personal or business related, including but not limited to, commercial, trade secrets, financial, technical, marketing, planning, personal, design, research, or development information, as such terms are used in Rule 26(c) of the Federal Rules of Civil Procedure and any applicable case law interpreting Rule 26(c). Protected Material designated as RESTRICTED-ATTORNEYS’ EYES ONLY shall be information (regardless of how it is generated, stored, or maintained) and/or tangible things that the producing Party believes in good faith to be such extremely sensitive or confidential information that it requires disclosure only to a limited group of persons, including due to a perceived risk that such disclosure to another Party or non-party would create a substantial adverse impact on the producing Party’s business, financial condition, ability to compete, standing in the industry, or any other risk of injury that could not be avoided by less restrictive means. Such material and information includes, without limitation, technical or product information not released to the public; confidential business information, including but not limited to market studies and analyses, future projections, strategies, forecasts, business plans, and information concerning business decisions or negotiations; company financial information and projections in any form that have not been made available to the public; license agreements and other contractual relationships with third parties; identification of

current, former, or potential customers and vendors; materials relating to ongoing research and development efforts and future products; technical materials used solely for internal purposes in connection with development, production information, engineering information, or sales training information; supplier and distribution lists and invoices; non-public correspondence and documents relating to the prosecution of any patent applications or any other proceeding before the United States Patent and Trademark Office or any foreign patent office; and all terms as used in Rule 26(c) of the Federal Rules of Civil Procedure and any applicable case law interpreting Rule 26(c). Absent a specific order by this Court, once designated as CONFIDENTIAL or RESTRICTED-ATTORNEYS' EYES ONLY, such designated material shall be used by the Parties only in connection with the Litigation, and not for any other purpose, including business, competitive, or governmental purposes or functions, and such material shall not be disclosed to anyone except as provided herein.

2. Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows:

CONFIDENTIAL

or

RESTRICTED-ATTORNEYS' EYES ONLY

The words "CONFIDENTIAL" or "RESTRICTED - ATTORNEYS' EYES ONLY" shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts designated as containing Protected Material, the cover page of the transcript shall be marked appropriately as "CONFIDENTIAL" or "RESTRICTED - ATTORNEYS' EYES

ONLY.”

3. Any document produced in this Action before issuance of this Order with the designation “Confidential” or “Confidential - Attorneys’ Eyes Only” shall receive the same treatment as if designated “RESTRICTED - ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is re-designated to have a different classification under this Order.
4. With respect to documents, information or material designated “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY”¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIAL shall also be considered DESIGNATED MATERIAL and treated as such under this Order.
5. A designation of Protected Material (i.e., “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY”) may be made at any time. Inadvertent or unintentional production of documents, information, or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY.”

return or destruction of that Protected Material by notifying the recipient(s) as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and treat the properly designated material (and any documents, information or material derived from or based on the inadvertently or unintentionally produced Protected Material) in accordance with its new designation as if it had been initially so designated.

6. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 14 herein:
 - (a) outside counsel of record in this Action for the Parties;
 - (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
 - (c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
 - (d) one designated representative of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other party’s consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;
 - (e) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action and are not employed by a competitor of either Party; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto;

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