

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

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| IN RE: HAIR RELAXER MARKETING SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION | MDL No. 3060 Case No. 23 C 818 Judge Mary M. Rowland Magistrate Judge Sheila M. Finnegan This document relates to: All Cases |
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JOINT ESI DISCOVERY STATUS REPORT ON SEARCH METHODOLOGY

Pursuant to the Court’s minute order [ECF No. 600], Co-Lead Counsel for Plaintiffs and counsel for Defendants¹ (collectively, the “Parties”) submit this Joint ESI Discovery Status Report regarding efforts, on a defendant-by-defendant basis, to reach agreement on search methodology.

I. JUDGE ROWLAND’S ESI APPLICABLE ORDERS

Plaintiffs believe that the previous orders from Judge Rowland that are applicable to this discovery includes but are not limited to the following issues:

- Relevant time period
- Definition of a hair relaxer product
- Duty to supplement collections and responses
- Control of documents
- All applicable prior Case Management Orders, Order and Minute Entries related to discovery both as it relates to individual Defendants and the Defendant group collectively.

¹ Only those Defendants that Plaintiffs have served with discovery requests and have had relevant discussions are described below and jointly submit this Report.

II. STATUS OF INDIVIDUAL DEFENDANT NEGOTIATIONS

As previously discussed with the Court, Defendants are individually negotiating with Plaintiffs' counsel. The status of those negotiations are described below, separated by Defendant.

a. Revlon

The parties agreed on March 12, 2024, to conduct a trial run of preliminary search terms and custodians, with the goal of using that data to assist with future discussions to refine search terms. During the collection process, Revlon encountered an unanticipated technical issue that it has since proactively resolved – which was to ensure that families of documents remain together during the export process. This did not impact the collection process or the data and documents themselves and was done for the benefit of both parties to ensure that there were no “orphaned” documents.

Revlon provided plaintiffs with a search term report on April 30, 2024. The Parties are continuing to work through the iterative process to ensure both Parties are making data informed decisions on the terms. As to discussions on date ranges for ESI collection, Revlon does not currently sell any hair relaxer products. Revlon stopped selling any hair relaxer products by April 2023.

Thus, during a meet and confer on April 30, 2024, the parties agreed to a collection date range beginning 5 years prior to Revlon's first sale of hair relaxer products (to the extent that such documents exist) through the last date Revlon sold hair relaxer products.

b. L'Oréal USA

The Parties have been meeting and conferring on the custodians and search terms of documents to be reviewed. At present, the Parties believe that they will be able to arrive at agreements regarding the validation of search terms and the custodians. However, the Parties are not in agreement on the following issues.

- Collection range
 - L’Oréal USA states that the collection cutoff date should be October 21, 2022 (the date of the first filed lawsuit) while Plaintiffs state that because L’Oréal USA continues to sell hair relaxer products, the current collection should be January 1, 2024.
- Custodians
 - Whether Defendant L’Oréal USA should be collecting custodial files from Defendant L’Oréal S.A. employees.
 - Defendant L’Oréal USA states that they cannot be required to collect custodial files from L’Oréal S.A., a foreign entity that has not been served or appeared in these actions, while Plaintiffs state that if an employee is providing services or working on behalf of L’Oréal USA while a L’Oréal S.A., then that custodial file should be collected.

c. Luster Products, Inc.

Counsel for Luster and Plaintiffs have exchanged search terms and are working out what the ESI search terms and appropriate limiters will be. To date no hit reports have been exchanged or run. Counsel continue to work to identify the appropriate custodians for collection and production but, to date, do not have any disputes over these items and are working cooperatively towards resolution.

Luster continues to engage in the sale and distribution of hair relaxing products.

d. Avlon Industries, Inc.

Defendant’s Position:

Avlon decided to move forward with search terms as its ESI search methodology. On January 8, 2024, Plaintiffs issued 563 search terms to Avlon. Many of the search terms were so

broad that they were facially unworkable and did not require any kind of analysis. For example, Plaintiffs included terms like “scalp” and “test” with no limiters. For a hair care company like Avlon who sells more than just hair relaxers, “scalp” and “test” would pull an inordinate amount of unrelated documents. Avlon requested that Plaintiffs provide more targeted search terms. Plaintiffs refused.

On March 29, 2024, after determining that TAR discussions would not be fruitful, Avlon provided plaintiffs, in compliance with CMO 4 Section VII, a set of targeted search terms that included some of Plaintiffs’ original search terms and terms specific to Avlon’s hair relaxer products and company. On April 1, 2024, Avlon met with Plaintiffs to discuss search terms, and plaintiffs indicated that they were in agreement with Avlon’s terms but believed that a few additional terms needed to be added. Avlon was agreeable to that; however, before the meeting concluded Plaintiffs demanded that Avlon provide hit lists of search terms that Avlon already rejected.

On April 8, 2024, Avlon provided additional search terms to Plaintiffs to consider in compliance with CMO 4 Section VII. Plaintiffs never responded save to again demand that Avlon provide hit lists on terms that Avlon rejected. On April 22, 2024, Plaintiffs provided a revised list, but the manner in which the list was presented was convoluted and not workable. On April 23, 2024, Avlon provided a revised list of 181 search terms along with a hit list of three of the custodians Avlon agreed to look into. Avlon is working to collect data on the remaining custodial and non-custodial sources. At an April 24, 2024 meet and confer, Avlon indicated that its April 23, 2024 set of search terms was issued in compliance with CMO 4 Section VII, and requested that Plaintiffs indicate whether this list was deficient under CMO 4 and what additional search terms needed to be included that was not all of the 563 search terms proposed on January 8, 2024.

On May 1, 2024, Avlon submitted an updated list of 190 proposed search terms for Plaintiffs to consider.

Plaintiffs Position:

Plaintiffs disagree with the allegation stated in Avlon's section but will not be addressing them or the *ad hominem* attacks. The issues as Plaintiff see them are:

As it relates to a current collection range, Plaintiffs' position is that because Avlon is continuing the sale and distribution of hair relaxer products the appropriate collection range at this time would be from five years before the first sale of hair relaxer products to present for ESI purposes, but a current collection cutoff date of December 31, 2023 has been proposed by Plaintiffs. Avlon believes that a more appropriate date range would be 5 years before first sale of their hair relaxer products to January 12, 2023 (the filing of the first lawsuit). Avlon states they are not available to discuss this further until the week of May 13, 2024. Plaintiff has requested a date before the week of May 13, 2024.

As it relates to search terms, the Parties continue to exchange search terms and the Plaintiff will be responding to the terms Avlon recently provided. Plaintiffs have offered a potential limiter that Avlon has not yet responded to. To date, Avlon has not provided a hit report for all the search terms proposed by Plaintiff. However, Plaintiffs will continue to negotiate.

e. Beauty Bell Enterprises, LLC f/k/a House of Cheatham, Inc., and House of Cheatham, LLC

In November 2023, Plaintiffs stated that they would provide search terms to House of Cheatham, LLC. Plaintiffs did not provide any search terms until February 15, 2024 whereas other defendants received search terms months earlier. House of Cheatham requested a shortened list on April 3, 2024, and Plaintiffs produced a shortened list of search terms containing 514 terms on April 25, 2024. During a meet and confer session on May 2, 2024,

House of Cheatham, LLC (“HOC”) stated that it was not yet in a position to commit to a search methodology after only having the shortened list of search terms within the last week. HOC has not searched any specific custodial files using any agreed upon search methodology to date.

During the May 2, 2024 meet and confer session, plaintiffs proposed the date range of production ending on December 31, 2023, and while HOC stated no issues with the date range during the May 2, 2024 meet and confer session, it has not had an opportunity discuss that end date with the joint defense group or its client.

f. Namaste Laboratories LLC

Defendant’s position:

Namasté Laboratories LLC (Namasté) has preliminarily decided to move forward with search terms as its ESI search methodology, but has reserved the right to move to TAR if an agreement on search terms cannot be reached. At present, Namasté and Plaintiffs have made significant progress toward agreement on a search term protocol.

On December 18, 2023, Plaintiffs sent an initial proposed search term list with 589 broad terms and limited modifiers. After correspondence and discussions between the parties, Plaintiffs provided Namasté with a revised set of 460 search terms on February 11, 2024. Thereafter, on April 14, 2024, Namasté sent Plaintiffs a counter search term proposal. Namasté’s proposal included 249 search terms with appropriate modifiers. Given the very general nature of many terms on the list, appropriate modifiers are critical in curating a reasonable and usable list that will, at the same time, ensure capture of relevant and responsive ESI materials.

On April 19, 2020, Plaintiffs requested that Namasté provide a redlined version comparing Plaintiffs’ February 11, 2024 search term list to Namasté’s April 14, 2024 search term list. Namasté had not previously created such a comparison but, in an effort to move discussions forward, created and forwarded to Plaintiffs the requested redline.

On April 25, 2024, Namasté and Plaintiffs met and conferred regarding the search term methodology. Thereafter, on April 29, 2024, Plaintiffs sent Namasté correspondence providing a “summary” of the meet and confer session and including, among other things, a substantive and lengthy list of 16 further requests for information. Namasté is currently reviewing and considering its response to Plaintiffs’ April 29, 2024 correspondence. Accordingly, Namasté’s discussions with Plaintiffs regarding the search term methodology are on-going.

With regard to the appropriate date range for ESI collection, Namasté’s discovery efforts are consistent with its understanding of the Court’s instruction, which is that collection of ESI materials begins, where available, five (5) year prior to Namasté’s first sale of hair relaxer products. The appropriate date range must also include and abide by a reasonable end date. It is Namasté’s position that the correct end date, and the only way to avoid hopelessly injecting protected materials into the discovery process, is the date of the first filing of a hair relaxer complaint against Namasté.

Plaintiffs’ position:

Namasté Laboratories LLC made Plaintiffs aware they already collected all relevant information from all sources. Plaintiff has requested information from Namasté Laboratories LLC regarding collections and to amend their Rule 26 disclosure. In addition to requesting the amending of their Rule 26 disclosure, Plaintiffs have requested the information listed below that Namasté Laboratories LLC has not responded to yet so that search term negotiations can continue, and the decisions being made are data informed decisions.

Questions asked regarding Namasté’s document corpus:

- How many terabytes of data have you collected into your Relativity database?
- How many custodians? And who?

- How many non-custodial collections?
- How many documents?
- How many pages?
- How were the custodians determined?
- Were any custodians partial collections?
- Were any archival sources collected?
- Were any hard copy sources collected?
- Were any storage sources collected?
- Were any cloud sources collected?
- Were there custodial or non-custodial sources you did not collect?
- For the documents you collected are there any documents that you were not able to collect the required meta data with?
- Were any of the collections from backup or archival sources?

g. Strength of Nature LLC

The parties have had a series of meet and confers relating to Search Terms/TAR and custodial production going back to December 2023. Plaintiffs sent a list of proposed custodians to start custodial file production on January 4, 2024, and Defendants sent back comments on why several of the custodians may not be best suited on April 1, 2024. Plaintiffs agreed to SON's limited set of 10 custodians as a starting point but requested further details on why the other custodians were not suited. Recently, Plaintiffs shared proposed search terms on February 3, 2024, and re-sent a slightly revised set on March 23, 2024, following a recent meet and confer. Strength of Nature responded to Plaintiffs' list of search terms by letter on April 4, 2024. Plaintiffs provided a further culled list (removing nearly 200 terms and requesting Strength of Nature provide

modifier/connectors) on April 30, 2024. The parties' negotiations on search methodology are ongoing.

Plaintiffs state the collection range should be from 5 years prior to the selling of hair relaxing products to May 1, 2024 (present). Strength of Nature states that the collection range should begin when the company was founded, in 2000, and end on October 21, 2022, the date of the first hair relaxer filing that named Strength of Nature as a defendant. Strength of Nature is also open to meet and confer on certain categories of documents that could be collected after the date of the initial filing.

Attorneys present at these meet and confers have included Tim Becker, Brian Barr and Jennifer Hoekstra for the Plaintiffs and Dean Porter and Melissa Weberman for the Defendants.

h. Sally Beauty Supply LLC

Plaintiffs and Defendant Sally Beauty Supply LLC have exchanged several versions of a TAR protocol and continue to meet and confer about it, but are close to an agreement. If the Parties cannot reach agreement on a TAR protocol: (1) Sally Beauty may choose to use a different search methodology (search terms) or (2) the Parties may raise this with the Court or Special Master. Attorneys present at these meet and confers have included Mark Abramowitz, David Neiman, Maria Fleming, Syreeta Poindexter, and Kendra Goldhirsch for the Plaintiffs and Lisa Gilford, Colleen Kenney, and Chelsea Priest for Sally Beauty.

Pursuant to the Court's minute order [ECF No. 600], the parties provide the following information and positions bearing on the appropriate collection range. The parties agree that the appropriate collection range for Sally Beauty is January 1, 1993 (five years prior to the first sale of a Sally Beauty hair relaxer product) to May 4, 2023 (the date that Sally Beauty was added to this litigation). The parties agree to meet and confer to discuss narrow exceptions to the May 4, 2023 cutoff for particular documents, if necessary in the future.

i. McBride Research Laboratories

McBride Research Laboratories (“McBride”) had an initial conferral with Plaintiffs’ counsel on April 25, 2024, regarding search terms. However, at the time of the conferral, there were no pending discovery requests about McBride to determine applicable search term methodologies. Accordingly, the parties agreed to confer again after discovery requests which have now been served.

Dated: May 2, 2024

/s/ Edward A. Wallace

Edward A. Wallace
WALLACE MILLER
150 N. Wacker Dr., Suite 1100
Chicago, Illinois 60606
Tel.: 312-261-6193
Email: eaw@wallacemiller.com

Plaintiffs’ Liaison Counsel

Diandra “Fu” Debrosse Zimmermann
DICELLO LEVITT LLP
505 20th Street North - Suite 1500
Birmingham, Alabama 35203
Tel.: 312-214-7900
Email: fu@dicellolevitt.com

Plaintiffs’ Co-Lead Counsel

Fidelma L. Fitzpatrick
MOTLEY RICE LLC
40 Westminster Street, Fifth Floor
Providence, Rhode Island 02903
Tel.: 401-457-7700
Email: ffitzpatrick@motleyrice.com

Plaintiffs’ Co-Lead Counsel

Michael A. London
DOUGLAS & LONDON, P.C.
59 Maiden Lane, Sixth Floor
New York, New York 10038
Tel.: 212-566-7500

Respectfully Submitted,

Mark C. Goodman
BAKER & MCKENZIE LLP
Two Embarcadero Center, Suite 1100 San
Francisco, California 94111
T: (415) 576-3080
mark.goodman@bakermckenzie.com

*Defense Liaison Counsel and Counsel for
Defendant Namasté Laboratories, LLC*

Maurice Bellan
Teisha C. Johnson
BAKER & MCKENZIE LLP
815 Connecticut Avenue, NW
Washington DC 20006
T: (202) 452-7057
maurice.bellan@bakermckenzie.com
teisha.johnson@bakermckenzie.com

Barry Thompson
BAKER & MCKENZIE LLP
10250 Constellation Boulevard, Suite 1850
Los Angeles, CA 90067
T: (310) 201-4703
barry.thompson@bakermckenzie.com

Colleen Baime
Laura Kelly
Baker & McKenzie LLP
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601
T: (312) 861-2510
colleen.baime@bakermckenzie.com

Email: mlondon@douglasandlondon.com

Plaintiffs' Co-Lead Counsel

Benjamin L. Crump
BEN CRUMP LAW FIRM
122 South Calhoun Street
Tallahassee, Florida 32301
Tel.: 850-224-2020
Email: ben@bencrump.com

Plaintiffs' Co-Lead Counsel

laura.kelly@bakermckenzie.com

Mark D. Taylor
Baker & McKenzie LLP
1900 North Pearl Street, Suite 1500
Dallas, TX 75201
T: (214) 978-3089
mark.taylor@bakermckenzie.com

*Counsel for Defendant Namasté
Laboratories, LLC*

Seth A. Litman
Irvin Hernandez
THOMPSON HINE LLP
Two Alliance Center
3560 Lenox Road, Suite 1600
Atlanta, GA 30326
T: (404) 541-2900
Seth.Litman@ThompsonHine.com
Irvin.Hernandez@ThompsonHine.com

*Counsel for Keratin Defendants Keratin
Complex and Keratin Holdings, LLC*

Dennis S. Ellis
Katherine F. Murray
Nicholas J. Begakis
Serli Polatoglu
**ELLIS GEORGE CIPOLLONE
O'BRIEN LLP**
2121 Avenue of the Stars
Suite 3000, 30th Floor
Los Angeles, CA 90067
T: (310) 274-7100
F: (310) 275-5697
dellis@egcfirm.com
kmurray@egcfirm.com
nbegakis@egcfirm.com
spolatoglu@egcfirm.com

Jonathan Blakley
**GORDON REES SCULLY
MANSUKHANI LLP**
1 N. Franklin St., Suite 800
Chicago, IL 60606

T: (312) 565-1400
F: (312) 565-6511
jblakley@grsm.com

Peter Siachos
**GORDON REES SCULLY
MANSUKHANI LLP**
18 Columbia Turnpike, Suite 220
Florham Park, NJ 07932
T: (973) 549-2500
F: (973) 377-1911
psiachos@grsm.com

*Counsel for Defendants L'Oréal USA, Inc.,
L'Oréal USA Products, Inc. and SoftSheen-
Carson LLC*

Lori B. Leskin
**ARNOLD & PORTER KAYE
SCHOLER, LLP**
250 West 55th Street
New York, NY 10019
T: (212) 836-8641
F: (212) 836-8689
Lori.leskin@arnoldporter.com

Rhonda R. Trotter
**ARNOLD & PORTER KAYE
SCHOLER, LLP**
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017
T: (213) 243-4000
F: (213) 243-4199

*Counsel for Defendants Strength of Nature
LLC; Strength of Nature Global LLC; and
Godrej SON Holdings*

R. Trent Taylor
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
T: (804) 775-1182
F: (804) 225-5409
rtaylor@mcguirewoods.com

Patrick P. Clyder
Royce B. DuBiner
MCGUIREWOODS LLP
77 West Wacker Drive, Suite 4100
Chicago, IL 60601-1818
T: (312) 849-8100
F: (312) 849-3690
pclyder@mcguirewoods.com
rdubiner@mcguirewoods.com

*Counsel for Defendant House of Cheatham
LLC*

Joseph P. Sullivan
Kevin A. Titus
Bryan E. Curry
LITCHFIELD CAVO LLP
303 W. Madison, Suite 300
Chicago, IL 60606
T: 312-781-6677
F: 312-781-6630
sullivanj@litchfieldcavo.com
titus@litchfieldcavo.com
curry@litchfieldcavo.com

*Counsel for Defendant Beauty Bell
Enterprises, LLC f/k/a House of Cheatham,
Inc.*

Richard J. Leamy, Jr.
Kristen A. Schank
Anna Morrison Ricordati
WIEDNER & MCAULIFFE, LTD.
1 N. Franklin St., Suite 1900
Chicago, Illinois 60606
T: (312) 855-1105
rjleamy@wmlaw.com
kaschank@wmlaw.com
amricordati@wmlaw.com

*Counsel for Defendant Avlon Industries,
Inc.*

Melissa Fallah
Robert W. Petti

Alyssa P. Fleischman
MARON MARVEL
191 N. Wacker Drive – Suite 2950 Chicago,
Illinois 60606
T: (312) 579-2018 (ofc)
mfallah@maronmarvel.com
rpetti@maronmarvel.com
afleischman@maronmarvel.com

Counsel for Defendant Luster Products, Inc.

Robert A. Atkins
Daniel H. Levi
Shimeng (Simona) Xu
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
1285 Avenue of the Americas
New York, NY 10019
T: (212) 373-3000
ratkins@paulweiss.com
dlevi@paulweiss.com
sxu@paulweiss.com

Randy S. Luskey
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
535 Mission Street, 24th Floor
San Francisco, CA 94105
T: (628) 432-5112
rluskey@paulweiss.com

David E. Cole
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
2001 K Street, NW
Washington, DC 20006
T: (202) 223-7348
dcole@paulweiss.com

Abbot P. Edward
Melissa He
Erich J. Gleber
HAWKINS PARNELL & YOUNG LLP
275 Madison Avenue, 10th Floor
New York, NY 10016
eabbot@hpylaw.com

mhe@hpylaw.com
egleber@hpylaw.com

*Counsel for Defendants Revlon, Inc., Revlon
Consumer Products Corporation, and
Revlon Group Holdings LLC*

Heidi Levine
SIDLEY AUSTIN LLP
787 7th Ave
New York, NY 10019
T: (212) 839-5300
hlevine@sidley.com

Lisa M. Gilford
SIDLEY AUSTIN LLP
555 W 5th St,
Los Angeles, CA 90013
T: (213) 896-6000
lgilford@sidley.com

Kara L. McCall
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
T: (312) 853-2666
kmccall@sidley.com

Counsel for Sally Beauty Supply LLC

Joseph J. Welter
Ryan M. Frierott
GOLDBERG SEGALLIA
665 Main Street
Buffalo, NY 14203
T: (716) 566-5457
jwelter@goldbergsegalla.com
rfrierott@goldbergsegalla.com

Counsel for AFAM Concept, Inc.