From: Brian Schlosser
To: Brendan Tully
Cc: Daniel Wasserberg; Daniel Woodard; Samuel Meirowitz; Kate Foran; Jacqueline Bushwack
Subject: RE: Rodriguez & Hernandez: Avon Corporate Rep Dep
Date: Tuesday, March 21, 2017 4:49:10 PM

Brendan,

I am writing on behalf of Avon Products, Inc. in response to your March 20, 2017 e-mail regarding the *Hernandez* and *Rodriguez* matters.

We cannot provide you with a copy of Avon's "Answers to the NYCAL Standard Interrogatories and their document production, pursuant to the Standard NYCAL Request for documents" by March 24, 2017. As you may not be aware, *Hernandez* is the first "NYCAL" case which named Avon as a defendant. Accordingly, Avon does not have prior answers to interrogatories and/or document productions with regard to the "NYCAL Standard" discovery. Furthermore, under CMO Section VII(A)(2)(b), Avon is not required to respond to "NYCAL Standard" discovery until 30 days after service. Plaintiffs' counsel has not served Avon with "Standard Interrogatories and Request for Document Production" in *Hernandez*, *Rodriguez* or any other "NYCAL" action for that matter. Under the CMO, the time frame within which Avon must respond to "NYCAL Standard" discovery therefore has not yet accrued. Avon will provide plaintiffs with responses to NYCAL standard discovery 30 days after service.

Avon also objects to your firms' deposition Notice, particularly the lengthy, accompanying Rider seeking documents. Under the CMO, plaintiffs cannot propound supplemental interrogatories/discovery without express approval of the Special Master. (Riders, in particular are not contemplated under the CMO.) Further, NYCAL courts have not permitted such supplemental discovery before defendants have been served with and answered standard discovery. As you know, the Court in *Fogel, Leslie v. American International et al.* (Index No. 190093/2016) (Supreme Court, N. Y. County Feb. 14, 2017), struck down "supplemental discovery" which is nearly identical in nature and scope to that sought by plaintiffs here since plaintiff "failed to comply with the procedures outlined in the CMO." A copy of the court's decision is attached. Based upon Justice Moulton's reasoning in that decision, the Notice and Rider in this instance is a thinly veiled attempt to obtain otherwise objectionable supplemental interrogatories/discovery and is therefore, a nullity under *Fogel* and NYCAL precedent. Putting aside the objectionable nature of the Notice and Rider, it is axiomatic that plaintiffs simply cannot forego standard discovery in an effort to accelerate a defendant's deposition.

Accordingly, we object to both the Notice and Rider and do not intend to produce a witness for deposition at this time. That said, I am available to discuss this matter in greater detail at your convenience.

Regards,

Brian S Schlosser

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From: Brendan Tully [mailto:BTully@p2law.com]
Sent: Monday, March 20, 2017 12:54 PM
To: Brian Schlosser
Cc: Daniel Wasserberg; Daniel Woodard; Samuel Meirowitz; Kate Foran
Subject: Rodriguez & Hernandez: Avon Corporate Rep Dep
Importance: High

Brian,

As you know, we served a corporate dep notice on your client Avon in December. You requested a 45 extension, which we granted as a courtesy. With the 45 day extension, your client was required to produce documents to us, pursuant to the dep notice Rider, by last week. Additionally, the new dep date, incorporating the extension, is March 24th, which is only a few days away.

To date, we have not received any documents from your client, nor heard from you whether you will be producing a witness on March 24th. Please advise. Our clients are living and your client has had nearly 3 months to comply with the Notice and Rider, and such, we have to move this along. Therefore, If we do not hear from you by tomorrow, or we are not able to work something out, I will be forced to reach out to the Special master and/or the Court.

Additionally, please provide me, before 3.24.17, with a copy of your client's Answers to the NYCAL Standard Interrogatories and their document production, pursuant to the Standard NYCAL Request for documents.

Thanks.
Brendan

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