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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DELIA WILSON, on Behalf of Herself and
All Others Similarly Situated,

Plaintiff,

v.

CONAIR CORPORATION,

Defendant.

Case No: 1:14-cv-00894-WBS-SAB

**ORDER ON STIPULATION RE
PROTOCOL FOR DESTRUCTIVE
TESTING OF PLAINTIFF’S CURLING
IRON**

Defendant Conair Corporation (“Conair”) and Plaintiff Delia Wilson (“Plaintiff”) (collectively, the “Parties”) enter into this Stipulation regarding the Protocol for Testing Plaintiff’s Curling Iron and hereby agree as follows:

I. Statement of General Intent

1. The general intent of this Stipulation is to establish a protocol for testing Plaintiff’s Conair Instant Heat Curling Iron, model CD87. A prior testing took place on June

1 2, 2015 and June 3, 2015 by Plaintiff. This protocol is for testing conducted by defendant
2 Conair.

3 2. Conair's expert consultant Kurt Breitenkamp of Exponent will be present and
4 oversee the testing. Plaintiff's counsel and/or Plaintiff's expert consultant(s) have the right to
5 be present to observe and/or electronically record the testing and events that occur at the
6 inspection and testing.

7 3. Conair will in writing inform plaintiff of the date(s) and location for each test at
8 least 3 business days prior to the tests. If plaintiff intends to attend or record the testing, no
9 later than five (5) days before the scheduled testing date(s), Plaintiff's counsel will provide
10 Conair's counsel with (a) the identity of all persons who will be present at the testing on
11 Plaintiff's behalf, and (b) the number and type of electronic recording devices Plaintiff's
12 representatives intend to use during the testing and events that occur at the testing.

13 4. Conair will bear the costs of this testing.

14 5. To the extent Plaintiff intends to conduct its own testing of the Curling Iron,
15 Plaintiff will submit a proposed protocol to Conair's counsel and obtain written consent at
16 least five (5) days before the scheduled testing date(s). To the extent the Parties cannot agree
17 on any proposed protocol submitted by Plaintiff, Conair's testing of the Curling Iron will
18 proceed, as long as the consent to Plaintiff's proposed protocol is not unreasonably withheld.
19 If Plaintiff does not conduct any testing at this time, Plaintiff preserves all rights and privileges
20 to conduct testing at a later time. Each party will bear the costs of their own testing.

21 6. Conair will produce the collected "Raw Data" and other information described
22 in Section II, Paragraph 7 to Plaintiff's Counsel within five (5) business days following receipt
23 by either Conair or its consultant from the testing laboratory. "Raw Data" shall mean
24 unprocessed collection of numbers and characters that will later be used, measured and/or
25 analyzed, and whereupon it can be visualized using graphs or images. "Raw Data" shall also
26 mean graphs, plots, outputs of measuring devices, spectra, interpretations thereof, images,
27 films, video and/or digital video created by the laboratory as part of the testing process.

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1 7. This Stipulation is not intended to and does not create or modify any standard
2 for the admissibility of evidence and is not intended to waive or otherwise alter any objections,
3 privileges or rights, including but not limited to, privileges and other rights under the Federal
4 Rules of Civil Procedure and Federal Rules of Evidence. All Parties preserve all objections
5 and rights.

6 **II. Conair’s Protocol for Testing Subject Curling Irons**

7 1. Plaintiff will be required to bring or provide to Conair’s counsel both of the
8 entire Curling Irons, including the power cords from both the curling iron and the “control”
9 curling iron that was used at Plaintiff’s testing to this testing conducted by Conair.

10 2. Conair’s expert, Kurt Breitenkamp intends to visually examine and capture
11 electronic and/or digital images of the entire Curling Iron. This inspection and digital imaging
12 will take place at Exponent’s facility at 149 Commonwealth Drive, Menlo Park, California,
13 94025.

14 3. Conair’s experts will also perform tests to evaluate whether there are chemical
15 compositional differences in the power cord insulation. Multiple samples of the insulation will
16 be taken at multiple locations on each of the two power cords. Fourier-transform infrared
17 (FTIR) spectroscopy will be used in combination with organic-solvent extraction to
18 gravimetrically assess the mass of chemical additives in the cord that can be dissolved. These
19 extracted additives will be analyzed by gas chromatography-mass spectrometry (GC-MS) to
20 possibly identify their composition and relative concentration. After organic extraction, the
21 insulation samples will be analyzed by thermogravimetric analysis (TGA) to quantify the mass
22 fraction of the material that is not combustible (i.e. inorganic additives and fillers). The non-
23 combustible residue from the EDS experiment will be subsequently analyzed by energy
24 dispersive spectroscopy (EDS) to qualitatively compare the inorganic components present in
25 each sample. The residue from each sample will then be analyzed by inductively coupled
26 plasma mass spectrometry (ICP-MS) to quantify the concentrations of inorganic elements in
27 each sample. The FTIR test will be performed by Kurt Breitenkamp at Exponent’s Menlo
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1 Park facility. The GC-MS analysis of the extracted organic compounds will be performed by
2 Susan Mackintosh, who is also employed by Exponent, at Exponent's Menlo Park facility.
3 The TGA and EDS analysis will be performed by Robert Farina at Exponent's Bowie,
4 Maryland facility located at 17000 Science Drive, Suite 200, Bowie, Maryland. The ICP-MS
5 analysis will be performed by a different facility, K Prime Inc., located at - 3621 Westwind
6 Blvd , Santa Rosa, California.

7 4. These samples will be taken from the power cord in the area of the alleged
8 failure and the area near the failure. The samples will be taken from similar locations as
9 performed during the testing done by Plaintiff.

10 5. These tests will require the removal of very small samples of insulation from
11 the power cord (1/2 gram). In order to remove these samples, the laboratory will use a knife,
12 scalpel or similar instrument (*e.g.*, microtome) to remove samples of insulation from the power
13 cord. The insulation will be removed at or near the break in the power cord and additional
14 samples will be removed in and around the break, as well as farther down the power cord.
15 Conair estimates that five (5) samples will be taken. Conair also reserves the right to test the
16 five (5) samples previously taken by Plaintiff's expert consultant for purposes of determining
17 composition of the samples, to the extent the samples are still in the possession of the testing
18 facility and available to Plaintiff. After its testing is completed, Conair will preserve all
19 samples of the insulation taken by it from the power cords and provide them to Plaintiff upon
20 request.

21 6. Insulation will also be taken from the same control Conair curling iron power
22 cord that Plaintiff previously tested and testing performed by Conair in accordance with
23 section II, subsections 3 through 5 as applicable. The samples will be taken from the similar
24 locations as performed during the testing done by Plaintiff.

25 7. Plaintiff's counsel will deliver the two curling irons to Defense counsel via
26 federal express for delivery on or before December 28, 2015. Defense counsel will provide the
27 curling irons to the experts. Defense counsel will create a chain of custody log, and at the end
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1 of the testing, will provide the two curling irons and all component parts back to Plaintiff's
2 counsel with a copy of the chain of custody log.

3 Within five (5) business days following the receipt of the test results by either Conair
4 or its consultant from the testing laboratory, Conair will produce the following to Plaintiff's
5 Counsel: (i) all Raw Data; (ii) documentation on how each test or analysis was performed; (iii)
6 all test results and interpretation of such results (iv) documentation on how each test or
7 analysis was interpreted and calculated and the resulting interpretation and calculations; and
8 (vi) if a library of spectra was used in these interpretations, what was used and how it was
9 derived.

10 **IT SO STIPULATED.**

11 Dated: December 24, 2015

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Dated: December 24, 2015

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Attorneys for Defendants

ORDER

Pursuant to the stipulation of the parties,

IT IS SO ORDERED.

Dated: **December 28, 2015**


UNITED STATES MAGISTRATE JUDGE