

1 **O'MELVENY & MYERS LLP**  
 Richard B. Goetz (State Bar No. 115666)  
 2 Carlos M. Lazatin (State Bar No. 229650)  
 400 South Hope Street  
 3 Los Angeles, CA 90071  
 Telephone: (213) 430-6000  
 4 Facsimile: (213) 430-6407  
 Email: rgoetz@omm.com  
 5 clazatin@omm.com

**BURSOR & FISHER, P.A.**  
 Neal J. Deckant (State Bar No. 322946)  
 Frederick J. Klorczyk (State Bar No. 320783)  
 1990 North California Boulevard, Suite 940  
 Walnut Creek, CA 94596  
 Telephone: (925) 300-4455  
 Facsimile: (925) 407-2700  
 E-Mail: ndeckant@bursor.com  
 fklorczyk@bursor.com

6 **O'MELVENY & MYERS LLP**  
 Hannah Y. Chanoine (admitted *pro hac vice*)  
 7 Times Square Tower  
 7 Times Square  
 8 New York, NY 10036  
 Telephone: (212) 326-2000  
 9 Facsimile: (212) 326-2061  
 Email: hchanoine@omm.com

**BURSOR & FISHER, P.A.**  
 Joseph I. Marchese (admitted *pro hac vice*)  
 888 Seventh Avenue  
 New York, NY 10019  
 Telephone: (646) 837-7150  
 Facsimile: (212) 989-9163  
 E-Mail: jmarchese@bursor.com

10 *Attorneys for Defendants*

**BURSOR & FISHER, P.A.**  
 Scott A. Bursor (State Bar No. 276006)  
 2665 S. Bayshore Dr., Suite 220  
 Miami, FL 33133-5402  
 Telephone: (305) 330-5512  
 Facsimile: (305) 676-9006  
 E-Mail: scott@bursor.com

*Attorneys for Plaintiff*

15 **UNITED STATES DISTRICT COURT**

16 **EASTERN DISTRICT OF CALIFORNIA**

18 JOANN MARTINELLI, individually and on  
 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 JOHNSON & JOHNSON and McNEIL  
 22 NUTRITIONALS, LLC,

23 Defendants.

No. 2:15-cv-01733-MCE-DB

**JOINT STIPULATION AND ORDER  
 REGARDING ADMISSIBILITY OF  
 DECLARATION OF LARRY  
 MARTINELLI**

1 In the interests of efficiently conducting discovery, Plaintiff Joann Martinelli (“Plaintiff”),  
2 Defendants Johnson & Johnson and McNeil Nutritionals, LLC (“Defendants”), and third-party  
3 Larry Martinelli (collectively, the “Parties”) submit this joint stipulation regarding the  
4 admissibility of the Declaration of Larry Martinelli in Support of Motion to Quash Subpoena,  
5 dated March 24, 2020 (the “Declaration”), Dkt. 225 at 21–22. In lieu of taking Larry Martinelli’s  
6 deposition, the Parties agree that the Declaration will be admissible in this case for all purposes,  
7 including at trial. Accordingly, by and through their counsel of record, the Parties hereby  
8 stipulate as follows:

9 WHEREAS, on March 10, 2020, third-party Larry Martinelli moved to quash a subpoena  
10 for his deposition testimony (Dkt. 220), and on March 24, 2020, filed the Declaration in support  
11 of his portion of the Joint Statement regarding the motion to quash (Dkt. 225);

12 WHEREAS, on June 8, 2020, Magistrate Judge Barnes denied Larry Martinelli’s motion  
13 to quash (Dkt. 236);

14 WHEREAS, on September 2, 2020 Defendants served a subpoena for Larry Martinelli’s  
15 deposition testimony, noticing the deposition to take place on September 16, 2020;

16 WHEREAS, Defendants have agreed to withdraw their subpoena to Larry Martinelli, and  
17 in exchange, the Parties hereby stipulate that the Declaration shall be admissible in this case for  
18 all purposes, including at trial.

19 NOW, THEREFORE, the Parties STIPULATE AND AGREE, subject to the approval of  
20 this Court, that:

21 1. The Declaration of Larry Martinelli in Support of Motion to Quash Subpoena,  
22 dated March 24, 2020 (Dkt. 225 at 21–22) shall be admissible in this case for all purposes,  
23 including at trial; and

24 2. Defendants will not seek to depose Larry Martinelli for any purpose in this case  
25 except in the event that Larry Martinelli submits evidence that contradicts or is inconsistent with  
26 the statements in the Declaration of Larry Martinelli in Support of Motion to Quash Subpoena,  
27 dated March 24, 2020 (Dkt. 225 at 21–22).

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IT IS SO STIPULATED.

Dated: September 15, 2020

**O'MELVENY & MYERS, LLP**

By: /s/ Carlos M. Lazatin  
Carlos M. Lazatin

Richard B. Goetz (State Bar No. 115666)  
Carlos M. Lazatin (State Bar No. 229650)  
400 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 430-6000  
Facsimile: (213) 430-6407  
E-Mail: rgoetz@omm.com  
clazatin@omm.com

*Attorneys for Defendants*

Dated: September 15, 2020

**BURSOR & FISHER, P.A.**

By: /s/ Frederick J. Klorczyk III (as authorized on 9/15/20)  
Frederick J. Klorczyk III

Neal J. Deckant (State Bar No. 322946)  
Frederick J. Klorczyk III (State Bar No. 320783)  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-Mail: ndeckant@bursor.com  
fklorczyk@bursor.com

*Attorneys for Plaintiff*

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Dated: September 15, 2020

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Neal J. Deckant (State Bar No. 322946)  
Frederick J. Klorczyk III (State Bar No. 320783)  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-Mail: ndeckant@bursor.com  
fklorczyk@bursor.com

*Attorneys for Larry Martinelli*

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**ORDER**

Pursuant to the parties' stipulation, IT IS SO ORDERED

DATED: September 21, 2020

/s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE