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Attorneys for Plaintiffs

(additional counsel on signature page)

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JORDAN NELSON and REGINA PERALTA,)
individually and on behalf of all others similarly)
situated,)
)
Plaintiffs,)
)
vs.)
)
KENVUE, INC., MCNEIL CONSUMER)
HEALTHCARE, JOHNSON & JOHNSON)
CONSUMER, INC., CVS PHARMACY, INC.,)
HALEON US CAPITAL LLC, GSK PLC,)
ALBERTSONS COMPANIES, INC., TARGET)
CORPORATION, WALMART INC., and)
PERRIGO COMPANY PLC,)
)
Defendants.)

Case No. 4:23-cv-04875-HSG
**STIPULATION AND ORDER
TO SUBSTITUTE PARTY
NAME, AMEND CAPTION, AND
TO ENLARGE TIME FOR
RESPONSIVE PROCEEDINGS
PENDING MDL
DETERMINATION**
Judge: Hon. Haywood S. Gilliam, Jr.
Courtroom: 2 – 4th Floor

STIPULATION AND ORDER TO SUBSTITUTE PARTY NAME, AMEND CAPTION, AND TO ENLARGE TIME FOR
RESPONSIVE PROCEEDINGS PENDING MDL DETERMINATION
CASE NO. 4:23-CV-04875-HSG

1 **WHEREAS**, Plaintiffs Jordan Nelson and Regina Peralta (“Plaintiffs”) filed the above-
2 captioned action against Defendants Kenvue, Inc., McNeil Consumer Healthcare, Johnson & Johnson
3 Consumer, Inc., CVS Pharmacy, Inc., Haleon US Capital LLC, GSK Plc, Albertsons Companies, Inc.,
4 Target Corporation, Walmart Inc., and Perrigo Company Plc (“Defendants”) on September 22, 2023
5 (the “Complaint”),

6 **WHEREAS**, Haleon US Capital LLC and GSK plc were incorrectly named as defendants in
7 this action;

8 **WHEREAS**, GlaxoSmithKline Consumer Healthcare Holdings (US) LLC (“Haleon”) is the
9 proper defendant regarding certain products alleged in the Complaint;

10 **WHEREAS**, Kenvue, Inc. and McNeil Consumer Healthcare were incorrectly named as
11 defendants in this action;

12 **WHEREAS**, Johnson & Johnson Consumer Inc. (“JJCI”) is the proper defendant regarding
13 certain products alleged in the Complaint;

14 **WHEREAS**, a petition has been filed before the Judicial Panel on Multidistrict Litigation (the
15 “JPML”) to consolidate certain civil actions now pending inside and outside of this District into a
16 single multidistrict litigation (the “MDL Petition”);

17 **WHEREAS**, the MDL Petition has identified at least thirteen actions it seeks to consolidate in
18 MDL No. 3089, and at least sixty additional actions are pending across the country that may also be
19 deemed related actions (together with any other actions that are the subject of the MDL Petition, the
20 “Related Actions”);

21 **WHEREAS**, Plaintiffs have filed a Notice of Related Actions in the MDL proceeding
22 identifying this action as related to those identified in the MDL Petition, *see In re: Oral Phenylephrine*
23 *Marketing and Sales Practices Litigation*, MDL No. 3089, ECF No. 51;

24 **WHEREAS**, the MDL Petition has been docketed before the JPML as *In re: Oral*
25 *Phenylephrine Marketing and Sales Practices Litigation*, MDL No. 3089, and responses to the MDL
26 Petition are due on or before October 25, 2023, with a reply due on or before November 1, 2023;

1 **WHEREAS**, oral argument on the MDL Petition is scheduled to take place on November 30,
2 2023 before the JPML panel, *see In re: Oral Phenylephrine Marketing and Sales Practices Litigation*,
3 MDL No. 3089, ECF No. 166;

4 **WHEREAS**, this Court has the inherent power to grant a stay, especially in circumstances
5 such as here, where doing so would promote judicial economy and avoid prejudice to the parties, *see*,
6 *e.g.*, *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *Gutierrez v. Samsung Elecs. Am., Inc.* 2022
7 WL 15398352, at *1 (N.D. Cal. Oct. 27, 2022) (granting stipulation to stay pending JPML decision);
8 *L.A.T. v. Meta Platforms, Inc.*, 2022 WL 4279709, at *1 (N.D. Cal. Sept. 15, 2022) (same); *Butler v.*
9 *McKesson Corp.*, 2013 WL 4104093, at *2 (Aug. 12, 2013 N.D. Cal.) (granting motion to stay pending
10 contested motion to transfer to MDL);

11 **WHEREAS**, absent relief from currently pending deadlines, the Court and the parties would
12 face responsive pleading deadlines and, in light of the possibility that there will be an MDL
13 consolidating the Related Actions for the purpose of pretrial proceedings, an extension of those
14 deadlines is prudent to avoid duplication of pretrial efforts by the parties, any waste of judicial
15 resources, and the risk of conflicting rulings;

16 **WHEREAS** the parties have met and conferred and agree that responsive pleading deadlines
17 should be stayed pending resolution of the MDL Petition;

18 **THEREFORE, THE PARTIES HEREBY STIPULATE, AGREE AND**
19 **RESPECTFULLY REQUEST THAT:**

- 20 1. Defendants “Haleon US Capital LLC” and “GSK plc” are dismissed without prejudice and will
21 be replaced by defendant “GlaxoSmithKline Consumer Healthcare Holdings (US) LLC” and
22 the caption in this action shall be amended to reflect that substitution;
- 23 2. Defendants “Kenvue, Inc.” and “McNeil Consumer Healthcare” are dismissed without
24 prejudice and the caption in this action shall be amended to reflect that dismissal;
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- 1 3. This Court stays any served Defendant's deadline to answer, move, or otherwise plead in
2 response to the Complaint, or any subsequently filed amended complaint until further order of
3 this Court or any Court to which the JPML assigns the Related Actions;
- 4 4. Because this case has been submitted to the JPML as a related case, the Court will receive
5 notice from the JPML if an MDL is formed. If the JPML denies the motion to form an MDL,
6 the Parties will meet and confer within 14 days of the JPML's ruling and prepare a joint status
7 report for the Court;
- 8 5. The parties' entry into this stipulation does not constitute a waiver of any jurisdictional
9 defenses that may be available under Rule 12 of the Federal Rules of Civil Procedure, including
10 personal jurisdiction, a waiver of any defenses under Rule 8 of the Federal Rules of Civil
11 Procedure, or a waiver of any other statutory or common law defenses that may be available
12 to any Defendant in this action, the Related Actions, or both. Defendants expressly reserve
13 their rights to raise any such defenses in response to any operative or amended complaint that
14 may be filed relating to this action.

1 Dated: October 18, 2023

Respectfully submitted,

2 /s/ Sarah N. Westcot

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17 Dated: October 18, 2023

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11 **SIGNATURE ATTESTATION**

12 Pursuant to Local Rule 5-1(i)(3) regarding signatures, I, Sarah N. Westcot, attest that
13 concurrence in the filing of this document has been obtained by the other signatory to this document.

14
15 By: /s/ Sarah N. Westcot

16
17 **IT IS SO ORDERED.**

18
19 Dated: 10/19/2023


HAYWOOD S. GILLIAM, JR.
United States District Judge