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ATTORNEYS FOR RESPONDENT
HENRY SCHEIN, INC.

"

"

Exhibit A

: fca . Fontecilla, Adrian
G/bh Friday, August 31, 2018 5:25 PM
Hc. Moy, Jessica; Kahn, Lin
7W In-re-Benco-Schein-Patterson-Service; Kass, Colin; John P. McDonald; Masters, Owen
T.; Lauren Fincher
G VVM RE: Marshall Report

Jessica,

We have provided you the basis for our request – which are the Scheduling Order and Rule 3.31A. We have made clear that the only resolution to this re requires prompt service of the two disclosures required: (1) materials relied upon by Dr. Marshall; and (2) materials considered by Dr. Marshall. Neither has been provided yet. Given that our expert report is due next week and Complaint Counsel has made clear that it does not intend to provide anything other than Appendix B, we are at an impasse and intend to file a motion today.

Best,
Adrian

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Thank you for meeting and conferring with us ov

information. Please let us know if you will do so. If that Dr. Marshall did not rely on any information outside of the information cited in the body and footnotes of his report, we ask that you state that fact expressly. If Complaint Counsel refuses to answer whether Dr. Marshall, himself, relied on materials outside of the information cited in the body and footnotes of this report, we ask that you state that fact expressly.

Third, our understanding that Dr. Marshall, himself, may have considered materials outside of the information cited in the body and footnotes of his report, but Complaint Counsel is refusing to identify such information, on the grounds that there purportedly is no requirement to distinguish between what Dr. Marshall considered and what his staff considered. If that is not correct, we ask that you identify such information.

Fourth, our understanding that Dr. Marshall and his staff may have considered materials, including information that is and is not cited in the body and footnotes of his report, and that such information is reflected in Appendix B to Dr. Marshall's report. If that is not correct, please let us know.

We would appreciate the courtesy of a written response to each of the four points above.

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Jessica,

I just want to confirm what you are saying in the second sent ence – beyond those materials cited in the body and footnotes of Dr. Marshall’s report, Dr. Marshall did not rely on any other documents in forming his op inions. If that understanding is incorrect, please let me know a time today we can discuss.

Best,
Adrian

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Lin,

We write to raise an issue concerning Appendix B of Dr. Marshall’s expert report, which purports to contain a list of the materials that Dr. Marshall and “[his] staff” considered in preparing the report.

We believe that Appendix B does not comport with Complaint Counsel’s disclosure obligations in two respects. First, it is not limited to what Dr. Marshall considered or relied upon, as opposed to what his staff may have considered or relied upon. Second, it does not disclose the materials that Dr. Marshall “relied upon,” as distinct from and in addition to the materials that he “considered.”

Rule 3.31A(c) requires that any expert report contain “the data, materials, and other information considered *by the witness* in forming [his] opinions.” Appendix B appears to contain information considered by Bates White staff, but not necessarily Dr. Marshall himself. As such, Appendix B does not comply with Rule 3.31A(c). Put simply, we are entitled to know what materials Dr. Marshall himself considered.

In addition, Paragraph 19(b) of the Scheduling Order requires Complaint Counsel to “comply with Rule 3.31A *and* ... [to] provide ... all documents *relied upon* by the expert in formulating an opinion.” Appendix B, however, appears to include documents considered but not relied upon. As such, Appendix B also does not comply with Paragraph 19(b). Likewise, we are entitled to know what materials Dr. Marshall is relying upon, as opposed to having simply reviewed or considered.

To the extent Dr. Marshall has personally considered (*i.e.*, reviewed) and is *relying* on all documents in Appendix B, we request that you state that fact expressly. Conversely, if Dr. Marshall has considered and *only* considered, *and* has relied upon and has *only* relied upon, the documents expressly cited in the body of the report (excluding Appendix B), then we similarly request that you state that fact expressly.

If, however, neither of those alternatives are true, we request that you produce two new lists, identifying: (i) the documents “considered by [Dr. Marshall] in forming [his] opinions,” and (ii) the documents “relied upon by [Dr. Marshall] in formulating [any] opinion.”

Please let us know promptly whether Complaint Counsel will agree to do so.

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Counsel Supporting the Complaint

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Counsel for Respondent Patterson Companies, Inc.

/s/ Adrian Fontecilla

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Notice of Electronic Service

I hereby certify that on August 31, 2018, I filed an electronic copy of the foregoing Respondent Henry Schein Inc's Motion to Complete DC -16.821 -2.333 7g0dr uslosures, with: D 1 >>BDC Spof 6.821 -228 w q 1 0 7

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