

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA, NORTHERN DIVISION**

ANGELA CARTER, individually)
and on behalf of all others similarly)
situated,)
)
Plaintiff,)
v.)
L'ORÉAL USA, INC., and SOFT)
SHEEN-CARSON, LLC,)
)
Defendants.)

Civil Action No.: 2:16-cv-508-CG-B

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA, NORTHERN DIVISION**

ELLA B. VALRIE, individually)
and on behalf of all others similarly)
situated,)
)
Plaintiff,)
v.)
L'ORÉAL USA, INC., and SOFT)
SHEEN-CARSON, LLC,)
)
Defendants.)

Civil Action No.: 1:17-cv-00270-CG-B

UNOPPOSED MOTION TO TRANSFER AND CONSOLIDATE

COME NOW the Plaintiffs in the above-styled actions, by and through the undersigned counsel of record, and file this *Unopposed Motion to Transfer and Consolidate* pursuant to Rule 42 of the FEDERAL RULES OF CIVIL PROCEDURE and CIVIL LOCAL RULE 42(a) of the Southern District of Alabama and, in support thereof, would show unto the Court as follows:

I. INTRODUCTION

The undersigned counsel represent the named Plaintiffs in the parallel class action lawsuits styled *Angela Carter, et al. v. L'Oréal USA, Inc. et al.* [2:16-cv-00508-CG-B (S.D. Ala.)] (“*Carter, et al.* case”) and *Ella B. Valrie v. L'Oréal USA, Inc., et al.* [1:17-cv-00270-CG-B (S.D. Ala.)] (“*Valrie* case”), which raise identical class wide factual allegations and legal claims against the same Defendants.

Plaintiffs request the *Valrie* case be transferred and consolidated with the *Carter, et al.* case for the purposes of pretrial and trial proceedings, judgment and appeal.

Plaintiffs’ counsel has communicated with Defendants’ counsel in the *Carter, et al.* case regarding consolidation of the two above-styled cases. Defendants’ counsel in *Carter, et al.* has advised that consolidation of the two actions is unopposed.

The “Carter” case:

The procedural history and posture of the *Carter* case is as follows:

1. The *Carter* case was originally filed September 30, 2016.
2. Counsel for Defendants’ have filed a *Motion to Dismiss Plaintiff’s Second Amended Class Action Complaint* in the *Carter* case which has been formally opposed by the plaintiff, and to which Defendants’ have filed a *reply brief*.
3. The parties in the *Carter* case have stipulated to the scheduling of a Rule 26(f) conference pending the outcome of the Defendants’ *Motion to Dismiss*.
4. The *Carter* case is pending before Senior Judge Callie V. S. Granade and Magistrate Judge Sonja F. Bivins.

The Subsequent “Blackmon” case and its Consolidation with “Carter”:

The procedural history and posture of the *Blackmon* case is as follows:

1. The *Blackmon* case was originally filed March 1, 2017, in this the U.S. District Court for the Southern District of Alabama.

2. On March 14, 2017, the *Blackmon* case was consolidated with the *Carter* case by formal *Order* entered by Senior District Judge Callie V.S. Granade.

Plaintiffs file this motion in each of the above-styled actions contemporaneously.

II. LEGAL STANDARD

“[D]istrict judges may by rule, order or consent transfer cases between themselves.” *Williams v. Ala. Bd. of Educ.*, 182 F.App’x 868, 871 (11th Cir. 2006) (quoting *U.S. v. Stone*, 411 F.2d 597, 598 (5th Cir. 1969)¹ (“*District judges have the inherent power to transfer cases from one to another for the expeditious administration of justice.*”)); see also *U.S. v. Martinez*, 686 F.2d 334, 338 (5th Cir. 1982) (reaffirming that district judges may “by rule, order or consent transfer cases between themselves”); see also *U.S. v. Diaz*, 189 F.3d 1239, 1243-44 (10th Cir. 1999) (expressing agreement with the U.S. Court of Appeals for the Fifth Circuit’s reasoning in *Stone and Martinez*). FEDERAL RULE OF CIVIL PROCEDURE 42(a) codifies a district court’s “inherent managerial power” “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” “ *Young v. City of Augusta*, 59 F.3d 1160, 1168 (11th Cir. 1995) (quoting *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)) (citations omitted). Rule 42(a) provides:

- (a) CONSOLIDATION. If actions before the court involve a common question of law or fact the court may:
 - (1) join for hearing or trial any or all matters at issue in the actions;
 - (2) consolidate the actions; or
 - (3) issue any other orders to avoid unnecessary cost or delay.

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*), the Eleventh Circuit Court of Appeals adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

FED. R. CIV. P. 42(a). The Eleventh Circuit has explained that consolidation pursuant to Rule 42(a) "is permissive and vests a purely discretionary power in the district court." *Young*, at 1168 (quoting *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1013 (5th Cir. 1977)). In exercising that discretion, district courts must weigh the risk of prejudice and confusion wrought by consolidation against the risk of inconsistent rulings on common factual and legal questions, the burden on the parties and the court (*i.e.*, *available judicial resources*), the length of time required to conclude multiple suits as against a single one, and the relative expense of proceeding with separate lawsuits if they are not consolidated. *See Hendrix*, at 1495. Moreover, with the same judge presiding over each matter, there will be far less risk of inconsistent intra-district decisions, which could cause confusion and uncertainty. *See U.S. v. Hogan*, 986 F.2d 1364, 1369 (11th Cir. 1993) (*discussing the problems created by inconsistent intra-circuit decisions*).

III. ARGUMENT AND CONCLUSION

The *Carter, et al.* case and the *Valrie* case share the same identical facts applicable to all class members and assert identical legal claims. Both actions address the same defective hair product and involve the exact same Defendants. Consolidation of these two actions will not unduly delay or prejudice the Defendants' because they are already actively litigating and defending the *Carter, et al.* case. In order to avoid duplication of efforts, judicial waste, and the potential for disparate rulings, Plaintiffs Carter, Blackmon and Valrie respectfully request consolidation of the *Valrie* case with the *Carter, et al.* case. Plaintiffs request consolidation of the two cases to this Court for all future proceedings, including trial, judgment and appeal.

District courts in this Circuit "have been 'urged to make good use of Rule 42(a) ... in order to expedite the trial and eliminate unnecessary repetition and confusion[.]'" *Young*, at 1169

(quoting *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973)); see also *Hendrix*, 776 F.2d at 1495 (quoting *Dupont v. Southern Pacific Co.*, 366 F.2d 193, 195 (5th Cir. 1966), cert. denied, 386 U.S. 958, 87 S.Ct. 1027 (1967)). Again, the *Carter, et al.* case and the *Valrie* case involve the same facts common to all class members and the same legal claims. Having the same judge consistently address the substantive and procedural legal questions that run through each case will serve the “expeditious administration of justice”. *U.S. v. Stone*, at 599. To move forward on a two-tracked path with parallel separate class action lawsuits pending would be inordinately wasteful and needlessly time-consuming for both the litigants and the Court. Based on considerations of efficiency, judicial economy, the risk of inconsistent rulings on common questions, the burden on the parties and the court, and the relative expense of proceeding separately versus together, consolidation of these actions will streamline the proceedings and eliminate unnecessary repetition and confusion. Simply stated, it would be far more sensible and efficient to litigate the cases in a single proceeding than to do so in duplicative actions; it just makes sense.

WHEREFORE, premises considered, Plaintiffs respectfully request the Court in the *Carter* case enter an *Order*:

1. Finding that the fundamental questions presented in *Angela Carter, et al. v. L’Oréal USA, Inc. et al.* [2:16-cv-00508-CG-B (S.D. Ala.)] and *Ella B. Valrie v. L’Oréal USA, Inc., et al.* [1:17-cv-00270-CG-B (S.D. Ala.)] are the same.
2. Finding that consolidation of the two actions will serve principles of judicial economy, avoid the risk of inconsistent rulings, and the expense of proceeding separately versus together, eliminating unnecessary repetition, duplication, and confusion.
3. (a) Consolidating *Ella B. Valrie v. L’Oréal USA, Inc., et al.* [1:17-cv-00270-CG-B (S.D. Ala.)] with *Angela Carter, et al. v. L’Oréal USA, Inc. et al.* [2:16-cv-00508-CG-B (S.D. Ala.)] for all future proceedings, including trial, judgment and appeal; and,

(b) Directing the Clerk of Court to extract all documents from *Ella B. Valrie v. L'Oréal USA, Inc., et al.* [1:17-cv-00270-CG-B (S.D. Ala.)] and make those documents part of the court file in *Angela Carter, et al. v. L'Oréal USA, Inc. et al.* [2:16-cv-00508-CG-B (S.D. Ala.)].

Respectfully submitted, this the 16th day of June, 2017.

/s/ W. Lewis Garrison, Jr.

W. Lewis Garrison, Jr.

Ala. Bar No.: ASB- 3591-N74W

Brandy Lee Robertson

Ala. Bar No.: ASB-2737-D65R

*Counsel for Plaintiff and the
Putative Class*

HENINGER GARRISON DAVIS, LLC

2224 First Avenue North

Birmingham, AL 35203

wlgarrison@hgdllawfirm.com

brandy@hgdllawfirm.com

Telephone: 205-326-3336

Facsimile: 205-380-8072

/s/ Joseph L. "Josh" Tucker

Joseph L. Tucker

Ala. Bar No.: ASB-1653-E26J

*Counsel for Plaintiff and the
Putative Class*

JACKSON & TUCKER, P.C.

2229 1st Ave. North

Birmingham, AL 35203-4203

Telephone: 205.252.3535

Facsimile: 205.252.3536

josh@jacksonandtucker.com

CERTIFICATE OF SERVICE

I hereby certify that I have this the 16th day of June, 2017, served a copy of the foregoing upon all parties to this matter by electronically filing the same with the Court's CM/ECF electronic filing system, which will cause a copy to be electronically served on all counsel of record.

/s/ Joseph L. Tucker
Joseph L. "Josh" Tucker
josh@jacksonandtucker.com
JACKSON & TUCKER, P.C.
2229 1st Ave. North
Birmingham, AL 35203-4203
Telephone: 205.252.3535
Facsimile: 205.252.3536