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January 2, 2018

**VIA ECF**

Hon. Lorna G. Schofield  
Thurgood Marshall United States Courthouse  
40 Foley Square  
Courtroom 1106  
New York, New York 10007

Re: *Akwei, et al. v. Reckitt Benckiser LLC*, 17-cv-6080

Dear Judge Schofield:

As you know, we represent defendant Reckitt Benckiser LLC (“RB”) in this matter filed by plaintiffs Brigitte Akwei (the “NY Plaintiff”), Donna Sims (the “IL Plaintiff”), and Joe Drew (the “GA Plaintiff” collectively, “Plaintiffs”), and write pursuant to Your Honor’s December 12, 2017 Order (Dkt. No. 20) requesting that the parties each show cause why the Court should not transfer this action to the District of New Jersey, pursuant to 28 U.S.C. § 1404(a).

In this action, Plaintiffs have alleged causes of action against RB based upon statements made on the packaging for RB’s Air Wick air freshener room spray (the “Air Wick Product”). The labeling for the Air Wick Product describes it as an air freshener, and states that it can, for a period lasting up to one hour, eliminate odors. By their Complaint, Plaintiffs apparently do not dispute that the Air Wick Product eliminates a consumer’s sensory perception of odors for up to one hour. Instead, Plaintiffs’ allege that the truthful statement on the label that the Air Wick Product “eliminates odors” is misleading because the underlying chemical compounds that cause a consumer to perceive malodorous scents are not physically removed from the atmosphere.

Based upon the statements on the packaging for the Air Wick Product, Plaintiffs have alleged causes of action in the Complaint arising exclusively from the laws of their respective states. The NY Plaintiff has brought claims for violation of the New York General Business Law and fraud under New York law. The IL Plaintiff has brought claims for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, as well as fraud, breach of express warranties, and unjust enrichment under Illinois law. The GA Plaintiff has brought claims for violation of the Georgia Fair Business Practices Act, as well as fraud, breach of express warranties, and unjust enrichment under Georgia law. The claims of the respective Plaintiffs are based entirely on state law from their respective states, and Plaintiffs have not alleged any federal claims against RB. On September 29, 2017, RB responded to the Complaint with a Motion to Dismiss Plaintiffs’ claims pursuant to Federal Rule of Civil Procedure 12(b)(6) (the “12(b)(6) Motion”). (See Dkt. Nos. 11-13.)

As Your Honor will recall, the parties appeared before the Court for an October 3, 2017 Initial Pretrial Conference, shortly after RB filed its Motion to Dismiss. At that Conference, and in an



Hon. Lorna G. Schofield  
January 2, 2018  
Page 2

accompanying October 3, 2017 Order (Dkt. No. 14), the Court asked the parties to address whether Plaintiffs' claims were properly joined before this Court. RB argued that the claims were not properly joined before this Court in a letter and accompanying motion (Dkt. Nos. 18 and 19) (collectively, the "Misjoinder Motion"), submitted pursuant to the October 3, 2017 Order. By the December 12, 2017 Order, this Court denied the Misjoinder Motion and requested that the parties address whether this case should be transferred to the District of New Jersey.

While RB is prepared to defend this case before this Court and pursue its pending 12(b)(6) Motion, to which Plaintiffs have not yet responded as the deadline to respond to that Motion has been stayed while the parties address the joinder, jurisdiction and venue issues raised by this Court, this matter may be properly transferred to the District of New Jersey pursuant to 28 U.S.C. § 1404(a). As Plaintiffs noted in their December 28, 2017 letter (Dkt. No. 21), in considering transfer pursuant to 28 U.S.C. § 1404(a), this Court must first determine whether the case could originally been brought in the transferee district, and then determine whether transfer is warranted based on the following factors:

(1) the convenience of witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of the operative facts; (5) the availability of process to compel attendance of unwilling witnesses; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded a plaintiffs' choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

*Glass v. S & M NuTec, LLC*, 456 F. Supp. 2d 498, 501 (S.D.N.Y. 2006).

This case could have originally been brought in the District of New Jersey, the location of RB's principal place of business. In turn, several of the foregoing factors weigh in favor of transfer to the District of New Jersey. Plaintiffs claim that the convenience of the witnesses and the parties favors their choice of forum, however, that argument only considers the convenience of the NY Plaintiff and ignores the convenience of the IL Plaintiff, the GA Plaintiff and RB. The IL and GA Plaintiffs will need to travel regardless of the venue of this case. RB and its witnesses, which include RB personnel involved with developing the labeling for and testing the effectiveness of the Air Wick Product, are based out of RB's headquarters in Parsippany, New Jersey. The inconvenience to multiple RB witnesses outweighs the inconvenience to the single NY Plaintiff by traveling to the District of New Jersey. Additionally, Plaintiffs' arguments regarding the potential convenience for expert witnesses are irrelevant, as "it is well settled that "the location of expert witnesses is irrelevant to a transfer decision." *Cerussi v. Union Coll.*, 144 F. Supp. 2d 265, 269 (S.D.N.Y. 2001) (citation and quotation omitted).

The location of relevant documents and ease of access to sources of proof also favors New Jersey. The balance of the relevant evidence, save the evidence presented by each of the Plaintiffs regarding their individual experiences with the Air Wick Product, will be maintained by RB, which is located in Parsippany, New Jersey. For the same reasons, the locus of operative facts slightly favors New Jersey, as only the NY Plaintiff has experience with the Air Wick Product in this District, while the marketing and testing of the Air Wick Product was conducted in New Jersey. The ability to compel attendance of unwilling witnesses also favors New Jersey in

## SheppardMullin

Hon. Lorna G. Schofield  
January 2, 2018  
Page 3

this instance, as the parties will be able to compel the attendance of all witnesses located in this District if the case is pending in the District of New Jersey, as the entirety of this District is within 100 miles of the Newark Division of the District of New Jersey.

The relative means of the parties and the forum's familiarity with governing law only slightly favors Plaintiffs' choice of forum. As discussed above, the IL and GA Plaintiffs must travel regardless of where this case is pending, and, as Plaintiffs' counsel acknowledges, it is relatively simple for the NY Plaintiff to travel to the District of New Jersey. Similarly, both this District and the District of New Jersey will need to familiarize themselves with the Illinois and Georgia consumer protection statutes and common law relied upon by Plaintiffs. While this Court may be more familiar with the New York statutes and common law relied upon by Plaintiffs, the District of New Jersey is frequently confronted with issues and claims arising under New York law in light of the District of New Jersey's proximity to New York.

RB will defend itself either before Your Honor or in the District of New Jersey, as this Court deems appropriate. Should this Court decide to maintain this case in this District, RB respectfully requests that the Court set a briefing schedule for RB's pending 30(b)(6) motion before the parties engage in discovery in connection with Plaintiffs' claims.

Respectfully submitted,

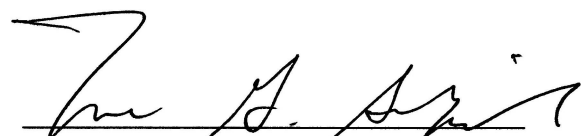


Paul W. Garrity  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: C.K. Lee, Esq.

Having reviewed the parties submissions regarding a possible change of venue, this action is transferred to the U.S. District Court for the District of New Jersey, pursuant to 28 U.S.C. § 1404(a) for substantially the reasons stated in this letter. The Clerk of Court is directed to cancel all conferences and transfer the case.

Dated: January 3, 2018  
New York, New York



**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**