

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

<p>SHARON HOFMAISTER Plaintiff/Petitioner(s) VS. JOHNSON &amp; JOHNSON et al Defendant/Respondent (s)</p>	<p>No. 23CV033743 Date: 12/22/2023 Time: 2:24 PM Dept: 18 Judge: Patrick McKinney  ORDER re: Ruling on Submitted Matter - Motion to Consolidate</p>
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The Court, having taken the matter under submission on 12/21/2023, now rules as follows:

The Motion to Consolidate filed by SHARON HOFMAISTER on 12/07/2023 is Granted in Part.

The motions of Plaintiffs to consolidate *Hofmaister v. Johnson & Johnson*, No. 23CV033743 and *Yerkes v. Avon Prods., Inc.*, No. 23CV032102 came on for hearing on December 21, 2023 in Department 18 of the Alameda County Superior Court. After consideration of the papers submitted in support of and in opposition to the motions, and the arguments of counsel presented at the hearing, the motions are **GRANTED in part** as to consolidation for expert discovery. The motions are **DENIED in part** without prejudice as to consolidation for trial purposes.

**I. Background**

On April 28, 2023, Plaintiffs Shelly and Thomas Yerkes filed a complaint against several entities alleging that Ms. Yerkes developed malignant mesothelioma following exposure to asbestos talc products. (Compl., *Yerkes v. Avon Prods., Inc.*, No. 23CV032102.) Ms. Yerkes used dozens of Avon’s products between 1969 and the 1990s, including among others *Miss Lollypop*, *Unforgettable Beauty Dust*, *Lila and Lily of the Valley*, *Field of Flowers Come Summer*, *Sweet Honesty*, *Fresh Cut Florals*, *Ultra*, *Tempo*, *Zany* perfumed-talc products, and *Skin So Soft* cosmetic-talc products. (Clancy Decl. Ex. 6, Nov. 29, 2023 (36:24–37:19, 39:8–41:14, 41:25–49:25, 54:17–56:19, 58:1–63:23); Raphael Decl. Ex. 3, Dec. 8, 2023 (480:4–481:5); Loomer Decl. Ex. C, Dec. 8, 2023 (24:21–24).) Ms. Yerkes also used Johnson’s baby powder in the 1960s as an infant, and between the 1980s and the 2000s. (Clancy Decl. Ex. 6 (26:23–28:12, 64:10–69:10, 70:21–71:22, 83:24–85:5); Raphael Decl. Ex. 3 (480:4–481:5); Loomer Decl. Ex. C (24:25–27).) Lastly, Ms. Yerkes used other products, such as Jean Nate’s products, between the 1970s and the 2000s. (Loomer Decl. Ex. C (24:28–25:6).)

On May 18, 2023, Plaintiff Sharon Hofmaister filed a complaint against several entities alleging that she developed malignant mesothelioma following exposure to asbestos talc products. (Compl., *Hofmaister v. Johnson & Johnson*, No. 23CV033743.) Ms. Hofmaister was a makeup artist and hairdresser. (Clancy Decl. Ex. 7 (16:20–18:20); Loomer Decl. Ex. D (23:14–16).)

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Ms. Hofmaister used Avon’s *Hawaiian Ginger*, *Odyssey*, *Skin So Soft*, *Charisma*, and *Candid* products between 1961 and 1970. (Clancy Decl. Ex. 7 (40:2–42:15); Raphael Decl. Ex. 1 (27:5, 40:16–41:4, 41:17–42:15, 350:17–351:2, 360:20–361:3, 367:6–369:6, 371:8–10, 374:21–375:18, 375:22–376:23).) Ms. Hofmaister also used Johnson’s Baby Powder on her clients from the 1990s until the 2000s. (Clancy Decl. Ex. 7 (12:9–26:21); Loomer Decl. Ex. D (23:14–17).) Lastly, Ms. Hofmaister used Revlon and L’Oréal products between the 1970s and 2000s. (Loomer Decl. Ex. D (23:20–23).)

Hofmaister and the Yerkes family (collectively, “Plaintiffs”) moved to consolidate their cases for all purposes. (Hofmaister’s Mot., *Hofmaister*; Yerkes & Yerkes’s Mot., *Yerkes*.<sup>1</sup>) Plaintiffs argued that consolidation is proper because: (1) “both cases have been preferentially set for trial on the same day by this Court;” (2) “both cases arise from the same disease—pleural mesothelioma—and the same common questions of law and fact—whether the Plaintiffs’ exposure to cosmetic talcum powder was a substantial factor giving rise to their mesothelioma;” and (3) “[c]onsolidating these two cases will save substantial court, juror, party, and taxpayer time and resources.” (*Id.* 2:14–25.) The Charles B. Crystal Company, Safeway Inc., Albertsons Companies, Inc., Longs Drug Stores California, LLC, Lucky Stores LLC, Save Mart Supermarkets LLC, and Avon Products, Inc. opposed.

The Court issued its tentative ruling denying the motion, based in part on the finding that Conopco, Coty, Albertsons, Longs, Lucky, and Save Mart were actively litigating in *Yerkes* but not in *Hofmaister*. At the hearing, Plaintiffs’ Counsel informed the Court that after the Court issued its tentative, several defendants had settled, and the only defendants remaining were Avon, the Brenntag entities, Charles B. Crystal, and Safeway

## II. Legal Standard

“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” (Code Civ. Proc. § 1048(a).)

## III. Discussion

As noted above in Section I, there are individual questions of fact that predominate in each case—especially concerning the composition of the products at issue and the period of exposure. These differences risk creating avoidable costs, confusion, delay, and raise the potential for prejudice during *trial*. Accordingly, the Court finds consolidation for trial purposes is unwarranted.<sup>2</sup>

But as for consolidation for *pretrial* purposes, the Court finds there is almost complete overlap between the expert witnesses identified by the remaining parties. (*Compare* Clancy Decl. Ex. 10, Dec. 14, 2023, *with id.* Ex. 11 (identical expert witnesses for Charles B. Chrystal); *compare id.* Ex. 12, *with id.* Ex. 13 (identical expert witnesses for Avon); *compare id.* Ex. 14, *with id.* Ex. 15 (four of five expert witnesses identical for Brenntag); *compare id.* Ex. 20, *with id.* Ex. 22 (identical expert witnesses for Safeway).) Conducting parallel expert discovery of almost identical expert witnesses for cases with identical trial dates and identical expert discovery

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deadlines will cause unnecessary costs and delay. Accordingly, the Court finds consolidation for expert discovery appropriate.

**IV. Order**

The motion is **GRANTED in part** as to consolidation for expert discovery.

The motion is **DENIED** without prejudice in part as to consolidation for trial purposes.

<sup>1</sup> Although each motion bears a different reservation number, the two motions are identical. As such, the Court refers to both motions as one for the purposes of this discussion.

<sup>2</sup> As discussed at the hearing, Plaintiffs may seek reconsideration of this order based on new facts or circumstances arising after the date of this order.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated : 12/22/2023



Patrick McKinney / Judge

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 12/27/2023 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: SHARON HOFMAISTER	By: <u>A. Amponsah</u> Deputy A. Amponsah
DEFENDANT/RESPONDENT: JOHNSON & JOHNSON et al	
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>	CASE NUMBER: 23CV033743

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter - Motion to Consolidate entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

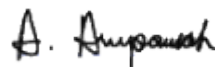
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Dated: 12/27/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Amponsah, Deputy Clerk