

SUB # 3

PRESENT:

Honorable Helen E. Freedman, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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:  
IN RE: NEW YORK RENU WITH MOISTURELOC :  
PRODUCT LIABILITY LITIGATION :  
:  
:  
----- X  
THIS DOCUMENT APPLIES TO ALL CASES :  
----- X

Index No. 766,000/2007

**CASE MANAGEMENT  
ORDER NO. 3**

**FILED**

**MAR 27 2007**

NEW YORK  
COUNTY CLERK'S OFFICE

**Electronic Filing**

**I. Scope Of Order**

1. Order Applicable To All Product Liability Plaintiffs In The New York Coordinated ReNu with MoistureLoc Proceeding. This Order shall apply to all plaintiffs who allegedly suffered personal injury from using ReNu with MoistureLoc in cases currently pending in the Supreme Court of the State of New York, County of New York, and to all related product liability actions that have been or will be originally filed in, or transferred to, this Court and assigned thereto (collectively, the "Coordinated Proceeding"). This Order is binding on all parties and their counsel in all product liability cases currently pending or subsequently made part of these proceedings.

**II. The Parties' Agreement Regarding Electronic Filing**

2. Consent To Electronic Filing. Representatives of Plaintiffs' and Defendants' Liaison Counsel have met and conferred, and have jointly presented this Order setting forth the parties' agreement and consent to electronic filing for all present and future cases in the Coordinated Proceeding, pursuant to terms set forth below.

3. In Present Cases, Electronic Filing To Take Effect Upon Filing Of An Omnibus Joint

Consent To Electronic Filing Form. In those cases filed and served on or before March 30, 2007 (“Present Cases”), the parties shall file an Omnibus Joint Consent To Electronic Filing Form signed by Plaintiffs’ and Defendants’ Liaison Counsel, stating that the parties consent to the use of electronic filing in this Coordinated Proceeding, and providing the names, firms, and e-mail addresses of Plaintiffs’ and Defendants’ Liaison Counsel, their designated representatives, and Plaintiffs’ Steering Committee and establishing a general case file entitled “In re: ReNu with MoistureLoc Product Liability Litigation” and bearing Index No. 766,000/2007. In addition, the Omnibus Joint Consent to Electronic Filing Form shall attach an appendix identifying all Present Cases by name, index number, and the name, firm and e-mail addresses of the plaintiff’s counsel and counsel for any non-Bausch & Lomb defendants. The Omnibus Joint Consent to Electronic Filing Form shall be filed and served by March 30, 2007, and, upon filing, Electronic Filing shall take effect for all Present Cases. Parties shall add the suffix “E” to the index number on all papers filed with the Court in all cases in which Electronic Filing is to take effect.

4. In Future Cases, Electronic Filing To Take Effect Upon Filing Of Complaint, Affidavits Of Service, And Plaintiff’s Consent To Electronic Filing Form. In those cases commenced after March 30, 2007 (“Future Cases”), electronic filing shall take effect either by the filing of a summons and complaint, the necessary affidavits of service for each named defendant, and a completed Plaintiff’s Consent to Electronic Filing Form, or by filing a hard copy of those papers with the County Clerk. A sample Plaintiff’s Consent to Electronic Filing Form is attached at Exhibit A. This form shall be prepared, filed and served by the plaintiff’s attorney, indicating that the plaintiff’s attorney and Bausch & Lomb Defendants’ counsel consent to the use of electronic filing, and provide one or more e-mail addresses for the plaintiff’s attorney, as well as the following

e-mail addresses for Bausch & Lomb Defendants' counsel:

Nixon Peabody LLP

Joseph J. Ortego                    jortego@nixonpeabody.com  
James W. Weller                    jweller@nixonpeabody.com  
   cc: Laura Dorsey   ldorsey@nixonpeabody  
Aaron Halpern                        ahalpern@nixonpeabody.com

Shook Hardy & Bacon, LLP

Edward O. Gramling                egramling@shb.com  
Marie Woodbury                    mwoodbury@shb.com  
Gay Tedder                          gtedder@shb.com  
Eric Anielak                         eanielak@shb.com  
   cc: Kristie Luttrell    kluttrell@shb.com

O'Melveny & Myers LLP

John Beisner                         jbeisner@omm.com  
Jessica Miller                        jmiller@omm.com

The appearance of these names and e-mail addresses on any Plaintiff's Consent To Electronic Filing Form shall not be deemed an appearance by any Bausch & Lomb Defendant. Bausch & Lomb Defendants shall not be required to file a Consent To Electronic Filing Form for Future Cases. In Future Cases naming only Bausch & Lomb Defendants, the plaintiffs' counsel shall not be required to file or serve a Notice of Availability of Electronic Filing Form.

5.        Future Cases Naming Non-Bausch & Lomb Defendants. In those Future Cases that name non-Bausch & Lomb defendants, Plaintiffs' counsel will also file and serve on the non-Bausch & Lomb defendant a Notice of Availability of Electronic Filing Form and a Defendant's Consent To Electronic Filing Form, which are attached hereto as Exhibits B and C, respectively. The non-Bausch & Lomb defendant's counsel shall then have 30 days from the date of service to either consent or decline to participate the Court's electronic filing system.

6.        Notice Regarding Availability Of Electronic Filing Form Not Required. With the

exception of Future Cases naming non-Bausch & Lomb defendants (discussed in paragraph II. 5. directly above), this Case Management Order No. 3 shall take the place of the Notice Regarding Availability of Electronic Filing Form, and that form shall not be required to be filed or served by any party.

7. Service Through Electronic Filing. Proper service of any electronically served documents shall be deemed to have been effectuated when the Court's receipt for the filing and payment of the filing fee for said documents is sent from Court via the electronic filing system to opposing Counsel. A party serving an interlocutory paper shall, on the day of filing, send electronically a Notice of Filing of the paper to all e-mail addresses of record as set forth in Section 202.5-b of the Uniform Rules for Trial Courts. In addition to the Notice of Filing, the filing attorney shall file proof of service. This proof of service need not itself be served on the parties.

8. Papers to Be Filed Electronically. All papers to be filed with the Court shall be filed electronically in accordance with the electronic filing rules set forth in Section 202.5-b of the Uniform Rules for Trial Courts, except where a special exemption is granted or as directed by the Court.

9. Courtesy Hard Copies of Papers for Judicial Review. Unless otherwise directed by the Court, courtesy hard copies shall be submitted with respect to all papers intended for judicial review including, but not limited to motion papers.

10. All Other Procedures, Including Those Related To "Secure" Documents, Governed By The Electronic Filing Rules. Except as indicated herein, all other filing, service, and all other procedures, including those related to documents designated by one or more parties as "secure," shall be governed by and pursuant to the New York rules regarding electronic filing as set forth in Section

202.5-b of the Uniform Rules for Trial Courts.

**III. Registration For Electronic Filing**

11. In Present Cases, All Counsel Shall Register By April 15, 2007. Counsel in Present Cases shall register for electronic filing promptly, but no later than April 15, 2007. Counsel shall register by submitting a Filing User Registration Form to obtain the confidential Filing User Identification Number and Password necessary to use the system. This form is available in the “forms” section of the Court’s Website, which is accessed by clicking on “E-Courts” at [www.nycourts.gov](http://www.nycourts.gov). Once registered, counsel shall not have to register for each case.

12. In Future Cases, Plaintiff’s Counsel And Non-Bausch & Lomb Defendants’ Counsel Shall Register Within Ten Days Of Filing Their Respective Consent To Electronic Filing Forms. In Future Cases, the plaintiff’s counsel shall register for electronic filing as set forth above no later than ten days after the filing and service of the Plaintiff’s Consent To Electronic Filing Form, as set forth in paragraph five above. In Future Cases, the counsel for non-Bausch & Lomb defendants shall register for electronic filing as set forth above no later than ten days after the filing and service of the Defendant’s Consent to Electronic Filing Form.

SO ORDERED.

Dated: March 26, 2007

**FILED**

**MAR 27 2007**

**NEW YORK  
COUNTY CLERK'S OFFICE**

  
\_\_\_\_\_  
Helen E. Freedman, J.S.C.

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

IN RE: NEW YORK RENU WITH MOISTURELOC  
PRODUCT LIABILITY LITIGATION

Index No. 766,000/2007

PLAINTIFF'S CONSENT  
TO ELECTRONIC FILING

-----X

Plaintiff(s) name,

-against-

Index No. [insert number]

Defendant(s) name,

-----X

Pursuant to Case Management Order No. 3 § II(5), I, \_\_\_\_\_, submit this Plaintiff's  
Consent in the above-entitled action and state as follows:

1. I, \_\_\_\_\_, am a plaintiff or an attorney for plaintiff. I consent to the use  
of electronic filing in this case and provide the following e-mail addresses for the purposes of service  
and giving notice of each filing pursuant to the terms set forth in Case Management Order No. 3:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

2. Counsel for Bausch & Lomb Defendants consent to the use of electronic filing in this  
case and provide the following e-mail addresses for the purposes of service and giving notice of each  
filing pursuant to the terms set forth in Case Management Order No. 3:

Nixon Peabody LLP

Joseph J. Ortego	jortego@nixonpeabody.com
James W. Weller	jweller@nixonpeabody.com
Laura Dorsey	ldorsey@nixonpeabody.com

Shook Hardy & Bacon, LLP

Edward O. Gramling	egramling@shb.com
Marie Woodbury	mwoodbury@shb.com
Gay Tedder	gtedder@shb.com
Eric Anielak	eanielak@shb.com

Kristie Luttrell

kluttrell@shb.com

O'Melveny & Myers LLP

John Beisner

jbeisner@omm.com

3. The appearance of the above names and e-mail addresses of Bausch & Lomb Defendants' counsel shall not be deemed an appearance by Bausch & Lomb Defendants in this case. Pursuant to Case Management Order No. 3 § II(5), Bausch & Lomb shall not be required to file a separate Consent to Electronic Filing form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

Attorney for \_\_\_\_\_

\_\_\_\_\_  
Telephone Number

# EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
IN RE: NEW YORK RENU WITH MOISTURELOC  
PRODUCT LIABILITY LITIGATION

Index No. 766,000/2007

NOTICE OF  
AVAILABILITY OF  
ELECTRONIC FILING

-----X  
Plaintiff(s) name,

-against-

Defendant(s) name,  
-----X

Index No. [insert number]

PLEASE TAKE NOTICE that Plaintiffs and Bausch & Lomb Defendants in the above-captioned action consent and intend that this action proceed as an electronically-filed case pursuant to the terms set forth in Case Management Order No. 3. Service of papers by electronic means cannot be made upon a party unless that party consents to use of the system.

Under Case Management Order No. 3 § II(6), each non-Bausch & Lomb defendant shall have 30 days from the date of service to either consent or decline to participate in the Court's electronic filing system. Each non-Bausch & Lomb Defendant that consents shall file a Defendant's Consent to Electronic Filing form, which is provided herewith.

**General Information**

In New York state court practice, actions may be commenced and cases processed by means of the electronic filing system in the following types of cases: (1) tax certiorari claims in the Supreme Court in New York City and in Monroe, Westchester, and Suffolk Counties; (2) tort claims, and commercial claims in the Commercial Division, in the Supreme Court in New York City and in Albany, Monroe, Nassau, Suffolk, and Westchester counties; (3) commercial claims in the Commercial Division of Supreme Court, and proceedings in Surrogate's Court, in Erie County; and (4) selected claims against the State of New York.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to

be filed with the Court and served in a simple, convenient, and expeditious manner. Electronic filing case documents are filed with the court by filing on the Court website, which can be accessed at any time day or night by going to [www.nycourts.gov](http://www.nycourts.gov) and clicking on “E-Courts.” In this litigation, electronic filing is governed by Case Management Order No. 3 and , where applicable, Section 202.5-b of the Uniform Rules for Trial Courts.

**Instructions**

1. Non-Bausch & Lomb defendants are strongly encouraged to consent to electronic filing.
2. Pursuant to Case Management Order No. 3 II(6), you have 30 days from the date of service to either consent or decline to participate in electronic filing. To consent, you must file a Defendant’s Consent to Electronic Filing form, which is provided herewith.
3. Pursuant to Case Management Order No. 3 § III(11), you have ten days from the date of filing a Defendant’s Consent to Electronic Filing form to register for electronic filing on the Court’s website, by going to [www.nycourts.gov](http://www.nycourts.gov), clicking on “E-courts,” clicking on “Electronic Filing,” clicking on “Forms,” and accessing the attorney registration form.
4. For additional information about electronic filing, see the *User’s Manual* and *Frequently Asked Questions* on the Court website or contact the Electronic Filing Resource Center at (646) 386-3033

Dated: \_\_\_\_\_

\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Firm)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_  
\_\_\_\_\_ (Phone)  
\_\_\_\_\_ (Fax)  
\_\_\_\_\_ (E-mail)  
Attorney(s) for \_\_\_\_\_

# EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

Index No. 766,000/2007

IN RE: NEW YORK RENU WITH MOISTURELOC  
PRODUCT LIABILITY LITIGATION

DEFENDANT'S CONSENT  
ELECTRONIC FILING

-----X

Plaintiff(s) name,

-against-

Index No. [insert number]

Defendant(s) name,

-----X

Pursuant to Case Management Order No. 3 § II(6), I, \_\_\_\_\_, am a non-Bausch & Lomb defendant or an attorney for a non-Bausch & Lomb defendant. I consent to the use of electronic filing in this case and provide the following e-mail addresses for the purposes of service and giving notice of each filing pursuant to the terms set forth in Case Management Order No. 3:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

As required under Case Management Order No. 3 § II(6), I attest that I filed this Defendant's consent to Electronic Filing within 30 days of service.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

Attorney for \_\_\_\_\_

\_\_\_\_\_  
Telephone Number