IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION IN RE: SOCLEAN, INC. MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION This document relates to: *Koninklijke Philips N.V. et al.* v. *SoClean, Inc. & DW Mgmt. Servs., LLC* (MDL 3014, ECF No. 2922) *Philips RS North America LLC* v. *SoClean, Inc. et al.* (MDL 3021, ECF No. 653) *Koninklijke Philips N.V. et al.* v. *SoClean, Inc. & DW Mgmt. Servs., LLC* (MDL 3021, ECF No. 507) *SoClean, Inc.* v. *Koninklijke Philips N.V. et al.* (MDL 3021, ECF No. 211)	Master Docket Nos. 21-mc-1230 and 22-mc-152 MDL Nos. 3014 and 3021

MOTION FOR ENTRY OF SCHEDULING ORDER GOVERNING ALL LITIGATION BETWEEN THE PHILIPS PARTIES AND THE SOCLEAN PARTIES

There are four litigation tracks between the various Philips, SoClean and DW parties: (1) SoClean's affirmative claims (MDL 3021, ECF No. 211), (2) Philips' counterclaims (MDL 3021, ECF No. 507), (3) Philips' contribution claims (personal injury) (MDL 3014, ECF 2922)), and (4) Philips' assigned claims (property damage economic loss) (MDL 3021 ECF No. 653). The parties have engaged in extensive discussions, overseen by Special Master Katz, to attempt to reach agreement on a scheduling order to govern these proceedings. However, the parties were unable to reach agreement on a joint schedule. A number of significant areas of disagreement remain.

The attached schedule (Ex. 1) is the parties' attempt to lay out their proposals and the disputes that remain. In addition, because the various footnotes in the attachment have become somewhat unwieldy, the Philips parties are submitting a separate brief (Ex. 2) laying out their positions on each disputed item. The SoClean and DW parties have declined to file a separate brief at this time.

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Respectfully submitted,

/s/ Michael H. Steinberg
Michael H. Steinberg (CA Bar No. 134179)
steinbergm@sullcrom.com
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, CA 90067
Tel: (310) 712-6670
Fax: (310) 712-8800

/s/ Tracy Richelle High
Tracy Richelle High (NY Bar No. 3020096)
hight@sullcrom.com
William B. Monahan (NY Bar No. 4229027)
monahanw@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Tel: (212) 558-4000
Fax: (212) 558-3588

Counsel for Koninklijke Philips N.V. and Philips North America LLC

/s/ Erik T. Koons
Erik T. Koons (NY Bar No. 2941102)
erik.koons@bakerbotts.com
BAKER BOTTS LLP
700 K Street, N.W.
Washington, D.C. 20001
Tel: (202) 639-7973
Fax: (202) 585-1086

/s/ Andrew T. George
Andrew T. George (PA Bar No. 208618)
andrew.george@bgblawyers.com
BOURELLY, GEORGE & BRODEY LLP
1050 30th Street, NW
Washington, DC 20007
Tel: (202) 753-5012
Fax: (703) 465-8104

Counsel for Philips RS North America LLC

Schedule for SoClean / DW / Philips Litigation[1]

Date	SoClean's Claims[2]	Philips' Counterclaims[2]	Philips' Contribution Claims (Personal Injury)[2]	Philips' Assigned Claims (Property Damage Economic Loss)[2]
8/19/2024	Joint report to S.M. Vanaskie			
8/20/2024		Response to SoClean's objections to S.M. Vanaskie's Report and Recommendation		

[1] White cells indicate dates/events upon which there is agreement. Pink cells indicate areas of disagreement.

Philips Position: Philips' positions on the disputed items are set forth in its accompanying position statement and, consistent with Special Master Katz's suggestion, briefly below. Given how unwieldy this document has become in light of the volume of footnotes and SoClean/DWHP's decision to set forth the entirety of their positions in the footnotes, the Philips parties informed SoClean and DWHP last week that they would be submitted a separate position statement clearly laying out the disputed items and their positions on each. SoClean and DWHP decided not to submit their own position statement (Philips had no objection to them doing so, or to sharing both sides' position statements in advance), but SoClean and DW instead made the strategic decision to wait to see what the Philips parties submit.

SoClean and DWHP Position: Consistent with the suggestion of Special Master Katz, and for ease of reference by the Court, SoClean's and DWHP's positions on the disputed items are set forth in this joint submission. Rather than set forth (and therefore disclose) all of their positions in this joint submission, Philips has indicated their intent to also file a separate "position statement," which was not shared with SoClean, DWHP or Special Master Katz as part of the parties' negotiation of this joint submission. As such, and regrettably, SoClean and DWHP must reserve their right to respond in a corresponding brief and/or during the August 22, 2024 status conference.

[2] There are four litigation tracks between SoClean, DW and Philips: (1) SoClean's affirmative claims, (2) Philips' counterclaims, (3) Philips' contribution claims, and (4) Philips' assigned claims. The parties disagree as to whether a schedule should include all four tracks or be limited to only the first and second tracks.

Philips Position: Philips believe it is important to coordinate all of these proceedings, including to minimize inefficiencies on the Court and the parties and lessen the risk of multiple depositions of the same individuals. Much of the fact and expert discovery (including merits and jurisdictional) will overlap significantly across all four tracks, and various legal issues will overlap as well. Philips thus believes that any schedule should take into account all four tracks so that this litigation can proceed in a coordinated fashion (consistent with the purpose of MDL practice) and to avoid conflicting deadlines across the four tracks. The Philips parties filed their Contribution Claims (track 3) in May 2024, following extensive briefing to the Court (and an R&R from Special Master Katz) on the entry of Pretrial Order No. 31. And the consumer claims subject of the Assigned Claims (track 4) were first asserted against SoClean by consumers back in 2021. Further, the Economic Loss Class Action Settlement—pursuant to which Philips RS became the owner of these consumer claims—was first filed in September 2023. If they are actually obtaining separate counsel, Defendants should have done so long ago. The Philips parties have been asking SoClean and DW to identify their counsel for weeks now. This is a transparent attempt by them to delay the advancement of tracks 3 and 4. The Philips parties also strongly disagree, for the reasons set forth in their position statement, that trial of SoClean's claims against the Philips parties should be given priority.

SoClean and DWHP Position: The business-to-business case has been pending for almost three years. At the July 24, 2024 status conference, the Court directed the parties to work with Special Masters Katz and Vanaskie regarding a timeline with the goal of starting trial on the business-to-business case within a year (*i.e.*, by July 2025). The parties' respective positions on that schedule are set forth in the first two columns entitled SoClean's Claims and Philips' Counterclaims. SoClean and DWHP object to, and do not consent to, the inclusion in this submission of proposed schedules for Philips' Contributions Claims (Personal Injury) and Philips' Assigned Claims (Property Damage). Philips' Assigned Claims and Amended Contribution Claims were filed on August 13, 2024 (*i.e.*, the day before this submission was due). SoClean anticipates that separate counsel will be representing it in connection with those claims, and respectfully requests that its counsel in those cases handle those matters, including the negotiation of any schedules for those matters. Here, SoClean requests that the Court enter a schedule for the business-to-business case, consistent with the Court's instruction that it be trial-ready by July 2025.

Date	SoClean's Claims[2]	Philips' Counterclaims[2]	Philips' Contribution Claims (Personal Injury)[2]	Philips' Assigned Claims (Property Damage Economic Loss)[2]
8/21/2024	Philips responses to Contention Interrogatories on Standing	SoClean / DW responses to Contention Interrogatories on Standing		
Disputed (Philips Proposal: 8/27/2024) (SoClean Proposal: *see* footnote 3)	SoClean's standing proffers on any SoClean employees[3]			
Disputed (Philips Proposal: 9/5/2025 oppositions and 9/19/2025 reply) (SoClean Proposal: *see* footnote 4)	Any oppositions and replies in connection with Philips' motion to join White Oak as the real party in interest[4]		Rule 12 motions or answers	Rule 12 motions or answers

[3] **Philips Position:** To the extent SoClean intends to offer testimony at the standing hearing from SoClean's own employees (SoClean has identified its CEO and CFO as having relevant information), SoClean should provide proffers of their testimony so that Philips can decide whether to depose them (or others) by the September 27 fact discovery deadline on standing issues. This is similar to the process that ultimately worked successfully in the Philips MDL on the KPNV personal jurisdiction issues, where KPNV made a proffer of the testimony of one witness, and the parties stipulated to his testimony for the evidentiary hearing without the need for either a deposition or for his appearance at the hearing. Not a single SoClean employee has been deposed in any of these proceedings, and Philips intends to depose lower-level SoClean employees *before* taking the depositions of SoClean's two most senior employees.

SoClean and DWHP Position: SoClean and DWHP agree that issues of standing are to be prioritized, as the Court directed. But SoClean and DWHP believe that fact discovery on issues of standing should then be followed by a period for expert reports and discovery, followed by a period for summary judgment briefing and argument (all as set forth on this chart). Proffers are neither necessary nor appropriate for this process. The parties are prioritizing discovery on issues of standing. Philips has had the opportunity to explore the bases for SoClean's standing for the past three years, and will continue to have an opportunity to do so on a prioritized basis. However, Philips' request for proffers, and its reference to how issues of KPNV *personal jurisdiction* in the Philips MDL were decided, assumes an evidentiary hearing as opposed to summary judgment briefing and argument, which is what SoClean and DWHP believe is appropriate and the Court intended. On the issue of multiple depositions, SoClean and its witnesses should not be prejudiced simply because Philips desires to move for early summary judgment on the issue of standing.

[4] **Philips Position:** This dispute is completely unnecessary and is emblematic of the sort of delay tactics the SoClean and DW parties have been engaged in. At SoClean's express request, the Philips parties agreed to extend their response deadline to September 5 (as reflected in the chart), which is more than three weeks after the Philips parties filed the White Oak motion. But now, SoClean appears to be trying to delay this motion (and SoClean's own response) by suggesting that it should not file its response *until White Oak files a response, if ever*. Even worse, despite knowing who represents White Oak, SoClean's counsel has refused to identify White Oak's counsel to the Philips parties, requiring the Philips parties to serve White Oak with its courtesy copy, which the Philips parties have now done. SoClean obviously wants to delay the substitution of White Oak into this case and is erecting wasteful roadblocks at every stage.

Date	SoClean's Claims[2]	Philips' Counterclaims[2]	Philips' Contribution Claims (Personal Injury)[2]	Philips' Assigned Claims (Property Damage Economic Loss)[2]
7 days after ruling on SoClean's objections to S.M. Vanaskie's R&R		Motion for leave to amend Counterclaims (with opposition due 14 days later and reply due 7 days later)[5]		

SoClean and DWHP Position: Philips filed its motion to join White Oak as a real party in interest on August 13, 2024 (*i.e.*, the day before this submission was due). Philips has indicated its intent to serve White Oak with the motion. SoClean requests that any briefing and argument by it on the motion to join White Oak as a real party in interest be on the same schedule as White Oak, and in any event that its response to the motion be due no earlier than September 5, 2024.

[5] **Philips Position:** In its Amended Counterclaims, Philips will be adding (i) new parties, including the three DW funds, White Oak, and additional SoClean entities, and (ii) new theories and allegations as to both liability and personal jurisdiction (including as to DWHP) newly identified over the course of recent discovery. If the Court prefers, Philips can file its motion for leave to amend the Counterclaims sooner, but for judicial efficiency, Philips believes SoClean's challenge to S.M. Vanaskie's R&R as to the adequacy of Philips' original pleading should first be resolved so as to avoid the potential for *two* amendments to the Counterclaims. Contrary to SoClean and DWHP's position, the personal jurisdiction issue (whether for DWHP or for any of the other Counterclaim-Defendants who intend to challenge jurisdiction) is nowhere near "ripe" for resolution for the reasons set forth in the Philips parties' position statement. The Court should resolve all personal jurisdiction challenges in a coordinated fashion after the pleadings have settled and at the conclusion of discovery, just as the Court stated at last month's case management conference. *See* July 24, 2024 CMC Tr. at 16 ("[W]e have to have a process where we understand that *once* that fact discovery period *for the whole case* is concluded, *then* we have to have the *briefing finalized on the personal jurisdiction issues* for any summary judgment motions, and then we will have the trial." (emphasis added)). Otherwise, the Court will be holding separate personal jurisdiction hearings for each defendant challenging personal jurisdiction, despite the fact that the core legal question as to personal jurisdiction is the same for each defendant.

SoClean and DWHP Position: Philips has for months been vaguely referencing its intent to seek to amend its counterclaims to add certain undisclosed new parties and new theories to its Counterclaims. At the July 24, 2024 status conference, the Court instructed that Philips must get its motion for leave to amend "filed soon, because you need permission." Counsel for Philips responded that they would "make that motion and show Your Honor, but we will get it filed soon." Instead of filing their motion for leave to amend "soon," Philips first proposed that they file their motion on August 30, 2024. Philips now states that they will file their motion for leave to amend seven days after the Court's ruling on SoClean's objections to Special Master Vanaskie's R&R. That is Philips' choice. However, as will be set forth in SoClean's and DWHP's forthcoming response to Special Master Vanaskie's Order for Status Report (MDL 3021 Dkt. 649), the issue of this Court's exercise of personal jurisdiction over DWHP has been fully briefed, jurisdictional discovery and depositions have taken place, and the matter is ripe for adjudication. The parties, including Special Master Katz, expended significant time and resources getting to this point. DWHP requests that it be afforded an opportunity to have the issue of this Court's exercise of personal jurisdiction over it decided as was previously ordered by the Court and agreed to by the parties – with an evidentiary hearing at the earliest practicable opportunity. SoClean and DWHP reject any attempt by Philips to delay adjudication of this issue because of potential amendments to their Counterclaims that Philips *may* make in the future *if* their Counterclaims survive dismissal and *if* they are permitted leave to file any such amendments. Incredibly, and directly contrary to the process and schedule the Court ordered and the parties agreed to in early June 2024, Philips now proposes that DWHP be kept a party in this case *at least through a decision following an evidentiary hearing to be held in March 2025*. And, moreover, Philips at the same time requests that DWHP be required to immediately participate in full merits discovery for no other reason than Philips' litigation decision to at some point in the future potentially amend its Counterclaims. To be clear, SoClean agrees that discovery is not stayed in the business-to-business case and is proceeding. But the Court's previous order of a stay as to DWHP, including a stay of DWHP's deadline to respond to Philips' Contributions Claims "until the issue of personal jurisdiction over DW is resolved" (MDL 3014 Dkt. 2738), should not be undone simply because Philips has indicated an intent to seek leave to amend their Counterclaims at some later date.

Date	SoClean's Claims[2]	Philips' Counterclaims[2]	Philips' Contribution Claims (Personal Injury)[2]	Philips' Assigned Claims (Property Damage Economic Loss)[2]
9/24/2024			Rule 12(b)(6) oppositions[6]	Rule 12(b)(6) oppositions[5]
9/27/2024	Deadline for fact discovery on standing issues			
10/3/2024	Expert reports on standing issues			
10/8/2024			Rule 12(b)(6) replies	Rule 12(b)(6) replies
10/17/2024	Rebuttal expert reports on standing issues			
10/24/2024	Deadline for expert depositions on standing issues			
21 days after ruling on motion for leave to amend Counterclaims		Rule 12 motions or answers to Amended Counterclaims if leave granted (with opposition due 21 days later and reply due 14 days later)		
11/7/2024	Standing motions			
11/21/2024	Oppositions to standing motions			
11/28/2024	Replies in support of standing motions			
12/12/2024 (case management conference)	Hearing on standing motions			
12/20/2024	Close of fact discovery[7]			

[6] **Philips Position:** These oppositions (and the subsequent replies in October) should focus only on the Rule 12(b)(6) arguments. The additional briefing on any Rule 12(b)(2) motions (*i.e.*, any personal jurisdiction arguments made by DWHP or any of the other defendants asserting a personal jurisdiction defense) should occur later, in advance of the evidentiary hearing on personal jurisdiction, following the development of the evidentiary record on personal jurisdiction as to those entities. The Court also made clear at the last conference that discovery would proceed for all parties, not limited to only SoClean. DWHP's proposal to stay all discovery as to DWHP is going to result in delay. Moreover, in the Philips MDL, there was never any stay of merits discovery of KPNV when KPNV similarly challenged personal jurisdiction.

SoClean and DWHP Position: As set forth above, SoClean anticipates that separate counsel will be representing it in connection with the Assigned Claims and Amended Contribution Claims that were filed on August 13, 2024 (*i.e.*, the day before this submission was due), and therefore respectfully requests that its counsel in those matters be responsible for those matters, including the negotiation of any schedule. Consistent with the Court's prior order of a stay of DWHP's deadline to respond to Philips' Contribution Claims "until the issue of personal jurisdiction over DW is resolved" (MDL 3014 Dkt. 2738), DWHP requests that the Court confirm that the same stay likewise applies to Philips' Assigned Claims.

[7] Discovery will be coordinated to fit with the SoClean consumer class action litigation as much as reasonably practicable. This means, for instance, that depositions that apply to the consumer class action should be conducted before the close of fact discovery in that action (currently, November 22, 2024).

Philips Position: The close of fact discovery should apply to all fact discovery, including merits, jurisdictional and class certification, other than (a) discovery on standing issues (which has an earlier deadline consistent with the prioritization the Court requested), and (b) discovery on individual patients in connection with the personal injury contribution claims (which will come later as part of the bellwether process). While the parties agree on the date to close fact discovery, they disagree regarding whether DWHP should participate in discovery before personal jurisdiction motions are decided. If DWHP does not participate in discovery, this will affect a number of deadlines and doubtless result in delay.

SoClean and DWHP Position: The parties agree on the date for close fact discovery in the business-to-business case. However, as set forth above, SoClean and DWHP do not consent to any deadlines for Philips' claims filed the day before the filing of this submission, including close of fact discovery in those cases.

Date	SoClean's Claims[2]	Philips' Counterclaims[2]	Philips' Contribution Claims (Personal Injury)[2]	Philips' Assigned Claims (Property Damage Economic Loss)[2]
1/20/2025		Expert reports on personal jurisdiction issues[8]	Bellwether selections Expert reports on personal jurisdiction issues	Motion for class certification Expert reports on class certification and personal jurisdiction issues
2/10/2025		Rebuttal expert reports on personal jurisdiction issues[8]	Rebuttal expert reports on personal jurisdiction issues	Opposition to motion for class certification Rebuttal expert reports on class certification and personal jurisdiction issues
2/20/2025			Conclusion of fact discovery on bellwether selections	
2/24/2025		Expert depositions on personal jurisdiction issues[8]	Expert depositions on personal jurisdiction issues	Class certification reply Expert depositions on class certification and personal jurisdiction issues
3/3/2025		Pre-hearing submissions on personal jurisdiction issues[8]	Pre-hearing submissions on personal jurisdiction issues	Pre-hearing submissions on personal jurisdiction issues
Mid-March 2025				Class certification hearing

With regard to DWHP, as set forth above (*see* footnote 4), the parties have engaged in extensive jurisdictional discovery, including depositions, and should proceed to an evidentiary hearing as soon as practicable, as previously ordered by the Court and agreed to by the parties. DWHP should not be required to remain a party to this case, obligated to participate in full merits discovery, *at least through a decision following an evidentiary hearing in March 2025* as Philips proposes – simply due to Philips' litigation decision to at some point in the future potentially seek leave to amend its Counterclaims.

[8] **Philips Position:** Philips' proposed dates for personal jurisdiction proceedings are intended to accommodate various events that must occur before those proceedings: a decision on Judge Vanaskie's R&R, followed by Philips' motion to amend its Counterclaims to assert additional jurisdictional theories and allegations *as to DWHP* as well as the new parties (many of whom are also likely to assert personal jurisdiction defenses), followed by discovery on the new allegations as to both DWHP and any of the other Counterclaim-Defendants who challenge personal jurisdiction. This proposal is also consistent with the Court's statement at the last case management conference that personal jurisdiction would be decided after the conclusion of discovery. July 24, 2024 CMC Tr. at 16 (emphasis added) ("[W]e have to have a process where we understand that once that fact discovery period for the whole case is concluded, then we have to have the briefing finalized on the personal jurisdiction issues for any summary judgment motions, and then we will have the trial.").

SoClean and DWHP Position: *See* footnotes 4 and 7. The issue of the Court's exercise of personal jurisdiction over DWHP is ripe for adjudication on a prompt schedule, as previously ordered by the Court and agreed to by the parties. DWHP also disagrees that Philips' citation to a single *statement* made by the Court during the July 24, 2024 status conference overrides the Court's prior *order* of a stay as to DWHP "until the issue of personal jurisdiction over DW is resolved" (MDL 3014 Dkt. 2738).

Date	SoClean's Claims[2]	Philips' Counterclaims[2]	Philips' Contribution Claims (Personal Injury)[2]	Philips' Assigned Claims (Property Damage Economic Loss)[2]
3/17/2025		Responsive pre-hearing submissions on personal jurisdiction issues[8]	Responsive pre-hearing submissions on personal jurisdiction issues	Responsive pre-hearing submissions on personal jurisdiction issues
Late March 2025		Personal jurisdiction evidentiary hearing[8]	Personal jurisdiction evidentiary hearing	Personal jurisdiction evidentiary hearing
3/24/2025	Expert reports on remaining issues			
4/14/2025	Rebuttal expert reports on remaining issues			
4/28/2025	Close of expert discovery			
5/2/2025	Any Daubert/Rule 702 motions			
5/16/2025	Any Daubert/Rule 702 oppositions			
Late May 2025	Daubert/Rule 702 hearing on remaining issues			
Disputed (Philips Proposal: 14 days after *Daubert*/Rule 702 ruling) (SoClean Proposal: *see* footnotes 9 and 10)	Motions for Summary Judgment (with oppositions due 21 days later and replies due 14 days later)[9]			
Disputed (Philips Proposal: 14 days after summary judgment ruling) (SoClean Proposal: *see* footnotes 9 and 10)	Motions *in limine*[8]			
July 2025	***Trial-Ready***[10]			

[9] **Philips Position:** This Court has stated on several occasions, in both MDLs, that it prefers to "deal with the expert sort of *Daubert*/Rule 702 motions first" and "then deal with the issue of summary judgment after that's decided." (*E.g.*, Jan. 25, 2024 CMC Tr. at 22.) Consistent with that instruction, the Philips parties have not set a firm date for summary judgment motions (which would force the Court to decide the *Dauberts* by a date certain), but instead to tether the deadline for summary judgment motions to when the Court has decided the *Dauberts*. The Philips parties have done the same thing for motions *in limine* for the same reason.

SoClean and DWHP Position: SoClean and DWHP object to Philips' request that motions for summary judgment and motions *in limine* be triggered only by rulings on other motions, solely to the extent that doing so would result in a trial-ready date for the business-to-business case later than July 2025 as instructed by the Court at the July 24, 2024 status conference. SoClean and DWHP will be prepared to discuss the Court's practice and preference at the August 22, 2024 status conference.

[10] **Philips Position:** The parties agree on this trial date but disagree on which claims should be tried first or whether now is the time for the Court to decide that question. Philips believes the sequencing of trials should be determined later in proceedings, after the tracks have advanced further, and after the parties have briefed which track should be tried first. The potential prejudice to the Philips parties is set forth in more detail in their position statement, but in essence, SoClean is trying to effect an out-of-bankruptcy-court

reorganization plan and is improperly trying to prioritize certain creditors (in particular, White Oak) over others (in particular, the Philips parties). Moreover, the Philips parties disagree that the Court stated that any particular track must be tried in July 2025, but instead, that the parties need to be ready for trial on all of their claims against one another by then. Under the Philips parties' proposal, that will happen.

SoClean and DWHP Position: As set forth above, at the July 24, 2024 status conference, the Court directed the parties to work with Special Masters Katz and Vanaskie regarding a timeline with the goal of starting trial on the business-to-business case within a year (*i.e.*, by July 2025). That is what SoClean and DWHP have attempted to do, with the assistance of Special Master Katz. As also set forth above, SoClean and DWHP object to, and do not consent to, the inclusion in this submission of trial dates, or any other dates, for new claims filed by Philips the day before submission of this filing.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION IN RE: SOCLEAN, INC. MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION This document relates to: All Actions Between SoClean, Philips, and Their Affiliates	Master Docket Nos. 21-mc-1230 and 22-mc-152 MDL Nos. 3014 and 3021

MEMORANDUM OF THE PHILIPS PARTIES
IN SUPPORT OF THEIR PROPOSED SCHEDULING ORDER

PRELIMINARY STATEMENT

As discussed at last month's case management conference, there are "multiple arms of this litigation." (July 24, 2024 CMC Tr. at 5.) In particular, four litigation tracks are currently at issue between the Philips parties and SoClean and its affiliates, including DWHP and the DW funds: (1) SoClean's affirmative claims against the Philips parties ("SoClean Claims"); (2) the Philips parties' counterclaims ("Counterclaims"); (3) the Philips parties' contribution claims for personal injury ("Contribution Claims"); and (4) the property damage claims assigned to Respironics under the Economic Loss Class Action Settlement ("Assigned Claims"). Any scheduling order should provide for coordination and a comprehensive set of deadlines for all four tracks, consistent with the goals of MDL practice. The Philips parties' schedule offers exactly this, while being consistent with black-letter law and the Court's instruction that the issue of standing (both as to SoClean and also as to the Philips parties) must be resolved "as soon as possible." (*Id.* at 15.) The Philips parties' schedule is also designed to ensure that the parties are "ready to go to trial within a year," as the Court instructed. (*Id.* at 17.)

By contrast, SoClean and DWHP have proposed a schedule that:

- ignores the Contribution Claims and the Assigned Claims entirely;
- attempts to accelerate a decision on personal jurisdiction *before* standing and *before* discovery is complete, in contravention of this Court's clear instruction that the issue of standing, not personal jurisdiction, would be accelerated and ignoring the Court's clear sequencing that "once [the] fact discovery period for the whole case is concluded, then we have to have the briefing finalized on the personal jurisdiction issues for any summary judgment motions" (July 24, 2024 CMC Tr. at 16);
- rejects opportunities to streamline proceedings by refusing to provide a proffer of the SoClean CEO's and CFO's anticipated testimony on SoClean's alleged standing, as KPNV did in similar circumstances in the Philips MDL, and thereby seek to force the Philips parties to depose the CEO and CFO before any lower-level SoClean employees and while a number of disputes remain as to the completeness of SoClean and DWHP's discovery;

- permits DWHP (and, presumably, everyone besides SoClean) to refuse any further participation in the litigation until personal jurisdiction has been decided, contrary to the Court's clear direction that "[t]here's not going to be a general stay" (July 24, 2024 CMC Tr. at 16-17); and

- attempts to unilaterally decide the order of trials (and to prioritize one of SoClean's creditors over all others) by providing a schedule only for the SoClean Claims and Counterclaims while ignoring the Contribution Claims and Assigned Claims.

Key factual and legal issues overlap in all four litigations. A schedule that accounts for all four tracks through coordinated discovery, motion practice, and hearing deadlines will therefore minimize inefficiencies to the Court (*e.g.*, by coordinating motion practice across tracks on overlapping issues) and to the parties (*e.g.*, curbing multiple depositions of the same individuals across all tracks), by advancing *all* of the litigation to its conclusion. The SoClean parties' proposal to treat the four litigation tracks as if they have nothing in common guarantees conflict, waste, gamesmanship, and delay.

Why are SoClean and DWHP ignoring the Contribution Claims and the Assigned Claims entirely? Because for those claims, SoClean and its controllers have no upside—they only stand to lose. And, what's worse, SoClean doesn't even own the claims it is advancing. (*See* ECF No. 651, 652.) SoClean is more than $110 million in debt (which is growing) to the real party-in-interest to this litigation, White Oak Healthcare Finance, LLC ("White Oak"),[1] and has defaulted on its debt obligations numerous times. SoClean has previously acknowledged it was experiencing

[1] The Philips parties have moved to join White Oak as the real party-in-interest, or alternatively, to dismiss SoClean's claims against the Philips parties. (ECF No. 651, 652.) Correspondingly, the Philips parties intend to name White Oak as a Counterclaim-Defendant in the amended Counterclaims and intend to seek leave to file those amended Counterclaims once the Court has ruled on SoClean's challenges to Special Master Vanaskie's Report and Recommendation ("R&R") on the original Counterclaims. If the Court prefers, Philips can file its motion for leave to amend sooner, but for judicial efficiency, Philips believes SoClean's challenge to the R&R as to the adequacy of Philips' original pleading should first be resolved so as to avoid the potential for two amendments to the Counterclaims.

"some very attenuated . . . financial circumstances." (July 20, 2023 CMC Tr. at 6.) In truth, SoClean is bankrupt and seeks to scrape together money through its claims against the Philips parties to fund its out-of-bankruptcy-court financial reorganization plan. White Oak holds a lien on all of SoClean's assets, expressly including its claims against the Philips parties. (*See* Ex. A (SoClean, Inc.'s UCC Financing Statement Amendments).) As a result, White Oak is the *only* creditor that stands to potentially recover on the SoClean Claims. And so, the SoClean parties are seeking to press the SoClean Claims forward (to the exclusion of the other claims) to treat White Oak in preference to SoClean's other creditors (including the Philips parties) by wishing away the litigation tracks the SoClean parties' proposed schedule deliberately omits.

The Philips parties respectfully request that the Court adopt their scheduling proposal, which (i) accounts for all of the litigation and allows for the coordination that SoClean's proposal prohibits, (ii) preserves a July 2025 trial date, (iii) treats all of SoClean's creditors equally, (iv) prioritizes standing over other issues, (v) provides for the orderly resolution of personal jurisdiction challenges by all DW entities (not merely DWHP) after the discovery record is complete, and (vi) leaves the question of trial order for a later date following the conclusion of coordinated proceedings.

ARGUMENT

I. The SoClean Parties' Schedule Ignores Two of the Four Litigation Tracks and the Need for Coordinated Discovery.

Building on the JPML's instructions in assigning both MDLs to this Court, *see In re SoClean, Inc., Mktg., Sales Pracs. & Prod. Liab. Litig.*, 585 F. Supp. 3d 1355, 1357 (J.P.M.L. 2022), the Court accurately noted from the outset that there are "going to be a lot of same issues that we'll have in the SoClean MDL that will be present in [the Philips MDL] as well." (*E.g.*, Mar.

22, 2022 CMC Tr. at 36.)[2] For this reason, these two MDLs have been coordinated from Day 1. Irrespective of which party has noticed a deposition, the other parties have been invited to attend and ask questions. Document production has overlapped in both MDLs. The protective orders mirror each other. And for years, all parties have attended joint discovery coordination calls with Special Master Katz. The Philips parties designed their schedule to maintain this tight coordination.[3]

Coordinating litigation across all four tracks will significantly reduce the discovery burdens and inefficiencies for the Court, the Special Master, and the parties. Each litigation track asks the same or similar threshold questions, including whether SoClean's ozone damaged PAP devices, when SoClean and DWHP personnel learned of ozone's harmful effects, and DWHP's and the other DW-controlled entities' alter ego status. Although some discovery inquiries unique to each track inevitably will arise, the central nexus of discovery for all claims can, and should, be addressed in a coordinated fashion. *See In re Generic Pharmas. Pricing Antitrust Litig.*, 2017 WL 4582710, at *2 (J.P.M.L. Aug. 3, 2017) (noting the benefits of "eliminat[ing] duplication and enhanc[ing] the convenience of the parties, the witnesses, and the courts through coordinated proceedings in [an] MDL").

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[2] *See also* Transfer Order, ECF No. 68 ("coordination of pretrial proceedings between the two litigations in a single district would appear to offer substantial efficiencies"); Transfer Order, ECF No. 111 (noting the advantages of "coordination and other proceedings on common issues" across both MDLs); MDL 3014, CMC Tr. at 22 ("I think the special master will be critical in trying to coordinate the discovery here [Philips MDL] and the discovery over in the SoClean case [SoClean MDL].").

[3] By contrast, the SoClean parties are now fighting against coordination on the ostensible basis that one of the four litigation tracks (the Contribution Claims) is pending in the Philips MDL instead of the SoClean MDL. They never explain why that actually matters, especially given the cross-MDL coordination to date. In reality, the SoClean parties want nothing to do with the Contribution Claims (or the Assigned Claims) because they only stand to lose in those cases.

Absent coordination, inefficiencies and unnecessary discovery costs and disputes are guaranteed. For example, without coordination, many witnesses from all sides will be deposed multiple times. This will prompt motion practice if the parties cannot agree on the scope and timing of those depositions and burdens on the parties and witnesses to prepare for them. The Court anticipated this very problem. (*See* Apr. 25, 2024 CMC Tr. at 6 ("[I]f the same person is going to be deposed on something else, you know, that's where you need the coordination . . . .").)

Even more, not including the Contribution Claims and the Assigned Claims in the schedule will delay discovery both sides need to assess the potential to comprehensively resolve this litigation. Facts will emerge and events will occur during the litigation of the Contribution Claims and Assigned Claims that could cause a reassessment of strengths and weaknesses by one side or the other, paving the way to renewed mediation and a potential global settlement. The SoClean parties' myopic, SoClean-favoring schedule leaves the development of a discovery timeline for these actions for another day, thereby missing an opportunity to potentially bring this litigation nearer to a close.

The SoClean parties reject these efficiencies in service of no one's interests except their own. Their schedule focuses exclusively on the SoClean Claims (and the Counterclaims, because those are tethered to the SoClean Claims) for no reason other than to stall the Contribution Claims and the Assigned Claims, since those claims create risk for only the SoClean parties. The SoClean parties justify their position by pretending, as they have done across multiple meet-and-confers, that those claims "do not exist yet." But that is incorrect. The Contribution Claims were filed back in May 2024, more than three months ago. In fact, the SoClean parties fought vehemently for *months* to prevent the Court from finalizing Pre-Trial Order #31 (ECF No. 2745), even requiring a Report and Recommendation from Special Master Katz. The Assigned Claims,

for which Respironics stands in the shoes of consumers whose property was damaged by SoClean's ozone, are even older. Certain consumers originally asserted these economic loss class action claims against SoClean in December *2021*, alleging that SoClean's ozone cleaners damaged class members' PAP devices. *See* Complaint, *Bradley* v. *SoClean, Inc.*, MDL No. 3021, ECF No. 91-3, ¶ 11. It has been public knowledge for about a year that class members would be assigning these claims to Respironics in exchange for valuable consideration. (*See* ECF No. 2279-1 at 26.)

The SoClean parties have known about these claims from prior pleadings and presentations by the Philips parties, but feign ignorance now only to prevent all tracks from being coordinated.[4] Their position contravenes this Court's clear and repeated instructions that the MDLs are to proceed "as efficiently as possible." (Mar. 22, 2022 CMC Tr. at 4.) Scheduling all four litigation tracks now is the most efficient method the Court can adopt to bring this litigation to a conclusion quickly. There is nothing inefficient about coordination, as the pleadings for each of the four tracks are still being settled, and substantial discovery is still pending.[5]

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[4] Even worse, despite how long they have known of the claims, SoClean and DWHP's counsel have been pretending that they have no idea—none—who is representing SoClean or DWHP in these proceedings. (Of course, SoClean and DWHP's current counsel have been doing a lot of arguing on behalf of their current clients related to these claims.) Similarly, SoClean and DWHP apparently have zero idea who is going to be representing White Oak, even though White Oak has been behind the scenes *since before SoClean filed suit*. The suggestion that there is no one on the scene to represent these companies in their most material litigations is plainly designed to impede coordination and to delay the claims the SoClean, DW, and White Oak parties are not interested in advancing.

[5] With respect to the SoClean Claims and Counterclaims, each of the following threshold issues are still being litigated: (1) whether SoClean or White Oak is the real party in interest; (2) SoClean's wholesale objections to all of Special Master Vanaskie's rulings on SoClean's Rule 12(b)(6) motion to dismiss the original Counterclaims; and (3) the Philips' parties forthcoming motion for leave to amend their Counterclaims to add new parties, including the DW funds and White Oak, and new allegations recently learned in discovery, including as to personal jurisdiction over DWHP. With respect to discovery, there are still at least 25 depositions that have yet to be taken, and no one from SoClean or DWHP (other than Rule 30(b)(6) depositions of those entities), the DW funds, White Oak, or the FDA has been deposed yet. All of this should occur in a coordinated fashion, not piecemeal across the four tracks.

II. The SoClean Parties' Request To Accelerate the Personal Jurisdiction Hearing Is Contrary to Law, Inconsistent with the Court's Instructions, and Highly Inefficient.

Through their proposed schedule, the SoClean parties ask the Court to reconsider what it said at the last conference and resolve the personal jurisdiction issues (i) before deciding Article III standing, (ii) before completion of discovery, including regarding the new allegations (including as to DWHP), new theories (including as to DWHP), and new DW parties to be named in the amended Counterclaims, and (iii) on a piecemeal basis that would require the Court to hold separate evidentiary hearings for each DW party challenging personal jurisdiction, despite a complete overlap in the legal issues. This makes no sense and should be rejected *again*.

The requirement that a plaintiff has Article III standing to sue is a "threshold matter" that is "inflexible and without exception." *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). "Without [Article III] jurisdiction the court cannot proceed at all in any cause." *Id.* Last month, the Court correctly ruled that resolving whether any party has standing is to be given priority over all other inquiries. *See, e.g.*, July 24, 2024 CMC Tr. at 17 ("I need you to work with the Special Master . . . to prioritize the standing issue for the discovery"); *id.* ("[F]or efficiency sake, we need to deal with [standing] so . . . if it turns out that way, then the case is over."). Accordingly, under settled law, standing must be given priority before the personal jurisdiction inquiry may be resolved.[6]

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[6] The Philips parties anticipate—consistent with the Court's approach on the KPNV personal jurisdiction issue in the Philips MDL—the standing hearing to be an evidentiary hearing, rather than a standard oral argument on summary judgment. *See Raritan Baykeeper, Inc.* v. *NL Indus., Inc.*, 2016 WL 7381715, at *7 (D.N.J. July 29, 2016) (setting an "evidentiary hearing to resolve the genuine disputes of material fact relevant to the determination of Plaintiffs' standing"). This Court has previously highlighted that an evidentiary hearing may be necessary "to make a factual determination about whether or not [SoClean] is an illegally marketed product." (Feb. 21, 2023 CMC Tr. at 23.) Ultimately, the Court need not decide this question now because, at the conclusion of standing discovery, there may not be any disputed issues of material fact. For instance,

The SoClean parties' proposal also would introduce a host of inefficiencies. Once SoClean's challenge to Special Master Vanaskie's Report and Recommendation is decided,[7] the Philips parties intend to amend their Counterclaims to add new parties (including White Oak, as the real party in interest, and the DW funds that had a direct ownership interest in SoClean)[8] and new allegations as to both liability *and* personal jurisdiction, *including as to DWHP*. As recognized by the Court last month, "[the Court] will have the motion filed to amend the . . . counterclaims." (July 24, 2024 CMC Tr. at 23.)[9] The pleadings will need to be settled before addressing personal jurisdiction, and additional discovery on the new allegations, theories and parties will be necessary. This does not even include a number of outstanding discovery issues from before the stay that need to be resolved, owing to the SoClean parties' severely over-restrictive view of what documents were "relevant" to the original Counterclaims as pleaded. Several other threshold issues should be resolved before the issue of personal jurisdiction can be fully adjudicated, including whether White Oak and the DW funds will also be asserting personal jurisdiction challenges alongside DWHP. If so, there will need to be discovery of those entities.[10]

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particularly in light of the Court-appointed FDA experts' testimony, it is unclear whether SoClean is going to continue to assert that it was legal for it to market and sell the SoClean 2.

[7] Notably, the SoClean parties have challenged *every single holding* the Special Master made. (ECF No. 646.)

[8] Following the filing of the Counterclaims, DWHP has pointed out that it does not own SoClean directly, but instead indirectly through affiliated funds. That position is not consistent even with SoClean Parent's consolidated financial statements (which it wrote), upon which the Philips parties relied in drafting their Counterclaims, which stated that "*DW Healthcare Partners ('DWHP')* acquired the Company." (ECF No. 507-2, at 32 (emphasis added).) But given DWHP's fixation on this point, and other evidence revealed in discovery, the Philips parties intend to name the affiliated DW funds as Counterclaim-Defendants.

[9] SoClean and DWHP will be opposing amendment, despite the liberal Rule 15 standards and lack of prejudice.

[10] The Philips parties also anticipate experts on the personal jurisdiction issues.

The SoClean parties, by contrast, would march to a hearing solely as to DWHP (not any of the other DWHP-related entities challenging personal jurisdiction), based on an incomplete record and before standing is addressed, leaving personal jurisdiction over other related entities to be resolved at later hearings. This approach is contrary to this Court's preference to rule on issues on the basis of a "fully developed record." *See, e.g.*, June 15, 2023 CMC Tr. at 27 (deferring decision on motion to dismiss for lack of standing due to a lack of "a fully developed record"), 42 ("I need a complete record."); Aug. 15, 2023 CMC Tr. (MDL 3014) at 8 (resolving evidentiary objections "[o]n a fully developed record").[11] Notably, while the facts relevant to personal jurisdiction may differ for each DW entity challenging jurisdiction, the gravamen of the claim and the legal issues will be very similar. As a result, the logical and efficient solution is to, *first*, take the discovery and then, *second*, have a single hearing (not the multiple hearings contemplated by the DW parties) where all personal jurisdiction issues can be resolved together under the same underlying legal framework. The Court recognized exactly this sequencing at the last case management conference, which the SoClean parties' proposal ignores:

> [W]e have to have a process where we understand that ***once that fact discovery period for the whole case is concluded, then we have to have the briefing finalized on the personal jurisdiction issues*** for any summary judgment motions, and then we will have the trial.

(July 24, 2024 CMC Tr. at 16 (emphasis added).)

The Philips parties' proposed schedule is consistent with these instructions, prioritizing standing over personal jurisdiction and scheduling a hearing for personal jurisdiction after the completion of discovery for all parties. The SoClean parties' proposal is not.

[11] In fact, counsel for SoClean has itself sought to avoid resolving disputes "on an incomplete record." (June 15, 2023 CMC Tr. at 29 (seeking to defer decision on motion to dismiss for lack of standing).)

III. The SoClean Parties' Schedule Eliminates Efficiencies Designed To Expeditiously Resolve the Standing Issues.

Given the Court's express desire to prioritize standing, the Philips parties have advanced a schedule that resolves this inquiry in a manner designed to optimize efficiency and avoid surprise and needless discovery disputes. In particular, the Philips parties have streamlined the amount of information the SoClean parties need to provide regarding their alleged standing. Thus far, while the Philips parties have extensively set forth their arguments and evidence as to SoClean's lack of standing, SoClean has only vaguely stated that its CEO and CFO have unspecified information SoClean will use to support its position that it has standing, without identifying what that information is.

To mitigate the need for lengthy depositions on topics *other* than standing,[12] the Philips parties requested that SoClean put forward a proffer of what sort of testimony these individuals will provide *specifically on the issue of standing only*. Based on that proffer, the Philips parties would then decide whether to depose these senior officers in the short term (in full, or only on the standing issue) or not at all until later in proceedings. For instance, these employees may only offer testimony related to the FDA's enforcement discretion, but as made clear from the Court-appointed FDA experts, the exercise of enforcement discretion does not make the underlying conduct legal. A date for this proffer is proposed in the Philips parties' schedule. The SoClean parties, by contrast, have repeatedly rejected this offer, attempting to secure a strategic

[12] A full deposition of SoClean's CEO and CFO on all topics should be discouraged at this stage. Class counsel for the SoClean consumer plaintiff class has stated that they intend to depose SoClean's CEO and CFO *later* in proceedings—thereby necessitating a second deposition. Further, given these individuals' seniority, the Philips parties would ordinarily depose these individuals later in discovery, after lower-level SoClean employees have been deposed. To date, given the substantial issues with SoClean's document productions, *not a single SoClean employee has been deposed*. The Philips parties want to depose the lower-level SoClean employees before deposing SoClean's senior-most executives.

advantage by forcing the Philips parties into deposing *SoClean's CEO and CFO as their first fact witnesses*.

The Court should adopt this limited proffer process just as it did in the Philips MDL. There, both Plaintiffs and KPNV made various evidentiary previews, including a written proffer from KPNV explaining one of its witnesses' intended testimony. Based on that proffer, both plaintiffs and defendants were able to negotiate a stipulation of the testimony, without requiring either party to depose the witness or call him live during the evidentiary hearing.

IV. The DW Entities Cannot Grant Themselves a Merits Discovery Stay.

DWHP has stated during meet-and-confers that it will not participate in *any* form of merits discovery—document productions *or* depositions—across *any* of the litigation tracks unless and until the Court finds it has personal jurisdiction over it. (The Philips parties expect the other non-SoClean parties, such as the related DW Funds and potentially White Oak, to take a similar position.) The only support DWHP provides for this extreme position is a minute order the Court issued in April 2024, stating, *at the time*, that DWHP's obligation to answer the Contribution Claims would be stayed pending resolution of the issue of personal jurisdiction. (*See* ECF No. 2738.) But the Court said nothing of a merits discovery stay, and the Court made clear at the most recent case management conference that there would be *no* general stay as to any issue or party—and that all matters must move forward. (*See* July 24, 2024 CMC Tr. at 16 ("I'm not going to stop the discovery. There's not going to be a general stay.").)

DWHP's position makes no sense, disregards last month's conference, and is contrary to the purpose of coordinated MDL proceedings and this Court's prior practice. Merits discovery must continue, and DWHP should be required to participate. A personal jurisdiction challenge has *never* been a barrier to merits discovery in these MDLs. For example, despite challenging personal jurisdiction in the Philips MDL, KPNV was likewise required to—and did—

participate in merits discovery, all while Rule 12(b)(2) briefing was pending before the Court. DWHP is thus in familiar territory in this Court and should not be granted a preferred status relative to KPNV. Likewise, despite challenging SoClean's standing in this matter, the Philips parties have been required to—and have—participated in extensive merits discovery. The SoClean parties offer no legitimate reason why DWHP should be treated any differently.

To the contrary, just last month, the Court made clear that merits discovery needs to continue and, in fact, that *all* fact discovery—including merits discovery—was to be completed *before* issues of personal jurisdiction were to be resolved. (*See* July 24, 2024 CMC Tr. at 16 ("[W]e have to have a process where we understand that once that fact discovery period for ***the whole case*** is concluded, ***then*** we have to have the briefing finalized on the personal jurisdiction issues for any summary judgment motions." (emphasis added)).) DWHP should not and cannot stall this case to suit its own interests. Further, if DWHP does not participate in merits discovery and later loses its jurisdictional challenge, there will be no way to meet the Court's July 2025 trial date in any of the tracks.[13]

V. The Court Should Reserve the Order of Trials for Future Consideration.

An insolvent company, like SoClean, has legal duties to *all* of its creditors. For SoClean, that includes the Philips parties. Right now, SoClean is attempting to force a complete restructuring outside of the watchful eye of a bankruptcy court. Because of this insolvency and the concurrent duties to the Philips parties as the largest creditor of SoClean (far exceeding White Oak's $110+ million lien), the order of trials will have important downstream effects for SoClean's out-of-bankruptcy-court financial reorganization and the interests of its creditors and other

[13] DWHP is a party to each of the Counterclaims, the Contribution Claims, and the Assigned Claims.

stakeholders. SoClean does not even own the claims it is asserting (*see* ECF No. 651-52), so the first preference is to White Oak who owns the claims asserted against the Philips parties. Ordinarily, a bankruptcy court would participate in this process, but SoClean is studiously avoiding filing for bankruptcy and triggering judicial supervision of its financial affairs. Obviously, SoClean should not be permitted to order trials in a manner that attempts to hinder or defraud some creditors (Philips) and prefer others (White Oak), but a failure to address all of the issues present in a holistic manner risks doing just that. All of SoClean's contingent assets and liabilities relate to litigation, and those assets are, by far, the most significant to the SoClean bankruptcy estate. The Court should avoid the risk of unintended error and reserve a determination on the proper order of trials, following the conclusion of coordinated discovery proceedings, with the benefit of comprehensive briefing on relevant statutes, procedural rules, and case law.

In its schedule, the Philips parties intentionally left this issue open for consideration at a later date. By contrast, the SoClean parties' *exclusive* focus on only the SoClean Claims and the Counterclaims dictates that trial for these actions must come first. The Philips parties have serious concerns with this outcome. Adopting a schedule that places trial of and judgment on the SoClean Claims and the Counterclaims ahead of the Assigned Claims and Contribution Claims impacts the interests of all of SoClean's creditors, including the Philips parties as the largest creditors. As currently contemplated by SoClean, in the event a trial of the SoClean Claims and the Counterclaims were to result in net proceeds going to SoClean, the SoClean parties' schedule would allow White Oak to recover on at least some of the substantial debt owed to it by SoClean *in preference to other creditors*. That is because White Oak has a security interest in the outcome of the SoClean Claims. (*See* June 16, 2022, UCC Financing Statement Amendment at 2.) But as an insolvent entity, SoClean owes a duty not only to White Oak, but to *all* of its creditors, including

the Philips parties. *See In re Zambrano Corp.*, 478 B.R. 670, 684 (Bankr. W.D. Pa. 2012) (explaining that "when an entity is insolvent, [fiduciary] duties extend to creditors of the corporation"). The goal of a bankruptcy proceeding is to create an organized process to resolve the interests of the debtor's creditors. For that reason, a bankrupt company is not permitted to avoid adjudication of one creditor's claim solely to adversely affect the priority and interests of other creditors; correspondingly, bankruptcy rules and procedures are designed to avoid "free-floating discretion to redistribute rights," particularly when it comes to creditor rights. *In re Chic., Milwaukee, St. Paul & Pac. R.R. Co.*, 791 F.2d 524, 528 (7th Cir. 1986) (Posner, J.).

Accordingly, contrary to the implicit suggestion in the SoClean parties' proposed schedule, now is not the time to address the ordering of trials. The Philips parties respectfully request that the Court set briefing at a later date, after the conclusion of coordinated pre-trial proceedings, on these and any other issues the Court believes may be relevant to the ordering of trials.[14]

CONCLUSION

The Court should adopt the Philips parties' proposed schedule.

Dated: August 14, 2024

Respectfully submitted,

/s/ Michael H. Steinberg

Michael H. Steinberg (CA Bar No. 134179)
steinbergm@sullcrom.com
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, CA 90067
Tel: (310) 712-6670
Fax: (310) 712-8800

[14] This briefing could cover such issues as (i) whether SoClean fraudulently transferred $50 million from its earnings to its owners (in spite of competing creditor claims), (ii) the possibility of equitable subordination, and (iii) whether a particular order of trials could result in hindrance or delay to contingent unsecured creditors.

/s/ Tracy Richelle High
Tracy Richelle High (NY Bar No. 3020096)
hight@sullcrom.com
William B. Monahan (NY Bar No. 4229027)
monahanw@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Tel: (212) 558-4000
Fax: (212) 558-3588

Counsel for Koninklijke Philips N.V. and Philips North America LLC

/s/ Erik T. Koons
Erik T. Koons (NY Bar No. 2941102)
erik.koons@bakerbotts.com
BAKER BOTTS LLP
700 K Street, N.W.
Washington, D.C. 20001
Tel: (202) 639-7973
Fax: (202) 585-1086

/s/ Andrew T. George
Andrew T. George (PA Bar No. 208618)
andrew.george@bgblawyers.com
BOURELLY, GEORGE & BRODEY LLP
1050 30th Street, NW
Washington, DC 20007
Tel: (202) 753-5012
Fax: (703) 465-8104

Counsel for Philips RS North America LLC

Exhibit A

Delaware

The First State

CERTIFICATE

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING ARE THE TRUE AND CORRECT COPIES OF ALL FINANCING STATEMENTS, LAPSED FINANCING STATEMENTS AND/OR ANY UCC3'S FILED IN THE OFFICE OF UNIFORM COMMERCIAL CODE WITH DEBTOR "SOCLEAN, INC. ".

Jeffrey W. Bullock, Secretary of State

20257108189-UCCXP
SR# 20242683178

Authentication: 203601367
Date: 05-31-24

You may verify this certificate online at corp.delaware.gov/authver.shtml

[redacted]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
CSC 1-800-858-5294

B. E-MAIL CONTACT AT FILER (optional)
SPRFiling@cscglobal.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

F-2701300
CSC
801 Adlai Stevenson Drive
Springfield, IL 62703

Filed In: DE
Secretary Of State

Delaware Department of State
U.C.C. Filing Section
Filed: 11:16 AM 11/19/2021
U.C.C. Initial Filing No: 2019 1200133
Amendment No: 2021 9407884
Service Request No: 20213849600

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
2019 1200133 2/20/2019

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ **PARTY INFORMATION CHANGE:**
Check one of these two boxes: AND Check one of these three boxes to:
This Change affects ☐ Debtor or ☐ Secured Party of record
☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
☐ ADD name: Complete item 7a or 7b, and item 7c
☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME: SoClean, Inc.

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ☑ **COLLATERAL CHANGE:** Also check one of these four boxes: ☑ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:

Any and all commercial tort claims in connection with and arising from the following cases: (i) SoClean, Inc. v. Sunset Healthcare Solutions, Inc., Case No. 1:20-cv-10351-IT (D. Mass.); (ii) SoClean, Inc. v. Sunset Healthcare Solutions, Inc., Case No. 1:21-cv-10131-IT (D. Mass.); (iii) SoClean, Inc. v. Does 1-394, Case No. 1:21-cv-03954 (N.D. Ill.); (iv) SoClean, Inc. v. RespLabs Medical USA, Inc. et al., Case No. 1:21-cv-03422 (N.D. Ill.); (v) 3B Medical, Inc. v. SoClean, Inc., Case No.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME: White Oak Healthcare Finance, LLC, as Agent

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA: Delaware Secretary of State - SoClean, Inc.
2071526.007 258253-1

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form
2019 1200133 2/20/2019

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME
White Oak Healthcare Finance, LLC, as Agent

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):
1:19-cv-03545-VM (S.D.N.Y.); and (vi) Konkinklijke Philips N.V. et al., Case No. 1:21-cv-11662-NMG (D. Mass.), and all proceeds thereof.

15. This FINANCING STATEMENT AMENDMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:
SoClean, Inc. 2071526.0007

[redacted]

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
CSC 1-800-858-5294

B. E-MAIL CONTACT AT FILER (optional)
SPRFILING@CSCGLOBAL.COM

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

CSC
801 ADLAI STEVENSON DRI
SPRINGFIELD, IL 62703
US

Delaware Department of State
U.C.C. Filing Section
Filed: 05:12 PM 06/16/2022
U.C.C. Initial Filing No: 2019 1200133
Amendment No: 2022 5087119
Service Request No: 20222751270

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER
20191200133

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:

Check one of these two boxes:
This Change affects ☐ Debtor or ☐ Secured Party of record

AND Check one of these three boxes to:
☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
☐ ADD name: Complete item 7a or 7b, and item 7c
☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ☑ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☑ RESTATE covered collateral ☐ ASSIGN collateral

Indicate collateral:

All assets of the debtor, now owned or hereafter acquired, wherever located, including any and all commercial tort claims in connection with or arising from the following cases (as the same may be transferred, removed, consolidated or appealed): (i) SoClean, Inc. v. Sunset Healthcare Solutions, Inc., Case No. 1:20-cv-10351-IT (D. Mass.); (ii) SoClean, Inc. v. Sunset Healthcare Solutions, Inc., Case No. 1:21-cv-10131-IT (D. Mass.); (iii) SoClean, Inc. v. RespLabs Medical USA, Inc. et al., Case No. 1:21-cv-03422 (N.D. Ill.); (iv) SoClean, Inc. v. Does 1-394, Case No. 1:21-cv-03954 (N.D. Ill.); (v) SoClean, Inc. v. Koninklijke Philips N.V. et al., Case No.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME
WHITE OAK HEALTHCARE FINANCE, LLC, AS AGENT

OR

9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

10. OPTIONAL FILER REFERENCE DATA:
DEBTOR: SOCLEAN, INC.:748720-1

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form
20191200133

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME
WHITE OAK HEALTHCARE FINANCE, LLC, AS AGENT

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)
1:21-cv-11662-NBG (D. Mass.); SoClean, Inc. v. Koninklijke Philips N.V. et al., Case No. 2:22-cv-00542-JFC (W.D.Pa.); (vi) 3B Medical, Inc. v. SoClean, Inc., Case No. 1:19-cv-03545-VM (S.D.N.Y.) (with respect to any counterclaims asserted as commercial tort claims); (vii) In re: SoClean, Inc., Marketing, Sales Practices & Products Liability Litigation, Case No. 1:22-mc-00152-JFC (W.D. Pa.) and Multidistrict Litigation Case No. MDL 3021 (with respect to any claims asserted as commercial tort claims), and all proceeds thereof.

15. This FINANCING STATEMENT AMENDMENT:
☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS: