

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/Turnoff

RENEE BLASZKOWSKI, *et al.*,
individually and on behalf of others
similarly situated,

Plaintiffs/Class Representatives,

vs.

MARS INC., *et al.*,

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Plaintiffs/Class Representatives, Renee Blaszkowski, *et al.*, respectfully request this Court to enter an Order granting them leave to file their Second Amended Complaint pursuant to Federal Rule of Civil Procedure 15 and as grounds therefor, states as follows:

1. The Plaintiffs filed their Class Action Complaint (“original Complaint”) on May 9, 2007. [DE 1]. Based upon the extraordinary number of problems and concerns with the advertising of Defendants’ pet food products as well as the products themselves, the Plaintiffs amended the original Complaint [DE 153] to add additional Plaintiffs and Defendants in July 2007.

2. Certain Defendants moved to dismiss the Amended Complaint based upon personal jurisdiction and all of the Defendants moved to dismiss based upon other grounds. The Court granted the Plaintiffs leave for personal jurisdiction discovery [DE 232], and the Defendants sought reconsideration of same. [DE 244]. This Court granted the Defendants’

Motion for Reconsideration of leave for personal jurisdiction discovery as to all but New Albertsons, Inc. [DE 251] without prejudice because the allegations regarding personal jurisdiction were not specific as to the Defendants connection to Florida and indicated that upon amendment, the Court would reconsider allowing the Plaintiffs leave for such discovery. [DE 251 p. 5 and fn. 5].

3. The Plaintiffs have prepared a Second Amend Complaint that is attached hereto as Exhibit "A" (without exhibits). The Second Amended Complaint details the personal jurisdiction allegations as to each Defendant so that the Plaintiffs can renew their request for leave for personal jurisdiction as to those Defendants who have contested same.

4. Moreover, while the Plaintiffs firmly believe that the Amended Complaint was more than adequate under the pleading requirements of the Federal Rules of Civil Procedure, in order to avoid a number of the issues raised in the Defendants' Motion to Dismiss, the Plaintiffs shortened the pleading substantially, made the relief sought crystal clear, alleged the Plaintiffs' injuries with specificity¹ and otherwise addressed issues raised by the Defendants in order to narrow the issues to be raised in any subsequent motion to dismiss.

5. Since the Plaintiffs filed the Amended Complaint, a number of lethal issues have arisen relating to the Defendants pet food products and, as a consequence, the Plaintiffs have added a request to certify equitable claims under Rule 23(b)(2) and claims for injunctive relief. The Plaintiffs are extremely concerned regarding the ongoing false advertising which has, and continues to, result in the illness and injury of the Plaintiffs' and consumers' cats and dogs. Equitable relief in the form of an injunction is thus imperative to the Plaintiffs to avoid further injury. Finally, the Plaintiffs have added a claim for strict liability.

¹ The injuries were also specifically alleged in the Amended Complaint.

6. The Second Amended Complaint also adds two Plaintiffs and an additional pet food manufacturer, Natura Pet Products, Inc. The Plaintiffs do not contemplate adding other parties to the lawsuit unless new information becomes available during discovery which would require the Plaintiffs to add same.

7. Federal Rule of Civil Procedure 15(a) provides that leave to amend “shall be given freely.” Fed. R. Civ. P. 15(a). The Eleventh Circuit has also determined that leave to amend should be granted liberally. *See Thomas v. Town of Davie*, 847 F.2d 771, 773 (11th Cir. 1988)(“Unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.”). In this case, there is no such substantial reason to deny leave to amend because this Motion has been brought in good faith, to cure the personal jurisdiction allegation deficiencies and in an attempt to narrow the issues to be brought before the Court on any subsequent motion to dismiss that the Defendants may file.

8. While the Plaintiffs have filed a Motion to Dismiss, the facts of the Second Amended Complaint are much shorter, they are identical to the previous pleadings and specifically address issues raised in the Defendants’ Motion to Dismiss, which will moot those issues. Based upon the identical factual and legal issues having been raised, the Defendants can re-file whatever portions of the Motion to Dismiss that they determine they want to pursue.

9. The Plaintiffs will be prejudiced if they are not allowed to amend the Complaint to clarify personal jurisdiction allegations, to add these two additional Plaintiffs, the one Defendant and claims for equitable relief and strict liability based upon the events that have transpired since the filing of the Amended Complaint.

WHEREFORE, the Plaintiffs, Renee Blaszkowski, *et al.*, respectfully request this Court to enter an Order granting them leave to amend and file their Complaint and for all other relief that this Court deems just and proper.

DATED: November 16, 2007

Rule 7.1 Certificate

Prior to filing this Motion, the undersigned contacted Carol Licko, Esquire, who agreed to contact all of the Defendants regarding their position on this Motion. As of the time of filing this Motion, Ms. Licko indicated the Defendants' position to be as follows: "Defendants will not formally oppose Plaintiffs' motion to amend with the second amended complaint, but will oppose any further amendment. If the Court grants Plaintiffs' motion, Defendants request that the Court also set a briefing schedule allowing Defendants 30 days to serve one consolidated response to the second amended complaint, allowing Plaintiffs 30 days to serve any opposition to Defendants' motion to dismiss, and allowing Defendants 20 days to serve one consolidated any (sic) reply."

s/ Catherine J. MacIvor
CATHERINE J. MACIVOR (FBN 932711)
cmacivor@mlegal.com
MALTZMAN FOREMAN, PA
One Biscayne Tower
2 South Biscayne Boulevard – Suite 2300
Miami, Florida 33131
Tel: 305-358-6555 / Fax: 305-374-9077
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on this 16 day of November, 2007. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

s/ Catherine J. MacIvor
CATHERINE J. MACIVOR

SERVICE LIST

CASE NO. 07-21221 ALTONAGA/Turnoff

CATHERINE J. MACIVOR

cmacivor@mlegal.com

JEFFREY B. MALTZMAN

jmaltzman@mlegal.com

JEFFREY E. FOREMAN

jforeman@mlegal.com

DARREN W. FRIEDMAN

dfriedman@mlegal.com

MALTZMAN FOREMAN, PA

One Biscayne Tower
2 South Biscayne Boulevard -Suite 2300
Miami, Florida 33131
Tel: 305-358-6555 / Fax: 305-374-9077

Attorneys for Plaintiffs

ROLANDO ANDRES DIAZ

E-Mail: rd@kubickdraper.com

CASSIDY YEN DANG

E-Mail: cyd@kubickdraper.com

MARIA KAYANAN

E-Mail: mek@kubickdraper.com

KUBICKI DRAPER

25 W. Flagler Street
Penthouse
Miami, Florida 33130-1712
Telephone: (305) 982-6708
Facsimile: (305) 374-7846

Attorneys for Defendant Pet Supermarket, Inc.

WILLIAM C. MARTIN

DLA PIPER LLP

203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601-1293
E-Mail: William.Martin@dlapiper.com

*Attorneys for Defendants Menu Foods, Inc.
And Menu Foods Income Fund*

JOHN B.T. MURRAY, JR.

E-Mail: Jbmurray@ssd.com

SQUIRE, SANDERS & DEMPSEY L.L.P.

1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, Florida 33401-6198
Telephone: (561) 650-7200
Facsimile: (561) 655-1509

*Attorneys for Defendants PETCO Animal Supplies
Stores, Inc., PetSmart, Inc., Wal-Mart Stores, Inc.,
Target Corporation and Meiner, Inc.*

ALEXANDER SHAKNES

E-Mail: Alex.Shaknes@dlapiper.com

AMY W. SCHULMAN

E-Mail: Amy.schulman@dlapiper.com

LONNIE L. SIMPSON

E-Mail: Lonnie.Simpson@dlapiper.com

S. DOUGLAS KNOX

E-Mail: Douglas.knox@dlapiper.com

DLA PIPER LLP

1251 Avenue of the Americas
New York, New York 10020

*Attorneys for Defendants Menu Foods, Inc.
and Menu Foods Income Fund*

HUGH J. TURNER, JR.

AKERMAN SENTERFITT

350 E. Las Olas Boulevard
Suite 1600
Fort Lauderdale, Florida 33301-2229
Telephone: (954)463-2700
Facsimile: (954)463-2224
E-Mail: hugh.turner@ackerman.com

GARY L. JUSTICE

E-Mail: gjustice@gibsondunn.com

CHARLES H. ABBOTT

E-Mail: cabbott@gibsondunn.com

GAIL E. LEES

E-Mail: grees@gibsondunn.com

WILLIAM EDWARD WEGNER

E-Mail: wwegner@gibsondunn.com

GIBSON DUNN & CRUTCHER LLP

333 South Grand Avenue
Los Angeles, California 90071
Telephone: (213) 229-7000

Attorneys for Defendant Nutro Products, Inc.

OMAR ORTEGA

DORTA AND ORTEGA, P.A.

Douglas Entrance
800 S. Douglas Road, Suite 149
Coral Gables, Florida 33134
Telephone: (305) 461-5454
Facsimile: (305) 461-5226
E-Mail: oortega@dortandortega.com

*Attorneys for Defendant Mars, Incorporated
And Mars Petcare U.S.*

BENJAMIN REID

E-Mail: bried@carltonfields.com

OLGA M. VIEIRA

E-Mail: ovieira@carltonfields.com

CARLTON FIELDS, P.A.

100 S.E. Second Street, Suite 4000
Bank of America Tower at International Place
Miami, Florida 33131-0050
Telephone: (305)530-0050
Facsimile: (305) 530-0050

Attorneys for Defendants Colgate-Palmolive

*Attorneys for Defendants Publix Super Markets, Inc.
and H.E. Butt Grocery Co.*

MARTY STEINBERG

E-Mail: msteinberg@hunton.com

ADRIANA RIVIERE-BADELL

E-Mail: ariviere-badell@hunton.com

HUNTON & WILLIAMS, LLP

Mellon Financial Center
1111 Brickel Avenue, Suite 2500
Miami, Florida 33131
Telephone: (305) 810-2500
Facsimile: (305) 810-2460

Attorneys for Defendant Nutro Products, Inc.

DANE H. BUTSWINKAS

E-Mail: dbutswinkas@wc.com

PHILIP A. SECHLER

E-Mail: psechler@wc.com

THOMAS G. HENTOFF

E-Mail: thentoff@wc.com

CHRISTOPHER M. D'ANGELO

E-Mail: cdangelo@wc.com

PATRICK J. HOULIHAN

E-Mail: phoulihan@wc.com

WILLIAMS & CONNOLLY LLP

725 Twelfth Street, N.W.
Washington, DC 20005

*Attorneys for Defendants Mars, Incorporated
And Mars Petcare U.S.*

MARCOS DANIEL JIMINEZ

E-Mail: ndj@kennynachwalter.com

ROBERT J. ALWINE, II

E-Mail: ralwine@kennynachwalter.com

KENNY NACHWALTER, P.A.

1100 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 373-1000
Facsimile: (305) 372-1861

Attorneys for Defendants Safeway, Inc. and

Company and Hill's Pet Nutrition, Inc.

SHERRIL M. COLOMBO
COZEN O'CONNOR
Wachovia Center, Suite 4410
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 704-5945
Facsimile: (305) 704-5955
E-Mail: scolombo@cozen.com

Attorneys for Defendant Del Monte Foods Co.

JOHN F. MULLEN
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-2179
Facsimile: (215) 665-2013
E-Mail: jmullen@cozen.com

Attorneys for Defendant Del Monte Foods, Co.

ROBERT C. TROYER
HOGAN & HARTSON L.L.P.
1200 17th Street
One Tabor Center, Suite 1500
Denver, Colorado 80202
Telephone: (303) 899-7300
Facsimile: (303) 899-7333
E-Mail: rcroyer@hhlaw.com

*Attorneys for Defendant Nestle USA, Inc.
Nestle Purina Petcare Co. and Nestle S.A.*

The Stop & Shop Supermarket Company LLC

RICHARD FAMA
E-Mail: rfama@cozen.com
JOHN J. McDONOUGH
E-Mail: jmcdonough@cozen.com
COZEN O'CONNOR
45 Broadway
New York, New York 10006
Telephone: (212) 509-9400
Facsimile: (212) 509-9492

Attorneys for Defendant Del Monte Foods

CAROL A. LICKO
HOGAN & HARTSON L.L.P.
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, Florida 33131
Telephone (305) 459-6500
Facsimile (305) 459-6550
E-Mail: calicko@hhlaw.com

*Attorneys for Nestle U.S.A., Inc.
Nestle Purinia Petcare Co. and Nestle S.A.*

CRAIG A. HOOVER
E-Mail: cahoover@hhlaw.com
MIRANA L. BERGE
E-Mail: mlberge@hhlaw.com
HOGAN & HARTSON L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910

*Attorneys for Defendants Nestle USA, Inc.
Nestle Purina Petcare Co. and Nestle S.A.*

JAMES K. REUSS
LANE ALTON & HORST, LLC
Two Miranova Place
Suite 500
Columbus, Ohio 43215
Telephone: (614) 233-4719
E-Mail: JReuss@lanealton.com

Attorneys for Defendant The Kroger Co. of Ohio

D. JEFFREY IRELAND
E-Mail: djireland@ficlaw.com

BRIAN D. WRIGHT

E-Mail: Bwright@ficlaw.com

LAURA A. SANOM

E-Mail: lsanom@ficlaw.com

FARUKI IRELAND & COX P.L.L.

500 Courthouse Plaza, S.W.

10 North Ludlow Street

Dayton, Ohio 45402

Attorneys for Defendant Proctor & Gamble Co. and The Iams Co.

RALPH G. PATINO

E-Mail: rpatino@patinolaw.com

DOMINICK V. TAMARAZZO

E-Mail: dtmarazzo@patinolaw.com

CARLOS B. SALUP

E-Mail: csalup@patinolaw.com

PATINO & ASSOCIATES, P.A.

225 Alcazar Avenue

Coral Gables, Florida 33134

Telephone: (305) 443-6163

Facsimile: (305) 443-5635

Attorneys for Defendants Pet Supplies "Plus" and Pet Supplies Plus/USA, Inc.

ALAN G. GREER
RICHMAN GREER, P.A.
Miami-Center – Suite 1000
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 373-4000
Facsimile: (305) 373-4099

Attorneys for Defendants Proctor & Gamble Co. and The Iams Co.

ROBIN L. HANGER
SQUIRE, SANDERS & DEMPSEY L.L.P.

200 S. Biscayne Boulevard
40th Floor

Miami, Florida 33131-2398

Telephone: (305) 577-7040

Facsimile: (305) 577-7001

E-Mail: rlhanger@ssd.com

Attorneys for Defendants PETCO Animal Supplies Stores, Inc.

ROBERT VALADEZ

E-Mail: rvaladez@shelton-valadez.com

JAVIER THOMAS DURAN

E-Mail: jduran@shelton-valadez.com

SHELTON & VALADEZ, P.C.

600 Navarro, Suite 500

San Antonio, Texas 78205

Telephone: (210) 349-0515

Facsimile: (210) 349-3666

Attorneys for Defendant H.E. Butt Grocery Co.

CRAIG P. KALIL

E-Mail: ckalil@aballi.com

JOSHUA D. POYER

E-Mail: jpoyer@abaili.com

**ABALLI, MILNE, KALIL & ESCAGEDO,
P.A.**

2250 Sun Trust International Center

One S.E. Third Avenue

Miami, Florida 33131

Telephone: (303) 373-6600

Facsimile: (305) 373-7929

*Attorneys for Defendant's Inc. and Albertson's
LLC*

C. RICHARD FULMER, JR.

**FULMER, LEROY, ALBEE, BAUMANN, &
GLASS, PLC**

2866 East Oakland Park Boulevard

Fort Lauderdale, Florida 33306

Telephone: (954) 707-4430

Facsimile: (954) 707-4431

E-Mail: rfulmer@Fulmer.LeRoy.com

Attorneys for Defendant The Kroger Co. of Ohio

W. RANDOLPH TESLIK

E-Mail: rteslik@akingump.com

ANDREW DOBER

E-Mail: adober@akingump.com

AKIN GUM STRAUSS HAUER & FELD LLP

1333 New Hampshire Avenue, NW

Washington, D.C. 20036

Telephone: (202) 887-4000

Facsimile: (202) 887-4288

*Attorneys for Defendants New Albertson's Inc. and
Albertson's LLC*

JASON JOFFE

SQUIRE SANDERS & DEMPSY, LLP

200 South Biscayne Boulevard

Suite 4000

Miami, Florida 33131

Telephone: (305) 577-7000

Facsimile: (305) 577-7001

E-Mail: jjoffe@ssd.com

Attorneys for Defendant Meijer, Inc.