

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

## MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/Turnoff

RENEE BLASZKOWSKI, et al.,

Plaintiffs/Class Representatives,

vs.

MARS INC., et al.,

Defendants.  

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**REPLY IN SUPPORT OF PLAINTIFF'S CROSS-MOTION TO STRIKE  
PORTIONS OF THE JURISDICTIONAL DEFENDANTS' RESPONSE**

Counsel for Safeway & Stop & Shop persist in declaring that they had reached an “agreement” regarding voluntary dismissal of their clients when that is, quite simply, not the case. Even worse, they have brought a good faith settlement proposal to the Court’s attention for no apparent purpose other than to try to bolster this claim of this non-existent agreement. After having approached counsel in good faith to *discuss* a potential voluntary dismissal, the Plaintiffs’ counsel determined that a dismissal was not a viable option at this time. The Declaration of Catherine J. MacIvor is attached hereto as Exhibit “A” that details the telephone conversations with Mr. Alwine and which differs from his version that was submitted to the Court late last night. Rather than simply parrot the Declaration in this Reply, the undersigned respectfully requests this Court to review the Declaration.

Most importantly, there was absolutely no basis to bring any confidential settlement communications to the attention of the Court whatsoever. As capable and competent counsel, if counsel truly believed that there was an agreement, I am sure that they would have requested that to be confirmed in writing. Moreover, if, based upon their unilateral understanding that there

was an agreement to dismiss them that they had been precluded from discussions regarding whether they would oppose a motion for leave to file the second amended complaint, then that only requires counsel to discuss the fact that they believed an agreement had been reached and *not* settlement communications. As for the specific settlement discussion referenced by counsel for Safeway and Sop & Shop, which are also set forth in the Cross-Motion, the Plaintiffs expressed concern about *both* the Plaintiffs and Safeway and Stop & Shop incurring expenses regarding protracted personal jurisdiction discovery (which was the Plaintiff's basis for considering voluntary dismissal in the first place). Given the fact that Safeway has been, at best, less than forth coming about its Florida contacts, including the "discovery" of Florida employees (after the Plaintiffs made it clear that they intended to seek leave for personal jurisdiction discovery), the Plaintiffs could not just dismiss Safeway or Stop & Shop without first obtaining discovery of their contacts.

If defense attorneys feel that they have unbridled ability to reference confidential settlement negotiations in order to bolster an argument to the Court that favors their position, then no Plaintiff would communicate settlement offers to the Defendants. *See St. Paul Fire and Marine Ins. v. Brothel Int'l*, 2007 U.S. Dist. LEXIS 64648 \* 55-56 (D.N.J. August 29, 2007) (striking references to "relevant background" that included confidential settlement communications that were irrelevant to the pending motion before the court). As discussed in the Plaintiffs' Cross-Motion, this case is very important to thousands of people who have been duped by the Defendants' advertising and whose cats and dogs have died or been made ill from the Defendants' products. The Plaintiffs' counsel provided Safeway and Sop & Shop with a reasonable confidential settlement proposal even after Safeway has been far less than forth coming about the facts relating to their contacts with Florida. That is not a tactic, but rather a

universally accepted method of trying to resolve a difficult issue out of court. Safeway and Stop & Shop *crossed the line* in both the Response to the Plaintiff's Motion for Leave for Personal Jurisdiction Discovery and again in their Response to the Plaintiffs' Cross-Motion to Strike.

WHEREFORE, the Plaintiffs respectfully request this Court to strike all portions of the Response that refer to any and all confidential settlement communications and for all other relief that this Court deems just and proper.

Dated: December 12, 2007  
Miami, FL

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on this 12th day of December, 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

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