

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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

Plaintiff,

v.

MARS INC., *et al.*

Defendant.

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Civil Action No. 07-cv-21221-CMA

**DEFENDANT NEW ALBERTSONS, INC.’S MOTION FOR LEAVE TO TAKE
LIMITED JURISDICTIONAL DISCOVERY**

Defendant, New Albertsons, Inc. (“New Albertsons”), respectfully submits this motion to take limited jurisdictional discovery of the named Florida Plaintiffs, Patricia Davis (“Patricia Davis”) and Raul Isern (“Raul Isern”) (sometimes collectively “Plaintiffs”), and states:¹

Argument

Plaintiffs’ jurisdictional allegations concerning New Albertsons are non-specific, conclusory, and generically applied to several Defendant Retailers.² Second Amended Class Action Complaint ¶¶ 51 - 60. [D.E. 260]. They read as follows:

New Albertsons is registered to do business in Florida and has a registered agent in Florida upon which service has been executed. [New] Albertson’s conducts business in Florida and places products in the stream of commerce that reach Florida consumers. New Albertsons is in the business of manufacturing, producing, distributing, advertising and/or selling its own brand of pet food

¹ New Albertsons seeks leave to serve jurisdictional discovery on account of the Court’s July 6, 2007 Order staying discovery pending the outcome of the motion to dismiss. [D.E. 130].

² Plaintiffs identify the Defendant Retailers as Target Corp., Wal-Mart Stores, Inc., Publix Supermarkets, Inc., Albertsons, LLC, New Albertsons, Inc., The Kroger Co. of Ohio, Safeway, Inc., H.E. Butt Grocery Company, Meijer Inc., and The Stop & Shop Supermarket Company.

products in Florida, as well as distributing, advertising and/or selling the Defendant Manufacturers' pet food products in Florida, which has injured the Plaintiffs in Florida. New Albertson's markets and sells its own brands and the Defendants' brands of commercial pet food in Florida. New Albertsons adopts the marketing representations of the Defendant Manufacturers by placing point of purchase advertising at or near the Defendant Manufacturers' pet food in its retail stores with the intent to induce consumers to purchase its products.

Second Amended Class Action Complaint ¶ 55. [D.E. 260].

The omissions are glaring. For example, the Second Amended Class Action Complaint does not describe what, if anything, any Plaintiff purchased from New Albertsons in Florida. It does not describe which of New Albertsons products, if any, injured any Plaintiff, let alone a Florida Plaintiff.³ New Albertsons is entitled to determine whether Plaintiffs' non-specific allegations provide the basis for the exercise of personal jurisdiction and which, if any, of the two named plaintiffs who live in Florida were allegedly injured by New Albertsons in Florida. In considering the elements of the constitutional limits of specific personal jurisdiction, it is the named class representatives whose claims must satisfy these elements in order for the Court to have personal jurisdiction over the defendants. Williams v. Firstplus Home Loan Trust 1996-2, 209 F.R.D. 404 (W.D. Tenn., 2002); Barry v. Mtg. Serv. Acquisition Corp., 909 F. Supp. 65 (D. R.I., 1995). See also Selman v. Harvard Medical School, 494 F. Supp. 603, 613 (S.D.N.Y. 1980) ("It is clear that the named class representative himself must satisfy all jurisdictional prerequisites [under the New York long-arm statute] before the action can go forward"). There is, however, a simple and efficient manner in which to answer those questions.

On October 30, 2007, the Court granted plaintiffs leave to conduct personal jurisdiction with regards to New Albertsons. [D.E. 251]. If this Court were to permit New Albertsons a reciprocal right to conduct very limited jurisdictional discovery, New Albertsons could

³ For the reasons set forth in Defendants' Omnibus Motion to Dismiss, these defects, and others, are fatal and warrant dismissal of this case, in its entirety.

determine whether its conduct injured any Plaintiff in Florida to the extent it deserves to be haled before this State's courts. If there is merit to Plaintiffs' allegations, Plaintiffs have no reason to pointlessly hide those facts. The inverse, however, is that New Albertsons is entitled to know whether Plaintiffs' jurisdictional allegations are as baseless as they are generic.

Again, the scope of the jurisdictional discovery would be limited both in terms of intended recipients, Patricia Davis and Raul Isern, the only two named Florida Plaintiffs, and topical breadth. Those topics would be limited to those set forth in the seven proposed interrogatories, per each named Florida Plaintiff, Patricia Davis and Raul Isern, attached hereto as Exhibit A.

In addition, New Albertsons proposes to proceed only by service of a limited set of interrogatories in lieu of either requests for production or depositions *duces tecum*, which, incidentally, New Albertsons believes to be the most efficient manner of moving forward for both Plaintiffs and Defendants at this early stage, recognizing the short amount of time the Parties have to complete this phase of discovery.

In this instance, limited interrogatories are a more efficient method of obtaining limited information in lieu of depositions. As pointed out in New Albertsons contemporaneous Motion for Leave to Provide Interrogatory Answers in lieu of 30(b)(6) Witnesses for Jurisdictional Discovery or, in the Alternative, for a Protective Order as to Specific Topics and Document Requests, Plaintiffs should have little difficulty answering New Albertsons simple, targeted interrogatories and the answers would provide New Albertsons with the clarity to which they are entitled.

WHEREFORE, New Albertsons, Inc., respectfully requests leave of this Court to serve limited jurisdictional discovery.

RULE 7.1 CERTIFICATION

Pursuant to S.D. Fla. L.R. 7.1., the undersigned certifies that counsel for New Albertsons has conferred with plaintiffs' counsel in a good faith effort to resolve by agreement the issues raised in this Motion, but has been unable to do so.

Dated: December 18, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Corporate Disclosure Statement was filed with the Clerk of the Court by the CM/ECF filing system on December 18, 2007, which will send notice to all counsel or parties of record on the attached service list.

s/ Joshua D. Poyer
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