UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case 07-21221-CIV-ALTONAGA

RENEE BLASZKOWSKI,
AMY HOLLUB and
PATRICIA DAVIS, individually
and on behalf of others
similarly situated,

Plaintiffs,

vs.

MARS, INC., et al.,

Defendants.

TRANSCRIPT OF MOTION TO DISMISS
BEFORE THE CECILIA M. ALTONAGA,
UNITED STATES DISTRICT JUDGE

MIAMI, FLORIDA

APRIL 4, 2008

APPEARANCES:

FOR THE PLAINTIFFS:

CATHERINE J. MacIVOR, ESQ.
BJORG EIKELAND, ESQ.
AMANDA SAMPLE, ESQ.
Maltzman Foreman, P.A.
One Biscayne Tower
2 South Biscayne Boulevard, Ste. 2300
Miami, FL 33131 - 305.358.6555
Email: cmacivor@mflegal.com
dfriedman@mflegal.com

FOR DEFENDANTS NEW ALBERTSON'S & ALBERTSON'S, LLC:

JOSHUA POYER, ESQ.
Aballi Milne Kalil & Escagedo
SunTrust International Center
1 SE 3rd Avenue, Ste. 2250
Miami, FL 33131 - 305.373.6600
Email: ckalil@aballi.com

FOR DEFENDANTS PROCTOR AND GAMBLE & IAMS:

ALAN G. GREER, ESQ.
Richman Greer, P.A.
201 S. Biscayne Boulevard, Ste. 1000
Miami, FL 33131 - 305.373.4000
Email: agreer@richmangreer.com

D. JEFFREY IRELAND, ESQ.
Faruki Ireland & Cox
10 N. Ludlow Street
500 Courthouse Plaza, SW
Dayton, OH 45402
Email: djireland@ficlaw.com

FOR DEFENDANTS TARGET, PETCO, WAL-MART, PETSMART:

J.B. MURRAY, ESQ.
Squires, Sanders & Dempsey, LLP
1900 Phillips Point West
777 S. Flagler Drive, Ste. 1900
West Palm Beach, FL 33401
561.650.7200
Email: jbmurray@ssd.com

FOR NESTLE USA:

CAROL ANN LICKO, ESQ.
JULIE NEVINS, ESQ.
Hogan & Hartson
1111 Brickell Avenue, Ste. 1900
Miami, FL 33131 - 305.459.6500
Email: calicko@hhlaw.com

CRAIG A. HOOVER, ESQ.
Hogan & Hartson
555 13th Street, NW
Washington, D.C. 20004 - 202.637.5600
Email: cahoover@hhlaw.com

FOR DEFENDANT NUTRO:

GAIL E. LEES, ESQ.
Gibson Dunn & Crutcher, LLP
333 South Grand Avenue
Los Angeles, CA 90071 - 213.229.7000
Email: wwegner@gibsondunn.com

MARK WHITBURN, ESQ.
Gibson Dunn & Crutcher
2100 McKinney Avenue, Ste. 1100
Dallas, TX 75201 - 214.698.3100
Email: mwhitburn@gibsondunn.com

MARTIN L. STEINBERG, ESQ.
Hunton & Williams, LLP
1111 Brickell Avenue, Ste. 2500
Miami, FL 33131
Email: msteinberg@unton.com

FOR DEFENDANTS COLGATE & HILL'S PET NUTRITION:

JAMES D. ARDEN, ESQ.
JOHN J. KUSTER, ESQ.
Sidley Austin, LLP
787 Seventh Avenue
New York, NY 10019 - 212.839.5300
jarden@sidley.com

FOR DEFENDANT DEL MONTE:

RICHARD FAMA, ESQ.
Cozen O'Connor
45 Broadway
New York, NY 10006 - 212.509.9400
Email: rfama@cozen.com

FOR DEFENDANTS MARS & MARS PETCARE U.S.:

PATRICK J. HOULIHAN, ESQ.
PHILIP A. SECHLER, ESQ.
Williams & Connolly, LLP
725 Twelfth Street, NW
Washington, D.C. 20005 - 202.434.5238
Email: phoulihan@wc.com

FOR DEFENDANT MENU FOODS:

ALEXANDER SHAKNES, ESQ.
DLA Piper, LLP
1251 Avenue of the Americas
New York, NY 10020
Emails: Alex.Shaknes@dlapiper.com
Lonnie.simpson@dlapiper.com

FOR DEFENDANT NATURA PET PRODUCTS:

KRISTEN CAVERLY, ESQ.
Henderson & Caverly
16236 San Diegu8ito Road, Ste. 4-13
Rancho Sante Fe, CA 92067
858.756.6342
Email: kcaverly@hcesq.com

REPORTED BY:

BARBARA MEDINA, RPR-CM
Official United States Court Reporter
Federal Courthouse Square, Ste. 404
301 North Miami Avenue
Miami, FL 33128-7792 305.523.5518
(Fax) 305.523.5519
Email: barbmedina@aol.com

TABLE OF CONTENTS

Page
Reporter's Certificate 94

INDEX TO EXHIBITS

Exhibits	Marked for Identification		Received in Evidence	
Description	Page	Line	Page	Line

CITATION INDEX

Page
Alabama versus U.S. Army Corps 20
American Honda Motor versus Motorcycle 21
Baur 57
Belaire versus Boca 61
Berry versus Budget 26
Blackston 69
Brooks 59
Central Hudson 22
City of Marietta v. CXS Transportation 24
Collins versus Daimler Chrysler 56
Conley versus Gibson 19
Davis versus Coca-Cola 60
FEC versus Akins 57
Firestone 56
Flamenbaum v. Orient 15
Fort Lauderdale Lincoln 55

Fulton 70
Garcia versus Santa Maria 37
Gonzalez versus Pepsico 56
Gritzke 55
Indemnity Insurance Company 15
Klay versus United Healthgroup 20
Levine versus American Bison 57
London versus Wal-Mart 48
Louie's Oyster versus Villagio 73
Lujan 48
Nebraska Press 23
O'Neill 49
Prohias 54
Prohias v. Pfizer 84
Pulte 71
Rivera versus Wyeth-Ayerst 54
Rowe versus An Abortion Clinic 73
Tilton 83
Tooltrend versus CMT Utensili 83
Twombley 9
Wooden versus board of Regents 59
Zapka (ph.) versus Coca-Cola 65

SIDEBAR CONFERENCE INDEX

Descriptions Page

ADMINISTRATIVE CONVENTIONS:

When counsel does not identify themselves each time they address the Court during a telephone conference, the industry-standard speaker identification is indicated by chevrons, i.e., >>>:

THE COURT: Good morning. Please be seated.

I believe everyone has signed in the sign-in sheet and my court reporter has everyone's name.

In the matter of Renee Blaszkowski versus Safeway, Stop & Shop. This is the defendants' motion to dismiss. I thought, perhaps, I could direct the arguments by asking you to address specific ones first, the ones that I think we can dispose of more readily, and then proceed to the other issues.

So I would ask defense counsel -- I'm not sure who's handling which argument for the defendants -- to first address the argument of the Economic Loss Rule.

Good morning, Ms. Licko.

MS. LICKO: Good morning, Your Honor.

Carol Licko, here on behalf of the defendants to address the Economic Loss Rule which we have raised with respect to the negligence claim and also with respect to the strict liability claim.

Your Honor is well familiar, as you know, with the Economic Loss Rule. You've cited it several times in several of your recent opinions. We submit, Your Honor, the Economic Loss Rule is an additional ground with respect to both the negligence claim and the strict liability claim.

The response that we've gotten from plaintiffs is that "Oh, no. I'm also claiming these personal damages to pets and, therefore, I can escape the Economic Loss Rule."

Your Honor, if you look at the Complaint -- and, again, this goes to the fundamental defect in the Complaint -- there is no fair notice. It is impossible to tell, when looking at the negligence claim, looking at the strict liability claim, what it is the plaintiffs are alleging against each and every one of the defendants.

Why is that critical? It's critical because their only defense -- they acknowledge that the Economic Loss Rule bars economic claims. If they only have an economic claim with respect to damages, that is clearly barred and they lose that claim. What they have to claim then is that somehow they also have this injury to other products, which here they allege would be their other property. It's the pets. And to do that, Your Honor, they rely on a couple of allegations of the Complaint. But because every defendant under Twombley and under Rule 8 is entitled to some fair notice of the claim and the grounds for that claim, then we submit, Your Honor, that's impossible for us to tell whether or not they're alleging purely economic damages, which it certainly seems to be in some situations, or whether, in fact, they're alleging something else.

Let me give you some examples. If you look at the negligence claim, Your Honor, in tab B of a notebook which we'd like to submit to you. We have already provided a copy to plaintiffs' counsel.

THE COURT: Thank you. And one for my law clerk, I suppose.

Tab B?

MS. LICKO: Yes, tab B.

We prepared this because we wanted to show with respect to the Economic Loss Rule that as an additional ground, they have clearly failed to do what they say they do, which is that they are relying on the damage to their pets.

Under tab B, we've got an exact copy of what they have alleged with respect to the negligence claim, and on behalf of the defendants, I've made an effort to try to determine, as we would have an obligation to do if we were responding to this claim, as to how the defendants could fairly respond because under Twombley and Rule 8 which governs here, that would be the requirement, and if you start out, you can see that under Count IV, which is the negligence claim, they styled it as being only against the defendant manufacturers, co-packers and PetSmart. Those are defined terms and would include certain defined defendants.

They immediately go on then into the next allegation and they pick up on all the defendants. They reallege paragraphs 1 through 28, which would call into that claim every single one of the defendants that they have identified in the Complaint.

They go on then and they add retailers to the group.

So there's confusion. Are retailers part of the group up at the top? Should they been listed? Are they really part of the negligence claim? Impossible to determine who should even respond to this claim.

Then they go into the next paragraph and make it even more confusing. They say it's certain defendants through association and/or by agreement with the defendant manufacturers, retailers and PetSmart. So, again, you can't even tell who is supposed to respond to the claim, let alone the type of damages that are at issue here.

If you go on to allegation 161, again, it's all defendants now. It's the defendants generically. So even if you were not one of the identified groups at the beginning, you would say "Perhaps I have an obligation to respond to this negligence claim."

They say there's an unreasonable risk. That's the allegation. Again, it's completely conclusory. They don't say what that unreasonable risk is to any specific plaintiff.

And the next allegation, again, they go to all defendants, and then -- and this is the critical one that goes to the Economic Loss Rule -- they talk about damages, and the damages they claim with respect to negligence are damages to the plaintiff class representatives and other class members have suffered loss and damage.

Now, that's certainly inconsistent with other

allegations in the Complaint. If you look at paragraph 1, they say -- they claim economic damages and then they have an "and/or" damages caused by damages to pets.

So there are complete contradictions within the Complaint when they identify the class. The class is defined with respect to no reference whatsoever to any injury to a pet. It's all based on economic damages, people who did not receive the benefit of the bargain.

So when we look at the allegation -- and this is why we pled the Economic Loss Rule -- it looks to us, you know -- completely as speculation -- that they do have an element here under their negligence claim for purely economic damages, and, clearly, those would be barred, and the plaintiffs don't dispute that well-established Florida law.

So we submit, Your Honor, that with respect to the negligence claim that this one should be dismissed.

THE COURT: Thank you.

I'll hear from plaintiffs' counsel.

MS. MacIVOR: Good morning, Your Honor.

I submit that this may not be a perfect pleading, but it is legally sufficient. Contrary to what Ms. Licko said, in their motion they only raise the Economic Loss Rule as to strict liability -- excuse me -- as to negligence, and that's on page 48. There is nothing in any regard. It doesn't prevail as to either count because in paragraph 2 of our

Complaint, we specifically state "and," that we're seeking benefit of the bargain damages, as they said. The plaintiffs, Ms. Blaszkowski and Ms. Peters, did not get what they thought they were getting with respect to the false advertising counts. Negligence is not a false advertising count. What we're saying in this count is that they put substances in the pet food, that they didn't manufacture it properly, all of which was alleged in detail in the Complaint.

The use of the word "and" in the second paragraph makes it clear, as our response certainly did, that we're seeking, unfortunately, what is referred to as property damages in Florida under the negligence count.

We're not seeking any type of contract damages for negligence. We're not seeking benefit of the bargain and property damages is all we're seeking.

If I could -- as a matter of fact, it's a little difficult to read the copy Ms. Licko gave me. I'm just going to refer to ours.

If you look at -- sorry. It says right here in paragraph 162 that the pet foods presented an --

THE COURT: 162 of your Complaint?

MS. MacIVOR: Of the Third Amended Complaint. I'm sorry.

-- presented an unacceptable and unreasonable risk of harm. That is certainly not a benefit of the bargain or

disappointed expectations. I think it's disingenuous for the defendants to say it doesn't give them fair notice. I haven't alleged anywhere in here, except for -- and I will concede that I did reallege the prior allegations. That could easily be taken care of if Your Honor thinks it's a problem or easily clarified.

With respect to leaving retailers in, you know, it clearly says negligence as to defendant manufacturers, co-packers and PetSmart. It was a clear error that hasn't been brought to my attention until now. If I had gotten a phone call, I would have been happy to do that. I'm not seeking negligence as to retailers.

Those are my two cots as to that. If the Court wishes more argument, I think that this is so basic. It's obvious from our response and allegations. We're not seeking anything but property damage for the illness or deaths for the plaintiffs' cats or dogs as to this count.

THE COURT: Thank you.

Ms. Licko.

MS. LICKO: Brief rebuttal.

Again, there is no dispute on the law, but let me just focus on the paragraphs that she has alleged to you. 162 doesn't say there is an actual unacceptable risk. It says that these are things that would result in foreseeable and reasonably avoidable damages.

It is impossible for the defendants -- again, this is her burden to plead her Complaint under Rule 8 to give reasonable notice, as defined by the Twombley Court, to each defendant of the claim and the grounds upon which it's based.

We've been through three amendments of this Complaint now, and, frankly, it is impossible, even on the negligence claim, to determine what damages she's claiming.

She just went through an explanation that under the clear language of her paragraph makes no sense. The damage she has alleged here on negligence seems to be what she says. The damage is to the plaintiff class. That's what we as a defendant must go by, and under that, under, as Your Honor has acknowledged in the Flamenbaum v. Orient case and Indemnity Insurance Company, under Florida law, those damages are economic damages. They are damages -- she claims her vet bills -- and those are clearly barred under Florida law. That means the negligence claim as an additional ground should be stricken above and beyond the fact it doesn't even provide fair notice of who did what, who breached what duty to a specific plaintiff such that it caused injury to either a plaintiff or a plaintiff's pet.

So we submit that that count must be dismissed.

THE COURT: Thank you.

MS. MacIVOR: If I may very quickly?

That goes more towards the defendants' argument and

goes beyond the Economic Loss Rule. The plaintiffs have repeatedly alleged in this case -- and this is the first time we've been hearing a motion to dismiss -- that Twombley requires some sort of tightened pleading standard. They even put that in their motion. I clearly set forth in the response that that was actually false as stated specifically in the Twombley opinion.

Repeatedly what the defendants have tried to do with respect to jurisdictional discovery, and now, again, here as to substantive claims, is they have repeatedly tried to hold the plaintiffs to a standard of pleading that I have never seen anyone try to hold a plaintiff to.

In 17 years of practice, I have not seen such a detailed Complaint from anyone. There's specific allegations here as to the specific harm caused. I've attached testing from one of the plaintiffs whose name is on that -- and she's a named plaintiff -- saying that there's a glycoalkaloids, I believe, perhaps, three, perhaps, five times higher than any human could withstand, much less a cat or dog.

I have set forth multiple paragraphs about the problems in this pet food and the harm that the pet food causes that is substantiated by medical literature.

I think it's disingenuous to say there is no way -- Twombley requires minimum notice, not a heightened pleading standard. Twombley could not change what the Supreme Court --

the Supreme Court can't use Twombley to change the rules, and that's not what happened there.

It's a minimum standard. We've met the minimum standard. We've alleged with a great deal of specificity. I don't think the defendants will ever be satisfied unless we have a 1,000-page pleading to discuss exactly what happened to who, where and when, which is not even required under Rule 9(b).

THE COURT: Thank you. We'll get there. All right. Thank you.

Let me turn now to Count VII for injunctive relief.

I'll hear the defendants' argument on -- I'm sorry -- yes, the defendant's argument on that.

MS. LICKO: Your Honor, the injunctive claim also must be dismissed because, again, it doesn't provide fair notice under Rule 8, and I'd like to, because it's going to permeate every single argument that you hear today, to address what the defense -- what plaintiffs' counsel has now said about Twombley because this is something she has repeated over and over again that somehow the defendants are trying to impose what she calls a heightened pleading standard that she is unable to meet and is contrary to both Rule 8 and Twombley.

Your Honor, that's incorrect. The problem here -- and I think you heard it with the response -- she's talking about the glycoalkaloids on Exhibit 34, I believe. Her allegations

are never connected to a specific plaintiff who did something -- to a specific defendant who did something to a specific plaintiff that caused injury either to that plaintiff or to that plaintiff's pet, and, again, this goes to just the product. She also has got these advertising allegations mixed in there that would go to what ad did that specific plaintiff see? Did they rely on the ad? How did the ad cause them to buy a specific product, which is never identified in the Complaint, and did the product cause a specific injury?

Now, what she has done on the injunctive relief claim is to take all the allegations in her Complaint -- and Your Honor knows this well, having done the one with the 1st Amendment issue in the menorah on Miami Beach. An injunctive action is a very, very high standard to meet. The plaintiffs have to show they have a likelihood of success on the merits of the claim. They have to show there's irreparable injury and that there is no adequate remedy at law. They haven't begun to meet the pleading requirements here.

First of all, as we've discussed throughout our brief, there is no allegation of any injury to any specific plaintiff or the plaintiffs' pets. She has got these vague, general allegations, but she has nothing that goes to the requirements that set forth in Twombley.

Twombley, it clarifies what Rule 8 requires. It says -- and this is -- I'm quoting from Twombley -- "A

plaintiff must show enough to give the defendants fair notice of what the claim is and the grounds upon which it rests."

The pre-Twombley claims and the old Conley versus Gibson standard has now been retired.

So for plaintiffs' counsel to suggest that somehow we're traveling under the old Conley rules that were addressed by the U.S. Supreme Court is simply untrue. The U.S. Supreme Court in Twombley has, in fact, clearly identified and clarified that under Rule 8 the defendant is entitled to fair notice.

Now a Complaint must have detailed factual allegations and it has to provide more than labels and conclusions. It can't be a formulaic recitation of just the elements of the claim, and you'll see that in the arguments they make with respect to all the claims, including injunctive relief. They said "Look, we filed the pleading form under rules of procedure. We filed form 1.982. We did exactly what we were required to," and they're saying that that's enough.

Your Honor, that may be enough if you're talking about one defendant and one plaintiff and you had a cause of action for a specific injury. You can't take that formulaic recitation and try to sue what they've done here today, the entire pet food industry.

The problem with her Complaint is not that she claims we want 1,000 pages. That's not it at all. What the

defendants are seeking here is simply fair notice such that they would have an opportunity to respond.

THE COURT: Isn't the essence of your argument with respect to Count VII that there is no cause of action for an injunction? That's a form of relief. That's as if one entitled it "Count VII, Rescission" or "Count VII, Compensatory Damages."

Isn't that the essence of your argument not that you are not on notice they want an injunction, but that that's not a cause of action. That's relief.

MS. LICKO: Underlying it, yes. That's one of the arguments we have made. There's no claim there.

What she has done is to reallege all 128 paragraphs of her Complaint, but there is no cause of action, and the 11th Circuit has been clear on that. She says "Well, they never dismiss it," but clearly the language of the 11th Circuit law on injunction says that's not a separate claim. It is a form of relief that could be attached to a viable claim of action, which we don't have here. All it is is seeking an additional form of relief. So it shouldn't be a separate claim to start with.

We've cited, Your Honor, the two cases, Alabama versus U.S. Army Corps and Klay versus United Healthgroup, which makes clear you can't just have a separate count simply for injunctive relief.

She goes on -- we've also cited American Honda Motor versus Motorcycle for the proposition when you have an adequate remedy at law, then you can't pursue an equitable claim, which is what she's trying to say her injunctive claim is some form of equitable claim, and the 11th Circuit has said "No," that that's not true.

Here all she's doing is realleging the same allegations under which she's claiming compensatory and possible punitive consequential damages. She can't use that as a basis for saying "I also want equitable relief in the form of injunction." It just is contrary to the law.

THE COURT: I'm not sure that that's the case. Why can't she say "I want damages for past conduct. In the alternative, if I don't prevail on that, I want an injunction prohibiting these defendants from engaging in these practices in the future."

Why can't it be pled in the alternative, and/or?

She's not claiming damages for future wrongful conduct. She's saying "For any future wrongful conduct, I want the Court to enter into an injunction and I have no adequate remedy to prevent against future wrongful conduct."

MS. LICKO: An injunction, Your Honor, is not used as a sanction for past conduct, and that's what she's trying to do here, because what she's asking the Court in her injunctive relief is to do two things. Number one would be to enter a

temporary and permanent injunction, enjoining the defendants from continuing their current unlawful false and misleading advertising and marketing and sale of their pet food and ordering them to terminate the continuing ill effects of past advertising.

As we discuss in our brief, that's not the purpose of an injunction. It's not an appropriate remedy to use an injunction when what you're trying to do actually is to sanction defendants for alleged past wrongdoing and misconduct. All an injunction is for is to prohibit irreparable harm until such time as there can be decisions on the merits of the case.

Here, what she's trying to do is to ask this Court to be a super regulator, to come in and effectively enjoin the defendants from advertising their food, from selling their pet food unless it's approved by Your Honor. That's what they're asking the Court to do, is to be a super regulator and to prevent all the defendants from unlawful false and misleading advertising, marketing, sales of their pet food.

That would be a clear violation, number one, of the First Amendment Rights of the defendants. They say -- she goes on to say that what she wants is that no advertising could go on unless, for example, there is -- she calls it competent, valid, scientifically valid studies to support the advertising.

That's not an appropriate legal burden under advertising. Under Central Hudson in the commercial speech law

by the U.S. Supreme Court, the defendants have a right under the First Amendment to advertise their product so long as it's lawful and not misleading. It's their burden to show that it's not. What they're asking this Court to do is impose a prior restraint, which clearly under U.S. Supreme Court law going all the way back to Nebraska Press, is something this Court cannot do, is to restrain speech in advance.

That's why her remedy, what she's seeking, is just totally inappropriate and improper. She can't ask for an injunction stopping the entire pet food industry and that's effectively what she's doing in the claim for relief.

I can go on and address why the advertising she's seeking to enjoin, it's --

THE COURT: No, I want to get through all of the issues. I was trying to put to the side the ones that I thought I could dispose of more quickly first.

Thank you.

MS. MacIVOR: Briefly, Your Honor, the count says "continuing" on page -- sorry -- paragraph 174, clearly, as Your Honor described, deals with future conduct and irreparable harm would be the deaths and illness of cats and dogs. So there's nothing that the plaintiffs -- excuse me -- the defendants have cited that said that is inadequate.

I have cited two cases that deal with Your Honor's concern about pleading as a separate count in the response.

One was City of Marietta v. CXS Transportation and it was Klay v. United Healthgroup -- they're both in the response -- where the 11th Circuit and -- yeah, they're both 11th Circuit cases -- did not dismiss a separate count. Clearly, it would be --

THE COURT: Was the question posed as it is here? Was there a challenge and did the Court expressly state it is a cause of action standing on its own?

MS. MacIVOR: Well --

THE COURT: All I did when I read this is I did a quick Westlaw search and I pulled up a whole bunch of cases, none of which are cited, that stand for the proposition that a claim for injunctive relief is nothing more than a form of possible relief that can be awarded once the party has prevailed on another cause of action. I have several cases for that.

MS. MacIVOR: I'm not going to dispute that with Your Honor. All I'm saying is I did cite several cases that state it need not be dismissed.

THE COURT: You can add it in your prayer for relief at the end of every count or at the end of the Complaint.

MS. MacIVOR: I'm not going to disagree.

I would like to say -- a couple of things were said -- to clarify, counsel said that I'm not able to meet any pleading standards. I categorically deny that.

THE COURT: Oh, we'll be hearing more about that.
MS. MacIVOR: Okay.
THE COURT: Moving right along in that light, let's address the fraudulent misrepresentation, negligent misrepresentation and deceptive trade practices, pleading fraud with particularity.
MS. LEES: Good morning, Your Honor. Gail Lees.
THE COURT: Good morning.
MS. LEES: I first want to apologize for my voice. When I was asked to do this argument a few weeks ago, we all and my doctor thought I would have my voice back better by today. It comes and goes. If it's a problem, if you would let me know.
THE COURT: Just speak into the microphone and try not to strain it.
MS. LEES: Thank you.
THE COURT: All right.
Do you want to take some water up there?
MS. LEES: I do have water. Thank you. I actually was able to speak when we started, but it disappears if I don't talk for a while.
THE COURT: All right.
MS. LEES: Your Honor, would the Court like to separate the Rule 9 and Rule 8 issues from the substantive elements of the claim because we've treated them together in

the brief and we would intend to treat them together --

THE COURT: However you prefer and however your voice permits.

MS. LEES: Your Honor, I think that Ms. Licko has covered a number of the points that we wished to start with with respect to the impact that the Twombley decision has created on the requirements of Rule 8.

I wanted to correct something that Ms. MacIvor said. This Court has made very clear its recognition that Twombley does change the law and has expressly stated in Berry versus Budget, "To survive a motion to dismiss, the Complaint must now contain factual allegations that are enough to raise a right to relief beyond the speculative level."

It is defendants' position that a review of the Complaint -- and we would like to do a review of the Complaint with the Court, and that's why we've submitted Exhibit A, which is the entire Complaint, and we've highlighted specific pages and put tabs where we have found an allegation that arguably goes to causation or arguably goes to reliance or arguably goes to injury. But I think it's important that when we do that review, we have in mind the standards that Twombley imposes under Rule 8 and the standards that Rule 9(b) imposes, which I think plaintiffs agree with defendants, Rule 9(b) specificity requirements apply to the cause of action for fraudulent misrepresentation, the cause of action for negligent

misrepresentation and also apply to the cause of action for violation of FDUPTA.

So with those standards in mind, I think a careful review of the Complaint will highlight the position of the defendants that this Complaint does not provide fair notice to the defendants. It does not frame allegations that permit defendants to craft an Answer that allows the defendants to admit or deny specific allegations, and it does not provide sufficient notice for defendants to respond to discovery, to determine discovery preservation obligations.

There have been three prior Complaints. There have been two motions to dismiss that the plaintiffs have seen. There have been the detailed dictates of the Twombley decision and the interpretations of Twombley and further repetitions of the principles of Twombley from the 11th Circuit and from the Courts in this district, and with all of that, the plaintiff has drafted a Complaint that is a model of what is not allowed.

The Complaint lumps all defendants together throughout virtually the entire Complaint and the specific allegations of causation, reliance and injury that I'll address reflect that. It fails to specify which plaintiff bought what product from what retailer in response to what advertisement from what manufacturer that said what.

It fails to specify what injury any plaintiff suffered and to connect any --

THE COURT: Are you speaking of the Complaint in general or just these three counts, because I'm focusing on these three for which a different pleading standard might apply?

MS. LEES: I'm speaking the Complaint, both in general and with respect to these three counts.

THE COURT: Because I'd rather address the three counts. I'm not all together persuaded as to the remainder, but let's look at these three first, if we could, and then I'll hear whatever arguments you all have about why this 100-page Complaint doesn't provide you notice from which you can respond and issue your denials and engage in discovery.

Let's address these three.

MS. LEES: With respect to 9(b), Your Honor, the 11th Circuit has established that precise statements and documents and representations made must be alleged and Rule 9(b) does apply to the first three causes of action, that the time, place and the person responsible for making the statements be alleged, as well as what the defendants have gained and the content and manner in which they're alleged.

So if we could turn to the specific allegations of the Complaint, in focusing particularly on the allegations of injury, the allegations of causation and the allegations of reliance, and take one specific plaintiff as an example in the interest of time, one specific defendant and one specific

defendant's ad, I would start off with named Plaintiff Blaszkowski. That is on page 3 of the Complaint, and on page 3 of the Complaint, paragraph 3, the allegations with respect to Plaintiff Blaszkowski appear. First we're told that she had cats/dogs. If you review the allegations with respect to all the remaining plaintiffs, you'll see that each is alleged to have cats/dogs. So the defendants are not put on notice even as to whether the products at issue might be involving cat food, as opposed to dog food.

They say they were manufactured and marketed by defendants and list several different defendants here, including Menu Foods, which is a co-packer, as the plaintiffs allege, for a number of other defendants. Again, it's not clear whether these other defendants are involved or not involved in the allegations that Plaintiff Blaszkowski is setting forth. A number of stores are also listed.

And then at the end, for causation, it says "which purchases were made based upon the above referenced defendants' marketing." Now, this is paragraph 3, so we don't have a lot above. I went back carefully to see what "above referenced marketing" was alleged. The only reference I could find to marketing above was on page 2, paragraph 1. I'm sorry. It's higher up. In the fifth line of paragraph 1 it says "Plaintiffs purchased pet food and/or treats that were manufactured, produced, distributed, marketed and advertised,"

and then it goes on. That's the only reference to the defendants' marketing that I could find.

So each of the plaintiffs has this allegation at the end of his or her paragraph which says that the purchases were made based upon the above referenced marketing, but there is no above referenced marketing, except a conclusionary statement that marketing occurred.

So, again, there's no notice that tells any defendant what advertising it is that defendant has allegedly engaged in.

So then taking Nutro, my client, as an example, we look then at paragraph 42, and the tabs show the causation, injury and reliance allegations, but they do also help us find the particular pages. Page 42, obviously, is right after the tab for page 40. It's on page 43, Your Honor, the allegations with respect to Nutro.

It says "Nutro's marketing makes the same and/or similar misleading statements and guaranties as the other defendants'." No specificity whatsoever. Nothing to tell Nutro what it is that Nutro has supposedly said, other than to look back at what all the other defendants have said, whose ads are, in fact, different from Nutro's, and guess at what it is the other defendants have done that Nutro is supposed to have also done.

Then one particular ad is selected. It's an ad which talks about adult cat food and has reference to a word,

"guaranteed," a word that is protected under AAFCO. It has other generalized language. Plaintiffs appear to complain about references to soy protein, although they don't allege that the inclusion of soy protein or the ingredient list here is inaccurate in all respects, and with just this one ad, the Complaint against Nutro is, I guess, made by the plaintiffs.

When you turn to the next page, on page 44, you see that plaintiffs say "Nutro has omitted to advise the plaintiffs and consumers just how it is scientifically formulated for an indoor cat, much less why an indoor cat's needs are any different from one who goes outdoors."

Much of what is alleged in is this type of language. You know, they haven't told us this. They haven't told us that. They're not pleading that it's an omission of a fact that's necessary to be stated in order to make it not misleading, in order to make it actionable.

They are not pleading that Nutro or, indeed, the other defendants have stated facts that are inaccurate. They are complaining about the way Nutro constructs its advertising because it is not the way that plaintiffs, apparently, would like Nutro to construct its advertising, and in that respect, what they're seeking is to have this Court act as a super regulator, is to have this Court say "You may not say this. We want you to tell them more about that."

These are not things consistent with the First

Amendment or consistent with the Safe Harbor provision that the FDUPTA statute creates that arises out of the Federal Government's delegation of regulatory authority over pet food to AAFCO, those aspects of the Complaint that cover language that AAFCO has expressly authorized are within the Safe Harbor, and when you remove all of that, all you have is a wish list, and the same is true when you look defendant by defendant by defendant.

An advertisement is taken and plaintiffs say "They didn't tell us this. They didn't tell us that." But, again, never was an allegation that says "Telling us this would be necessary in order to prevent it from being misleading. It's actionable because it fails to say. That it includes thus and thus deleterious ingredients." It's nothing like that. It's consistent in the allegations that say -- they didn't tell us additional information that we, as a matter of policy, as a matter of political point of view would like to, you know, would like to see the advertising state.

With respect to the causation, reliance and injury allegations, Your Honor, I'm not sure if the Court wants them addressed as part of the separate argument with respect to, with respect to standing or --

THE COURT: No. I'm just addressing right now fraud and whether it's pled with sufficient particularity as required by the rule.

MS. LEES: Okay.

And the particularity requirement of fraud does also include a requirement, an allegation of causation. So would it be appropriate for me to address causation allegations?

THE COURT: Certainly.

MS. LEES: The causation allegations appear, first of all, on pages 2 to 12, and I've already talked about that a bit.

Principally, we have the allegation that appears at the end of each plaintiffs' claim -- I'm sorry -- each plaintiffs' paragraph which says "which purchases were made based upon the above referenced defendants' marketing." So those -- I'm sorry -- those actually are reliance allegations.

But they are causation allegations to the extent that causation and reliance are intertwined in that in order for a plaintiff to have relied on an advertisement and made a purchase and that purchase then would be caused by the defendants' advertising.

So "which purchases were made based upon the above referenced defendants' marketing" is not a specific allegation that is required under the rules where a plaintiff would come forward and state "I saw such-and-such ad. It said so-and-so. I bought this product in reliance, wouldn't have bought it otherwise. The product caused thus and such damage and that's the injury."

That's what's required. That's not pleaded with respect to any plaintiff and it's not even pleaded in a lump-sum way, except by use of these very vague allegations which say "which purchases were made based upon the above referenced defendant's marketing."

Additional causation arguments that we --

THE COURT: How would you propose the plaintiffs do this? That as to each plaintiff, over the several year time span covered by the allegations, and as to each and every single defendant, each plaintiff identify each and every single advertisement over the span of these several years, identify where they read it, what they did in reliance and what damage was caused thereby?

MS. LEES: What the cases require, Your Honor, is -- there is some there is some leeway with respect to a long-running advertising campaign where it is not required that a plaintiff say "I saw these 47 advertisements over a period of five years." But it is required that the plaintiff provide the defendant with specificity, as the Court outlined with respect to the other elements. It is required that a named plaintiff step forward and say "I saw advertising that made this and this type of statement. I relied on it. It was inaccurate in the following way. I relied on it."

THE COURT: If each plaintiff has to say how it was inaccurate in the following way, it's going to be inaccurate in

the following way as to each defendant as to each ad then. Right?

MS. LEES: As to each defendant, as to each defendant's separate conduct.

THE COURT: Right.

MS. LEES: Conduct of defendants, obviously, is different from one to another.

THE COURT: Correct.

MS. LEES: And, yes. I mean, it was not defendants' choice to have 23 defendants lumped together in one lawsuit. Nor was it defendants' choice that plaintiff put forth 30 -- I sorry -- plaintiffs' counsel put forth 30 different plaintiffs. But if a plaintiff is going to be a named plaintiff in a class action, we do submit, Your Honor, that it is required that that named plaintiff show that that plaintiff has standing -- and I know you don't want to get into that just yet -- but that plaintiff have shown that that plaintiff has suffered an injury and has done so as a result of an advertisement or a label that has some type of misrepresentation or actionable omission and that that caused a purchase and that that caused damages.

THE COURT: All right.

MS. LEES: Without that type of specificity, there's no way the defendant can determine what documents it needs to preserve. It doesn't know what advertising campaigns are at issue, what advertising campaigns are not. It --

THE COURT: Actually, it can. It propounds the first interrogatory and asks the first question at a deposition and, you know, quite frankly, I'm sure you're all preserving all your documents, be they in electronic form or otherwise, that relate to this case. So you actually could.

The question is is it required in this pleading and does the pleading suffice?

MS. LEES: The pleading also must provide sufficient specificity to make it clear whether if proved, the allegations would give rise to a viable cause of action. That's one of the changes that Twombley brought, and what is lacking here is a sufficient level of specificity to let anybody determine, the Court or any defendant determine whether if what the plaintiff says is true there would be a cause of action here.

As currently pleaded, there isn't anything which all ties together into a cause of action, and what we would submit is in order for a Complaint to pass muster, in order for the defendants to be held to answer, the plaintiff does have to have that tie that I was outlining from an advertisement to a purchase to a product to an injury.

THE COURT: Thank you, Ms. Lees. Let me cut you off, if I could, and give your voice a break and hear from the plaintiffs and then we'll hear from you again. I'm trying to get through all of the issues. There are quite a number of them this morning.

Ms. MacIvor.

MS. MacIVOR: Let's take FDUPTA first. That's addressed in our response at pages 60 through 63. We have cited a number of cases that say that FDUPTA is not pled as a Rule 9(b) claim.

THE COURT: The plaintiffs say "Where FDUPTA is premised upon acts of fraud, however, that the rule would then apply."

MS. MacIVOR: No, we're saying 9(b) --

THE COURT: I'm sorry. The defendants. I misspoke. The defendants are saying that.

MS. MacIVOR: Yes. We are saying that it is not a fraud-based claim and there is a plethora of cases from Florida and this court that says fraud need not be pled because it's a different type of cause of action.

In this case, we have set forth FDUPTA because it would subvert the legislative intent behind FDUPTA to require plaintiffs to, as the Court noted in prior decisions, to require a plaintiff to do that because it's supposed to be a broad-based statute to allow consumers to do exactly what they're trying to do here, to go in and correct advertising that is false, and that was the legislative intent behind that.

The cases that we referenced from Garcia versus Santa Maria -- I mean, I could go through them, but Your Honor has seen them in the response.

As far as some of the allegations regarding the fraud counts, which are really fraudulent and negligent misrepresentation, we've also cited cases in the response, Your Honor, that say that when there's a long-standing fraudulent situation where there have been a number of fraudulent misrepresentations made over a period of time, that there are other ways in which to meet the rule 9(b) burden.

Getting back to exactly what Ms. Lees was talking about a few moments ago, in paragraph 1 she said that "the above referenced advertising," she didn't know what that was talking about.

In paragraph 1, it discusses that they relied upon representations and omissions in purchasing pet food that they would not have purchased it had they known the truth and they didn't get the benefit and that was all based upon the advertising.

Paragraph 2, false and deceptive advertising, misrepresentations and omissions. Certainly, while it doesn't say "above," and probably should have said "below," there's certainly a number of allegations very specific within the Complaint. Paragraph 69 is only one example, although there's many, many more.

Prior to that, there's a long list of representations that show exactly how the defendants have misled the people like the plaintiffs, like Ms. Blaszkowski and Ms. Peters.

They're representing, for instance -- Natura is a good example, their advertising. You know, "We only put in the food what you would eat." That's not unlike what most of them do, whether it's through pictures -- and pictures are actionable and I have certainly pled that, and, you know, Natura -- I mean, in any other concept, as far as, you know, anything I have ever seen, the saying that this is the same as you'd eat, when the regulations that they're talking about say it's supposed to be food that's inedible and not fit for human consumption.

What we're not saying is that we're trying to compel AAFCO to be used, the AAFCO definition, which is what they're trying in a convoluted way to say what this lawsuit is about, but that's not what it's about. We're agreeing that the AAFCO definition is what it is, but that has nothing to do with the lawsuit.

The fact that they're leading these people to believe that they are paying for human grade quality food and taking their good hard earned money and making them think that they're giving them this great good glorious wonderful human grade food and it's not, that's the deception.

It is a lie under -- or a fraud -- under any way I've ever seen it when you have a defendant who is making something and says "We only put in the food exactly what you would eat," but the AAFCO definition on the back of the label completely

contradicts that, only most consumers won't go and order the AAFCO book that explains what these are in exceedingly fine print that took me at least two months of research to try to figure out.

I know Ms. Blaszkowski never did that. She didn't know what that meant. I know Ms. Peters never did that. She didn't know that they weren't getting human grade quality food. That's one example.

Paragraph 69 goes through -- there's a number of bullet points that takes several pages that give the defendants specifics.

THE COURT: Isn't one of the defendants' complaints here, that they, in fact, do not know whether Ms. Blaszkowski and Ms. Peters actually purchased the Natura food based upon that representation that it was human grade quality because no where is it identified what plaintiff bought what in reliance upon what.

So what plaintiff has a grievance against which of these various defendants, or is it that each plaintiff is aggrieved by the actions of all of these defendants and actually read the advertising that each defendant had, purchased each defendant's products and suffered damage as to each one?

MS. MacIVOR: Taken as true, which is what we are doing today, and using the example that the defendants just

used, paragraph 3, not every defendant is mentioned in paragraph 3, and if you look at the subsequent paragraphs for Patricia Davis and Susan Peters, who is also here with us today, not every defendant is mentioned.

What is mentioned is that Ms. Blaszkowski purchased Mars, Mars PetCare -- and let me explain one other thing before I get to that. There has been some criticism of including Menu Foods in here and there has been some criticism of using Mars and Mars PetCare. Without any discovery in terms of the nature of this industry, I have no way of knowing without a crystal ball who actually manufactured some of the food, and they know that.

It's a little disingenuous given the fact in 2007 when we had the massive Menu Foods recall, when people found out that the food that they thought they were buying from trusted manufacturers was actually manufactured by Menu Foods. That is secret. If you call Menu Foods or if you call any one of these defendants and say "Who actually manufactures your food?" they won't tell you.

It's impossible for Ms. Blaszkowski and Ms. Peters to sit here and say -- and they know it or they should -- who manufactured what. We've done the best that we can because we know whose name is on it, but we don't know if Menu Foods manufactures it. It could be Diamonds. God knows who's manufacturing it. It could be manufactured in China, for all

we know. That's what we found out last year.

So what is alleged here is the people they think they're buying it from anyway, which is all we can do at this point without discovery.

Also, the retail stores, each one, which are different for each plaintiff. Then if you go in with the specific allegations, each one of these, especially in the FDUPTA count, which is not held to the fraud standard, each one of these people and it's based upon their -- I mean it's cited cases that say Florida Courts have said they don't even necessarily have to buy the product, but these people have alleged they bought it. They have alleged they looked at the advertising. It comes down to a reasonable consumer standard.

With respect to the fraudulent misrepresentation and negligent misrepresentation, -- the specific paragraphs in paragraph 69, they relate. This industry is so homogenous and what they're not letting the Court know is that the food is, basically, made all the same way. You can never tell who makes it. It's all made through extruders and the wet food is made the same way. There's very little differentiation between it from everything that I've been able to know and if you look at the backs of the cans.

So the fact the advertising is very similar, it's just like any other competitive industry, when one defendant does something, another one will follow. One says "Oh, we're

putting glucosamine in it now because this is wonderful for your cat." Even though it's not supported by any competent research or the National Research Council saying it is actually good, they'll all follow.

So what we're saying in this Complaint is that they have looked at the advertising. We have given the defendants whose advertising they looked at. We've summarized, which I've given Your Honor the cases saying I can provide a list summarizing the representations, which is what we've done. We have given a time period. The class period is through a particular time. Barring that, there's very little else we can do at this particular period of time without giving Your Honor a 10,000 page pleading.

It certainly is enough to know that we put them on notice that we think through their pictures and drawings they show human grade ingredients, but it doesn't have human grade ingredients. That puts them on notice. Every one of them do that in their advertising and they do it for a reason. They're trying to sell pet food and they're selling something they're not selling.

THE COURT: Thank you.

MS. LEES: Your Honor --

THE COURT: Ms. Lees.

MS. LEES: Your Honor, I'm very appreciative that Ms. MacIvor made the reference to human grade ingredients

because I think it illustrates one of the central flaws in the Complaint.

Human grade ingredients is something that the Complaint alleges one of the 23 defendants represented and it's an allegation that appears in one exhibit to the Complaint. That allegation is with respect to Defendant Natura. It is not with respect to any other defendant and, yet, the Court just heard Ms. MacIvor say "them," I think -- I lost count -- something like twelve times.

That is what is the matter with this Complaint, that plaintiffs will say "defendants did such-and-such" when what plaintiffs really mean is a defendant on a particular day did such-and-such.

It's a very different situation. None of the other defendants should be held to answer with respect to representations of human grade if only one defendant has made a representation of human grade, and if only five of the plaintiffs saw advertisements and purchased products in reliance on a representation that the plaintiffs are challenging such as that, only those defendants who are involved in that representation should be defending and only with respect to those particular named plaintiffs.

So I think that really brings, I think, a very sharp focus to what we are saying is the biggest problem of the many problems with this Complaint.

And then the second thing is just looking at this long list of allegations in paragraph 69, which is on page 30 of the Complaint, many of them are very much like the fifth one. "The defendants' marketing makes numerous deceptive and/or false claims relating to . . ." and they list a whole series of things, quality, contents, health, et cetera. Much of this is language that is, in fact, protected under FDUPTA under the Safe Harbor, under the AAFCO regulations, and all of it is general, vague, unspecific and impossible to frame an Answer to.

THE COURT: All right. Thank you.

MS. MacIVOR: Well, looking at the one to show that's not true, under paragraph 69, if you look at the first bullet point, it says -- and prior to that -- it says "The defendants' marketing has misled, deceived and failed to disclose to the plaintiffs on an ongoing and continuous basis through the class period material information." The very first bullet point shows "The defendants' pet food containers deceptively include pictures and drawings of human grade ingredients, but the pet food does not have human quality food " -- I'm sorry. I hope that wasn't me. So that's not true.

There are other allegations I can go through and I can specifically state -- I've mentioned many, many times in the previous paragraph where I talk about in the Complaint that the defendants' pet food is made wholly or partially of inedible

garbage unfit for human consumption. Elsewhere in the Complaint as well.

If you go to the second bullet point, "The defendants' marketing deceptively makes the plaintiffs believe that they are purchasing wholesome pet food when the defendants use a food pyramid similar to those used by nutritionists in human food nutrition, particularly where the pictures and drawings of human grade ingredients are used. We gave an example of that and attached pictures in the Complaint as exhibits.

The defendants' -- another bullet point: "The defendants' cat and dog food is deceptively marketed as having health, medical and hygienic and other benefits."

Those are just three examples of specifics. It goes on for several pages what they specifically are.

Then if you go down -- excuse me for a moment -- there are other allegations of what those are. For examples -- here we go. I'm sorry. It's on paragraph 70. I'll refer to page 33. They market their pet food with alleged health, medical and other benefits in much the same way that medical or other benefits are marketed to the plaintiffs.

For example, glucosamine and chondroitin are marketed as providing a benefit to human joints. They're also marketed in pet food without any competent or reliable scientific evidence to demonstrate the benefits to a cat or dog. The same with Omega 3 fatty acids.

So I have given them specifics. It's on their bags and containers. It's in their advertising. I don't know how -- I know I've been a defense attorney for 17 years primarily. I know I could answer this Complaint. I know I have answered Complaints based on frauds that have been far less specific than this.

There's a time period. There's specific allegations summarizing the fraud. There's plaintiffs who say they looked at the advertising. It's impossible, as I said to Your Honor, to tell exactly who it was, and they know that, and they're here disingenuously saying why haven't we said exactly who their marketing represents but we don't know who made the food.

We have done everything we can in the Complaint. It's still not enough. At some point, enough has got to be enough with these defendants. It's as specific as any plaintiff could get.

Paragraph 72 talks about a commercial showing the good life, talking about showing pictures of wonderful fresh vegetables and real meat. We're saying that that's deceptive --

THE COURT: I understand.

MS. MacIVOR: -- and misleading. We have given them numerous specifics in this Complaint. It's the most detailed Complaint I've seen in 17 years.

THE COURT: Thank you, Ms. MacIvor.

I will ask defendants to address the arguments with respect to injury and standing. {}

MS. LEES: Thank you, Your Honor.

With respect to injury and standing, the requirements arise not only from the elements of the cause of action, but also, as the Court is aware, from the decision of the United States Supreme Court in Lujan, which has been consistently applied by the 11th Circuit and by the Courts in this district.

The requirements are very specific that injury, in fact, and a causal connection between the injury and the conduct complained of must be pleaded. That language is directly from Lujan and is endorsed an quoted by the Courts, as I said, within the 11th Circuit.

The injury must be concrete and particularized. Concrete and particularized, that's from London versus Wal-Mart, 340 F.3d at 1251. It also arises from Lujan. "Concrete" and "particularized" are not words that can be applied to the injury allegations that are in this Complaint.

The injury allegations are on page 2, and injury allegations are highlighted in blue, "Did not receive a benefit from the purchase of pet food and/or treats that were materially different from what was advertised," "and/or," "The plaintiffs' cats and/or dogs have suffered illness and/or death."

First of all, we don't know whether they're alleging

that they didn't receive a benefit from the purchase of the pet food or whether they're alleging that pets died, and we don't know which type of injury, if there is one, occurred with respect to which type of plaintiff, which named plaintiff.

Injury allegations also appear on page 32, and the even numbered pages, of course, have to be flipped, "And/or their cats and/or dogs became ill and/or died from ingesting the pet food."

We have no idea whose plaintiff's cat and/or dog became ill and/or died from ingesting pet food.

I think, by the way, Your Honor, the very fact that the Complaint says each plaintiff had cats and/or dogs reflects a lack of investigation. It reflects a failure by the plaintiffs' counsel to sit down with the plaintiffs and find out what the circumstances were of the particular plaintiffs to set that forth and meet the requirements of pleading that, such that the defendants would then be in a position to have notice of what the claims were and be in a position to frame Answers.

Moving beyond the injury allegations, there are also requirements of causation allegations springing from the Lujan decision and also applicable under FDUPTA. As this Court noted in the O'Neill case, FDUPTA does require causation allegations. So It's worth looking not only at the injury allegations, but also at the causation allegations. We talked earlier about some of them, but there are other causation allegations at

pages 71 to 73. "As the direct and approximate result of the defendants' misrepresentations and/or omissions and concealment of material facts, the plaintiffs' class representatives and the plaintiff class have suffered damages."

Again, there is no specificity. There is no direct link, no plaintiffs' injury or conduct is tied to any defendants' advertisement or product or any retailer defendants' sale of any product.

The absence of those nexus, of the nexus between each of those links is fatal to this Complaint surviving analysis under Lujan and, therefore, deprives the case of Federal subject matter jurisdiction because it does not create an Article III case or controversy. It's not something that this Court can adjudicate when there is not a showing that each of the named plaintiffs has standing.

Plaintiffs cannot rely on allegations that class members other than the named plaintiffs have standing. It's required, as I think -- as I'm sure the Court is aware -- that each named plaintiff himself or herself satisfy the Court that -- with specific allegations -- that it has, in fact, suffered an injury and that that injury was caused by the conduct of a particular defendant. So that's the standing aspect of it.

The Rule 8 aspects of it, I think, we've already discussed pretty extensibly, the Twombley requirements of the

necessity to plead sufficient facts to give rise to a plausible inference of entitlement to relief.

With respect to 9(b), as applicable here, the greater specificity requires not only what all of the causes of action are lacking here in order to satisfy the standing causation and injury requirements, but also requires a higher level of specificity in order to sustain the fraud claims.

THE COURT: All right. Thank you.

Ms. MacIvor.

MS. MacIVOR: We've cited cases in our response that talk about Lujan that was just mentioned, that general -- excuse me -- general factual allegations of injury resulting from the defendants' conduct suffice because on a motion to dismiss Courts presume that general allegations embrace those specific facts that are necessary to support the claim.

Again, we hear some disingenuous allegations here this morning. In some of the prior Complaints, I've set forth the specific cats and dogs, numbers of them. I don't think the fact that in the Third Amended Complaint it says "cats/dogs" -- if Your Honor requires it, I think that under Lujan, it meets it because clearly they have standing.

I've alleged it before, the specific number. In a desire to be a little more brief this time, I condensed that down. So it's not a question of not having done my homework. If anyone took a look at the last two Complaints -- and I'm

sure the defense has -- they'll see it. That's there. If Your Honor orders I need to do that, I'll be happy to do it again.

As to the remainder of what was said this morning, the plaintiffs have alleged, first, that they incurred property damage when their cats and dogs ingested the defendants' pet food and treats and became ill or died. They've alleged they would not have purchased pet food if they had been aware of the actual contents and the effect it would have on their cats and dogs. They've alleged they would not have purchased premium pet food if they had known it would be more expensive. What I told Your Honor before about Menu Foods, right after the 2007 massive recall, that the same stuff that was purchased at the grocery store that, you know, people buy because they can't afford the expensive stuff, it's all made by Menu Foods.

Plaintiffs wouldn't have done that. They wouldn't have given their precious cats and dogs that kind of thing if they had known that. Fourth, they have also incurred out-of-pocket veterinary expenses. Each one of those -- and I have cited it extensively in the response. There's two tracks in the Complaint. There's the ones that relate to false advertising and those that relate to property damage. I have said with respect to the false advertising -- I've cited a number of cases which I would be happy to cite to Your Honor again today that talk about economic injury is injury under Lujan and suffices to provide standing. That has been alleged in this

Complaint.

If you look at the paragraph that they referred to -- for Ms. Blaszkowski, paragraphs 1 and 2 -- it specifically alleges -- and I don't want to read it again -- but the latter half of the paragraph exactly what -- excuse me. I'm going to go back to the first paragraph. "Each and every plaintiff purchased pet food and/or treats that was manufactured" -- then it goes on. It says that they relied upon them, wouldn't have purchased it. They did not receive a benefit and they were materially different from what was advertised.

Then it says "and/or," which it probably should have said "and," as it does in the next paragraph, but, anyway, "The plaintiffs's cats or dogs have suffered illness and/or death as a result of ingesting it."

In the second paragraph it says that The marketing and advertising, sale of commercial pet foods, they've been injured by that, and then it says "and," and then we have "for the illness" -- they're also suing for the illness and deaths of plaintiffs' cats and dogs from ingesting the defendants' commercial pet food.

Taking the allegations as true for the purpose of the motion to dismiss and because there's supposed to be general allegations the Court is supposed to presume, the plaintiffs have properly alleged standing here and they've gone over and above what they need to do so.

There's extensive injury allegations regarding false advertising in the Complaint, property damage in the form of illness and injury to cats and dogs. We have attached an exhibit that shows Susan Thomas had her pet food tested by the New York Department of Agriculture and that it could kill a human being, much less a cat or a dog.

We've also alleged the plaintiffs have paid a higher price for premium pet food when it has the same ingredients as non-premium. That's a classic FDUPTA case.

They've alleged they've incurred pet bills from having ingested the defendants' pet food. Nonetheless, the defendants claim this is a no injury case. None of the cases they've cited support that because this is not a case where there's no injury.

They've cited repeatedly cases from Florida, the Rivera versus Wyeth-Ayerst that has been so heavily relied upon by the defendants, it has been rejected in this district, and Prohias.

You know, they're saying that we don't allege physical injury. We have alleged property damage, which Your Honor noticed in the negligence claim. That absolutely fits injury into this for that prong of this Complaint.

Like I said, false advertising has to do with the economic benefit, and then, of course, property damage would meet it.

That's injury at the pleading stage. That's all we need to provide at this time, and I've cited a number of cases throughout our response that provide that.

One is Gritzke where they say, you know, contrary to the heightened pleadings that the defendants want us to use here, the Gritzke case from the Northern District of Florida says no Court is required, not even the purchase of the product is required under FDUPTA. Yet, we've alleged that. That's alleged in the same paragraph that Ms. Lees referred to with respect to Ms. Blaszkowski.

Also, in Fort Lauderdale Lincoln, "FDUPTA entitles a consumer to recover damages attributable to the diminished value of the goods or services." We've also alleged -- I'm not going to go into all of them. On page 52 of our response, we've also gone into the fraud and other allegations as well. Nonetheless, they're still trying to say we haven't pled enough.

Well, at the motion to dismiss stage, it's unclear, after having looked at each and every one of their cases -- and I've certainly to streamline this case before, I've been happy to say I'll go forward. I'll allege it, but, frankly, they haven't met their burden to show we have not met standing in this case.

Except for alleging a Chinese menu, which is really what they're getting down to, their entire boils down to "You

haven't told us the brands." But we have done in detail, we've linked each plaintiff to a defendant, whether it's a manufacturer, a co-packer, if we have a reasonable basis to believe there could be a co-packer involved, a pet specialty retailer or retailer.

They know what their brands are. If Your Honor rules we have to give them the brands, the Chinese menu which some people have up to 17 dogs, it could be quite a bit of brands. I am quite certain that they know what their brands are. The fact of the matter is we have done the important thing here. We have linked the defendants so they know how to respond. They have to know -- and I find it hard to believe any of them will say "You know what? We do. We agree with them because on this particular brand we falsely advertised." So I think they'll be able to answer the Complaint.

I have also given the Court a couple of cases. Collins versus Daimler Chrysler, where they rejected the Firestone case, which is the alleged no-injury case. Gonzalez versus Pepsico, which is a case out of the District of Kansas. It says "Economic injury is a paradigmatic form of injury in fact." I'm sure Your Honor, has read them. I've cited at least, from my count here, at least 15 other cases that support that.

As far as the individual and collective allegations that we've heard about from time to time this morning, there

are some individual allegations. There are some collective allegations. Like I said before, because this is a homogenous industry and because when people go in, they typically have -- people like Ms. Blaszkowski and Ms. Peters -- have relied on representations, which we've alleged.

I have mentioned reliance with respect to each of them, but on other occasions I've made general allegations because where it fits with each plaintiff, I've made a general allegation. To say that specifically for each person would make this Complaint probably 10,000 pages.

They've said that they have purchased the food based upon the marketing. Cases such as FEC versus Akins show that there's no basis to dismiss this case based on, the Complaint based on standing, because there are some collective and some individual allegations. FEC versus Akins says "Ruling that widely shared injury constitutes an injury in fact for Article III," and gives an obvious example of a widespread standing, "Where large numbers of individual suffer the same common law injury, a widespread mass tort counts as an injury in fact."

And Levine versus American Bison is another one. "Meat Consumers do not lack standing simply because the injury was shared by all other meat consumers." Baur is another case. We have clearly alleged standing in this case, Your Honor.

While Your Honor might want us to go back and list the cats and dogs, I've done it in two other Complaints. I'll be

happy to do it again. The fact is I wouldn't have included a plaintiff in the case if they wouldn't have had at least one cat or dog. I find it hard to believe that they wouldn't be able to answer the Complaint if they don't know who has a cat or dog, but if Your Honor rules that, I'll be happy to put it back in.

Thanks you.

THE COURT: Thank you.

Ms. Lees.

MS. LEES: Your Honor, plaintiffs cannot solve the problem with this Complaint by simply alleging that this is a homogenous industry. First of all, it's not. It's a highly competitive industry.

THE COURT: Well, I accept it as true. Right? Their allegations, their allegations that it is a homogenous industry and they are all doing this is accepted as true at this stage.

MS. LEES: There's an allegation that it's a homogenous industry. There's also an allegation with respect to each individual defendants and how each defendant is advertising its product, so some things just defy reason and I think, perhaps, don't deserve the level of acceptance as others.

But the problem is that the plaintiff is trying to say that everybody in the industry is acting similarly and, therefore, all defendants can be held to answer for the conduct

of any defendant. That is not the law.

THE COURT: I don't think -- where do they allege that? There's no vicarious joint and several liability here.

MS. LEES: I'm not saying that they're alleging that. What I'm saying is that's what it boils down to. By saying that it's a homogenous industry and by saying a defendant is saying X. Therefore, all defendants should be held accountable for the statement X, that is, in essence, attributing the conduct of one defendant to all defendants.

To the contrary, the law is very clear in two respects that collective allegations are not sufficient. The decision -- excuse me -- of the 11th Circuit in Wooden versus board of Regents specifically states that each named plaintiff must show he -- quote -- "individually satisfies the Constitutional requirements of standing." That's something that needs to be done by each named plaintiff.

The Brooks decision also by the 11th Circuit -- and these were both pre-Twombley decisions, both cited in our papers. Brooks is at 116 F.3d at 1380. It says that the plaintiff cannot lump all defendants together.

So the 11th Circuit has expressly held -- this was under 9(b) -- that under 9(b), and also that with respect to standing, defendants cannot be treated in this lump-sum fashion that the plaintiff is doing here.

What the plaintiffs have given the Court is a shotgun

pleading. It's a shotgun pleading of the exact type that this circuit condemned in the Davis versus Coca-Cola decision, the race discrimination case. In that case, the Court pointed out a number of evils of shotgun pleadings. Two are particularly applicable here. The Court describes systemic harm that occurs, first, inexorably broadening the scope of discovery, much of which may be unnecessary, by failing to give the defendant specific notice of what a specific defendant has done, but, instead, holding all defendants to answer for the conduct of one defendant. The scope of discovery is broadened in a way that is extremely burdensome and not only to the parties, but also to the Court.

The Court also points out that shotgun pleadings lessen the time and resources available to reach and dispose of cases --

THE COURT: I'm sorry. Where does this pleading seek to hold all defendants responsible for the conduct of one?

MS. LEES: Well, I think an example is the pleading with respect to the statement of Ms. MacIvor earlier with respect to human grade ingredients.

THE COURT: I'm saying the pleading, where in the pleading is there an allegation that all defendants are responsible for the action of one?

MS. LEES: The entire Complaint is replete with references to "defendants." References to Defendant Nutro, as

we pointed out, appear in the two paragraphs I talked about earlier. Everything else is "defendants." Every time it says "defendants," each one of the 23 defendants has to address whether it has done what is claimed in that particular paragraph.

All of those paragraphs are very broad and conclusionary, and, so, it's hard to understand exactly what's being said. But even if you did know what was being said, it needs to be said with respect to particular defendants to whom it's applicable and not with respect to all defendants at once in order to have a Complaint that can frame the litigation for purposes of going forward.

Thank you, Your Honor.

THE COURT: Thank you.

MS. MacIVOR: Just briefly.

I also cited cases that contradict what Ms. Lees has just said. The Belaire case, I'm not sure I cited that one. I'm going to mention that one to the Court right now. It's Belaire versus Boca at 2007 U.S. District Lexis 45415 and it's at headnote 10. That's a decision last year by Judge Ryskamp. It denied defendants' motion to dismiss based on grouping defendants together as carrier defendants and agent defendants, and there's others.

THE COURT: I believe you did cite that one. I do see it.

MS. MacIVOR: And there are others that do that as well.

We have not always grouped all defendants together. Where it has been applicable for all defendants to be mentioned, we've done it. But we have also repeatedly talked about individual defendants. We've grouped retailers together. We've shown pictures that show retailers act in an almost identical manner.

We believe we've alleged standing, Your Honor.

THE COURT: Thank you.

Let's go on then, if we could, to consumer protection, Count III.

MS. LEES: Excuse me, Your Honor.

I addressed consumer protection, Count III, when I was addressing the arguments with respect to standing and causation. What I would say in addition -- and it has already been touched on -- is that the extensive regulation under AAFCO pursuant to a delegation of authority from the Food and Drug Administration which would congressionally mandate it, that the AAFCO regulations govern almost all of the language that the plaintiffs complain of here, and that that falls within the Safe Harbor under FDUPTA and, therefore, cannot be the basis of plaintiffs' Complaint.

That's the additional argument. The FDUPTA claim is also subject to the deficiencies that we spoke of earlier with

respect to the overbroad allegations lumping together all plaintiffs and all defendants and failing to create the nexus that's necessary between the conduct of a defendant and the activity of a plaintiff in reliance and the resulting injury.

THE COURT: Thank you.

Ms. MacIvor, why does not the extensive regulation in this industry prohibit Count III?

MS. MacIVOR: This is AAFCO's official publication. I'm an alternate advisor on AAFCO, so I'm very familiar with AAFCO.

I find it interesting the defendants have only talked with a very broad brush about these -- quote/unquote -- extensive regulations. We're not bringing a lawsuit on AAFCO. What these ingredient definitions are, the ones on the back of a can that talk about in a rather convoluted way, they'll talk about chicken by-products, you have to go through, like I said earlier, and read in this exceedingly fine print what chicken by-products are.

I'm not saying that I want this Court to tell AAFCO or issue a, you know, a writ to get rid of AAFCO. That's not what the suit is about. The suit is about false advertising and I have complained about that to AAFCO, but AAFCO is not going to do anything about it. AAFCO, they're a nonregulatory body. I find interesting they keep saying "acting as if AAFCO really is a regulatory body." It's not. They're a nonprofit corporation

whose preamble states that they're there as much for the protection of the pet food industry as they are for the consumers. So we're not talking about the AAFCO regulations.

What we're really talking about -- and the defendants go back and forth, whether they talk about preemption or not, sometimes they act like they do and sometimes they act like they don't. In our response, we've gone through and we've described in the Prohias case, you know, there's nothing in AAFCO that says you can falsely advertise. They've described what a chicken by-product is, but we're not saying that, you know, they shouldn't be describing using "chicken by-products" in the back of the label. That's not what the suit is about. They're trying to confuse the issues, confuse the Court, but I've confidence the Court is not going to be confused on that issue at all.

There's absolutely no basis for a Safe Harbor in this case. There's nothing in the FDUPTA or there's nothing that the defendants have pointed to that says the defendants are authorized to deceive the public, and to deceive Ms. Blaszkowski and Ms. Peters about what's in the pet food.

When you show on a can and in your commercials and come out and say, like I have quoted with Natura earlier, that "We put in this pet food the same thing that you would eat," when you have to go and do your research and order this book, because it's only available from AAFCO, and you look in, wow,

chicken by-products, that's not human food. So that's deceptive and that has nothing to do with regulations.

The regulations in effect here -- they have not pointed to any specific regulation that says, you know, this is authorized. My entire Complaint, it's just not there. They just keep saying that we're extensively regulated because of AAFCO. There is a small regulation that says Florida adopts the definitions of AAFCO. The suit is not about those definitions.

We've gone into that in detail in our response. Judge Jordan, in Prohias, upon which the defendants heavily rely, specifically came out and said that false advertising is a sanction. It's not required and it's not allowed. Safe Harbor does not apply.

Zapka (ph.) versus Coca-Cola is a another case that says when you talk about the FDA's labeling and notification requirements does not exempt defendants from liability for deceptive marketing practices, where the FDCA does not specifically authorize the marketing practices. They never addressed that because they can't because there's nothing in the AAFCO publication that says "You know, it's okay for you to falsely advertise," and I really doubt AAFCO would actually say that.

So it's disingenuous, to say the least, that they think it is, and we've cited cases that show the Safe Harbor

provision is interpreted very narrowly. Even with the narrow interpretation, it has no application here.

Furthermore, we also went into quite a bit of depth at page 20. There is no pre-approval. As a matter of fact, their own motion talked about how there is no pre-approval for pet food here.

They don't look at the advertising. They don't say "What you say is okay." They don't even really look what's in the pet food except for what the defendants submit to AAFCO. AAFCO doesn't do any independent testing. They don't do any of that, and I went into depth in the response as well.

If there's anything I haven't addressed, I'll be happy to address that at this time.

THE COURT: Thank you.

Ms. Lees.

MS. LEES: Your Honor, once again, Ms. MacIvor has given us quite a bit of news about what the Complaint is alleging and it illustrates, again, the problem with the Complaint.

The argument was premised in very large part on statements that plaintiffs aren't challenging this and they're not challenging that and they're not challenging the other, but we wouldn't know that from the Complaint. The Complaint, in fact, sets forth various advertisements, generally one per defendant, and sets for a series of generalized allegations in

paragraph 69 that we looked at earlier.

It goes on for pages saying "Defendants have said this. Defendants have said that." The language that is approved under AAFCO with the definitions that are approved are, in fact, referenced in the Complaint.

Now, maybe plaintiffs don't mean to say "and you shouldn't have said that and that was false and we can sue you," so as to give rise to the arguments we're making that, in fact, they cannot sue us because the conduct, in fact, is within the Safe Harbor. If plaintiffs don't mean to say that, they need to draft a Complaint that doesn't contain those allegations.

If the Complaint says "You have advertised in the following way," and then says very generally "you" -- and, again, it's all of you together, lumped together, but it then goes on to say "and your advertising is false and people relied on it and suffered damages," we're entitled to assume that the false advertising is the false advertising that was laid out in the Complaint and alleged by the plaintiff to be false. But, in fact, plaintiffs' counsel is now telling us what we thought maybe was the case, which is much of what's in the Complaint isn't, in fact, the basis for the allegations of causation and the allegations of injury, and plaintiffs, apparently, as we've learned now is not saying that "You violated AAFCO, that you made a false representation when you set forth an advertisement

that the" --

THE COURT: The plaintiffs never alleged you violated AAFCO.

MS. LEES: And, in fact, that's our point. Without an allegation that "You violated AAFCO," conduct that is permitted under AAFCO, it is, in fact, not actionable.

What I am saying -- and Ms. MacIvor stood up and said "We're not challenging all of that," and yet we didn't know that before because the Complaint --

THE COURT: The Complaint, the main claim of the Complaint is false advertising, misleading advertising, and AAFCO doesn't speak to that. AAFCO doesn't give the industry carte blanche to engage in false advertising.

MS. LEES: Absolutely, it does not. That's right.

THE COURT: Plaintiffs don't allege a violation of AAFCO. Plaintiffs don't interject it into their pleading. You've interjected it as a defense.

MS. LEES: We've interjected it as a defense because the Complaint, as drafted, recites numerous allegations with respect to representations that have been made which, in fact, would fall within the AAFCO Safe Harbor.

THE COURT: Right, but that's not it. There's more to it than that. They don't simply allege "Chicken by-products," using the term, "is illegal." You have to read everything together, and then know I know from reading it that it's not an

allegation that these defendants engaged in false advertising by utilizing terminology approved by AAFCO. That's not the allegation. That's not the essence of the false advertising claim because if it were, I think plaintiffs would concede that's not it. There's more to it than that and it's all laid out here.

MS. LEES: That's, I think, where defendants would disagree with the Court and the plaintiffs. We don't believe it's laid out. We don't believe that the plaintiffs have connected the dots, that any plaintiff has connected the dots between any particular ad, the viewing of that ad and allegations with respect to what is false in that ad with the sufficiency that Rule 9(b) requires or with the sufficiency that's necessary to satisfy the causal links that need to be alleged.

THE COURT: Thank you.

Strict liability, strict products liability.

MS. LICKO: The strict liability count needs to be dismissed for a lot of the reasons you just heard. There is no identification of a product.

Under the 11th Circuit well-established precedent, including the case that we cited of Blackston, strict liability is imposed for injuries which are the proximate cause of product defects, not for the manufacture of defective products. "Unless the manufacturer's defective product can be shown to be

the proximate cause of the injury, there can be no recovery. A manufacturer has the absolute right to have strict liability for injuries adjudged on the basis of his own marketed product and not that of someone else.

This whole notion of you can take an allegation here about one plaintiff who purchased pet food and another plaintiff whose pet may have gotten ill and link all of these things together from different parts just doesn't work under well-established 11th Circuit precedent on strict liability and including under Twombley. It requires connecting the dots of Mrs. Blaszkowski, who has been the poster child for this lawsuit, about a specific pet, dog or cat, whatever, who purchased one or more specific products, and then with respect to strict liability, it's not enough because we also cite the Fulton case in which the Middle District of Florida said it can be a generic industry. It can't be all wood products. It can't be, you know, that you've looked at all wood --

THE COURT: Why isn't that an issue of proof? Why isn't that an issue for summary judgment?

MS. LICKO: It's an issue of the allegation. It violates the defendants' due process to say you are going to sue them as part of an industry.

It comes usually -- you can look at the established precedents for the Florida Supreme Court. There is no market share liability concept within the State of Florida. The only

time that it ever comes up -- and the Florida Supreme Court has allowed two exceptions -- for DS and for blood transfusions where it is impossible to identify a specific product because it so interwoven with something else.

Here we have Mrs. Blaszkowski who knows what she purchased for pet food. She has like 17 different brands of pet food. Presumably if she purchased all 17, she still has to, for purposes of strict liability, say which one of those products had a defect that caused an injury to her pet.

THE COURT: What case stands for the proposition at the pleading stage where the claims are against multiple defendants that each plaintiff must identify the particular product at the pleading stage, because I think the case you read from didn't deal with a pleading defect, did it?

MS. LICKO: Well, on Pulte and on Blackston v. Shook, they were on summary judgment. But it goes to an issue of due process and fair notice under Rule 8. If that's the standard of proof and all they're able to do -- it's funny --

THE COURT: Well, Rule 8 governs notice. Every defendant here is on notice if it marketed pet food products and has pet food that might have caused, might be defective, to ask the questions in discovery and learn which product --

MS. LICKO: That's totally insufficient notice to any defendant.

These defendants manufacture all sorts of brands.

Mrs. Blaszkowski has not alleged that her dog or cat or slash or both ever suffered any injury because of any one specific product.

What happens is you've got plaintiffs who said they purchased pet food from specific manufacturers, all of them or several. That's not enough. It's not enough to indict an industry on a showing of a strict liability claim. It's fundamental that there has to be product ID to give fair notice and to survive a 12(b)(6) motion even at the pleading stage because, otherwise, the defendant has absolutely no way of knowing what product is at issue, what defect is at issue, what injury even occurs because an energy has to relate in some way to the defect. It's not enough to say "Oh, my cat is not as healthy as it should be," which is one of the allegations you see in the Complaint. How is that a product defect under the strict liability claim?

There has been no specificity with respect to this claim that links up a plaintiff who purchased a product, a specific product, claiming it had a defect that then caused an injury.

That is fair notice under Rule 8 and under Twombley, and until the plaintiffs can connect those dots, showing that a specific product -- one, not 17 -- but that one caused this injury, they can't survive even at the pleading stage on this.

THE COURT: All right. Thank you.

I'll hear from --

MS. LICKO: If I could just add, they don't really dispute that. They cite to Florida law and they cite an interesting case, Louie's Oyster versus Villagio, for this whole notion that somehow Federal law is more liberal than the Florida law and that Florida law only requires, you know, a fact pleading and that somehow is strict because it can't distinguish the law on this. What they do is say Federal law is somehow looser than the Florida State law.

This is a Florida-based claim. What they need to do is satisfy the elements of that claim under Florida law. Under Florida law, they've got to show that specific linkage between a plaintiff, a defect and a specific product and an injury which is caused by that product.

Again, the Villagio case isn't even a strict liability case. They're unable to distinguish the Pulte case or the 11th Circuit case of Blackston versus Shook and Fletcher. They don't even try.

What they do is try to say there's an inference, and the case they cite is interesting. It's an abortion case of Rowe versus An Abortion Clinic. It comes under the free access to clinic entrances, where the Court said "Okay. Plaintiff there in an abortion case was allowed to proceed anonymously." It has nothing to do with strict liability. It's a totally separate claim, but the Court goes on to say "And we will

allow, since motive of the defendant is a required element, we will allow that to be inferred based on the circumstances of what happened to that plaintiff when she tried to enter the abortion clinic."

It has nothing to do with this the requirements of a strict liability claim. The only inference under strict liability is one which is referred to in some of the cases we cite, which is called the Cassini inference, and that one doesn't apply here. The only inference which is allowed there is the inference that a product which is defective and somehow destroyed like the catheter, that you are allowed an inference that that defect also existed at the time of manufacture.

Again, they haven't pled that, they haven't alleged that, they haven't addressed that issue. The only inference they rely on is the one of the abortion case.

So we submit, Your Honor, they've submitted no case that allows them to go forward at the pleading stage and we cite an 11th Circuit case which is controlling here.

Thank you.

THE COURT: Thank you.

Ms. MacIvor.

MS. MacIVOR: That sounded similar to where the burden is thrust on me when they haven't met their burden in a motion to dismiss, as Your Honor noted, because almost every case they cited, it wasn't a small distinction that they have cited

Florida cases because that is a fact pleading, which is why that didn't have anything to do with the abortion. It was showing there was a notice pleading standard in Federal Court and fact pleading, which Your Honor is well aware of, and that's what that had to do with.

As Your Honor noted, and we pointed out in the response, Blackston is a summary judgment case, and they relied on it. They said we needed to prove -- they talked about ultimate facts, all of which has to do with Florida, fact pleading standard, which is different than notice pleading, as Your Honor has noted.

I'll give Your Honor an example. They say -- they all make pet food. They all make dry pet food. Here's a good example: Ms. Blaszkowski and Ms. Peters, they both have cats. They both purchased dry cat food. In the Complaint, which has to be taken as true if you use the proper standard, they have purchased and we have alleged that that is highly detrimental to cats. There's not one of these defendants who can say "We don't make pet food. We don't make dry pet food."

As a matter of fact, after this Complaint came out, Mars is going out and saying "You know what? Dry cat food is not good for cats. Now we're encouraging you to use wet pet food."

So they know the allegations are true. The allegations taken as true show that there is strict liability

as far as the pleading stage and ultimately we'll prevail on that because they've already acknowledged it. That's why it's so disingenuous today because at the pleading stage we have more than made a case for strict liability. Glycoalkaloids alone -- Susan Thomas is on the top of that exhibit. The glycoalkaloids in the pet food could have killed a human being. How they could actually stand up here and say we haven't pled strict liability is beyond my comprehension.

The plaintiffs have alleged sufficient cause of action for strict liability.

Thank you.

THE COURT: Thank you.

The warranty claims, Counts VII and VIII.

MS. LICKO: I'll be happy to address those.

If I could just clarify one point with respect to strict liability. The plaintiffs' counsel refers to an exhibit which she claims links, establishes this link. Exhibit 24 does no such thing. There is no name of anybody, of any plaintiff by the name of Susan Thompson that's there at all. There is no mention of the words glycoalkaloid. There's some words that may be a piece of that, an ingredient. There is nothing in Exhibit 28.

When you look at the allegation of Exhibit 28, it doesn't say that Susan Thompson or any other plaintiff got sick as a result of eating this particular batch of pet food. What

it says is that exposure to ingredients or to elements of this would be toxic to humans. It doesn't say anybody got sick.

Now, if that's true, if that's a basis of her Complaint, why hasn't she alleges that? That's the fundamental prerequisite of a strict liability claim, is to establish that link. She has gone way beyond the Complaint now in trying to defend a Complaint that can't be defended.

What she would have needed to do in the Complaint, or in the previous three times, is to try to set out what she has tried to tell the Court orally now, that someone named Susan Thompson bought food that was tainted that that particular product, if it got an inspection report, or was somehow so tainted that it caused her pet to die. Then maybe she would start to show some sort of a claim for strict liability, but she never draws that link, and when you go back to the allegation in the Complaint that reference Exhibit 24, there's no link. All it says is that exposure would be toxic to humans.

And with that, I would like to go to the warranty claims.

THE COURT: Correct.

MS. MacIVOR: Could I respond to that briefly?

THE COURT: Yes.

MS. MacIVOR: On Exhibit 24 -- it's on the docket entry -- page 43, it says right there Yvonne Thomas, a named

plaintiff, and there are allegations -- I can't find the page, but I will be happy to provide it to the Court -- where I talk about glycoalkaloids and having been found way in excess of human tolerance. I can't find the page right now.

That has been alleged. The owner's name is right there, and anyone who brought Natura pet food at this time would have been exposed to glycoalkaloids, and testings there -- it was report to do Natura, and they know that.

How -- I will repeat again -- how the defendants can stand up here and say there's no plaintiffs named, that they don't know what glycoalkaloids are -- I looked this up. If you Google it -- I've alleged glycoalkaloids. If you talk about -- and I'm not very good at pronouncing these things -- chaconine and solanine -- if you Google it, it turns up as glycoalkaloids.

THE COURT: Thank you.

MS. LICKO: With respect to the warranty claims, again, we submit, Your Honor, that there is no fair notice because there is nothing that connects the dots between a specific plaintiff who bought a specific product from a manufacturer or retailer and then suffered injury as a result of that.

Because of that, they haven't established any privity and that's the basis of the warranty claims, that you need to show privity to show that there's a relationship.

We've gone through the cases here. There is a distinction between an implied and express warranty. The implied warranty, you have to say you're a foreseeable user, that the product was being used in the intended way, that the product was somehow defective when it was transferred and that the defect caused the injury. Again, they don't do this in any way that puts any individual defendant on notice as to a claim by an individual plaintiff.

What they have done, I think, is to try -- they've tried to avoid the Rules of Civil Procedure here because if you had one plaintiff and one defendant, this would be easy. There would be a connection. They would have to allege it. Somehow they think because they have many plaintiffs on this side and at least 23 defendants on this side that they don't have to tie anything together, that everybody is responsible for everything and as long as Mrs. Blaszkowski had a pet and as long as Susan Thompson had a pet that was injured, that somehow this all links up.

That doesn't suffice as notice under Twombley or under Rule 8. They have to establish the link. Because they can't establish that link, they can't establish privity, which is an essential element of either implied or express warranty. They can't even establish causation. They can't show an injury, both of which are fundamental elements of these claims.

Let me show you what the implied warranty, if I could,

because that's one of the examples that we used in the book. You can't show privity when you can't show whether or not a defendant even has an obligation to respond.

If you look at tab B at the last few pages there, they have Count VII, which is a breach of implied warranty, and they start out -- the heading there says it's against retailers and pet specialty retailers. If they could show that connection, that privity, then they start to be able to say they have a claim.

Let's go on and look at the allegations because we're dealing with 23 defendants here, each one of whom needs to know whether or not this is a claim to which they need to respond.

So you go down and 176, again, they incorporate all the allegations as to all the defendants. So, again, there's confusion. Is this all defendants or is this just the retailers and pet specialty retailers?

For some reason, in allegation 177, the plaintiffs add in now manufacturers and co-packers, who clearly are not in privity, and clearly under the law, do not belong as part of this claim. But they've added in manufacturers and co-packers and for some reason, they've now singled out PetSmart as being a part of this allegation. Does PetSmart suddenly need to respond to this particular claim because of the allegation that they packaged and distributed this food?

The confusion with this claim, again, which goes to

the fundamental issue of privity and whether there's fair notice continues because when you get to paragraph 178, again, now they're only making allegations against the defendant retailers and the pet specialty retailers only. They've dropped out the other references to co-packers and manufacturers. But, again, 179, it goes back to saying it's all defendants have engaged in this behavior, that all defendants knew of the purposes for which the defendant food was purchased and so forth.

Then the defendants knew of the purpose for the pet foods and they impliedly warrant that the pet foods were of merchantable quality. This sort of suggests it's all defendants, not just the ones referenced at the very top of the claim.

Then they go on to say defendants breached implied warranties. Who is it? Just the ones they have identified at the beginning? Is it PetSmart? There is no way any defendant has fair notice of who this claim actually applies to.

Then when they come down, they ask for a judgment against defendants. Presumably because this is boilerplate language they use on every claim, they're now seeking a judgment against all defendants for implied warranty.

There is no fair notice so they can't get to the issue of privity. The claim on the face never connects the dot between a specific plaintiff having purchased any specific

product.

THE COURT: Thank you.

Ms. MacIvor.

MS. MacIVOR: Well, I'll say it's a legally sufficient pleading, but not a perfect pleading. The intent was to --

THE COURT: I think the intent is to capture those in the title. correct? Each count identifies who is being addressed.

MS. MacIVOR: Yes. But, clearly, that's what the count relates to and that's what we meant. Some things in a lengthy pleading slipped us by. I apologize to the Court for that.

THE COURT: Every time the title references the particular category of defendants, that is what would govern.

MS. MacIVOR: Yes.

THE COURT: All right.

Unjust enrichment.

MS. LICKO: Your Honor, unjust enrichment is an equitable claim. We've laid out the elements of the claim in our papers. It, again, requires that they have fair notice of this claim, that they establish that there's some causation and some injury, which, as we've talked about already, they have not done.

They also have to show that there is no adequate legal remedy which is available to them. That's the threshold for

showing an unjust enrichment claim. They haven't done that here, and if you look at the case law -- what they do in response is they argue they don't need to do that, but the 11th Circuit authority is clear on that.

We have made reference to the case of Tooltrend versus CMT Utensili which makes it clear that unjust enrichment is a claim that is only available if they can show the inadequacy of an available legal remedy. They can't do that here because, again, their unjust enrichment claim is based on paragraphs 1 through 128 of the Complaint and those are the same allegations under which they already seek compensatory, consequential and other damages. So they've conceded by the allegations of their Complaint that they do have an adequate remedy at law.

They also go on to say that they would like to try to plead this in the alternative. The fact of the matter is they have not pleaded in the alternative. They clearly have not done that. All they've done is to simply say "Because of everything we have said in the previous paragraphs, we, therefore, have a claim for unjust enrichment on all."

That's contrary to the 11th Circuit law. The 11th Circuit law holds there can be no such claim for unjust enrichment when that's the claim.

Also, they try to say that this claim is based on the wrongdoing of the defendants, and if you look at the case of Tilton, unjust enrichment as an equitable claim has nothing to

do with the wrongdoing of the alleged defendants. Defendants can't allege wrongdoing as a basis for unjust enrichment, and that, at the end of the day, is the basis for their unjust enrichment claim.

We submit, Your Honor, under 11th Circuit precedent and also under the Florida law that since it's an equitable remedy and they have conceded by their own allegations that they have a remedy at law, this is a claim that must be dismissed.

THE COURT: Thank you.

MS. MacIVOR: We are pleading in the alternative and because the defendants claim we have no remedy at law, obviously, at some point the decision will be made whether we go forward on that or not.

There is no allegation here of wrongful conduct in this particular one. That would be a wrongful enrichment claim. Under Prohias v. Pfizer, which the defendants have relied on, the Court analyzed an unjust enrichment claim based on false advertising and determined under other circumstances to dismiss it, but because they did get the benefit of the bargain from the product that they used.

In this case, we're saying that the plaintiffs did not, as an alternative legal theory. That's why we pled unjust enrichment and it's absolutely acceptable. We cited case law in the response I won't bother to go through at this point

where at the pleading stage we can plead alternative equitable remedies.

THE COURT: Thank you very much. We'll take a 10 minute recess and then I'll give will you my decision.

[There was a short recess at 10:31 a.m.]

THE COURT: Please be seated. Thank you.

I'm going to give the parties the benefit of my decision today because we need to move this case along and the parties need to get started with discovery.

I'm going to be denying the motion to dismiss the Second Amended Complaint in its entirety as a result of a lack of injury or standing. I believe the pleading sufficiently alleges facts related to injury to the plaintiffs and they have satisfied standing.

Furthermore, I do not find that the Twombley decision or Rule 8 changes the landscape of my review of this pleading. Twombley reaffirms Rule 8. Twombley reaffirms that this is notice pleading and plaintiffs need to plead sufficient facts to state a claim, but I think the essence of the arguments addressed in the motion to dismiss is that defendants are dissatisfied with the particularity of those facts. That is not a basis for a dismissal under Rule 8, 12(b)(6).

The Second Amended Complaint sufficiently alleges reliance and causation. The fraud-based claims are pled with sufficient particularity in light of the nature of the claims

that are raised in this lawsuit, and the plaintiffs have discussed that at length in their response with citation to case law. I will not repeat that here.

I do not agree that the FDUPTA claim needs to be alleged with the particularity required for a fraud-based claim.

Count III, consumer protection, does not fail to state a claim. I do not find -- and I think my remarks during the course of the hearing may have previewed my views on this matter -- I do not find that any of these definitions by this entity that defines what terms might be used and what components might be used in pet food bars the litigation that is presented here with claims of false advertising.

The Economic Loss Rule is not a bar to the count for negligence. When the plaintiffs go back to correct some of the problems with the Second Amended Complaint, however, they're just to specify that they're seeking property damage for illness to cats and dogs so we're clear that there is no overlap with the prohibition of the Economic Loss Rule.

The Complaint does state a claim for strict products liability sufficiently to satisfy the Court.

The claim for injunctive relief is dismissed. I already intimated as much. That is not a separate cause of action. That is a prayer for relief that one can include with respect to any of the counts where you seek that in the

alternative to the legal remedies that are requested.

Plaintiffs' warranty claims, Counts VII and VIII, are not barred for the failure to allege privity and do state a cause of action, and the unjust enrichment claim is properly pled as well.

The plaintiffs need to simply go back and remove the injunctive relief claim, incorporate any of that language where it is appropriate prayers for relief, and be very clear that the caption of each count which identifies those defendants which are being addressed within the body of each count are the only ones addressed. I think that was an error in the draftsmanship.

So I think those are the only two things I need to have the plaintiffs go back and correct.

I'm going to ask the plaintiffs to file their Complaint by next Friday and I am going to lift the bar on merits discovery.

There is the one outstanding issue regarding the several defendants who have challenged personal jurisdiction.

So Ms. MacIvor, why don't you tell me where you are on that.

MS. MacIVOR: The deposition is set on April 21 and 22 and we'll be briefing shortly as soon as we get the transcripts thereafter.

THE COURT: Is there a deadline for the briefing or

no?

MS. MacIVOR: Your Honor said --

THE COURT: Whenever you're ready?

MS. MacIVOR: Right. It took some time to schedule and collect the documents.

THE COURT: My announcement today that you are going to go forward with merits discovery is as to other defendants, not these who are challenging personal jurisdiction.

I need an updated pretrial schedule in this case and I want to fix a date for the filing of the motion for class certification. In the order I issue today or Monday memorializing my oral rulings today, I will ask the parties to give me an updated and revised schedule to govern the case from this point forward.

Once the pleading is amended next Friday, I don't need to see these arguments again. You can simply keep them as defenses in your Answer to that Complaint. I don't think that opens the door to a renewed motion to dismiss that raises all these arguments. I have not been persuaded by them at this juncture. What I've asked Ms. MacIvor to do doesn't change the allegations sufficiently to warrant having these issues readdressed.

Is there anything else that I can address for the parties?

MS. LICKO: Your Honor, two issues. One, there is a

footnote within the motion to dismiss which deals with three particular defendants because there are no substantive allegations against them, and those three are Proctor and Gamble Colgate-Palmolive and Nestle USA. There has been no opposition to the motion to dismiss, as we pointed out in a footnote in our reply, footnote number 13, footnote number 16 in the motion to dismiss. She simply has failed to respond. So those defendants would take the position that that has been waived --

THE COURT: You're not going to be naming them in the new one?

MS. MacIVOR: They are named and there are paragraphs about that. I've said before, people give me an affidavit that they have nothing to do with the pet food and I'll take them out.

THE COURT: I don't think you addressed that, though. I sort of just assumed they're not going to be there anymore because there's nothing about them presently.

In your merits discovery, if you find something out, you can always seek leave to amend to bring them back in.

MS. MacIVOR: That's fine, Your Honor.

MS. LICKO: Your Honor, a second thing, too. We haven't had time to discuss it amongst the defendants, obviously, but I think the thinking would be -- if you want, we can talk to Ms. MacIvor -- to work out a schedule that

contemplates bifurcated discovery, class discovery first and then merits discovery.

THE COURT: We have put off discovery now for about a year.

MS. MacIVOR: We would definitely oppose that. They are often inextricably intertwined, merits and class. You're still going to have to get into substantive allegations to analyze them for class certification purposes anyway.

THE COURT: I'm going to be seeing disputes, "This goes beyond class certification. Discovery is overly broad." This is not a narrow case. This is one where there are a number of issues.

MS. LICKO: What we would like to do, Your Honor, and we'd like time to talk about it among ourselves, is if we are going to move towards discovery, is allow us the opportunity to narrow it as you suggested. Otherwise, it's going to be discovery of an entire pet food industry of every single defendant, every single retailer in the entire United States.

So what we would like to do, as you suggested, certainly the plaintiffs know which plaintiff had a dog or cat which was injured by a specific product. Through discovery, we could narrow down the issues over which there will be discovery. I think we would like an opportunity to do that.

We'll try to address it with Ms. MacIvor first, but then go back to you with the opportunity, if we can't agree,

that would be a logical way of approaching this case because, otherwise, it will be all over the board of every single brand of pet food purchased or sold in the United States since 2003. It is just a massive, massive case.

THE COURT: If I don't certify a class here, you still have all of these plaintiffs and all of these defendants with all the same necessary discovery.

MS. LICKO: But they will, if it's not a class, they will be limited to those specific products that they really have a claim about because they were injured by -- let's say if it's Nestle's pet food, the other 23 defendants don't need to be here.

Through discovery, we could narrow down because, as she has pointed out, they know exactly what happened. They don't have to put that in their Complaint, but we should have the right to know through discovery what it is they're really talking about so we can start to frame the issues.

THE COURT: Well, I believe what you are suggesting then is you first be allowed to have discovery of the plaintiffs before submitting to discovery by the plaintiffs.

MS. LICKO: That would certainly narrow it down, Your Honor, yes.

THE COURT: Or at least initial discovery that --

MS. MacIVOR: We would oppose that, Your Honor. I think we could definitely -- if I could finish -- I think we

can definitely proceed with discovery at the same time. I don't think it's going to be -- I know as a plaintiff, and I said this before, I have no interest in looking at massive quantities of documents. There will be certain things we need to ask for. I've been careful and I have worked with many defendants. We worked things out with Kroger. We're going to continue to do that. I just think this is premature. We're not there.

I have alleged the defendants in the Complaint that we just had a long argument about and there's not going to be a case where there's not defendants in the case. I need to be able to go forward with certain things and to delay things after there has been a stay in discovery for almost a year and say "Well, wait a minute. Let's give the defendants discovery before we give the plaintiffs discovery" just puts the Federal Rules, flips it on its ear, in my opinion. It's unfair, quantumly so.

You know, we will be happy to give them a list. We have provided mandatory disclosure. Many of the defendants haven't. I'm standing here. I'll give them the brands in mandatory disclosure.

MS. LICKO: Your Honor, we propose that we try to work with plaintiffs' counsel on that. I was involved with some of the jurisdictional discovery issues. If we can't work it out, we'd like the opportunity to bring it back to you.

THE COURT: You certainly can.

I am not favorably inclined to a bifurcation of discovery. I do it in other purported class actions where, perhaps, you might have one named representative suing on behalf of a class. But here we have a number of plaintiffs and, as I said, if I don't certify a class, all plaintiffs and all defendants will probably still be before me. It's not a case that would probably go away because I didn't certify a class because it's a sizable enough group that there are a number of claims that will still proceed.

So I'm not, and in light of the history of this case, with the way I have tied the plaintiffs' hands in their ability to gather facts and information, I'm not inclined to keep that in place any longer than I have already.

I thank everyone for coming in this morning and for the excellent work in briefing these issues and in your oral presentations.

You all have a good day.

MS. MacIVOR: Thank you, Your Honor.

MS. LICKO: Thank you.

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

_____ _____

DATE

BARBARA MEDINA
Official United States Court Reporter
301 North Miami Avenue, Suite 404
Miami, FL 33128-7792 305.523.5518
(Fax) 305.523.5519
Email: barbmedina@aol.com

A

AAFCO 31:1 32:4,5 39:12,12,14,25 40:2 45:8 62:17,20 63:9,10,13,19 63:20,22,22,23,24 64:3,9,25 65:7 65:8,21,22 66:9,10 67:4,24 68:3,5 68:6,12,12,16,21 69:2
AAFCO's 63:8
Aballi 1:23
ability 93:12
able 24:24 25:20 42:21 56:15 58:4 71:18 80:8 92:12
abortion 6:17 73:20,21,23 74:4,15 75:2
above-entitled 94:3
absence 50:9
absolute 70:2
absolutely 54:21 64:16 68:14 72:10 84:24
accept 58:14
acceptable 84:24
acceptance 58:21
accepted 58:16
access 73:21
accountable 59:7
accurate 94:2
acids 46:25
acknowledge 9:8
acknowledged 15:13 76:2
act 31:22 62:7 64:6,6
acting 58:24 63:24
action 18:14 19:20 20:4,10,14,18 24:8,15 26:24,25 27:1 28:17 35:14 36:10,14,16 37:15 48:5 51:4 60:23 76:9 86:24 87:4
actionable 31:16 32:13 35:19 39:4 68:6
actions 40:20 93:3
activity 63:4
acts 37:7
actual 14:23 52:8
ad 18:6,7,7 29:1 30:24,24 31:5 33:22 35:1 69:11,11,12
add 10:25 24:20 73:2 80:17
added 80:20
addition 62:16
additional 8:21 10:6 15:17 20:19 32:16 34:6 62:24
address 7:4 8:7,10,15 17:17 23:12 25:4 27:20 28:7,13 33:4 48:1 61:3 66:13 76:14 88:23 90:24
addressed 19:6 32:21 37:3 62:14 65:20 66:12 74:14 82:8 85:20 87:10,11 89:16
addressing 32:23 62:15
adequate 18:17 21:2,20 82:24 83:13
adjudged 70:3
adjudicate 50:14
Administration 62:19
ADMINISTRATIVE 7:2
admit 27:8
adopts 65:7
ads 30:20
adult 30:25
advance 23:7
advertise 23:2 64:9 65:22
advertised 29:25 48:22 53:10 56:14 67:13
advertisement 27:22 32:9 33:16 34:11 35:18 36:19 50:7 67:25
advertisements 34:17 44:18 66:24
advertising 13:4,5 18:5 22:3,5,14,18 22:21,23,25 23:12 30:9 31:19,21 32:18 33:18 34:16,21 35:24,25 37:21 38:10,16,17 39:2 40:21 42:12,23 43:6,7,18 47:2,9 52:20 52:22 53:16 54:2,23 58:20 63:21 65:12 66:7 67:16,18,18 68:11,11 68:13 69:1,3 84:19 86:13
advise 31:8
advisor 63:9
affidavit 89:13
afford 52:14
agent 61:22
aggrieved 40:20
ago 25:10 38:9
agree 26:23 56:13 86:4 90:25
agreeing 39:14
agreement 11:7
agreer@richmangreer.com 2:5
Agriculture 54:5
Akins 5:22 57:12,15
al 1:10
Alabama 5:10 20:22
ALAN 2:3
ALBERTSON'S 1:22,22
ALEXANDER 4:2
Alex.Shaknes@dlapiper.com 4:4
allegation 10:20 11:11,17,19 12:9 18:20 26:18 30:3 32:11 33:3,9,20 44:5,6 57:9 58:17,18 60:22 68:5 69:1,3 70:5,20 76:23 77:16 80:17 80:22,23 84:15
allegations 9:14 12:1 14:4,15 16:14 17:25 18:5,11,22 19:11 21:8 26:12 27:6,8,19 28:21,22,23,23 29:3,5 29:15 30:12,14 32:15,20 33:4,6,13 33:14 34:3,9 36:9 38:1,20 42:7 45:2,22 46:16 47:7 48:18,19,20 49:5,19,20,22,23,24,25 50:16,20 51:12,14,16 53:21,23 54:1 55:15 56:24 57:1,2,7,15 58:15,15 59:11 63:1 66:25 67:12,22,23 68:19 69:12 72:14 75:24,25 78:1 80:10 80:14 81:3 83:10,12 84:7 88:21 89:3 90:7
allege 9:12 29:13 31:3 54:19 55:21 59:2 68:15,23 79:12 84:2 87:3
alleged 10:10 13:7 14:3,22 15:10 16:2 17:4 22:9 28:16,19,20 29:6 29:21 31:12 42:2,11,12 46:18 51:22 52:4,6,9,25 53:24 54:7,10 54:20 55:8,9,13 56:18 57:5,23 62:9 67:19 68:2 69:15 72:1 74:13 75:17 76:9 78:5,12 84:1 86:5 92:9
allegedly 30:9
alleges 44:4 53:4 77:4 85:13,23
alleging 9:5,18,20 48:25 49:2 55:24 58:11 59:4 66:18
allow 37:20 74:1,2 90:15
allowed 27:17 65:13 71:2 73:23 74:9 74:11 91:19
allows 27:7 74:17
alternate 63:9
alternative 21:14,17 83:15,16 84:11 84:23 85:1 87:1
ALTONAGA 1:13
AMANDA 1:18
amend 89:20
amended 13:22 51:19 85:11,23 86:16 88:15
Amendment 18:13 22:20 23:2 32:1
amendments 15:5
American 5:11 6:7 21:1 57:20
Americas 4:3
AMY 1:5
analysis 50:10
analyze 90:8
analyzed 84:18
and/or 11:7 12:3 21:17 29:24 30:16 45:4 48:21,22,23,23 49:6,7,7,9,10 49:12 50:2 53:7,11,13
Angeles 3:4
ANN 2:16
announcement 88:6
anonymously 73:23
answer 27:7 36:18 44:15 45:9 47:4 56:15 58:4,25 60:9 88:17
answered 47:5
Answers 49:18
anybody 36:12 76:18 77:2
anymore 89:17
anyway 42:3 53:12 90:8
apologize 25:9 82:11
apparently 31:20 67:23
appear 29:4 31:2 33:6 49:5 61:1
APPEARANCES 1:15
appears 33:9 44:5
applicable 49:21 51:3 60:5 61:10 62:4
application 66:2
applied 48:8,18
applies 81:18
apply 26:24 27:1 28:4,17 37:8 65:14 74:9
appreciative 43:24
approaching 91:1
appropriate 22:7,24 33:4 87:8
approved 22:15 67:4,4 69:2
approximate 50:1
April 1:10 87:22
ARDEN 3:13
arguably 26:18,19,19
argue 83:3
argument 8:10,11 14:14 15:25 17:12 17:13,17 20:3,8 25:10 32:21 62:24 66:20 92:10
arguments 8:6 19:14 20:12 28:10 34:6 48:1 62:15 67:8 85:19 88:16 88:19
arises 32:2 48:16
Army 5:10 20:23
Article 50:13 57:16
asked 25:10 88:20
asking 8:6 21:24 22:16 23:4
asks 36:2
aspect 50:23
aspects 32:4 50:24
association 11:7
assume 67:17
assumed 89:17
attached 16:15 20:18 46:9 54:3
attention 14:10
attorney 47:3
attributable 55:12
attributing 59:8
Austin 3:14
authority 32:3 62:18 83:4
authorize 65:19
authorized 32:5 64:19 65:5
available 60:14 64:25 82:25 83:7,8
Avenue 1:24 2:17 3:3,6,9,14 4:3,13 94:6
avoid 79:10
avoidable 14:25
awarded 24:14
aware 48:6 50:18 52:7 75:4
a.m 85:5

B

B 9:23 10:3,4,9 80:4
back 23:6 25:11 29:20 30:20 38:8 39:25 53:6 57:24 58:6 63:14 64:5 64:12 77:15 81:6 86:15 87:6,14 89:20 90:25 92:25
backs 42:22
bags 47:1
ball 41:11
bar 86:14 87:16
BARBARA 4:12 94:5
barbmedina@aol.com 4:15 94:8
bargain 12:8 13:2,14,25 84:21
barred 9:10 12:13 15:16 87:3
Barring 43:11
bars 9:9 86:12
based 12:7 15:4 29:18 30:5 33:12,19 34:4 38:15 40:14 42:9 47:5 57:11 57:13,14 61:21 74:2 83:9,23 84:18
basic 14:14
basically 42:18
basis 21:10 45:16 56:3 57:13 62:22 64:16 67:22 70:3 77:3 78:24 84:2 84:3 85:22
batch 76:25
Baur 5:12 57:22
Beach 2:13 18:13
beginning 11:13 81:17
begun 18:17
behalf 1:6 8:14 10:10 93:5
behavior 81:7
Belaire 5:13 61:17,19
believe 8:2 16:18 17:25 39:17 46:4 56:4,12 58:3 61:24 62:9 69:8,9 85:12 91:18
belong 80:19
benefit 12:8 13:2,14,25 38:15 46:22 48:20 49:1 53:9 54:24 84:20 85:7
benefits 46:12,19,20,24
Berry 5:14 26:10
best 41:22
better 25:11
beyond 15:18 16:1 26:13 49:19 76:8 77:6 90:10
bifurcated 90:1
bifurcation 93:2
biggest 44:24
bills 15:16 54:10
Biscayne 1:19,19 2:4
Bison 6:7 57:20
bit 33:8 56:8 66:3,17
BJORG 1:17
Blackston 5:15 69:22 71:15 73:17 75:7
blanche 68:13
Blaszkowski 1:4 8:4 13:3 29:2,4,15 38:25 40:5,13 41:5,20 53:3 55:10 57:4 64:20 70:11 71:5 72:1 75:14 79:16
blood 71:2
blue 48:20
board 6:21 59:13 91:2
Boca 5:13 61:19
body 63:23,25 87:10
boilerplate 81:20
boils 55:25 59:5
book 40:2 64:24 80:1
bother 84:25
bought 27:21 33:23,23 40:16 42:12 77:11 78:20
Boulevard 1:19 2:4
brand 56:14 91:2
brands 56:1,6,7,8,9 71:6,25 92:20
breach 80:5
breached 15:19 81:15
break 36:22
Brickell 2:17 3:9
brief 14:20 18:19 22:6 26:1 51:23
briefing 87:23,25 93:16
briefly 23:18 61:15 77:22
bring 89:20 92:25
bringing 63:13
brings 44:23
broad 61:6 63:12 90:10
broadened 60:10
broadening 60:6
Broadway 3:19
broad-based 37:20
Brooks 5:16 59:17,19
brought 14:10 36:11 78:6
brush 63:12
Budget 5:14 26:11
bullet 40:10 45:13,17 46:3,10
bunch 24:11
burden 15:2 22:24 23:3 38:7 55:22 74:22,23
burdensome 60:11
buy 18:8 42:11 52:13
buying 41:15 42:3
by-product 64:10
by-products 63:16,18 64:11 65:1 68:23

C

C 94:1,1
CA 3:4 4:8
cahoover@hhlaw.com 2:21
calicko@hhlaw.com 2:18
call 10:22 14:11 41:17,17
called 74:8
calls 17:20 22:22
campaign 34:16
campaigns 35:24,25
cans 42:22
caption 87:9
capture 82:6
care 14:5
careful 27:3 92:5
carefully 29:20
Carol 2:16 8:14
carrier 61:22
carte 68:13
case 1:3 15:13 16:2 21:12 22:11 36:5 37:16 49:22 50:11,13 54:9,12,13 55:6,20,23 56:18,18,19 57:13,22 57:23 58:2 60:3,3 61:17 64:8,17 65:15 67:21 69:22 70:15 71:10,13 73:4,15,16,16,17,20,20,23 74:15 74:16,18,24 75:7 76:4 83:2,5,24 84:22,24 85:8 86:3 88:9,13 90:11 91:1,4 92:11,11 93:8,11
cases 20:22 23:24 24:4,11,15,18 34:14 37:4,13,23 38:3 42:9 43:8 51:10 52:23 54:12,15 55:2,19 56:16,22 57:12 60:15 61:16 65:25 74:7 75:1 79:1
Cassini 74:8
cat 16:19 29:8 30:25 31:10 43:2

46:11,24 49:9 54:6 58:3,4 70:12 72:1,13 75:15,21 90:20
categorically 24:25
category 82:14
CATHERINE 1:17
catheter 74:11
cats 14:17 23:21 48:23 49:7,12 51:18 52:5,8,16 53:13,19 54:3 57:25 75:14,18,22 86:18
cats/dogs 29:5,7 51:19
cat's 31:10
causal 48:10 69:14
causation 26:19 27:20 28:23 29:17 30:11 32:19 33:3,4,6,14,15 34:6 49:20,22,24,25 51:5 62:16 67:22 79:23 82:21 85:24
cause 18:7,9 19:20 20:4,10,14 24:8 24:15 26:24,25 27:1 36:10,14,16 37:15 48:5 69:23 70:1 76:9 86:23 87:4
caused 12:3 15:20 16:15 18:3 33:17 33:24 34:13 35:20,20 50:21 71:9 71:21 72:19,23 73:14 77:13 79:6
causes 16:21 28:17 51:4
Caverly 4:7,7
CECILIA 1:13
Center 1:24
central 5:17 22:25 44:1
certain 10:18 11:6 56:9 92:4,12
certainly 9:19 11:25 13:10,25 33:5 38:18,20 39:5 43:14 55:20 90:20 91:21 93:1
Certificate 5:4
certification 88:11 90:8,10
certify 91:5 93:6,8 94:2
cetera 45:6
chaconine 78:13
challenge 24:7
challenged 87:19
challenging 44:20 66:21,22,22 68:8 88:8
change 16:25 17:1 26:10 88:20
changes 36:11 85:16
chevrons 7:6
chicken 63:16,17 64:10,11 65:1 68:23
child 70:11
China 41:25
Chinese 55:24 56:7
choice 35:10,11
chondroitin 46:21
Chrysler 5:19 56:17
circuit 20:15,16 21:5 24:3,3 27:15 28:15 48:8,13 59:12,17,21 60:2 69:21 70:9 73:17 74:18 83:4,20,21 84:5
circumstances 49:15 74:2 84:19
citation 5:9 86:2
cite 24:18 52:23 61:24 70:14 73:3,3 73:20 74:8,18
cited 8:19 20:22 21:1 23:23,24 24:12 37:4 38:3 42:9 51:10 52:18,22 54:13,15 55:2 56:21 59:18 61:16 61:17 65:25 69:22 74:25,25 84:24
City 5:18 24:1
Civil 79:10
ckalil@aballi.com 1:25
claim 8:16,17,22,22 9:4,5,9,11,11,16 9:17,23 10:10,13,16,22 11:3,4,9 11:15,22 12:2,12,16 15:4,7,17 17:14 18:10,16 19:2,14 20:12,17 20:18,20 21:3,4,5 23:11 24:13 25:25 33:10 37:5,13 51:15 54:12 54:21 62:24 68:10 69:4 72:7,16,18 73:10,11,25 74:6 77:5,14 79:7 80:9,12,20,23,25 81:14,18,21,24 82:19,19,21 83:1,7,9,19,21,22,23 83:25 84:4,8,12,17,18 85:19 86:4 86:6,8,20,22 87:4,7 91:10
claimed 61:4
claiming 8:24 15:7 21:8,18 72:19
claims 9:9 15:15 16:10 19:3,15,24 45:5 49:18 51:7 71:11 76:13,17 77:20 78:17,24 79:24 85:24,25 86:13 87:2 93:10
clarified 14:6 19:9
clarifies 18:24
clarify 24:24 76:15
class 11:23,23 12:5,5 15:11 35:13 43:10 45:16 50:3,4,16 88:10 90:1 90:6,8,10 91:5,8 93:3,5,6,9
classic 54:9
clear 13:10 14:9 15:9 20:15,24 22:19 26:9 29:14 36:9 59:10 83:4,6 86:18 87:8
clearly 9:10 10:7 12:13 14:8 15:16 16:5 19:8 20:16 23:5,19 24:4 51:21 57:23 80:18,19 82:9 83:16
clerk 10:1
client 30:10
clinic 6:17 73:21,22 74:4
cmacivor@mflegal.com 1:20
CMT 6:19 83:6
Coca-Cola 5:21 6:22 60:2 65:15
COLGATE 3:12
Colgate-Palmolive 89:4
collect 88:5
collective 56:24 57:1,14 59:11
Collins 5:19 56:17
come 22:13 33:21 64:22 81:19
comes 25:12 42:13 70:23 71:1 73:21
coming 93:15
commercial 22:25 47:17 53:16,20
commercials 64:21
common 57:18
Company 6:5 15:14
compel 39:11
compensatory 20:6 21:8 83:11
competent 22:22 43:2 46:23
competitive 42:24 58:13
complain 31:2 62:21
complained 48:11 63:22
complaining 31:19
Complaint 9:1,2,15 10:24 12:1,5 13:1,8,21,22 15:2,5 16:14 18:9,11 19:11,24 20:14 24:21 26:11,15,15 26:17 27:4,5,17,18,19 28:1,5,11 28:22 29:2,3 31:6 32:4 36:17 38:21 43:5 44:2,4,5,10,25 45:3,24 46:2,9 47:4,13,23,24 48:18 49:12 50:10 51:19 52:20 53:1 54:2,22 56:15 57:10,13 58:4,11 60:24 61:11 62:23 65:5 66:17,19,23,23 67:5,11,13,19,21 68:9,10,11,19 72:15 75:15,20 77:4,6,7,8,16 83:10,13 85:11,23 86:16,20 87:16 88:17 91:15 92:9
complaints 27:11 40:12 47:5 51:17 51:25 57:25
complete 12:4
completely 11:17 12:11 39:25
components 86:12
comprehension 76:8
concealment 50:2
concede 14:3 69:4
conceded 83:12 84:7
concept 39:6 70:25
concern 23:25
conclusionary 30:6 61:7
conclusions 19:12
conclusory 11:17
concrete 48:14,15,17
condemned 60:2
condensed 51:23
conduct 21:13,19,19,21,23 23:20 35:4,6 48:11 50:6,22 51:13 58:25 59:9 60:10,17 63:3 67:9 68:5 84:15
conference 6:25 7:4
confidence 64:14
confuse 64:13,13
confused 64:14
confusing 11:6
confusion 11:1 80:15,25
congressionally 62:19
Conley 5:20 19:3,6
connect 27:25 72:22
connected 18:1 69:10,10
connecting 70:10
connection 48:10 79:12 80:7
connects 78:19 81:24
Connolly 3:23
consequential 21:9 83:11
consistent 31:25 32:1,15
consistently 48:7
constitutes 57:16
Constitutional 59:15
construct 31:21
constructs 31:19
consumer 42:13 55:12 62:11,14 86:7
consumers 31:9 37:20 40:1 57:21 57:22 64:3
consumption 39:10 46:1
contain 26:12 67:11
containers 45:18 47:2
contemplates 90:1
content 28:20
contents 5:2 45:6 52:8
continue 92:7
continues 81:2
continuing 22:2,4 23:19
continuous 45:16
contract 13:13
contradict 61:16
contradictions 12:4
contradicts 40:1
contrary 12:21 17:22 21:11 55:4 59:10 83:20
controlling 74:18
controversy 50:13
CONVENTIONS 7:2
convoluted 39:13 63:15
copy 9:24 10:9 13:17
corporation 63:25
Corps 5:10 20:23
correct 26:8 35:8 37:21 77:21 82:7 86:15 87:14
cots 14:13
Council 43:3
counsel 7:3 8:9 9:25 12:18 17:18 19:5 24:24 35:12 49:14 67:20 76:16 92:23
count 10:15 12:25 13:5,6,12 14:17 15:22 17:11 20:4,6,6,24 23:18,25 24:4,21 42:7 44:8 56:22 62:12,14 63:7 69:18 80:5 82:7,10 86:7,14 87:9,10
counts 13:4 28:2,6,8 38:2 57:19 76:13 86:25 87:2
couple 9:14 24:23 56:16
course 49:6 54:24 86:9
court 1:1 4:12 7:4 8:1,3 10:1 12:17 13:21 14:13,18 15:3,23 16:25 17:1 17:9 19:7,8 20:3 21:12,20,24 22:12,16 23:1,4,5,6,14 24:6,7,10 24:20 25:1,3,8,14,17,22,23 26:2,9 26:16 28:1,7 31:22,23 32:20,23 33:5 34:7,19,24 35:5,8,21 36:1,13 36:21 37:6,10,14,18 40:12 42:17 43:21,23 44:7 45:11 47:21,25 48:6 48:7 49:21 50:14,18,19 51:8 53:23 55:7 56:16 58:8,14 59:2,25 60:3,5 60:12,13,16,21 61:14,18,24 62:10 63:5,19 64:13,14 66:14 68:2,10,15 68:22 69:8,16 70:18,24 71:1,10,19 72:25 73:22,25 74:20 75:3 76:12 77:10,21,23 78:2,16 82:2,6,11,13 82:16 84:10,18 85:3,6 86:21 87:25 88:3,6 89:10,16 90:3,9 91:5,18,23 93:1 94:6
Courthouse 2:7 4:13
Courts 27:16 42:10 48:8,12 51:14
cover 32:4
covered 26:5 34:9
Cox 2:6
Cozen 3:18
co-packer 29:12 56:3,4
co-packers 10:17 14:9 80:18,20 81:5
craft 27:7
CRAIG 2:19
create 50:12 63:2
created 26:7
creates 32:2
critical 9:7,7 11:20
criticism 41:7,8
Crutcher 3:3,6
crystal 41:10
current 22:2
currently 36:15
cut 36:21
CXS 5:18 24:1

D

D 2:6 3:13
Daimler 5:19 56:17
Dallas 3:7
damage 10:8 11:24 14:16 15:9,11 33:24 34:12 40:22 52:5,21 54:2,20 54:24 86:17
damages 8:24 9:10,19 11:10,21,22 11:22 12:2,3,3,7,12 13:2,11,13,15 14:25 15:7,14,15,15 20:7 21:9,13 21:18 35:20 50:4 55:12 67:17 83:12
date 88:10 94:5
Davis 1:5 5:21 41:3 60:2
day 44:12 84:3 93:18
Dayton 2:8
deadline 87:25
deal 17:4 23:24 71:14
dealing 80:11
deals 23:20 89:1
death 48:24 53:13
deaths 14:16 23:21 53:18
deceive 64:19,19
deceived 45:15
deception 39:21
deceptive 25:5 38:17 45:4 47:20 65:2,18
deceptively 45:18 46:4,11
decision 26:6 27:13 48:6 49:21 59:12,17 60:2 61:20 84:13 85:4,8 85:15
decisions 22:11 37:18 59:18
defect 9:2 71:9,14 72:11,13,15,19 73:13 74:12 79:6
defective 69:24,25 71:21 74:10 79:5
defects 69:24
defend 77:7
defendant 3:1,17 4:1,6 9:15 10:17 11:7 14:8 15:4,12 18:2 19:9,20 28:25 30:8,9 32:7,7,8 34:10,19 35:1,3,23 36:13 39:23 40:21 41:1 41:4 42:24 44:6,7,12,16 50:22 56:2 58:19 59:1,6,9 60:8,8,10,25 63:3 66:25 71:20,24 72:10 74:1 79:7,11 80:3 81:3,8,17 90:18
defendants 1:11,22 2:2,10 3:12,21 8:5,10,14 9:6 10:11,13,19,21,23 11:6,12,12,20 14:2 15:1,25 16:8 17:5,12,20 19:1 20:1 21:15 22:1,9 22:14,17,20 23:1,23 26:14,23 27:5 27:6,7,7,9,18 28:19 29:7,11,11,13 29:14,18 30:2,18,20,22 31:18 33:12,18,20 35:6,9,10,11 36:18 37:10,11 38:24 40:11,12,19,20,25 41:18 43:6 44:4,11,15,20 45:4,14 45:18,25 46:3,5,10,11 47:15 48:1 49:17 50:2,7,8 51:13 52:5 53:19 54:11,11,17 55:5 56:11 58:19,25 59:7,9,20,23 60:9,17,22,25 61:2,3 61:3,9,10,21,22,22,22 62:3,4,6 63:2,11 64:4,18,18 65:11,17 66:9 67:2,3 69:1,7 70:21 71:12,25 75:18 78:9 79:14 80:11,14,15 81:7 81:8,10,13,15,20,22 82:14 83:24 84:1,1,12,17 85:20 87:9,19 88:7 89:2,8,23 91:6,11 92:6,9,11,14,19 93:7
defendant's 17:13 29:1 34:5 35:4 40:22
defended 77:7
defending 44:21
defense 8:9 9:8 17:18 47:3 52:1 68:17,18
defenses 88:17
deficiencies 62:25
defined 10:18,18 12:5 15:3
defines 86:11
definitely 90:5 91:25 92:1
definition 39:12,15,25
definitions 63:14 65:8,9 67:4 86:10
defy 58:20
DEL 3:17
delay 92:12
delegation 32:3 62:18
deleterious 32:14
demonstrate 46:24
Dempsey 2:11
denials 28:12
denied 61:21
deny 24:25 27:8
denying 85:10
Department 54:5
deposition 36:2 87:22

deprives 50:11
depth 66:3,11
described 23:20 64:8,9
describes 60:5
describing 64:11
Description 5:7
Descriptions 7:1
deserve 58:21
desire 51:23
destroyed 74:11
detail 13:8 56:1 65:10
detailed 16:14 19:11 27:13 47:23
determine 10:11 11:3 15:7 27:10 35:23 36:12,13
determined 84:19
detrimental 75:17
dfriedman@mflegal.com 1:21
Diamonds 41:24
dictates 27:13
die 77:13
died 49:2,7,10 52:6
Diegu8ito 4:8
different 28:3 29:11 30:21 31:11 35:7,12 37:15 42:5 44:14 48:22 53:10 70:8 71:6 75:10
differentiation 42:20
difficult 13:17
diminished 55:12
direct 8:6 50:1,5
directly 48:12
disagree 24:22 69:8
disappears 25:20
disappointed 14:1
disclose 45:15
disclosure 92:19,21
discovery 16:9 27:9,10 28:12 41:9 42:4 60:6,10 71:22 85:9 87:17 88:7 89:19 90:1,1,2,3,10,15,17,21 90:23 91:7,13,16,19,20,23 92:1,13 92:14,15,24 93:3
discrimination 60:3
discuss 17:6 22:6 89:23
discussed 18:19 50:25 86:2
discusses 38:12
disingenuous 14:1 16:23 41:13 51:16 65:24 76:3
disingenuously 47:11
dismiss 1:13 8:5 16:3 20:16 24:4 26:11 27:12 51:14 53:22 55:18 57:13 61:21 74:24 84:20 85:10,20 88:18 89:1,5,7
dismissal 85:22
dismissed 12:16 15:22 17:15 24:19 69:19 84:9 86:22
dispose 8:8 23:16 60:14
dispute 12:14 14:21 24:17 73:3
disputes 90:9
dissatisfied 85:21
distinction 74:25 79:2
distinguish 73:8,16
distributed 29:25 80:24
district 1:1,1,14 27:16 48:8 54:17 55:6 56:19 61:19 70:15
DIVISION 1:2
djireland@ficlaw.com 2:8
DLA 4:3
docket 77:24
doctor 25:11
documents 28:15 35:23 36:4 88:5 92:4
dog 16:19 29:9 46:11,24 49:9 54:6 58:3,5 70:12 72:1 90:20
dogs 14:17 23:21 48:23 49:7,12 51:18 52:5,9,16 53:13,19 54:3 56:8 57:25 86:18
doing 21:7 23:11 40:25 58:16 59:24
door 88:18
dot 81:24
dots 69:10,10 70:10 72:22 78:19
doubt 65:22
draft 67:11
drafted 27:17 68:19
draftsmanship 87:12
drawings 43:15 45:19 46:7
draws 77:15
Drive 2:12
dropped 81:5
Drug 62:18
dry 75:13,15,19,21
DS 71:2
due 70:21 71:16
Dunn 3:3,6
duty 15:19
D.C 2:21 3:24

E

E 3:2 94:1,1
ear 92:16
earlier 49:24 60:19 61:2 62:25 63:17 64:22 67:1
earned 39:19
easily 14:4,5
easy 79:11
eat 39:3,7,24 64:23
eating 76:25
economic 8:11,15,19,20,25 9:8,9,9 9:19 10:6 11:21 12:2,7,10,12,22 15:15 16:1 52:24 54:24 56:20 86:14,19
effect 52:8 65:3
effectively 22:13 23:11
effects 22:4
effort 10:11
EIKELAND 1:17
either 12:25 15:20 18:3 79:22
electronic 36:4
element 12:11 74:1 79:22
elements 19:13 25:25 34:20 48:5 73:11 77:1 79:24 82:19
Email 1:20,25 2:5,8,14,18,21 3:4,7 3:10,20,24 4:9,15 94:8
Emails 4:4
embrace 51:14
encouraging 75:22
endorsed 48:12
energy 72:12
engage 28:12 68:13
engaged 30:9 69:1 81:7
engaging 21:15
enjoin 22:13 23:13
enjoining 22:1
enrichment 82:17,18 83:1,6,9,19,22 83:25 84:2,4,16,18,24 87:4
enter 21:20,25 74:3
entire 19:23 23:10 26:17 27:19 55:25 60:24 65:5 90:17,18
entirety 85:11
entitled 9:16 19:9 20:6 67:17
entitlement 51:2
entitles 55:11
entity 86:11
entrances 73:22
entry 77:25
equitable 21:3,5,10 82:19 83:25 84:6 85:1
error 14:9 87:11
Escagedo 1:23
escape 8:25
especially 42:7
ESQ 1:17,17,18,23 2:3,6,11,16,16,19 3:2,5,8,13,13,18,22,22 4:2,7
essence 20:3,8 59:8 69:3 85:19
essential 79:22
establish 77:5 79:20,21,21,23 82:21
established 28:15 70:23 78:23
establishes 76:17
et 1:10 45:6
everybody 58:24 79:15
everyone's 8:3
evidence 5:6 46:24
evils 60:4
exact 10:9 60:1
exactly 17:6 19:17 37:20 38:8,24 39:24 47:10,11 53:5 61:7 91:14
example 22:22 28:24 30:10 38:21 39:2 40:8,25 46:8,21 57:17 60:18 75:12,14
examples 9:22 46:13,16 80:1
exceedingly 40:2 63:17
excellent 93:16
exceptions 71:2
excess 78:3
excuse 12:23 23:22 46:15 51:12 53:5 59:12 62:13
exempt 65:17
exhibit 17:25 26:16 44:5 54:4 76:5 76:16,17,22,23 77:16,24
exhibits 5:5,6 46:9
existed 74:12
expectations 14:1
expenses 52:18
expensive 52:10,14
explain 41:6
explains 40:2
explanation 15:8
exposed 78:7
exposure 77:1,17
express 79:2,22
expressly 24:7 26:10 32:5 59:21
extensibly 50:25
extensive 54:1 62:17 63:6,13
extensively 52:19 65:6
extent 33:14
extremely 60:11
extruders 42:19

F

F 94:1
face 81:24
fact 9:20 13:16 15:18 19:8 30:21 31:14 39:17 40:13 41:13 42:23 45:7 48:10 49:11 50:20 51:19 56:10,21 57:16,19 58:1 66:4,24 67:5,9,9,20,22 68:4,6,20 73:7 75:1 75:4,9,20 83:15
facts 31:18 50:3 51:1,15 75:9 85:13 85:18,21 93:13
factual 19:11 26:12 51:12
fail 86:7
failed 10:7 45:15 89:7
failing 60:7 63:2
fails 27:21,24 32:13
failure 49:13 87:3
fair 9:3,16 14:2 15:18 17:15 19:1,9 20:1 27:5 71:17 72:8,21 78:18 81:1,18,23 82:20
fairly 10:13
fall 68:21
falls 62:21
false 13:4,5 16:6 22:2,17 37:22 38:17 45:4 52:20,22 54:1,23 63:21 65:12 67:7,16,18,18,19,25 68:11,13 69:1 69:3,12 84:19 86:13
falsely 56:14 64:9 65:22
FAMA 3:18
familiar 8:18 63:9
far 38:1 39:6 47:5 56:24 76:1
Faruki 2:6
fashion 59:23
fatal 50:10
fatty 46:25
favorably 93:2
Fax 4:14 94:7
FDA's 65:16
FDCA 65:18
FDUPTA 27:2 32:2 37:2,4,6,16,17 42:7 45:7 49:21,22 54:9 55:8,11 62:22,24 64:17 86:4
Fe 4:8
FEC 5:22 57:12,15
Federal 4:13 32:2 50:11 73:5,8 75:3 92:15
fifth 29:23 45:3
figure 40:4
file 87:15
filed 19:16,17
filing 88:10
find 29:21 30:2,12 49:14 56:12 58:3 63:11,24 78:1,4 85:15 86:8,10 89:19
fine 40:2 63:17 89:21
finish 91:25
Firestone 5:23 56:18
first 8:7,10 16:2 18:19 22:20 23:2,16 25:9 28:9,17 29:4 31:25 33:6 36:1 36:2 37:2 45:13,17 48:25 52:4 53:6 58:12 60:6 90:1,24 91:19
fit 39:9
fits 54:21 57:8
five 16:18 34:18 44:17
fix 88:10
FL 1:20,25 2:4,13,18 3:10 4:14 94:7
Flagler 2:12
Flamenbaum 5:24 15:13
flaws 44:1
Fletcher 73:17
flipped 49:6
flips 92:16
Florida 1:1,8 12:14 13:12 15:14,16 37:13 42:10 54:15 55:6 65:7 70:15 70:24,25 71:1 73:3,6,6,9,11,12 75:1,9 84:6
Florida-based 73:10
focus 14:22 44:24
focusing 28:2,22
follow 42:25 43:4
following 34:23,25 35:1 67:14
food 13:6 16:21,21 19:23 22:3,14,15 22:18 23:10 29:9,9,24 30:25 32:3 38:13 39:2,9,18,20,24 40:7,14 41:11,15,18 42:17,19 43:19 45:18 45:20,20,25 46:5,6,7,11,18,23 47:12 48:21 49:2,8,10 52:6,7,10 53:7,20 54:4,8,11 57:11 62:18 64:2,20,23 65:1 66:6,9 70:6 71:6,7 71:20,21 72:5 75:13,13,15,19,19 75:21,23 76:6,25 77:11 78:6 80:24 81:8 86:12 89:14 90:17 91:3,11
foods 4:1 13:20 29:12 41:8,14,16,17 41:23 52:11,14 53:16 81:11,11
footnote 89:1,6,6,6
foregoing 94:2
Foreman 1:18
foreseeable 14:24 79:3
form 19:16,17 20:5,17,20 21:4,10 24:13 36:4 54:2 56:20
formulaic 19:13,21
formulated 31:9
Fort 5:25 55:11
forth 16:5,20 18:23 29:16 35:11,12 37:16 49:16 51:17 64:5 66:24 67:25 81:9
forward 33:22 34:21 55:21 61:12 74:17 84:14 88:7,14 92:12
found 26:18 41:14 42:1 78:3
Fourth 52:17
frame 27:6 45:9 49:18 61:11 91:17
frankly 15:6 36:3 55:21
fraud 25:5 32:23 33:2 37:7,14 38:1 39:22 42:8 47:8 51:7 55:15
frauds 47:5
fraudulent 25:4 26:24 38:2,4,5 42:14
fraud-based 37:13 85:24 86:5
free 73:21
fresh 47:18
Friday 87:16 88:15
Fulton 6:1 70:15
fundamental 9:2 72:8 77:4 79:24 81:1
funny 71:18
further 27:14
Furthermore 66:3 85:15
future 21:16,18,19,21 23:20
F.3d 48:16 59:19

G

G 2:3
Gail 3:2 25:7
gained 28:19
Gamble 2:2 89:4
garbage 46:1
Garcia 6:2 37:23
gather 93:13
general 18:21 28:2,5 45:9 51:11,12 51:14 53:22 57:7,8
generalized 31:2 66:25
generally 66:24 67:14
generic 70:16
generically 11:12
getting 13:4 38:8 40:7 55:25
Gibson 3:3,6 5:20 19:4
give 9:22 14:2 15:2 19:1 36:10,22 40:10 51:1 56:7 60:7 67:8 68:12 72:8 75:12 85:4,7 88:13 89:13 92:14,15,18,20
given 41:13 43:6,8,10 47:1,22 52:16 56:16 59:25 66:17
gives 57:17
giving 39:20 43:12
glorious 39:20
glucosamine 43:1 46:21
glycoalkaloid 76:20
glycoalkaloids 16:17 17:25 76:4,6 78:3,7,11,12,15
go 10:20,25 11:5,11,19 15:12 18:6 22:21 23:12 37:21,24 40:1 42:6

45:22 46:3,15,17 53:6 55:14,21 57:3,24 62:11 63:16 64:5,24 74:17 77:15,19 80:10,13 81:15 83:14 84:14,25 86:15 87:6,14 88:7 90:25 92:12 93:8
God 41:24
goes 9:2 11:20 15:25 16:1 18:4,22 21:1 22:20 25:12 26:19,19,19 30:1 31:11 40:9 46:13 53:8 67:2,16 71:16 73:25 80:25 81:6 90:10
going 13:17 17:16 23:5 24:17,22 34:25 35:13 53:5 55:14 61:12,18 63:22 64:14 70:21 75:21 85:7,10 87:15,16 88:6 89:10,17 90:7,9,15 90:16 92:2,6,10
Gonzalez 6:3 56:18
good 8:1,12,13 12:19 25:7,8 39:1,19 39:20 43:4 47:17 75:13,22 78:13 93:18
goods 55:13
Google 78:12,14
gotten 8:23 14:10 70:7
govern 62:20 82:14 88:13
Government's 32:3
governs 10:14 71:19
grade 39:18,20 40:7,15 43:16,16,25 44:3,16,17 45:19 46:8 60:20
Grand 3:3
great 17:4 39:20
greater 51:3
Greer 2:3,3
grievance 40:18
Gritzke 6:4 55:4,6
grocery 52:13
ground 8:21 10:6 15:17
grounds 9:17 15:4 19:2
group 10:25 11:1 93:9
grouped 62:3,6
grouping 61:21
groups 11:13
guaranteed 31:1
guaranties 30:17
guess 30:21 31:6

H

half 53:5
handling 8:10
hands 93:12
happened 17:2,6 74:3 91:14
happens 72:4
happy 14:11 52:2,23 55:20 58:1,5 66:12 76:14 78:2 92:18
Harbor 32:1,5 45:8 62:22 64:16 65:13,25 67:10 68:21
hard 39:19 56:12 58:3 61:7
harm 13:25 16:15,21 22:10 23:21 60:5
Hartson 2:17,20
heading 80:6
headnote 61:20
health 45:6 46:12,18
Healthgroup 6:6 20:23 24:2
healthy 72:14
hear 12:18 17:12,17 28:10 36:22,23 51:16 73:1
heard 17:24 44:8 56:25 69:19
hearing 16:3 25:1 86:9
heavily 54:16 65:11
heightened 16:24 17:21 55:5
held 36:18 42:8 44:15 58:25 59:7,21
help 30:12
Henderson 4:7
high 18:14
higher 16:18 29:23 51:6 54:7
highlight 27:4
highlighted 26:17 48:20
highly 58:12 75:17
HILL'S 3:12
history 93:11
Hogan 2:17,20
hold 16:10,12 60:17
holding 60:9
holds 83:21
HOLLUB 1:5
homework 51:24
homogenous 42:16 57:2 58:12,15 58:18 59:6
Honda 5:11 21:1
Honor 8:13,18,20 9:1,14,17,23 12:15 12:19 14:5 15:12 17:14,23 18:12 19:19 20:22 21:22 22:15 23:18,20 24:18 25:7,23 26:4 28:14 30:14 32:20 34:14 35:14 37:24 38:4 43:8 43:12,22,24 47:9 48:3 49:11 51:20 52:2,11,23 54:20 56:6,21 57:23,24 58:5,10 61:13 62:9,13 66:16 74:16 74:24 75:4,6,11,12 78:18 82:18 84:5 88:2,25 89:21,22 90:13 91:22 91:24 92:22 93:19
Honor's 23:24
HOOVER 2:19
hope 45:20
HOULIHAN 3:22
Hudson 5:17 22:25
human 16:19 39:9,18,20 40:7,15 43:16,16,25 44:3,16,17 45:19,20 46:1,6,8,22 54:6 60:20 65:1 76:6 78:4
humans 77:2,18
Hunton 3:9
hygienic 46:12

I

IAMS 2:2
ID 72:8
idea 49:9
identical 62:8
identification 5:6 7:5 69:20
identified 10:23 11:13 18:8 19:8 40:16 81:16
identifies 82:7 87:9
identify 7:3 12:5 34:10,11 71:3,12
Ill 50:13 57:17 62:12,14 63:7 86:7
ill 22:4 49:7,10 52:6 70:7
illegal 68:24
illness 14:16 23:21 48:23 53:13,18 53:18 54:3 86:18
illustrates 44:1 66:18
immediately 10:20
impact 26:6
implied 79:2,3,22,25 80:5 81:15,22
impliedly 81:11
important 26:20 56:10
impose 17:20 23:4
imposed 69:23
imposes 26:21,22
impossible 9:3,18 11:3 15:1,6 41:20 45:9 47:9 71:3
improper 23:9
inaccurate 31:5,18 34:22,25,25
inadequacy 83:7
inadequate 23:23
inappropriate 23:9
inclined 93:2,13
include 10:18 33:3 45:18 86:24
included 58:1
includes 32:13
including 19:15 29:12 41:7 69:22 70:10
inclusion 31:4
inconsistent 11:25
incorporate 80:13 87:7
incorrect 17:23
incurred 52:4,17 54:10
Indemnity 6:5 15:13
independent 66:10
INDEX 5:5,9 6:25
indicated 7:5
indict 72:6
individual 56:24 57:1,15,18 58:19 62:6 79:7,8
individually 1:5 59:14
indoor 31:10,10
industry 19:23 23:10 41:10 42:16,24 57:3 58:12,13,15,18,24 59:6 63:7 64:2 68:12 70:16,22 72:7 90:17
industry-standard 7:5
inedible 39:9 45:25
inexorably 60:6
inextricably 90:6
inference 51:2 73:19 74:6,8,9,10,11 74:14
inferred 74:2
information 32:16 45:17 93:13
ingested 52:5 54:11
ingesting 49:7,10 53:14,19
ingredient 31:4 63:14 76:21
ingredients 32:14 43:16,17,25 44:3 45:19 46:8 54:8 60:20 77:1
initial 91:23
injunction 20:5,9,17 21:11,14,20,22 22:1,7,8,10 23:10
injunctive 17:11,14 18:10,13 19:15 20:25 21:4,24 24:13 86:22 87:7
injured 53:16 79:17 90:21 91:10
injuries 69:23 70:3
injury 9:12 12:6 15:20 18:3,9,16,20 19:21 26:20 27:20,24 28:23 30:12 32:19 33:25 35:17 36:20 48:2,4,9 48:10,14,18,19,19 49:3,5,19,23 50:6,21,21 51:6,12 52:24,24 54:1 54:3,12,14,20,21 55:1 56:20,20 57:16,16,19,19,21 63:4 67:23 70:1 71:9 72:2,12,20,24 73:13 78:21 79:6,23 82:22 85:12,13
inspection 77:12
instance 39:1
insufficient 71:23
Insurance 6:5 15:14
intend 26:1
intended 79:4
intent 37:17,22 82:5,6
interest 28:25 92:3
interesting 63:11,24 73:4,20
interject 68:16
interjected 68:17,18
International 1:24
interpretation 66:2
interpretations 27:14
interpreted 66:1
interrogatory 36:2
intertwined 33:15 90:6
interwoven 71:4
intimated 86:23
investigation 49:13
involved 29:14,15 44:21 56:4 92:23
involving 29:8
Ireland 2:6,6
irreparable 18:16 22:10 23:20
issue 11:10 18:13 28:12 29:8 35:25 63:20 64:15 70:18,19,20 71:16 72:11,11 74:14 81:1,23 87:18 88:11
issues 8:8 23:15 25:24 36:24 64:13 88:21,25 90:12,22 91:17 92:24 93:16
IV 10:16
i.e 7:6

J

J 1:17 3:13,22
JAMES 3:13
jarden@sidley.com 3:15
jbmurray@ssd.com 2:14
JEFFREY 2:6
JOHN 3:13
joint 59:3
joints 46:22
Jordan 65:11
JOSHUA 1:23
Judge 1:14 61:20 65:10
judgment 70:19 71:16 75:7 81:19,22
JULIE 2:16
juncture 88:20
jurisdiction 50:12 87:19 88:8
jurisdictional 16:9 92:24
J.B 2:11

K

Kalil 1:23
Kansas 56:19
kcaverly@hcesq.com 4:9
keep 63:24 65:6 88:16 93:13
kill 54:5
killed 76:6
kind 52:16
Klay 6:6 20:23 24:1
knew 81:8,10
know 8:18 12:10 14:7 25:13 31:13 32:17 35:16,24 36:3 38:10 39:2,5 39:6 40:5,6,6,7,13 41:11,21,23,23 42:1,17,21 43:14 47:2,3,4,4,10,12 48:25 49:3 52:13 54:19 55:4 56:6 56:9,11,12,13 58:4 61:8 63:20 64:8,11 65:4,21 66:23 68:8,25,25 70:17 73:6 75:21,24 78:8,11 80:11 90:20 91:14,16 92:2,18
knowing 41:10 72:11
known 38:14 52:10,17
knows 18:12 41:24 71:5
KRISTEN 4:7
Kroger 92:6
KUSTER 3:13

L

L 3:8
label 35:18 39:25 64:12
labeling 65:16
labels 19:12
lack 49:13 57:21 85:11
lacking 36:11 51:5
laid 67:18 69:5,9 82:19
landscape 85:16
language 15:9 20:16 31:2,12 32:4 45:7 48:11 62:20 67:3 81:21 87:7
large 57:18 66:20
Lauderdale 5:25 55:11
law 10:1 12:14 14:21 15:14,16 18:17 20:16 21:3,11 22:25 23:5 26:10 57:18 59:1,10 73:3,5,6,6,8,8,9,11 73:12 80:19 83:2,13,20,21 84:6,8 84:12,24 86:3
lawful 23:3
lawsuit 35:10 39:13,16 63:13 70:12 86:1
leading 39:17
learn 71:22
learned 67:24
leave 89:20
leaving 14:7
Lees 3:2 25:7,7,9,16,19,23 26:4 28:5 28:14 33:1,6 34:14 35:3,6,9,22 36:8,21 38:8 43:22,23,24 48:3 55:9 58:9,10,17 59:4 60:18,24 61:16 62:13 66:15,16 68:4,14,18 69:7
leeway 34:15
legal 22:24 82:24 83:8 84:23 87:1
legally 12:21 82:4
legislative 37:17,22
length 86:2
lengthy 82:11
lessen 60:14
letting 42:17
let's 25:3 28:9,13 37:2 62:11 80:10 91:10 92:14
level 26:13 36:12 51:6 58:21
Levine 6:7 57:20
Lexis 61:19
liability 8:17,22 9:5 12:23 59:3 65:17 69:17,17,18,22 70:2,9,14,25 71:8 72:7,16 73:15,24 74:6,7 75:25 76:4,8,10,16 77:5,14 86:21
liberal 73:5
Licko 2:16 8:12,13,14 10:4 12:21 13:17 14:19,20 17:14 20:11 21:22 26:4 69:18 70:20 71:15,23 73:2 76:14 78:17 82:18 88:25 89:22 90:13 91:8,21 92:22 93:20
lie 39:22
life 47:18
lift 87:16
light 25:3 85:25 93:11
likelihood 18:15
limited 91:9
Lincoln 5:25 55:11
line 5:7,7 29:23
link 50:6 70:7 76:17 77:6,15,17 79:20 79:21
linkage 73:12
linked 56:2,11
links 50:10 69:14 72:18 76:17 79:18
list 29:11 31:4 32:6 38:23 43:8 45:2,5 57:24 92:18
listed 11:2 29:16
literature 16:22
litigation 61:11 86:12
little 13:16 41:13 42:20 43:11 51:23
LLC 1:22
LLP 2:11 3:3,9,14,23 4:3
logical 91:1
London 6:8 48:15
long 23:2 38:23 45:1 79:16,16 92:10
longer 93:14
long-running 34:16
long-standing 38:4

Lonnie.simpson@dlapiper.com 4:5
look 9:1,22 12:1,9 13:19 19:16 28:9 30:11,20 32:7 41:2 42:21 45:13 51:25 53:2 64:25 66:7,8 70:23 76:23 80:4,10 83:2,24
looked 42:12 43:6,7 47:8 55:19 67:1 70:17 78:11
looking 9:4,4 45:1,12 49:23 92:3
looks 12:10
looser 73:9
Los 3:4
lose 9:10
loss 8:11,15,19,21,25 9:8 10:6 11:21 11:24 12:10,22 16:1 86:14,19
lost 44:8
lot 29:19 69:19
Louie's 6:9 73:4
Ludlow 2:7
Lujan 6:10 48:7,12,16 49:20 50:11 51:11,20 52:24
lump 59:20
lumped 35:10 67:15
lumping 63:1
lumps 27:18
lump-sum 34:3 59:23

M

M 1:13
MacIVOR 1:17 12:19 13:22 15:24 23:18 24:9,17,22 25:2 26:8 37:1,2 37:9,12 40:24 43:25 44:8 45:12 47:22,25 51:9,10 60:19 61:15 62:1 63:6,8 66:16 68:7 74:21,22 77:22 77:24 82:3,4,9,15 84:11 87:20,22 88:2,4,20 89:12,21,25 90:5,24 91:24 93:19
main 68:10
making 28:18 39:19,23 67:8 81:3
Maltzman 1:18
mandate 62:19
mandatory 92:19,21
manner 28:20 62:8
manufacture 13:7 69:24 71:25 74:12
manufactured 29:10,25 41:11,16,22 41:25 53:7
manufacturer 27:23 56:3 70:2 78:21
manufacturers 10:17 11:8 14:8 41:16 72:5 80:18,20 81:6
manufacturer's 69:25
manufactures 41:18,24
manufacturing 41:25
Maria 6:2 37:24
Marietta 5:18 24:1
MARK 3:5
Marked 5:6
market 46:18 70:24
marketed 29:10,25 46:11,20,21,22 70:3 71:20
marketing 22:3,18 29:19,21,22 30:2 30:5,6,7,16 33:12,20 34:5 45:4,15 46:4 47:12 53:15 57:12 65:18,19
Mars 1:10 3:21,21 41:6,6,8,9 75:21
MARTIN 3:8
mass 57:19
massive 41:14 52:12 91:4,4 92:3
material 45:17 50:3
materially 48:22 53:10
matter 8:4 13:16 32:16,17 44:10 50:12 56:10 66:4 75:20 83:15 86:10 94:3
McKinney 3:6
mean 35:9 37:24 39:6 42:9 44:12 67:6,10
means 15:17
meant 40:6 82:10
meat 47:19 57:21,22
medical 16:22 46:12,18,19
MEDINA 4:12 94:5
meet 17:21 18:14,18 24:24 38:7 49:16 54:25
meets 51:20
members 11:23 50:17
memorializing 88:12
menorah 18:13
mention 61:18 76:20
mentioned 41:1,4,5 45:23 51:11 57:6 62:5
menu 4:1 29:12 41:7,14,16,17,23 52:11,14 55:24 56:7
merchantable 81:12
merits 18:15 22:11 87:17 88:7 89:19 90:2,6
met 17:3 55:22,22 74:23
Miami 1:2,8,20,25 2:4,18 3:10 4:13 4:14 18:13 94:6,7
microphone 25:14
Middle 70:15
Milne 1:23
mind 26:21 27:3
minimum 16:24 17:3,3
minute 85:4 92:14
misconduct 22:9
misleading 22:2,17 23:3 30:17 31:16 32:12 47:22 68:11
misled 38:24 45:15
misrepresentation 25:4,5 26:25 27:1 35:19 38:3 42:14,15
misrepresentations 38:6,18 50:2
misspoke 37:10
mixed 18:5
model 27:17
moment 46:15
moments 38:9
Monday 88:11
money 39:19
MONTE 3:17
months 40:3
morning 8:1,12,13 12:19 25:7,8 36:25 51:17 52:3 56:25 93:15
motion 1:13 8:5 12:22 16:3,5 26:11 51:13 53:22 55:18 61:21 66:5 72:9 74:23 85:10,20 88:10,18 89:1,5,7
motions 27:12
motive 74:1
Motor 5:11 21:1
Motorcycle 5:11 21:2
move 85:8 90:15
Moving 25:3 49:19
msteinberg@unton.com 3:10
multiple 16:20 71:11
MURRAY 2:11
muster 36:17
mwhitburn@gibsondunn.com 3:7

N

N 2:7
name 8:3 16:16 41:23 76:18,19 78:5
named 16:17 29:1 34:20 35:13,15 44:22 49:4 50:15,17,19 59:13,16 77:10,25 78:10 89:12 93:4
naming 89:10
narrow 66:1 90:11,16,22 91:13,21
narrowly 66:1
National 43:3
Natura 4:6 39:1,5 40:14 44:6 64:22 78:6,8
nature 41:9 85:25
Nebraska 6:11 23:6
necessarily 42:10
necessary 31:15 32:12 51:15 63:3 69:14 91:7
necessity 51:1
need 24:19 37:14 52:2 53:25 55:2 67:11 69:14 73:10 78:24 80:12,22 83:3 85:8,9,18 87:6,13 88:9,15 91:11 92:4,11
needed 75:8 77:8
needs 31:10 35:23 59:16 61:9 69:18 80:11 86:4
negligence 8:16,22 9:4,23 10:10,16 11:3,15,22 12:12,16,23 13:5,12,14 14:8,12 15:6,10,17 54:21 86:15
negligent 25:4 26:25 38:2 42:15
Nestle 2:15 89:4
Nestle's 91:11
never 16:11 18:1,8 20:15 32:11 40:5 40:6 42:18 65:19 68:2 77:15 81:24
NEVINS 2:16
new 1:22 3:15,19 4:4 54:5 89:11
news 66:17
nexus 50:9,9 63:2
nonprofit 63:25
nonregulatory 63:23
non-premium 54:9
North 4:13 94:6
Northern 55:6
notebook 9:23
noted 37:18 49:21 74:24 75:6,11
notice 9:3,16 14:2 15:3,19 16:24 17:15 19:1,10 20:1,9 27:5,9 28:11 29:7 30:8 43:15,17 49:17 60:8 71:17,19,20,23 72:8,21 75:3,10 78:18 79:7,19 81:2,18,23 82:20 85:18
noticed 54:21
notification 65:16
notion 70:5 73:5
no-injury 56:18
number 21:25 22:19 26:5 29:13,16 36:24 37:4 38:5,20 40:9 51:22 52:22 55:2 60:4 89:6,6 90:12 93:5 93:10
numbered 49:6
numbers 51:18 57:18
numerous 45:4 47:23 68:19
nutrition 3:12 46:7
nutritionists 46:6
Nutro 3:1 30:10,15,19,19,22 31:6,8 31:17,19,21 60:25
Nutro's 30:16,21
NW 2:20 3:23
NY 3:15,19 4:4

O

obligation 10:12 11:14 80:3
obligations 27:10
obvious 14:14 57:17
obviously 30:13 35:6 84:13 89:24
occasions 57:7
occurred 30:7 49:3
occurs 60:6 72:12
official 4:12 63:8 94:6
Oh 2:8 8:24 25:1 42:25 72:13
okay 25:2 33:1 65:21 66:8 73:22
old 19:3,6
Omega 46:25
omission 31:14 35:19
omissions 38:13,18 50:2
omitted 31:8
once 24:14 61:10 66:16 88:15
ones 8:7,7 23:15 52:20 63:14 81:13 81:16 87:11
ongoing 45:16
opens 88:18
opinion 16:7 92:16
opinions 8:20
opportunity 20:2 90:15,23,25 92:25
oppose 90:5 91:24
opposed 29:9
opposition 89:5
oral 88:12 93:16
orally 77:10
order 31:15,16 32:12 33:15 36:17,17 40:1 51:5,7 61:11 64:24 88:11
ordering 22:4
orders 52:2
Orient 5:24 15:13
outdoors 31:11
outlined 34:19
outlining 36:19
outstanding 87:18
out-of-pocket 52:17
overbroad 63:1
overlap 86:19
overly 90:10
owner's 78:5
Oyster 6:9 73:4
O'Connor 3:18
O'Neill 6:12 49:22

P

packaged 80:24
page 5:3,7,7,10 7:1 12:24 23:19 29:2 29:2,22 30:13,14,14 31:7,7 43:13 45:2 46:17 48:19 49:5 55:14 66:4 77:25 78:1,4
pages 19:25 26:17 30:13 33:7 37:3 40:10 46:14 49:6 50:1 57:10 67:2 80:4
paid 54:7
Palm 2:13
papers 59:19 82:20
paradigmatic 56:20
paragraph 11:5 12:1,25 13:9,20 15:9 23:19 29:3,19,22,23 30:4,11 33:11 38:9,12,17,21 40:9 41:1,2 42:16 45:2,13,24 46:17 47:17 53:2,5,6 53:12,15 55:9 61:5 67:1 81:2
paragraphs 10:22 14:22 16:20 20:13 41:2 42:15 53:3 61:1,6 83:9,18 89:12
part 11:1,2 32:21 66:20 70:22 80:19 80:22
partially 45:25
particular 30:13,24 43:11,12 44:12 44:22 49:15 50:22 56:14 61:4,9 69:11 71:12 76:25 77:11 80:23 82:14 84:16 89:2
particularity 25:6 32:24 33:2 85:21 85:25 86:5
particularized 48:14,15,17
particularly 28:22 46:7 60:4
parties 60:12 85:7,9 88:12,24
parts 70:8
party 24:14
pass 36:17
Patricia 1:5 41:3
PATRICK 3:22
paying 39:18
people 12:7 38:24 39:17 41:14 42:2 42:9,11 52:13 56:8 57:3,4 67:16 89:13
Pepsico 6:3 56:19
perfect 12:20 82:5
period 34:17 38:6 43:10,10,12 45:17 47:7
permanent 22:1
permeate 17:16
permit 27:6
permits 26:3
permitted 68:5
person 28:18 57:9
personal 8:24 87:19 88:8
persuaded 28:8 88:19
pet 3:12 4:6 12:6 13:6,20 15:21 16:21,21 18:4 19:23 22:3,14,18 23:10 29:24 32:3 38:13 43:19 45:18,19,25 46:5,18,23 48:21 49:1 49:8,10 52:5,7,10 53:7,16,20 54:4 54:8,10,11 56:4 64:2,20,23 66:5,9 70:6,7,12 71:6,7,9,20,21 72:5 75:13,13,19,19,22 76:6,25 77:13 78:6 79:16,17 80:7,16 81:4,10,11 86:12 89:14 90:17 91:3,11
PetCare 3:21 41:6,9
PETCO 2:10
Peters 13:3 38:25 40:6,14 41:3,20 57:4 64:20 75:14
pets 8:24 9:13 10:8 12:3 18:21 49:2
PetSmart 2:10 10:17 11:8 14:9 80:21 80:22 81:17
Pfizer 6:14 84:17
ph 6:22 65:15
PHILIP 3:22
Phillips 2:12
phone 14:10
phoulihan@wc.com 3:24
physical 54:19
pick 10:21
pictures 39:4,4 43:15 45:19 46:7,9 47:18 62:7
piece 76:21
Piper 4:3
place 28:17 93:14
plaintiff 11:18,23 15:11,20,20 16:12 16:17 18:1,3,3,6,20 19:1,20 27:16 27:21,24 28:24 29:1,4,15 33:16,21 34:2,8,10,17,18,20,24 35:11,13,13 35:15,15,17,17 36:13,18 37:19 40:16,18,19 42:6 47:15 49:4,4,12 50:4,19 53:6 56:2 57:8 58:2,23 59:13,16,20,24 63:4 67:19 69:10 70:6,7 71:12 72:18 73:13,22 74:3 76:18,24 78:1,20 79:8,11 81:25 90:20 92:2
plaintiffs 1:7,16 8:23 9:5,25 12:13,18 13:2 14:17 16:1,11,16 17:18 18:14 18:21 19:5 23:22 26:23 27:12 29:6 29:12,24 30:3 31:2,6,8,8,20 32:9 33:10,11 34:7 35:12,12 36:23 37:6 37:18 38:25 44:11,12,18,19,22 45:16 46:4,20 47:8 48:23 49:14,14 49:15 50:3,6,15,16,17 52:4,15 53:19,23 54:7 58:10 59:25 62:21 62:23 63:2 66:21 67:6,10,20,23 68:2,15,16 69:4,8,9 72:4,22 76:9

76:16 78:10 79:13 80:17 84:22 85:13,18 86:1,15 87:2,6,14,15 90:20 91:6,20,20 92:15,23 93:5,6 93:12
plaintiffs's 53:13
plaintiff's 15:21 18:4 49:9
plausible 51:1
Plaza 2:7
plead 15:2 51:1 83:15 85:1,18
pleaded 34:1,2 36:15 48:11 83:16
pleading 12:20 16:4,11,24 17:6,21 18:18 19:16 23:25 24:24 25:5 28:3 31:14,17 36:6,7,8 43:13 49:16 55:1 60:1,1,16,18,21,22 68:16 71:11,13,14 72:9,24 73:7 74:17 75:1,3,4,10,10 76:1,3 82:5,5,11 84:11 85:1,12,16,18 88:15
pleadings 55:5 60:4,13
Please 8:1 85:6
pled 12:10 21:17 32:24 37:4,14 39:5 55:16 74:13 76:7 84:23 85:24 87:5
plethora 37:13
point 2:12 32:17 42:4 45:14,17 46:3 46:10 47:14 68:4 76:15 84:13,25 88:14
pointed 60:3 61:1 64:18 65:4 75:6 89:5 91:14
points 26:5 40:10 60:13
policy 32:16
political 32:17
posed 24:6
position 26:14 27:4 49:17,18 89:8
possible 21:9 24:14
poster 70:11
POYER 1:23
practice 16:13
practices 21:15 25:5 65:18,19
prayer 24:20 86:24
prayers 87:8
preamble 64:1
precedent 69:21 70:9 84:5
precedents 70:24
precious 52:16
precise 28:15
preemption 64:5
prefer 26:2
premature 92:7
premised 37:7 66:20
premium 52:9 54:8
prepared 10:5
prerequisite 77:5
presentations 93:17
presented 13:20,24 86:13
presently 89:18
preservation 27:10
preserve 35:24
preserving 36:3
Press 6:11 23:6
Presumably 71:7 81:20
presume 51:14 53:23
pretrial 88:9
pretty 50:25
prevail 12:25 21:14 76:1
prevailed 24:15
prevent 21:21 22:17 32:12
previewed 86:9
previous 45:24 77:9 83:18
pre-approval 66:4,5
pre-Twombley 19:3 59:18
price 54:8
primarily 47:4
Principally 33:9
principles 27:15
print 40:3 63:17
prior 14:4 23:4 27:11 37:18 38:23 45:14 51:17
privity 78:23,25 79:21 80:2,8,19 81:1 81:24 87:3
probably 38:19 53:11 57:10 93:7,8
problem 14:5 17:23 19:24 25:12 44:24 58:11,23 66:18
problems 16:21 44:25 86:16
procedure 19:17 79:10
proceed 8:8 73:23 92:1 93:10
proceedings 94:3
process 70:21 71:17
Proctor 2:2 89:3
produced 29:25
product 18:5,8,9 23:2 27:21 33:23 33:24 36:20 42:11 50:7,8 55:7 58:20 69:20,24,25 70:3 71:3,13,22 72:3,8,11,15,18,19,23 73:13,14 74:10 77:12 78:20 79:4,5 82:1 84:21 90:21
products 4:6 9:12 29:8 40:22 44:18 69:17,24 70:13,16 71:9,20 86:20 91:9
Prohias 6:13,14 54:18 64:8 65:11 84:17
prohibit 22:10 63:7
prohibiting 21:15
prohibition 86:19
prong 54:22
pronouncing 78:13
proof 70:18 71:18
proper 75:16
properly 13:7 53:24 87:4
property 9:13 13:11,15 14:16 52:4 52:21 54:2,20,24 86:17
propose 34:7 92:22
proposition 21:2 24:12 71:10
propounds 36:1
protected 31:1 45:7
protection 62:11,14 64:2 86:7
protein 31:3,4
prove 75:8
proved 36:9
provide 15:18 17:15 19:12 27:5,8 28:11 34:18 36:8 43:8 52:25 55:2 55:3 78:2
provided 9:24 92:19
providing 46:22
provision 32:1 66:1
proximate 69:23 70:1
public 64:19
publication 63:8 65:21
pulled 24:11
Pulte 6:15 71:15 73:16
punitive 21:9
purchase 33:17,17 35:20 36:20 48:21 49:1 55:7
purchased 29:24 38:14 40:14,22 41:5 44:18 52:7,9,12 53:7,9 57:11 70:6,13 71:6,7 72:5,18 75:15,17 81:9,25 91:3
purchases 29:18 30:4 33:11,19 34:4
purchasing 38:13 46:5
purely 9:19 12:12
purported 93:3
purpose 22:6 53:21 81:10
purposes 61:12 71:8 81:8 90:8
pursuant 62:18
pursue 21:3
put 13:6 16:5 23:15 26:18 29:7 35:11 35:12 39:2,24 43:14 58:5 64:23 90:3 91:15
puts 43:17 79:7 92:15
putting 43:1
pyramid 46:6
P.A 1:18 2:3

Q

quality 39:18 40:7,15 45:6,20 81:12
quantities 92:4
quantumly 92:17
question 24:6 36:2,6 51:24
questions 71:22
quick 24:11
quickly 15:24 23:16
quite 36:3,24 56:8,9 66:3,17
quote 59:14
quoted 48:12 64:22
quote/unquote 63:12
quoting 18:25

R

R 94:1
race 60:3
raise 12:22 26:12
raised 8:15 86:1
raises 88:18
Rancho 4:8
reach 60:14
read 13:17 24:10 34:12 40:21 53:4 56:21 63:17 68:24 71:14
readdressed 88:22
readily 8:8
reading 68:25
ready 88:3
reaffirms 85:17,17
real 47:19
reallege 10:21 14:4 20:13
realleging 21:7
really 11:2 38:2 44:12,23 55:24 63:24 64:4 65:22 66:8 73:2 91:9 91:16
reason 43:18 58:20 80:17,21
reasonable 15:3 42:13 56:3
reasonably 14:25
reasons 69:19
rebuttal 14:20
recall 41:14 52:12
receive 12:7 48:20 49:1 53:9
Received 5:6
recess 85:4,5
recitation 19:13,22
recites 68:19
recognition 26:9
recover 55:12
recovery 70:1
refer 13:18 46:17
reference 12:6 29:21 30:1,25 43:25 77:16 83:5
referenced 29:18,20 30:5,6 33:12,20 34:5 37:23 38:10 67:5 81:13
references 31:3 60:25,25 81:5 82:13
referred 13:11 53:2 55:9 74:7
refers 76:16
reflect 27:20
reflects 49:12,13
regard 12:24
regarding 38:1 54:1 87:18
Regents 6:21 59:13
regulated 65:6
regulation 62:17 63:6 65:4,7
regulations 39:8 45:8 62:20 63:13 64:3 65:2,3
regulator 22:13,16 31:23
regulatory 32:3 63:25
rejected 54:17 56:17
relate 36:5 42:16 52:20,21 72:12
related 85:13
relates 82:10
relating 45:5
relationship 78:25
reliable 46:23
reliance 26:19 27:20 28:24 30:12 32:19 33:13,15,23 34:12 40:16 44:19 57:6 63:4 85:24
relied 33:16 34:22,23 38:12 53:8 54:16 57:4 67:16 75:7 84:18
relief 17:11 18:10 19:15 20:5,10,18 20:20,25 21:10,25 23:11 24:13,14 24:20 26:13 51:2 86:22,24 87:7,8
rely 9:14 18:7 50:16 65:11 74:15
relying 10:8
remainder 28:8 52:3
remaining 29:6
remarks 86:8
remedies 85:2 87:1
remedy 18:17 21:3,21 22:7 23:8 82:25 83:8,13 84:7,8,12
remove 32:6 87:6
Renee 1:4 8:4
renewed 88:18
repeat 78:9 86:3
repeated 17:19
repeatedly 16:2,8,10 54:15 62:5
repetitions 27:14
replete 60:24
reply 89:6
report 77:12 78:8
REPORTED 4:11
reporter 4:12 8:3 94:6
Reporter's 5:4
representation 40:15 44:17,19,21 67:25
representations 28:16 38:13,23 43:9 44:16 57:5 68:20
representative 93:4
representatives 11:23 50:3
represented 44:4
representing 39:1
represents 47:12
requested 87:1
require 34:14 37:17,19 49:22
required 17:7 19:18 32:24 33:21 34:1,16,18,20 35:14 36:6 50:18 55:7,8 65:13 74:1 86:5
requirement 10:15 33:2,3
requirements 18:18,22 26:7,24 48:4 48:9 49:16,20 50:25 51:6 59:15 65:17 74:5
requires 16:4,24 18:24 51:4,6,20 69:13 70:10 73:6 82:20
Rescission 20:6
research 40:3 43:3,3 64:24
resources 60:14
respect 8:16,16,21 9:10 10:6,10 11:22 12:6,15 13:4 14:7 16:9 19:15 20:4 26:6 28:6,14 29:3,5 30:15 31:21 32:19,21,22 34:2,15 34:19 42:14 44:6,7,15,22 48:2,4 49:4 51:3 52:22 55:10 57:6 58:18 59:22 60:19,20 61:9,10 62:15 63:1 68:20 69:12 70:13 72:17 76:15 78:17 86:25
respects 31:5 59:10
respond 10:13 11:4,9,14 20:2 27:9 28:11 56:11 77:22 80:3,12,23 89:7
responding 10:12
response 8:23 13:10 14:15 16:5 17:24 23:25 24:2 27:22 37:3,25 38:3 51:10 52:19 55:3,14 64:7 65:10 66:11 75:7 83:3 84:25 86:2
responsible 28:18 60:17,23 79:15
restrain 23:7
restraint 23:5
rests 19:2
result 14:24 35:18 50:1 53:14 76:25 78:21 85:11
resulting 51:12 63:4
retail 42:5
retailer 27:22 50:7 56:5,5 78:21 90:18
retailers 10:25 11:1,8 14:7,12 62:6,7 80:6,7,16,16 81:4,4
retired 19:4
review 26:14,15,21 27:4 29:5 85:16
revised 88:13
rfama@cozen.com 3:20
RICHARD 3:18
Richman 2:3
rid 63:20
right 13:19 17:9 23:1 25:3,17,22 26:12 30:13 32:23 35:2,5,21 45:11 51:8 52:11 58:14 61:18 68:14,22 70:2 72:25 77:25 78:4,5 82:16 88:4 91:16
Rights 22:20
rise 36:10 51:1 67:8
risk 11:16,18 13:24 14:23
Rivera 6:16 54:16
Road 4:8
Rowe 6:17 73:21
RPR-CM 4:12
rule 8:11,15,19,21,25 9:8,16 10:6,14 11:21 12:10,22 15:2 16:1 17:7,16 17:22 18:24 19:9 25:24,24 26:7,22 26:22,23 28:16 32:25 37:5,7 38:7 50:24 69:13 71:17,19 72:21 79:20 85:16,17,22 86:14,19
rules 17:1 19:6,16 33:21 56:6 58:5 79:10 92:16
Ruling 57:15
rulings 88:12
Ryskamp 61:20

S

S 2:4,12
Safe 32:1,5 45:8 62:22 64:16 65:13 65:25 67:10 68:21
Safeway 8:4
sale 22:3 50:8 53:16
sales 22:18
SAMPLE 1:18
San 4:8
sanction 21:23 22:9 65:13
Sanders 2:11
Santa 6:2 37:23
Sante 4:8
satisfied 17:5 85:14
satisfies 59:14
satisfy 50:19 51:5 69:14 73:11 86:21
saw 33:22 34:17,21 44:18
saying 13:5 16:17 19:18 21:10,19

24:18 37:9,11,12 39:7,11 43:3,5,8 44:24 47:11,19 54:19 59:4,5,5,6,7 60:21 63:19,24 64:10 65:6 67:2,24 68:7 75:21 81:6 84:22
says 13:19 14:8,23 15:10 18:25 20:15,17 23:18 29:17,23 30:4,16 32:11 33:11 36:14 37:14 39:24 42:25 45:14,14 49:12 51:19 53:8 53:11,15,17 55:7 56:20 57:15 59:19 61:2 64:9,18 65:4,7,16,21 67:13,14 77:1,17,25 80:6
schedule 88:4,9,13 89:25
scientific 46:23
scientifically 22:23 31:9
scope 60:6,10
SE 1:24
search 24:11
seated 8:1 85:6
SECHLER 3:22
second 13:9 45:1 46:3 53:15 85:11 85:23 86:16 89:22
secret 41:17
see 10:15 18:7 19:14 29:6,20 31:7 32:18 52:1 61:24 72:15 88:16
seeing 90:9
seek 60:16 83:11 86:25 89:20
seeking 13:1,11,13,14,15 14:11,15 20:1,19 23:8,13 31:22 81:21 86:17
seen 16:11,13 27:12 37:25 39:7,23 47:24
selected 30:24
sell 43:19
selling 22:14 43:19,20
sense 15:9
separate 20:17,20,24 23:25 24:4 25:24 32:21 35:4 73:25 86:23
series 45:5 66:25
services 55:13
set 16:5,20 18:23 37:16 49:16 51:17 67:25 77:9 87:22
sets 66:24,25
setting 29:16
Seventh 3:14
SHAKNES 4:2
share 70:25
shared 57:16,22
sharp 44:23
sheet 8:2
Shook 71:15 73:17
Shop 8:5
short 85:5
shortly 87:23
shotgun 59:25 60:1,4,13
show 10:5 18:15,16 19:1 23:3 30:11 35:15 38:24 43:16 45:12 55:22 57:12 59:14 62:7 64:21 65:25 73:12 75:25 77:14 78:25,25 79:23 79:25 80:2,2,7 82:24 83:7
showing 47:17,18 50:14 72:7,22 75:3 83:1
shown 35:17 62:7 69:25
shows 45:18 54:4
sick 76:24 77:2
side 23:15 79:13,14
SIDEBAR 6:25
Sidley 3:14
signed 8:2
sign-in 8:2
similar 30:17 42:23 46:6 74:22
similarly 1:6 58:24
simply 19:7 20:1,24 57:21 58:11 68:23 83:17 87:6 88:16 89:7
single 10:23 17:17 34:10,10 90:17 90:18 91:2
singled 80:21
sit 41:21 49:14
situated 1:6
situation 38:5 44:14
situations 9:20
sizable 93:9
slash 72:1
slipped 82:11
small 65:7 74:25
solanine 78:14
sold 91:3
solve 58:10
soon 87:23
sorry 13:19,23 17:12 23:19 29:22 33:10,13 35:12 37:10 45:20 46:17 60:16
sort 16:4 77:14 81:12 89:17
sorts 71:25
sounded 74:22
South 1:19 3:3
SOUTHERN 1:1
soy 31:3,4
so-and-so 33:22
span 34:9,11
speak 25:14,20 68:12
speaker 7:5
speaking 28:1,5
specialty 56:4 80:7,16 81:4
specific 8:7 11:18 15:19 16:14,15 18:1,2,3,6,8,9,20 19:21 26:17 27:8 27:19 28:21,24,25,25 33:20 38:20 42:6,15 47:6,7,15 48:9 50:20 51:15,18,22 60:8,8 65:4 70:12,13 71:3 72:2,5,19,23 73:12,13 78:20 78:20 81:25,25 90:21 91:9
specifically 13:1 16:6 45:23 46:14 53:3 57:9 59:13 65:12,19
specificity 17:4 26:23 30:18 34:19 35:22 36:9,12 50:5 51:4,7 72:17
specifics 40:11 46:13 47:1,23
specify 27:21,24 86:17
speculation 12:11
speculative 26:13
speech 22:25 23:7
spoke 62:25
springing 49:20
Square 4:13
Squires 2:11
stage 55:1,18 58:16 71:11,13 72:9 72:24 74:17 76:1,3 85:1
stand 24:12 76:7 78:10
standard 16:4,11,25 17:3,4,21 18:14 19:4 28:3 42:8,13 71:17 75:3,10 75:16
standards 24:25 26:21,22 27:3
standing 24:8 32:22 35:15 48:2,4 50:15,17,22 51:5,21 52:25 53:24 55:22 57:14,17,21,23 59:15,23 62:9,15 85:12,14 92:20
stands 71:10
start 10:15 20:20 26:5 29:1 77:14 80:6,8 91:17
started 25:20 85:9
state 13:1 24:7,18 32:18 33:22 45:23 70:25 73:9 85:19 86:7,20 87:3
stated 16:6 26:10 31:15,18
statement 30:6 34:22 59:8 60:19
statements 28:15,18 30:17 66:21
states 1:1,14 4:12 48:7 59:13 64:1 90:18 91:3 94:6
statute 32:2 37:20
stay 92:13
Ste 1:19,24 2:4,12,17 3:6,9 4:8,13
STEINBERG 3:8
step 34:21
stood 68:7
Stop 8:5
stopping 23:10
store 52:13
stores 29:16 42:5
strain 25:15
streamline 55:20
Street 2:7,20 3:23
stricken 15:18
strict 8:17,22 9:4 12:23 69:17,17,18 69:22 70:2,9,14 71:8 72:7,16 73:7 73:15,24 74:6,6 75:25 76:4,8,10 76:16 77:5,14 86:20
studies 22:23
stuff 52:12,14
styled 10:16
subject 50:12 62:25
submit 8:20 9:17,24 12:15,20 15:22 35:14 36:16 66:9 74:16 78:18 84:5
submitted 26:16 74:16
submitting 91:20
subsequent 41:2
substances 13:6
substantiated 16:22
substantive 16:10 25:24 89:2 90:7
subvert 37:17
success 18:15
such-and-such 33:22 44:11,13
suddenly 80:22
sue 19:22 67:7,9 70:22
suffer 57:18
suffered 11:24 27:24 35:17 40:22 48:23 50:4,21 53:13 67:17 72:2 78:21
suffice 36:7 51:13 79:19
suffices 52:25
sufficiency 69:13,13
sufficient 12:21 27:9 32:24 36:8,12 51:1 59:11 76:9 82:4 85:18,25
sufficiently 85:12,23 86:21 88:21
suggest 19:5
suggested 90:16,19
suggesting 91:18
suggests 81:12
suing 53:18 93:4
suit 63:21,21 64:12 65:8
Suite 94:6
summarized 43:7
summarizing 43:9 47:8
summary 70:19 71:16 75:7
SunTrust 1:24
super 22:13,16 31:22
support 22:23 51:15 54:13 56:22
supported 43:2
suppose 10:2
supposed 11:9 30:22 37:19 39:9 53:22,23
supposedly 30:19
Supreme 16:25 17:1 19:7,7 23:1,5 48:7 70:24 71:1
sure 8:9 21:12 32:20 36:3 50:18 52:1 56:21 61:17
survive 26:11 72:9,24
surviving 50:10
Susan 41:3 54:4 76:5,19,24 77:10 79:16
sustain 51:7
SW 2:7
systemic 60:5

T

T 94:1,1
tab 9:23 10:3,4,9 30:14 80:4
TABLE 5:2
tabs 26:18 30:11
tainted 77:11,13
take 18:11 19:21 25:18 28:24 37:2 70:5 85:3 89:8,14
taken 14:5 32:9 40:24 75:16,25
takes 40:10
talk 11:21 25:21 45:24 51:11 52:24 63:15,15 64:5 65:16 78:2,12 89:25 90:14
talked 33:7 49:24 61:1 62:5 63:11 66:5 75:8 82:22
talking 17:24 19:19 38:8,11 39:8 47:18 64:3,4 91:17
talks 30:25 47:17
TARGET 2:10
telephone 7:4
tell 9:3,18 11:9 30:18 31:24 32:10,10 32:15 41:19 42:18 47:10 63:19 77:10 87:20
telling 32:11 67:20
tells 30:8
temporary 22:1
term 68:24
terminate 22:4
terminology 69:2
terms 10:18 41:9 86:11
tested 54:4
testing 16:15 66:10
testings 78:7
thank 10:1 12:17 14:18 15:23 17:9 17:10 23:17 25:16,19 36:21 43:21 45:11 47:25 48:3 51:8 58:8 61:13 61:14 62:10 63:5 66:14 69:16 72:25 74:19,20 76:11,12 78:16 82:2 84:10 85:3,6 93:15,19,20
Thanks 58:7
theory 84:23
thing 41:6 45:1 52:16 56:10 64:23 76:18 89:22
things 14:24 21:25 24:23 31:25 45:6 58:20 70:8 78:13 82:10 87:13 92:4 92:6,12,12
think 8:7 14:1,14 16:23 17:5,24 26:4 26:20,23 27:3 39:19 42:2 43:15 44:1,8,23,23 49:11 50:18,24 51:18 51:20 56:14 58:21 59:2 60:18 65:25 69:4,7 71:13 79:9,13 82:6 85:19 86:8 87:11,13 88:17 89:16 89:24 90:23 91:25,25 92:2,7
thinking 89:24
thinks 14:5
Third 13:22 51:19
Thomas 54:4 76:5 77:25
Thompson 76:19,24 77:11 79:17
thought 8:6 13:3 23:16 25:11 41:15 67:20
three 15:5 16:18 27:11 28:2,3,6,7,9 28:13,17 46:13 77:9 89:1,3
threshold 82:25
thrust 74:23
tie 36:19 79:14
tied 50:6 93:12
ties 36:16
tightened 16:4
Tilton 6:18 83:25
time 7:3 16:2 22:11 28:17,25 34:8 38:6 43:10,11,12 47:7 51:23 55:2 56:25,25 60:14 61:2 66:13 71:1 74:12 78:6 82:13 88:4 89:23 90:14 92:1
times 8:19 16:18 44:9 45:23 77:9
title 82:7,13
today 17:17 19:22 25:12 40:25 41:4 52:23 76:3 85:8 88:6,11,12
told 29:4 31:13,13 52:11 56:1
tolerance 78:4
Tooltrend 6:19 83:5
top 11:2 76:5 81:13
tort 57:19
totally 23:9 71:23 73:24
touched 62:17
Tower 1:19
toxic 77:2,17
tracks 52:19
trade 25:5
TRANSCRIPT 1:13
transcription 94:3
transcripts 87:23
transferred 79:5
transfusions 71:2
Transportation 5:18 24:1
traveling 19:6
treat 26:1
treated 25:25 59:23
treats 29:24 48:21 52:6 53:7
tried 16:8,10 74:3 77:10 79:10
true 21:6 32:7 36:14 40:24 45:13,21 53:21 58:14,16 75:16,24,25 77:3
trusted 41:15
truth 38:14
try 10:11 16:12 19:22 25:14 40:3 73:18,19 77:9 79:9 83:14,23 90:24 92:22
trying 17:20 21:4,23 22:8,12 23:15 36:23 37:21 39:11,13 43:19 55:16 58:23 64:13 77:6
turn 17:11 28:21 31:7
turns 78:14
Twelfth 3:23
twelve 44:9
two 14:13 20:22 21:25 23:24 27:12 40:3 51:25 52:19 57:25 59:10 60:4 61:1 71:2 87:13 88:25
Twombley 6:20 9:15 10:14 15:3 16:3 16:7,24,25 17:1,18,22 18:23,24,25 19:8 26:6,9,21 27:13,14,15 36:11 50:25 70:10 72:21 79:19 85:15,17 85:17
TX 3:7
type 11:10 13:13 31:12 34:22 35:19 35:22 37:15 49:3,4 60:1
typically 57:3

U

ultimate 75:9
ultimately 76:1
unable 17:21 73:16
unacceptable 13:24 14:23
unclear 55:18
Underlying 20:11
understand 47:21 61:7
unfair 92:16
unfit 46:1

unfortunately 13:11
United 1:1,14 4:12 6:6 20:23 24:2 48:6 90:18 91:3 94:6
unjust 82:17,18 83:1,6,9,19,21,25 84:2,3,18,23 87:4
unlawful 22:2,17
unnecessary 60:7
unreasonable 11:16,18 13:24
unspecific 45:9
untrue 19:7
updated 88:9,13
USA 2:15 89:4
use 13:9 17:1 21:9 22:7 34:3 46:5 55:5 75:16,22 81:21
user 79:3
usually 70:23
Utensili 6:19 83:6
utilizing 69:2
U.S 3:21 5:10 19:7,7 20:23 23:1,5 61:19

V

v 5:18,24 6:14 15:13 24:1,2 71:15 84:17
vague 18:21 34:3 45:9
valid 22:23,23
value 55:13
various 40:19 66:24
vegetables 47:19
versus 5:10,11,13,14,19,20,21,22 6:2,3,6,7,8,9,16,17,19,21,22 8:4 19:3 20:22,23 21:2 26:10 37:23 48:15 54:16 56:17,19 57:12,15,20 59:12 60:2 61:19 65:15 73:4,17,21 83:5
vet 15:15
veterinary 52:18
viable 20:18 36:10
vicarious 59:3
view 32:17
viewing 69:11
views 86:9
VII 17:11 20:4,6,6 76:13 80:5 87:2
VIII 76:13 87:2
Villagio 6:9 73:4,15
violated 67:24 68:2,5
violates 70:21
violation 22:19 27:2 68:15
virtually 27:19
voice 25:9,11 26:2 36:22
vs 1:9

W

wait 92:14
waived 89:9
Wal-Mart 2:10 6:8 48:16
want 19:25 20:9 21:10,13,14,19 23:14 25:9,18 31:24 35:16 53:4 55:5 57:24 63:19 88:10 89:24
wanted 10:5 26:8
wants 22:21 32:20
warrant 81:11 88:21
warranties 81:16
warranty 76:13 77:19 78:17,24 79:2 79:3,22,25 80:5 81:22 87:2
Washington 2:21 3:24
wasn't 45:21 74:25
water 25:18,19
way 16:23 23:6 31:19,20 34:3,23,25 35:1,23 39:13,22 41:10 42:18,20 46:19 49:11 60:11 63:15 67:14 72:10,12 77:6 78:3 79:4,7 81:17 91:1 93:12
ways 38:7
weeks 25:10
well-established 12:14 69:21 70:9
went 15:8 29:20 66:3,11
weren't 40:7
West 2:12,13
Westlaw 24:11
wet 42:19 75:22
we'll 17:9 25:1 36:23 76:1 85:3 87:23 90:24
we're 13:1,5,10,13,14,15 14:15 19:6 29:4 37:9 39:11,11,14 42:25 43:5 47:19 63:13 64:3,4,10 65:6 67:8 67:17 68:8 75:22 80:10 84:22 86:18 92:6,7
we've 8:23 10:9 15:5 16:3 17:3,4 18:19 20:22 21:1 25:25 26:16,17 38:3 41:22 43:7,9 50:24 51:10 54:7 55:8,13,15 56:1,25 57:5 62:5 62:6,7,9 64:7,7 65:10,25 67:23 68:18 79:1 82:19,22
whatsoever 12:6 30:18
WHITBURN 3:5
wholesome 46:5
wholly 45:25
widely 57:16
widespread 57:17,19
Williams 3:9,23
wish 32:6
wished 26:5
wishes 14:13
withstand 16:19
wonderful 39:20 43:1 47:18
wood 70:16,17
Wooden 6:21 59:12
word 13:9 30:25 31:1
words 48:17 76:20,20
work 70:8 89:25 92:22,24 93:16
worked 92:5,6
worth 49:23
wouldn't 33:23 52:15,15 53:8 58:1,2 58:3 66:23
wow 64:25
writ 63:20
wrongdoing 22:9 83:24 84:1,2
wrongful 21:18,19,21 84:15,16
wwegner@gibsondunn.com 3:4
Wyeth-Ayerst 6:16 54:16

X

X 59:7,8

Y

yeah 24:3
year 34:8 42:1 61:20 90:4 92:13
years 16:13 34:11,18 47:3,24
York 3:15,19 4:4 54:5
Yvonne 77:25

Z

Zapka 6:22 65:15

0

07-21221-CIV-ALTONAGA 1:3

1

1 1:24 10:22 12:1 29:22,23 38:9,12 53:3 83:9
1st 18:12
1,000 19:25
1,000-page 17:6
1.982 19:17
10 2:7 61:20 85:3
10,000 43:13 57:10
10:31 85:5
100-page 28:10
1000 2:4
10006 3:19
10019 3:15
10020 4:4
11th 20:14,16 21:5 24:3,3 27:15 28:14 48:8,13 59:12,17,21 69:21 70:9 73:16 74:18 83:3,20,20 84:5
1100 3:6
1111 2:17 3:9
116 59:19
12 33:7
12(b)(6) 72:9 85:22
1251 4:3 48:16
128 20:13 83:10
13 89:6
13th 2:20
1380 59:19
15 5:24 6:5 56:22
16 89:6
161 11:11
162 13:20,21 14:22
16236 4:8
17 16:13 47:3,24 56:8 71:6,7 72:23
174 23:19
176 80:13
177 80:17
178 81:2
179 81:6
19 5:20
1900 2:12,12,17

2

2 1:19 12:25 29:22 33:7 38:17 48:19 53:3
20 5:10 6:6 66:4
20004 2:21
20005 3:24
2003 91:3
2007 41:13 52:11 61:19
2008 1:10
201 2:4
202.434.5238 3:24
202.637.5600 2:21
21 5:11 87:22
2100 3:6
212.509.9400 3:19
212.839.5300 3:15
213.229.7000 3:4
214.698.3100 3:7
22 5:17 87:22
2250 1:24
23 6:11 35:10 44:4 61:3 79:14 80:11 91:11
2300 1:19
24 5:18 76:17 77:16,24
2500 3:9
26 5:14
28 10:22 76:22,23

3

3 29:2,2,3,19 41:1,2 46:25
3rd 1:24
30 35:11,12 45:2
301 4:13 94:6
305.358.6555 1:20
305.373.4000 2:4
305.373.6600 1:25
305.459.6500 2:18
305.523.5518 4:14 94:7
305.523.5519 4:14 94:7
32 49:5
33 46:18
33128-7792 4:14 94:7
33131 1:20,25 2:4,18 3:10
333 3:3
33401 2:13
34 17:25
340 48:16
37 6:2

4

4 1:10
4-13 4:8
40 30:14
404 4:13 94:6
42 30:11,13
43 30:14 77:25
44 31:7
45 3:19
45402 2:8
45415 61:19
47 34:17
48 6:8,10 12:24
49 6:12

5

500 2:7
52 55:14
54 6:13,16
55 5:25 6:4
555 2:20
56 5:19,23 6:3
561.650.7200 2:13
57 5:12,22 6:7
59 5:16 6:21

6

60 5:21 37:3
61 5:13
63 37:3
65 6:22
69 5:15 38:21 40:9 42:16 45:2,13 67:1

7

70 6:1 46:17
71 6:15 50:1
72 47:17
725 3:23
73 6:9,17 50:1
75201 3:7
777 2:12
787 3:14

8

8 9:16 10:14 15:2 17:16,22 18:24 19:9 25:24 26:7,22 50:24 71:17,19 72:21 79:20 85:16,17,22
83 6:18,19
84 6:14
858.756.6342 4:9

9

9 6:20 25:24
9(b) 17:8 26:22,23 28:14,16 37:5,9 38:7 51:3 59:22,22 69:13
90071 3:4
92067 4:8
94 5:4