

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 07-21221-CIV-ALTONAGA/BROWN

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

Plaintiffs,

vs.

MARS, INCORPORATED, *et al.*,

Defendants.

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**DECLARATION OF KRISTEN E. CAVERLY IN SUPPORT OF DEFENDANTS'**  
**MOTION TO COMPEL THE DEPOSITIONS OF PLAINTIFFS**  
**AND INCORPORATED MEMORANDUM OF LAW**

1. I am over the age of 18 and have personal knowledge of the facts set forth herein or know of such facts from my review of the case files for this action, which are maintained by my office in the normal course of business. I am lead counsel for defendant Natura Pet Products, Inc. and admitted *pro hac vice* in the action.

2. On April 16, 2008, acting on behalf of all Defendants<sup>1</sup> with respect to coordination of Plaintiffs' depositions, I sent a letter to Plaintiffs' counsel, Catherine MacIvor, proposing dates, order and times of depositions of each of the 33 named plaintiffs in this action on successive days in Miami, Florida, beginning the week of May 12, 2008. A true and correct copy of my April 16, 2008 letter to Ms. MacIvor is attached to the motion as Exhibit C.

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<sup>1</sup> Defendant Kroger is excluded from involvement with the deposition scheduling and meet and confer process as their lack of personal jurisdiction arguments are pending.

3. The following day, on April 17, 2008, a paralegal with Ms. MacIvor's firm, Russell Keith, advised me that Ms. MacIvor was unavailable, but that a conference call would be set on her return to the office Monday, April 21, to discuss the deposition schedule proposed in Defendants' April 16 letter.

4. On April 21, 2008, Ms. MacIvor failed to schedule the conference call or otherwise respond to Defendants' April 16 letter, and also failed to acknowledge my April 16 email confirming my availability for a telephone conference at Ms. MacIvor's convenience.

5. On April 23, 2008, Philip Sechler and I had a phone call with Catherine MacIvor in which she stated that she was unavailable for various periods between then and July, so the depositions could not begin when Defendants requested. She further explained that because each of her clients purportedly required her to personally defend their respective depositions, no deposition could be scheduled during periods of Ms. MacIvor's unavailability. Ms. MacIvor also stated that it would be burdensome for many of her clients to travel to Miami for the taking of their depositions. Mr. Sechler and I indicated defendants would consider taking some depositions outside of Miami if the depositions could be done in major cities and in blocks. Ms. MacIvor did not offer an alternative schedule on the call but promised to do so.

6. On April 28, acting on behalf of all Defendants, I served notices of deposition directed to each of the named Plaintiffs for depositions beginning May 12, 2008 in Miami, Florida. True and correct copies of the deposition notices are attached as Composite Exhibit D to the Motion. My email transmitting the notices, which is attached to the Motion as Exhibit E, made clear that Defendants "have set [the depositions] in Miami as we suggested, but we are open to working with you on the dates and locations as we discussed on Wednesday [April 23]."

7. On May 1, 2008, Ms. MacIvor notified me that she had “extensive conflicts” with the noticed deposition dates and complained that notices were served “without first waiting for me to check with the Plaintiffs as to their availability and travel issues.” A true and correct copy of Ms. MacIvor’s May 1, 2008 email to me is attached to the Motion as Exhibit F. A week later, Ms. MacIvor still had not provided an alternate deposition proposal, but on May 7, 2008, in a telephone conference with many of the Defendants including myself concerning document production, Ms. MacIvor promised to do so promptly.

8. On May 12, 2008, the date for the first of the noticed depositions, Plaintiffs’ counsel had not produced the noticed deponent, filed a motion for protective order objecting to the deposition, or proposed an alternative deposition schedule.

9. On May 12, 2008, I again wrote to Ms. MacIvor pressing for a response to Defendants’ depositions schedule and stating “the footnote in your letter regarding the document productions to the effect that you would not even be available to begin depositions until mid-July was very discouraging. If we wait until mid-July to begin the depositions, there is little chance that we will finish even Plaintiffs’ depositions before the end of August and that would mean taking a deposition every day for six weeks, which is hardly favorable to anyone’s schedule, particularly since you wish to take the depositions in various locations around the country rather than in Miami as defendants suggested. With the number of plaintiffs you have, the travel which will be required for each group of depositions, and the short time defendants have to prepare to defend your class certification motion, it is very important that we get these depositions on everyone’s calendars soon.” A true and correct copy of my May 12, 2008 email to Catherine MacIvor is attached to the Motion as Exhibit G.

10. On May 14, Ms. MacIvor provided a deposition schedule which proposed that:

- Plaintiffs' depositions would not commence until August 4, 2008 and would end on October 10 – less than a month before the class certification deadline.
- Depositions would proceed in various locations throughout the country, including New York, Las Vegas, Washington, D.C., St. Louis, and Minneapolis, to relieve Plaintiffs of the burden of traveling a great distance from their homes.

A true and correct copy of the May 14, 2008 letter from Catherine MacIvor to me is attached as Exhibit H to the Motion.

11. Defendants agreed to Plaintiff's May 14 proposed schedule with some minor adjustments for particular plaintiffs, but asking Plaintiffs' counsel to "please bear in mind that many of the defendants feel they are making an enormous concession in not requiring each plaintiff to travel to Miami to be deposed, as the rules provide and as noticed. In addition, since the depositions were noticed to commence in May and run through to July, it is a considerable further concession to allow the deposition not to begin until August to accommodate your schedule." A true and correct copy of my May 22, 2008 email to Ms. MacIvor is attached to the Motion as Exhibit I.

12. Plaintiffs' counsel confirmed in a June 4, 2008 email to me that "we can agree to almost all of the terms with a few exceptions." A true and correct copy of the June 4, 2008 email from Ms. MacIvor to me is attached as Exhibit K to the Motion.

13. On June 9, 2008, Ms. MacIvor and I exchanged various emails about the details of the deposition schedule in preparation for me presenting a formal stipulation later that week. True and correct copies of emails between Ms. MacIvor and me dated June 9, 2008 are attached to the Motion as Composite Exhibit L.

14. I worked with Defendants to prepare a stipulated agreement, reflecting months of negotiations amongst themselves and between opposing counsel, which I sent to Ms. MacIvor on June 13, 2008. A true and correct copy of my June 13, 2008 email to Catherine MacIvor and the

attached Stipulation Scheduling Plaintiffs' Deposition and Conditions Thereto are attached to the Motion as Exhibits M and N, respectively.

15. Plaintiffs' counsel failed to provide any response to the proposed stipulation by June 18, 2008.

16. On June 20, 2008, Juli Ann Lund, in my presence and with a copy to me, sent an email to Ms. MacIvor as to the status of Ms. MacIvor's review of the deposition stipulation. Ms. MacIvor responded that she had not yet reviewed the stipulation. True and correct copies of the emails dated June 20, 2008 between Ms. Lund and Ms. MacIvor are attached as Exhibits O and P to the Motion.

17. On June 23, 2008, I received a copy of the June 23, 2008 email from Ms. Lund to Ms. MacIvor, which is attached as Exhibit Q to the Motion.

18. On June 27, 2008, I sent via email and facsimile a letter to Ms. MacIvor inquiring about the status of the stipulation. A true and correct copy of my email and letter are attached as Exhibit R to the Motion. Ms. MacIvor acknowledged the email on June 27 but said she could not open the attachment remotely and asked that the letter be sent to Mr. Keegan.

19. On June 30, 2008, I sent a facsimile to Mr. Keegan which included my June 27, 2008 letter to Ms. MacIvor and a copy of the June 13 deposition stipulation. A true and correct copy of my June 30, 2008 facsimile to Mr. Keegan is attached to the Motion as Exhibit S. Mr. Keegan did not respond to this letter.

20. I advised Plaintiffs' counsel on July 1, 2008 that if she failed to respond regarding the dates and locations contained in the stipulation sent June 13 by the close of business on July 2, 2008, Defendants would move for entry of an order compelling Plaintiffs to appear for the

taking of their depositions beginning August 4, 2008 in Miami. A true and correct copy of my July 1, 2008 email to Ms. MacIvor is attached as Exhibit T to the Motion.

21. Ms. MacIvor responded to my email on July 1, 2008 that the stipulation was acceptable if two changes were made – the city where plaintiff Linda Brown was to be deposed and the date – now June 30 – on which Plaintiffs were to provide discovery responses. Ms. MacIvor said that she would be available on July 2 in the afternoon to discuss the changes. A true and correct copy of Ms. MacIvor’s July 1, 2008 email to me is attached as Exhibit U to the Motion.

22. On July 2, 2008, Mr. Sechler and I called Ms. MacIvor at her office and on her cell phone. She did not answer at either number, so Mr. Sechler left a message and I sent a follow-up email attaching the stipulation with the revisions Ms. MacIvor had requested. Mr. Keegan was copied on that email. A true and correct copy of my follow-up email dated July 2, 2008 is attached as Exhibit V to the Motion.

23. On July 3, 2008, Ms. MacIvor responded to the July 2 phone message with an email saying that she was available then to speak about the stipulation. As Mr. Sechler was out of the office that day, I called Ms. MacIvor. Ms. MacIvor again confirmed on the phone that the stipulation was acceptable and said that she would sign it when she returned to the office after the 4<sup>th</sup> of July weekend. She did not return the stipulation the following Monday.

24. On July 9, 2008, I sent an email to Mr. Baker, new Plaintiffs’ counsel, asking about the status of the stipulation and Plaintiffs’ deposition dates. A true and correct copy of my email to Mr. Baker of July 9, 2008 is attached to the Motion as Exhibit W.

25. At a meet and confer by telephone conference with Patrick Keegan, Jason Baker and Catherine MacIvor on July 15, 2008, Mr. Keegan stated that he would not be producing any

of the Plaintiffs for deposition about their claims against the Defendants on the schedule beginning August 4. Mr. Keegan indicated on the phone call that depositions could proceed as to the six Plaintiffs who purchased products from Defendant Natura Pet Products, Inc., but only with respect to their claims against Natura and only as to questions about the Natura products they purchased.

26. After hours on July 17, 2008, Mr. Keegan sent a letter to defense counsel formally proposing that no depositions of Plaintiffs would go forward on the schedule and terms the parties spent months negotiating. A true and correct copy of Mr. Keegan's July 17, 2008 letter is attached as Exhibit X to the Motion.

The foregoing is stated under penalty of perjury under the laws of the United States of America. Executed in San Diego, California on July 21, 2008.

  
Kristen E. Caverly, Esq.