

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/Turnoff

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

Plaintiffs/Class Representatives,

vs.

MARS INC., *et al.*

Defendants.

**PLAINTIFFS' MOTION TO ADD AND/OR SUBSTITUTE
ARNA CORTAZZO AS A PLAINTIFF/CLASS REPRESENTATIVE**

Plaintiffs, Renee Blaszkowski, *et al.*, respectfully request this Court to enter an Order adding and/or substituting Arna Cortazzo as a Plaintiff/Class Representative in this case, and as grounds therefor, state as follows:

As this Court is aware, the Plaintiffs have consistently taken the position since early July 2008 that, as a result of the settlement reached in the case of *In re Pet Food Products Liability Litigation*, CIV NO.: 07-2867 (NLH/AMD), a Multi-District Litigation case in the United States District Court for the District of New Jersey (the "Multi-District Case"), the claims in this pending case have been subsumed in the broad release language of that settlement. Thus, because all of the Defendants presently before this Court, with the exception of Defendant, Natura Pet Products, Inc. ("Natura") are parties to the Multi-District Case, all claims in this case will likely be void based upon the Multi-District Case settlement. As a result, the Plaintiffs have are in the process of attempting to negotiate a settlement for the dismissal of all of the Defendants except Natura, which means that only five (5) Plaintiffs will remain in this case (not

including Ms. Cortazzo) and only one (1) Defendant. Thus, only claims against Natura will be prosecuted going forward. Accordingly, counsel for the Plaintiffs will proceed with only those Plaintiffs who incurred damages as a result of using Natura's pet food products, including Ms. Cortazzo.

The two Florida Plaintiffs in this case, Patricia Davis and Raul Isern, however, did not use pet food products manufactured by Natura. Conversely, Arna Cortazzo, a Florida resident, did purchase and use Natura's pet food products and experienced damages as a result of same. Accordingly, the Plaintiffs in this matter seek to add and/or substitute Ms. Cortazzo for Ms. Davis or Mr. Isern so that jurisdiction may be retained by this Court once the claims of Ms. Davis and/or Ms. Isern are dismissed.¹

When requesting a modification of a Rule 16 Scheduling Order, the moving party must demonstrate "good cause" and receive leave of the Court. Fed. R. Civ. P. 16(b); *Alexander v. AOL Time Warner, Inc.*, 132 Fed. Appx. 267, 269 (11th Cir. 2005); *Murphy v. S. Energy Homes, Inc.*, 2007 U.S. Dist. LEXIS 52111, **1-2 (M.D. Ala. July 18, 2007). "The good cause standard for modification of a scheduling order 'precludes modification unless the schedule cannot be met despite the diligence of the party seeking the extension.' *Am. Gen. Life Ins. Co. v. Schoenthal Family, LLC*, 2007 U.S. Dist. LEXIS 84076 (N.D. Ga. Nov. 14, 2007) (quoting *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998)) (emphasis added). In this case, at the time the January 16 deadline expired, the Plaintiffs had no way of knowing that the Multi-District Case would encompass all of the claims in this litigation, except for those against Natura. Further, the settlement agreement in the Multi-District Case was not announced until several months *after* the January 16, 2008 deadline, making impossible compliance with the deadline under these

¹ While the Court previously set January 18, 2008 as a deadline for adding parties [DE 257], the circumstances have changed since that time dramatically based upon the settlement that was publicly announced after the deadline to add parties.

particular circumstances. Consequently, despite the Plaintiffs' diligence throughout the entire course of this litigation, it is difficult to imagine how the Plaintiffs could have otherwise avoided these unpredictable events.

Should the Court find that the Plaintiffs possess good cause to add Ms. Cortazzo, Federal Rule of Civil Procedure 21 would govern the addition of a plaintiff to this case. Rule 21 provides that “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” Fed. R. Civ. P. 21 (emphasis added). *See also Rollins Burdick Hunter, Inc. v. Lemberger*, 105 F.R.D. 631, 636 (E.D. Wis. 1985) (stating that Rule 21 “has long been invoked as a remedial device for the addition of parties where such is appropriate in the interest of justice[]” and “is specifically intended to permit the joinder of a person who, through inadvertence, mistake, or for some other reason, had not been made a party and is later found to be necessary or desirable.”); *Truncale v. Universal Pictures Co.*, 82 F. Supp. 576, 578 (D.N.Y. 1949) (“In so far as this rule relates to the addition of parties, it is intended to permit the bringing in of a person who, through inadvertence, mistake or for some other reason, had not been made a party and whose presence as a party is later found necessary or desirable[.]”). In explaining Rule 21, the court in *Four Star Capital Corp. v. Nynex Corp.*, 183 F.R.D. 91, 98 (S.D.N.Y. 1997) stated:

Rule 21, F.R. Civ. P grants the court “broad discretion to permit a change in the parties at any stage of a litigation.” *See Int’l Union of Bricklayers & Allied Craftsmen Local No. 5 v. Hudson Valley Dist. Council Bricklayers & Allied Craftsmen Joint Ben. Funds*, 162 F.R.D. 17, 24 (S.D.N.Y. 1995) (Conner, J.). The court’s decision to permit joinder is based on whether the claims of the additional plaintiffs arose out of the same or separate acts or occurrences, *see Kahn, et al. v. Chase Manhattan Bank, N.A.*, 1995 U.S. Dist. LEXIS 11772, No. 90 Civ. 2824, 1995 WL 491067, at 3 (Aug. 17, 1995) (McKenna, J.); whether the party seeking joinder has unnecessarily delayed the proceedings; and whether the nonmovant would be prejudiced by the addition, *see Thomas v. Mitchell-Bradford Chemical Co.*, 582 F. Supp. 1373, 1376 (E.D.N.Y. 1984).

Based upon application of all three requirements set forth in *Four Star Capita*, the addition of Ms. Cortazzo is not only highly appropriate, but absolutely necessary so as not to deprive the Plaintiffs of whatever remedies they have left. First, Ms. Cortazzo was a victim of the same alleged acts and unlawful activity by Natura as the original Plaintiffs—namely deceptive and misleading marketing and advertising to induce purchase of Natura’s pet food products. *Compare with Gropp v. United Airlines*, 847 F. Supp. 941, 944 (M.D. Fla. 1994) (although applying Federal Rule of Civil Procedure 20, the court found that “the addition of the five additional [plaintiffs was] proper as Plaintiffs assert that these five were victims of the same alleged acts of harassment and unlawful activity as were the original five Plaintiffs[.]”). Second, the Plaintiffs are not filing this Motion for the purpose of delay, but rather to simply permit this case to proceed and eventually conclude in the same Honorable Court where it began and to allow at least some of the Plaintiffs a remedy. Moreover, this Motion could not have been filed sooner as the previously-mentioned agreement with all of the Defendants other than Natura had not been publicly announced until early June. Finally, although all of the Defendants have objected to adding another Plaintiff at this point simply because the deadline has expired, only Defendant Natura will be impacted by the addition and/or substitution of Ms. Cortazzo, a single Plaintiff. Yet, Natura will not be prejudiced if this Motion is granted as Ms. Cortazzo is in the process of preparing all of her discovery materials and has promised to deliver same to the undersigned within ten (10) days for prompt delivery to Natura. This would also occur prior to her deposition, which can be scheduled at a mutually convenient time. Moreover, Natura has not yet taken a deposition, so this will not impact any other Court deadlines because Ms. Cortazzo’s can be scheduled within the remaining time period for all depositions. Accordingly, the Plaintiffs respectfully request that this Court enter an Order permitting the addition and/or

substitution of Ms. Cortazzo as a Plaintiff so that this Court may retain jurisdiction of this case and the Plaintiffs who remain will not be deprived of whatever remedy remains.

WHEREFORE, the Plaintiffs respectfully request this Court to enter an Order granting the Plaintiffs leave of Court to add and/or substitute Arna Cortazzo as a Plaintiff/Class Representative in this case for all of the reasons set forth above and for all other relief that this court deems just and proper.

Dated: August 22, 2008
Miami, FL

RULE 7.1 CERTIFICATE

Prior to filing this Motion, Plaintiffs counsel, Catherine J. MacIvor, conferred with the Defendants about the substance of this Motion who did not agree to the relief requested herein base upon the expiration of the deadline to add parties of January 16, 2008 notwithstanding the fact that Defendant Natura will be the only Defendant remaining in the case going forward.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on August 22, 2008. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

/s Catherine J. MacIvor

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