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/Class Representatives,

vs.

MARS INC., *et al.*

Defendants.
_____/

NOTICE OF SERVING PLAINTIFF ARNA CORTAZZO'S UNEXECUTED RESPONSES TO MARS INCORPORATED'S FIRST SET OF INTERROGATORIES

Dated: September 3, 2008
Miami, FL

/s Catherine J. MacIvor
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Composite Exhibit "A"

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that these responses were served on all counsel or parties of record on the attached Service List via e-mail on September 3, 2008.

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PLAINTIFF, ARNA CORTAZZO'S RESPONSES TO DEFENDANT, MARS' INCORPORATED'S FIRST SET OF INTERROGATORIES

PLAINTIFFS' OBJECTIONS TO DEFINITIONS IN DEFENDANT MARS INC.'S FIRST SET OF INTERROGATORIES

Definition # 1

The Plaintiffs object to the definition of "you" "yours" and "yourselves" because it is overbroad to the extent that it includes a "spouse, relative, officers, employees, agents, investigators, representatives or other persons acting, or purporting to act, on behalf of the Plaintiffs. For example, in the context of interrogatory number 6, Defendant Mars, Inc., requests the Plaintiffs to "identify each website or electronic community (including weblogs, internet bulletin boards, and listservs) which *you* have maintained or to which *you* have contributed during the past five (5) years and for each, state the registered name *you* used, the nature of the website or electronic community, the internet address (URL), and the date or period of time during which *you* maintained or contributed to it." See Interrogatory number 6. Thus, based on this definition, *as to only one interrogatory*, each Plaintiff would have to interview a spouse, relatives, representatives, employees, etc. about whether they maintained or contributed to any sort of electronic internet communication whether or not it was related to this case or even a single issue in this case over a five (5) year period of time." The definition makes each and every interrogatory overbroad and unduly burdensome for the Plaintiffs to formulate a response. *Johnson v. Kraft Foods N. Am.,* 238 F.R.D. 648, 658-59 (D. Kan. 2006) ("[a] request may be overly broad on its face 'if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.' A request seeking documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.'"). The unnecessary definitional complexity is no less problematic with interrogatories. *In re U. S. Financial Sec. Litigation*, 74 F.R.D. 497, 498 (S.D. Cal. 1975) ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *T&H Landscaping, LLC v. Colo. Structures Inc*., 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Puerto Rico Aqueduct & Sewer Auth. v. Clow Corp*., 108 F.R.D. 304, 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts *pertaining to* this lawsuit" are overbroad or unduly burdensome) (emphasis added); *Alexander v. FBI*, 2000 U.S. Dist. LEXIS 8859, *9 (D.D.C. 2000) (holding that a plaintiff's interrogatory request for all documents that "in any way contain information relevant to" interrogatory answers is vague and overly broad because it does not allow the responding party to determine what documents plaintiff considers relevant).

Definition # 2

This definition expands each and every interrogatory such that the singular includes the plural "and vice versa" and the words "and" as well as "or" are both "conjunctive and disjunctive." If that were not already brad enough, the word "including" is defined to mean "without limitation." The definition makes each and every interrogatory overbroad and unduly burdensome for the Plaintiffs to formulate a response. *Kraft Foods N. Am.,* 238 F.R.D. at 658-59.

Definition # 4

The Plaintiffs object to the definition of "document" which is also overbroad in that the definition seeks information that "pertains directly or indirectly either to *any of the subjects listed below* or to *any other matter relevant to the issues in this action*." First, the use of the word "pertains," which is defined in Definition # 7, makes the definition overbroad because it encompasses two layers of definitional terms that are excessive. Thus, for example, in taking into account Definition # 7, the Plaintiffs would somehow have to figure out whether a document "indirectly" "relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts" "either to any of the subjects listed below or to any other matter relevant to the issues in this action." It is further difficult to determine what the Defendants mean by the use of the word indirectly. Second, expanding the scope to any matter that is relevant to the *subject matter of this action* expands the scope beyond the Fourth Amended Complaint. *See* Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause). Discovery obtainable without a showing of good cause relates to the Plaintiffs' claims. *Id.*

Definition # 7

The Plaintiffs object to the definition of "pertain to" and "pertaining to" since that is defined as "relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts." As discussed *supra,* it is subsumed in the definition of "documents" and thus expands the scope of any interrogatory to make it overly broad, particularly when used in an already broad interrogatory such as number 6, as set forth *supra* and *infra.* This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.,* 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc*., 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"). *Loubser v. Pala,* 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener v. SBC Pension Benefit Plan-Non-Bargained*

Program, 2007 U.S. Dist. LEXIS 21190, *16 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc. v. Union Pac. R.R. Co*., 2001 U.S. Dist. LEXIS 24647, *10 (D. Kan. 2001) (holding that a request for all documents that "relate to any claim for damages" is overbroad and unduly burdensome); *Clow Corp*., 108 F.R.D. at 313 (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp. v. Nami Res. Co*., LLC, 2006 U.S. Dist. LEXIS 38005, *2 (E.D. Ky. 2006) (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Pogue v. Woodford*, 2008 U.S. Dist. LEXIS 22438, *2 (E.D. Cal. 2008) (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague).

Second, requesting information regarding "*any other matter relevant to the issues in this action*" expands the scope beyond the Fourth Amended Complaint. *See* Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause); *Barrington v. Mortage IT, Inc*., 2007 U.S. Dist. LEXIS 90555, *9-10 (S.D. Fla. 2007); *McBride v. Rivers*, 170 Fed. Appx. 648, 659 (11th Cir. 2006); *Naples Cmty. Hosp., Inc. v. Medical Sav. Ins. Co*., 2006 U.S. Dist. LEXIS 25894, *7 (M.D. Fla. 2006) (all recognizing the "good cause" requirement for expanding the scope of discovery to "any matter relevant to the subject matter involved" under Fed. R. Civ. P. 26(b)(1)).

Definition # 8

The definition of pet should be limited to the class period of May 9, 2003 to May 9, 2007. *See Bowman v. General Motors Corp.*, 64 F.R.D. 62, 68 (E.D. Pa. 1974)(information after time of incident denied); *Waggener v. Unum Life Ins. Co. of Am*., 238 F. Supp. 2d 1179, 1188 (S.D. Cal. 2002) (in a claim for wrongful termination of disability benefits, a dispute arose over the definition of "disability" in an insurance policy. The court required defendant to produce documents that reflected the "definition of disability in the Gibson, Dunn & Crutcher policy *at the time Waggener's claim was terminated*) (emphasis added); *Martin v. Wal-Mart Stores*, Inc., 2007 U.S. Dist. LEXIS 89715, *8-9 (N.D. Ill. 2007) (holding that the definition of "electronic item" should be "limited to the item sold to Ms. Martin—the Zune MP3 player, as well as any other electronic items included in the return policy covering the Zune MP3 player").

Definition # 13

The Plaintiffs further object to this definition since it is vague and incomprehensible as phrased. It appears to ask for the full name and any alias, including user names and screen names in connection with posting comments to websites, business and, incredibly, the screen names, registered reader names used in connection with posting comments to websites, home addresses and *places of employment of the Plaintiffs' companion cats and dogs*. The Plaintiffs further object that it is overbroad because it seeks screen names, registered reader names, business

addresses of witnesses other than the Plaintiffs' companion cats and dogs and other irrelevant information, which would not lead to the discovery of admissible evidence, but would ultimately result in harassing the Plaintiffs and those with whom they associate. *Diversified Products Corp.*, 42 F.R.D. at 4 (holding that the use of unreasonable definitions may render an interrogatory overly burdensome); *Hertz v. Luzenac Am., Inc*., 2006 U.S. Dist. LEXIS 25945, *36 (D. Colo. 2006) (stating that if the burden of an interrogatory is unreasonable in light of its benefits, a party may properly object); *Griffin v. Memphis Sales & Mfg. Co*., 38 F.R.D. 54, 57 (N.D. Miss. 1965) (stating that an inquiry into the identity of plaintiff's relatives, when there is nothing in the pleadings or briefs suggesting they have a connection with the controversy, is irrelevant and not reasonably calculated to lead to discovery of admissible evidence); *Stephens v. City of Chicago*, 203 F.R.D. 353, 358 (N.D. Ill. 2001) (stating that interrogatories that are overly broad as to "make discovery so onerous and burdensome in terms of manpower, costs, and the general disruption to the defendants' business so as to coerce a settlement" are unacceptable).

PLAINTIFFS OBJECTIONS TO INSTRUCTIONS IN DEFENDANT, MARS, INC.'S FIRST SET OF INTERROGATORIES

Instruction # 1

The Plaintiff's object to instruction #1 because it contravenes the Federal Rules of Civil Procedure to the extent that it requires the Plaintiffs to either answer or object "in lieu of an answer" rather than answering that part of the interrogatory to which the Plaintiffs have no objection. This directly contradicts the plain language of Federal Rule of Civil Procedure 33 (b)(1), which specifically provides that each interrogatory shall be answered fully "unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable." Fed. R. Civ. P. 33 (b)(1).

INTERROGATORIES

1. Please identify each of your pets, as defined above, and for each, state the name, the breed, the date your ownership and/or care of the pet began, the age of the pet when your ownership and/or care of it began, the date your ownership and/or care of the pet ended (if any), the date of the pet's death (if any), and the name of its owner and/or primary care-giver.

Objection. The request is facially overbroad based upon the defined term "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Plaintiffs' companion cats or dogs. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may "require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit"); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and

necessary to the litigation at hand"); *Colo. Structures Inc*., 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp*., 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp*., 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc*., 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had "*no relevant knowledge concerning*" the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex*., 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc*., 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co*., 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

Notwithstanding the objection and without waiving it, as to her pets only during the period of time between May 9, 2003 and May 9, 2007, Ms. Cortazzo responds as follows:

Name	Breed	D/O	Age D/O	DOD	Caregiver
Hudson	GSD/Norwegian Elkhound Mix	10/2001	2 years old	N/A	Arna Cortazzo
Patches	Australian Cattle Dog	2000	3 years old	2007	Arna Cortazzo
Don Diego de La Vega (Diego)	Weimaraner	2004	3 years old	N/A	Arna Cortazzo
Matilda	DSH	1/2005	4 months old	N/A	Arna Cortazzo
Frankie	Manx	1992	10 months old	10/05	Arna Cortazzo

2. For each pet identified in response to Interrogatory No. 1, please identify any veterinarian or other professional who examined, treated, or provided any care to or advice regarding that pet, including the name, address, telephone number, place of employment and job title of each such person.

Objection. The temporal scope of this interrogatory is unlimited in time and is therefore, overbroad. It thus encompasses information well beyond the relevant time period of the Fourth Amended Complaint, which is May 9, 2003 through May 9, 2007. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 with 5 being the outermost edge of the proper scope of discovery. Ten (10) years well exceeds the outermost bound of the temporal scope of discovery. *Avirgan v. Hull*, 116 F.R.D. 591, 593 (S.D. Fla. 1987) (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Cherenfant v. Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, *8 (S.D. Fla. 2004) (in a discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Cohen v. Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, *2-3 (S.D. Fla. 2007) ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Adkins v. Christie*, 488 F.3d 1324, 1330 (11th Cir. 2007) (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde v. Bd. of Regents*, 2007 U.S. Dist. LEXIS 62700, *33-34 (S.D. Ga. 2007) (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection and without waiving it, Ms. Cortazzo will produce available veterinarian records for veterinary offices that she recollects using for the time period between May 9, 2003 and May 9, 2007 for all of the companion pets referenced in the response to interrogatory number 1. These records will be produced in lieu of a response per Federal Rule of Civil Procedure 33(d).

3. For each pet identified in response to Interrogatory No. 1, please identify any health concerns for which you consulted with, or sought treatment by, any veterinarian or other professional and, for each such health concern, state the nature of the concern, the date or time period during which it occurred, the name of any individual with whom you consulted regarding the concern, the names of all medications or remedies prescribed or otherwise recommended to address the concern, and the date or time period during which the pet used each such medication or remedy.

Objection. The request is facially overbroad based upon the defined term "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Plaintiffs companion cats or dogs health and/or illness. *See*

***Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Socas*, 2008 U.S. Dist. LEXIS 16683, *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Aero Holdings, Inc*., 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had *"no relevant knowledge concerning"* the case) (emphasis added); *Brooks v. S.C. Johnson & Son, Inc*.,, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added); *Colo. Structures Inc*., 2007 U.S. Dist. LEXIS 63532, at *5 (interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp*., 108 F.R.D. 304, 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome) (internal quotations omitted); *Pioneer Res. Corp*., 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex*., 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc*., 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co*., 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D.**

Notwithstanding the objection, and without waiving it, as to her pets only, Ms. Cortazzo will produce veterinarian records for the time period between May 9, 2003 and May 9, 2007 for all of the companion pets referenced in the response to interrogatory number 1 in lieu of a response per Federal Rule of Civil Procedure 33(d).

4. For each pet identified in response to Interrogatory No. 1, please identify all foods, whether commercially available or not, provided by you to the pet since the date your care of it began and for each such food, state the brand and product name (if any), the name and address of the retail store where it was purchased (if applicable), the date or time period during which it was purchased (if applicable), the date or time period during which it was provided to the pet, and the amount and frequency with which the food was provided to the pet.

Objection. The request is facially overbroad based upon the defined term "you" and "your"because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the purchase of food for the Plaintiffs' companion cats or

dogs. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Socas*, 2008 U.S. Dist. LEXIS 16683, *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had *"no relevant knowledge concerning"* the case) (emphasis added); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Brooks*, 1990 U.S. Dist. LEXIS 19395, *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added); *Clow Corp.*, 108 F.R.D. at 313 (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome") (internal quotations omitted). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

The temporal scope of this interrogatory is also unlimited in time and is therefore overbroad since it encompasses information well beyond the relevant time period of the Fourth Amended Complaint. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four (4) year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 with 5 being the outermost edge of the proper scope of discovery. Ten (10) years well exceeds the outermost bound of the temporal scope of discovery. *Avirgan*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Cherenfant*, 2004 U.S. Dist. LEXIS 30458, *8 (in a discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Cohen v. Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Adkins v. Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde v. Bd. of Regents*, 2007 U.S. Dist. LEXIS 62700, *33-34 (stating that three to f

Notwithstanding the objection, the Plaintiffs will respond to this request for the time period between May 9, 2003 and May 9, 2007, which is the Class Period defined in the Fourth Amended Complaint.

The following information applies to Ms. Cortazzo's pets only during the Class Period defined in the Fourth Amended Complaint to the best of her recollection.

FOOD PURCHASED:

Hudson	
Evo Dry Dog Food	**Pet Pros Pet Store** **3695 Murrell Road** **Rockledge FL 32955** **2003-2007**
Nutro Chicken and Rice	**Petsmart** **Melbourne Fl** **2001-2002**
Patches:	
Evo	**Pet Pros Pet Store** **2003-2005, 2005-2008**
Innova Reduced Calorie	**Pet Pros Pet Store** **2006-2008**
Hills Science Diet Rx	**Rockledge Animal Clinic** **2003**
Diego:	
Evo Dry Dog Food	**Pet Pros Pet Store** **2004-2008**
Matilda:	
Evo Dry Cat Food	**Pet Pros** **2005-2008**
Frankie:	
Evo Dry Cat Food	**Pet Pros** **2003-2005**
Hills Science Diet	**Rockledge Animal Clinic** **2001 – 2003**

5. Please identify yourself, including your full name and any prior names used, all electronic identities used at any time during the past five (5) years (including email addresses,

user names, or screen names), all addresses at which you have lived for the past ten (10) years, your date of birth, and your driver's license number and state of issuance.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined term "you" and "your" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not parties to this action actually have any sort of information regarding electronic identities that they used during the past five (5) years, which is wholly irrelevant. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Aero Holdings, Inc*., 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had "*no relevant knowledge concerning*" the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added); *Rivera v. NIBCO, Inc*., 384 F.3d 822, 825 (9th Cir. 2004) (discovery of plaintiff's birthplace is irrelevant); *Myricks v. FRB*, 480 F.3d 1036, 1042 (11th Cir. 2007) (Upholding district court's decision to deny "irrelevant discovery" of severance agreements not related to the claim); *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 95 (Fla. 1995) (a litigant is not "entitled carte blanche to irrelevant discovery"); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague). The definition of "you" and "yours" would also require the Plaintiffs to divulge the date of birth, social security numbers and drivers license information of a spouse, relatives, agents, employees, etc., which is highly confidential and completely irrelevant since these persons are not parties to this lawsuit and such information cannot be obtained without a properly issued subpoena under Federal Rule of Civil Procedure 45. While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex*., 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc*., 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co*., 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

To the extent that this interrogatory seeks all electronic identities used at any time during the past five (5) years (including all email addresses, user names, or screen names), this is an invasion of the Plaintiffs' right to privacy to keep sensitive information personal and confidential. For example, the request is so broad that it would encompass "electronic identities," user names" or "screen names" used for online banking, credit cards, utilities, etc., which has no relevance whatsoever in this case. Courts have held that, insofar as discovery requests seek confidential information such as driver's licenses and social

security numbers, privacy concerns are relevant, and the party requesting such information "must show that the value of the information sought would outweigh the privacy interests of the affected individuals." *Case v. Platte County*, 2004 U.S. Dist. LEXIS 18052, 2004 WL 1944777, at *2 (D. Neb. June 11, 2004)(citing *Onwuka v. Fed. Express Corp.*, 178 F.R.D. at 517). *See Walters v. Breaux*, 200 F.R. D. 271, 274 (W.D. La. 2001)(citing cases protecting legitimate privacy concerns with respect to social-security numbers). Even when social-security information is needed to help locate individuals, courts will decline to compel production of social-security numbers when other identifying and locating information is available. *See McDougal-Wilson v. Goodyear Tire and Rubber Co.*, 232 F.R.D. 246, 252 (E.D.N.C. 2005); *Raddatz v. Standard Register Co.*, 177 F.R.D. 446, 448 (D. Minn. 1997)(stating that court should not order the production of personnel files in their entirety where less intrusive means may be used to obtain the relevant information). *Delgado v. Ortho-McNeil, Inc.*, 2007 U.S. Dist. LEXIS 74731, *10 (C.D. Cal. 2007) (citing privacy concerns, the defendant objected to plaintiffs request for the names, addresses, phone numbers, email addresses, and social security numbers. The Court agreed that the "production of telephone numbers, email addresses, and social security numbers is inappropriate"). *McGee v. City of Chicago*, 2005 U.S. Dist. LEXIS 30925, 7-8 (N.D. Ill. 2005) (good cause exists to prohibit public disclosure of private information, including a drivers license number, because such disclosure may "cause the Individual Defendants unnecessary annoyance or embarrassment and would unfairly and gratuitously invade their privacy"); *Chavez v. Daimler Chrysler Corp.*, 206 F.R.D. 615, 622 (S.D. Ind. 2002) ("To the extent that Chavez seeks the names and phone numbers of current supervisory-level employees, such information may be redacted because these contacts are to be made through Defendant's counsel only"); *Vogt v. Tex. Instruments, Inc.*, 2006 U.S. Dist. LEXIS 67226, 11-12 (N.D. Tex. 2006) (citing privacy concerns, defendant objected to providing plaintiff with names, last known addresses, phone numbers, and social security numbers of employees at defendant's facility. In response, the court stated: "The Court agrees with Defendant's concerns regarding the privacy of its employees. At this stage, Plaintiffs have not demonstrated a need for locating information beyond names and addresses…If any notices are returned to Plaintiffs' counsel because the contact information is inaccurate, Plaintiffs may petition the District Court to order Defendant to produce the phone numbers and/or Social Security numbers of those potential opt-in plaintiffs"); *In re B & H Towing, Inc.*, 2006 U.S. Dist. LEXIS 42758, 14-15 (S.D. W. Va. 2006) (in response to an interrogatory seeking the disclosure of knowledge of company employees, the court required a redaction of social security numbers, phone numbers, addresses, and other private information). *Pendlebury v. Starbucks Coffee Co.*, 2005 U.S. Dist. LEXIS 36748, *9-10 (S.D. Fla. 2005) (defendant asked plaintiff to identify "all names, identifiers, internet handles,' electronic mail addresses, or other descriptors used by plaintiffs when sending electronic mail or posting any content, message, or other communication on any chat board, internet web log, internet web site, chat room, text message, or other internet media or electronic communication that relates or refers to Starbucks or their employment with Starbucks". The court held that "this Interrogatory sweeps too broadly and again infringes on Plaintiffs' privacy rights. Rather than seeking Plaintiffs' (private) e-mail addresses and "internet handles," the Court concludes that Defendant should first establish a foundation for the request by inquiring (through an interrogatory or at a deposition) whether Plaintiffs have, in fact, posted messages concerning store manager

duties or hours worked. Only if this question is answered in the affirmative should Plaintiffs then be required to divulge this private information").

Additionally, providing date of birth and driver's license information may subject the Plaintiffs to identity theft if such information were to be filed in the public record or obtained by any third party for an improper use as a result of the disclosure during the lawsuit. There are a number of law firms involved in this lawsuit and a number of attorneys have either been dismissed or withdrawn. It is unnecessary and inappropriate to risk identity theft to provide this information or to subject the Plaintiffs to any unnecessary risk should her confidential personal information be publicly disclosed.

Such a request is also irrelevant and not reasonably calculated to lead to the discovery of evidence that will be admissible at trial. Courts have found that private information from represented parties such as driver's license, telephone and social-security numbers are confidential and not reasonably calculated to lead to the discovery of admissible information. *See* *Mike v. Dymon*, No. 95-2405-EEO, 1996 U.S. Dist. LEXIS 17329, 1996 WL 674007, at *7 (D. Kan. November 14, 1996)("The court does not find that requests for social security numbers and dates of birth of all individuals who provided information to answer the interrogatories are reasonably calculated to lead to the discovery of admissible evidence.").

Moreover, to the extent that a Plaintiff has an electronic identity, email address and screen name in connection with her employment which is the property of her company and which the company considers to be highly proprietary and confidential, this is also objectionable and should be sought to the extent that it is relevant under Rule 45.

Moreover, this interrogatory is also overbroad to the extent that the Defendants have requested the Plaintiffs to provide documents as to all electronic information that has been posted, sent or received in relation to this lawsuit, which is irrelevant. See Defendants "Joint" First Requests for the Production of Documents # 6-7, 20, 21, 22, 23, which include e-mails and web sites, weblogs, electronic bulletin boards or other electronic media. It is sheer harassment to request such highly personal information as screen names and electronic identities, which is so broad that it would encompass financial account information, identities used to order retail products such as clothing and books, and could result in identity theft if such information were disclosed and/or filed in the public record during the course of this lawsuit.

This request is also objectionable to the extent that it infringes on the Plaintiffs' First Amendment right to anonymous free speech for all communications made anonymously on the internet or in any other written communication. The First Amendment to the United States Constitution provides that "Congress shall make no law...abridging the freedom of speech." U.S. CONST. amend. I. It is a long-standing principle that anonymity plays an important role in free speech and expression and, accordingly, constitutional principles are invoked whenever a threat to that anonymity is posed such as the request at issue. Indeed, the right to speak anonymously or pseudonymously has its roots in a long tradition of American political thinkers who published their works anonymously. James Madison, Alexander Hamilton, and John Jay authored the Federalist Papers under the name

"Publius," referring to a defender of the ancient Roman Republic. Dawn C. Nunziato, *Freedom of Expression, Democratic Norms, and Internet Governance, 52 Emory L.J. 187, 252 n. 250 (2003).* "It has been asserted that, between 1789 and 1809, six presidents, fifteen cabinet members, twenty senators, and thirty-four congressman published anonymous political writings." Jennifer B. Wieland, *Note: Death of Publius: Toward a World Without Anonymous Speech, 17 J.L. & POL. 589, 592 (2001)* (relying on *Comment, The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil,* 70 YALE L.J. 1084 (1961)).

The seminal case articulating the constitutionally protected privacy interests of an anonymous speaker is the 1995 Supreme Court case of *McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995).* There, the central issue was whether an Ohio statute, which prohibited the distribution of anonymous campaign literature, violated an individual's free speech rights to distribute anonymous pamphlets opposing a school tax levy. The Court found, that regarding issues of public concern, anonymous speech is protected under the First Amendment. The Court declared that Ohio could not "seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented." *McIntyre,* 514 U.S. at 357. *See also Talley v. California,* 362 U.S. 60, 65 (1960) (anonymous pamphlets seeking boycotts of allegedly racially discriminatory businesses); *Church of the Am. Knights of the Ku Klux Klan v. Kerik,* 232 F.Supp.2d 205 (S.D.N.Y. 2002) (right to wear masks at KKK rally).

Two years later, the Supreme Court applied the principle of constitutionally protected anonymous speech to internet postings in *Reno v. American Civil Liberties Union,* 521 U.S. 844 (1997). The protection of anonymity takes on added significance on the Internet, a medium which provides individuals with unprecedented opportunities to both publish and receive information. While the expressive powers of the Internet have long been understood by its users, the medium's potential attained recognized constitutional status only in 1997. In *ACLU v. Reno,* the Supreme Court reviewed the Communications Decency Act, the first federal statute seeking to regulate Internet content. In a landmark decision defining the scope of the online medium's First Amendment protection, the Court noted that the Internet

> **provides relatively unlimited, low-cost capacity for communication of all kinds ...this dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.**

521 U.S. at 870. The Court concluded that there is "*no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium*." *Id.* What the Court described as "the vast democratic fora of the Internet" would be stifled if users were unable to preserve their anonymity online. *Id.* at 868. The courts have long recognized that compelled identification can chill expression.

In *Reno*, the Court was asked to review the constitutionality of the Communications Decency Act provisions seeking to protect minors from harmful material on the Internet. In that landmark decision defining free speech rights on the internet, the Court illustrated how the internet provides for virtually unlimited capacity for communication of all kinds. Indeed, the Court observed:

> **This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.**

***Reno v. ACLU*, 521 U.S. at 870. The Court, harkening back to its decision in *McIntyre*, ultimately concluded that "the vast democratic forum of the internet" would be stifled if users were unable to preserve their anonymity online. *Id*. at 868. Quoting *McIntyre*, the Court observed that compelled identification can have a chill on freedom of speech and expression, and that "anonymity is a shield from the tyranny of the majority…It thus exemplifies the purpose behind the Bill of rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation -- and their ideas from suppression -- at the hand of an intolerant society**." ***McIntyre*, 514 U.S. at 357.**

Similarly, in *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999), the United States District Court for the Northern District of California sought to reach an equilibrium between the plaintiff's right to pursue a legitimate cause of action against concerns for the potential chilling effect of revealing online anonymity. Confronted with this dilemma, the court observed:

> **People are permitted to interact pseudonymously and anonymously with each other so long as those act are not in violation of the law. This ability to speak one's mind without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate . . . . People who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identities.**

***Id. at 578.* Rather than haphazardly reveal the identities of anonymous speakers as a means of silencing unlawful speech, courts have instead relied on the speaker's audience to discern the content of the message. *See McIntyre, 514 U.S. at 348 n.11* (stating "don't underestimate the common man. People are intelligent enough to evaluate the source of an anonymous writing . . . . They can evaluate its anonymity along with its message, as long as they are permitted . . . to read that message.") (citations omitted).**

While it is abundantly clear nondisclosure of identity is a fundamental principle of a free society, it is also necessarily critical for the preservation of blogs which espouse unpopular

or underrepresented views, engage in legitimate exposure of illegal practices, promote consumer safety issues or deal with issues n which government officials or those connected with the feed industry can speak anonymously with consumers without fear of retribution from corporate giants. *See Abrams v. United States, 250 U.S. 616, 630 (1919)* (Holmes, J., dissenting); *see also Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969)* (stating that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail . . . ."). "In contemporary society, the individual is often overwhelmed by the size, wealth, and power of impersonal organizations, both in the private and public sectors." Richard S. Miller, *Tort Law and Power: A Policy-Oriented Analysis*, 28 Suffolk U. L. Rev. 1069, 1076 (1994) (citing Allen M. Linden, *Tort Law as Ombudsman*, 51 Can. B. Rev. 155 (1973)). Corporate Defendants should not be permitted to abuse the discovery process by discovery aimed at unmasking an anonymous critic as a scare tactic to chill continued criticism. *See, e.g.*, David Boies, *The Chilling Effect of Libel Defamation Costs: The Problem and Possible Solution*, 39 ST. Louis U. L.J. 1207, 1210 (1995)(Lawsuits do not exist to provide discovery for its own sake (or to provide grist for publicity mills), or to punish (fair or unfair) by imposing the expense and disruption of litigation, or even to provide an outlet for dissatisfaction with criticism. Lawsuits are to vindicate a legal right.).

The Internet embodies the democratic institution of the marketplace of ideas in the fullest sense. As the Supreme Court explained in *Reno*, "from the publisher's point of view, [the Internet] constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers." *Reno v. ACLU*, 521 U.S. 844, 853, 870 (1997). The fascination of the Internet lies in its potential for realizing the concept of public discourse at the heart of the Supreme Court's First Amendment jurisprudence." *See* Daniel A. Farber, *Free Speech Without Romance: Public Choice and the First Amendment*, 105 Harv. L. Rev. 554, 580-82 (1991) (arguing that freedom of speech is essential to promoting the wide dissemination of public discourse). A prevalent metaphor and the central tenet for the First Amendment public discourse is the "marketplace of ideas." *See Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 56 (1988)* (stating that "'a central tenet of the First Amendment [is] that the government must remain neutral in the marketplace of ideas.'") (quoting *FCC v. Pacifica Found.*, 438 U.S. 725, 745-46 (1978)). The "marketplace of ideas" metaphor originated in Justice Holmes' dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). The "marketplace of ideas" concept has remained prevalent theme of First Amendment jurisprudence ever since. *See Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969)* (articulating that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas . . . ."). "The marketplace of ideas is a sphere of discourse in which citizens can come together free from governmental interference or intervention to discuss a diverse array of ideas and opinions." *See* Eugene Volokh, *Cheap Speech and What It Will Do, 104 YALE L.J. 1805, 1086 (1995)* (arguing that "the perfect 'marketplace of ideas' is one where all ideas, not just the popular or well-funded ones, are accessible to all."). "To the extent that this ideal isn't achieved, the promise of the First Amendment is only imperfectly realized." *Id.* Lyrissa Barnett Lidsky, *Silencing John Doe: Defamation & Discourse in Cyberspace*, 49 Duke L.J. 855, 893-94 (2000). "Scholars have touted the Internet as the living embodiment of the 'marketplace of ideas' metaphor that lies at the heart of First Amendment theory." *Id.* at 893.

This interrogatory is also objectionable in that it is overbroad in seeking all addresses where the Plaintiffs have lived for the past ten (10) years and is harassing to the extent that the Defendants "Joint" First Requests for the Production of Documents also request "documents sufficient to identify all addresses at which the Plaintiffs lived or worked during the last five (5) years." See RFP # 25. Five years is a far more appropriate inquiry given the four year Class Period defined in the Fourth Amended Complaint. *Socas,* 2008 U.S. Dist. LEXIS 16683, at *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Smith v. Maue*, 2008 U.S. Dist. LEXIS 18207, *2 (S.D. Ill. 2008) (stating that defendants correctly limited their discovery response and answer to interrogatories to the relevant time period); *Sample v. Zancanelli Mgmt. Corp.*, 2008 U.S. Dist. LEXIS 13224, *10 (D. Kan. 2008) (plaintiff's interrogatory sought the "identification of legal actions filed against Zancanelli for personal harm or death due to the physical conditions of any of its business premises for the preceding ten year period." The court reduced the time period to four years prior, stating 10 years was overbroad and not limited to the relevant time period); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532 (D. Colo. 2007) (same); *Amsler v. Teledyne Cont'l Motors Aircraft Prod.*, 1991 U.S. Dist. LEXIS 15118, *6-7 (E.D. Pa. 1991) (same). Moreover, there is no legal basis for attempting to gain discovery of their work addresses and such a request is not only irrelevant to this case, but sheer harassment.

Notwithstanding the objections and without waiving them, Ms. Cortazzo will provide only her full name, prior names and permanent addresses for the past five (5) years:

Full name: **Arna Dori Cortazzo**
Prior names: **None**

Permanent Address(es) for the past 5 years:

1303 Avalon Drive
Rockledge, FL 32955

6. Please identify each website or electronic community (including weblogs, internet bulletin boards, and listservs) which you have maintained or to which you have contributed during the past five (5) years and for each, state the registered name you used, the nature of the website or electronic community, the internet address (URL), and the date or period of time during which you maintained or contributed to it.

The Plaintiffs incorporate by reference the objections made in response to interrogatory number 5 above as though set forth fully herein.

Office website: www.thelawyer4.net

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/Class Representatives,

vs.

MARS INC., *et al.*

Defendants.
_____/

NOTICE OF SERVING PLAINTIFF ARNA CORTAZZO'S UNEXECUTED RESPONSES TO NATURA PET PRODUCTS' FIRST SET OF INTERROGATORIES

Dated: September 3, 2008
Miami, FL

/s Catherine J. MacIvor

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that these responses were served on all counsel or parties of record on the attached Service List via e-mail on September 3, 2008.

/s Catherine J. MacIvor
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PLAINTIFF, ARNA CORTAZZO'S, RESPONSES TO NATURA PET PRODUCTS' INTERROGATORIES

PLAINTIFFS' OBJECTIONS TO DEFINITIONS

Definition # 1

The Plaintiffs object to the definition of "you" "yours" and "yourselves" because it is overbroad to the extent that it includes a "spouse, relative, officers, employees, agents, investigators, representatives or other persons acting, or purporting to act, on behalf of the Plaintiffs. For example, in the context of interrogatory number 1, the Defendants request the names, addresses, telephone numbers, place of employment of any person who has, claims to have or who you believe may have knowledge or information regarding *any fact alleged in the pleadings* … filed in this action, or any fact underlying the subject matter of this action." See Interrogatory number 1. Thus, based on this definition, *as to only one interrogatory*, each Plaintiff would have to interview a spouse, relatives, representatives, etc. about 1,281 paragraphs in six (6) pleadings *and* "any fact underlying the subject matter of the action." The definition makes each and every interrogatory overbroad and unduly burdensome for the Plaintiffs to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) ("[a] request may be overly broad on its face 'if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.' A request seeking documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.'"); *Diversified Products Corp. v. Sports Center Co.*, 42 F.R.D. 3, 4 (D. Md. 1967) (holding that the use of unreasonable definitions may render an interrogatory overly burdensome); *Griffin v. Memphis Sales & Mfg. Co.*, 38 F.R.D. 54, 57 (N.D. Miss. 1965) (stating that an inquiry into the identity of plaintiff's relatives, when there is nothing in the pleadings or briefs suggesting that they have a connection with the controversy, is irrelevant and not reasonably calculated to lead to discovery of admissible evidence); *City of Wichita v. Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, *16-17 (D. Kan. 2000) (holding that an interrogatory requesting City to "identify any and all persons the City has contacted or interviewed with" was overbroad because City would have been required to identify many people who had *"no relevant knowledge concerning"* the case) (emphasis added).

Definition # 2

This definition expands each and every interrogatory such that the singular includes the plural "and vice versa" and the words "and" as well as "or" are both "conjunctive and disjunctive." If that were not already broad enough, the word "including" is defined to mean "without limitation." The definition makes each and every interrogatory overbroad and unduly burdensome for the Plaintiffs to formulate a response. *Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Diversified Products Corp.*, 42 F.R.D. at 4 (holding that the use of unreasonable definitions may render an interrogatory overly burdensome).

Definition # 4

The Plaintiffs object to the definition of "document" which is also overbroad in that the definition seeks information that "pertains directly or indirectly either to *any of the subjects listed below* or to *any other matter relevant to the issues in this action*." First, the use of the word "pertains," which is defined in Definition # 7, makes the definition overbroad because it encompasses two layers of definitional terms that are excessive. Thus, for example, in taking into account Definition # 7, the Plaintiffs would somehow have to figure out whether a document "indirectly" "relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts" "either to any of the subjects listed below or to any other matter relevant to the issues in this action." Such a definition is so facially over broad that it impossible to respond to it. It is further difficult to determine what the Defendants mean by the use of the word "indirectly." Second, expanding the scope to any matter that is relevant to the *subject matter of this action* expands the scope beyond the Fourth Amended Complaint. *See* Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause); *Diversified Products Corp.*, 42 F.R.D. at 4 (holding that the use of unreasonable definitions may render an interrogatory overly burdensome).

Definition # 7

The Plaintiffs also object to the definition of "pertain to" and "pertaining to" since that is defined as "relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts." As discussed *supra*, it is subsumed in the definition of "documents" and thus expands the scope of any interrogatory to make it overly broad. This is particularly so when, for example, it is used in an already broad interrogatory such as number 1, which seeks "…the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings… filed in this action, or any fact underlying the subject matter of this action." *See* Request Number 2. Thus, the Plaintiffs have the impossible task of determining whether any documents "mention" the requested documents. This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, 29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc*., 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*, 2007

U.S. Dist. LEXIS 21190, *16 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc. v. Union Pac. R.R. Co*., 2001 U.S. Dist. LEXIS 24647, *10 (D. Kan. 2001) (holding that a request for all documents that "relate to any claim for damages" is overbroad and unduly burdensome); *Puerto Rico Aqueduct & Sewer Auth. v. Clow Corp*., 108 F.R.D. 304, 313 (D.P.R. 1985) (defendants' interrogatories seeking identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome) (internal quotations omitted); *Pioneer Res. Corp. v. Nami Res. Co*., LLC, 2006 U.S. Dist. LEXIS 38005, *2 (E.D. Ky. 2006) (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Pogue v. Woodford*, 2008 U.S. Dist. LEXIS 22438, *2 (E.D. Cal. 2008) (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Diversified Products Corp.*, 42 F.R.D. at 4 (holding that the use of unreasonable definitions may render an interrogatory overly burdensome).

Second, expanding the scope to any matter that is relevant to "*any other matter relevant to the issues in this action*" expands the scope beyond the Fourth Amended Complaint. *See* Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause); *Barrington v. Mortage IT, Inc*., 2007 U.S. Dist. LEXIS 90555, *9-10 (S.D. Fla. 2007); *McBride v. Rivers*, 170 Fed. Appx. 648, 659 (11th Cir. 2006); *Naples Cmty. Hosp., Inc. v. Medical Sav. Ins. Co*., 2006 U.S. Dist. LEXIS 25894, *7 (M.D. Fla. 2006) (recognizing the "good cause" requirement for expanding the scope of discovery to "any matter relevant to the subject matter involved" under Fed. R. Civ. P. 26(b)(1)).

Definition # 8

The definition of pet should be limited to the class period of May 9, 2003 to May 9, 2007. *See Bowman v. General Motors Corp.*, 64 F.R.D. 62, 68 (E.D. Pa. 1974)(information after time of incident denied); *U.S. v. R&F Properties of Lake County, Inc*., 433 F.3d 1349, 1359 (11th Cir. 2005) (discovery limited to relevant time period of acts alleged in pleadings); *Avirgam v. Hill*, 932 F.2d 1572, 1576 (11th Cir. 1991); *Waggener v. Unum Life Ins. Co. of Am*., 238 F. Supp. 2d 1179, 1188 (S.D. Cal. 2002) (in a claim for wrongful termination of disability benefits, a dispute arose over the definition of "disability" in an insurance policy. The court required defendant to produce documents that reflected the "definition of disability in the Gibson, Dunn & Crutcher policy *at the time Waggener's claim was terminated*) (emphasis added); *Martin v. Wal-Mart Stores*, Inc., 2007 U.S. Dist. LEXIS 89715, *8-9 (N.D. Ill. 2007) (holding that the definition of "electronic item" should be "limited to the item sold to Ms. Martin—the Zune MP3 player, as well as any other electronic items included in the return policy covering the Zune MP3 player").

Definition # 13

The Plaintiffs further object to this definition since it is vague and incomprehensible as phrased. It appears to ask for the full name and any alias, including user names and screen names in

connection with posting comments to websites, business and, incredibly, the screen names, registered reader names used in connection with posting comments to websites, home addresses and *places of employment of the Plaintiffs' companion cats and dogs*. The Plaintiffs further object that it is overbroad because it seeks screen names, registered reader names, business addresses of witnesses other than the Plaintiffs' companion cats and dogs and other irrelevant information, which would not lead to the discovery of admissible evidence, but would ultimately result in harassing the Plaintiffs and those with whom they associate. *Diversified Products Corp.*, 42 F.R.D. at 4 (holding that the use of unreasonable definitions may render an interrogatory overly burdensome); *Hertz v. Luzenac Am., Inc*., 2006 U.S. Dist. LEXIS 25945, *36 (D. Colo. 2006) (stating that if the burden of an interrogatory is unreasonable in light of its benefits, a party may properly object); *Griffin v. Memphis Sales & Mfg. Co*., 38 F.R.D. 54, 57 (N.D. Miss. 1965) (stating that an inquiry into the identity of plaintiff's relatives, when there is nothing in the pleadings or briefs suggesting they have a connection with the controversy, is irrelevant and not reasonably calculated to lead to discovery of admissible evidence); *Stephens v. City of Chicago*, 203 F.R.D. 353, 358 (N.D. Ill. 2001) (stating that interrogatories that are overly broad as to "make discovery so onerous and burdensome in terms of manpower, costs, and the general disruption to the defendants' business so as to coerce a settlement" are unacceptable).

PLAINTIFFS OBJECTIONS TO INSTRUCTIONS IN DEFENDANT, NATURA PET PRODUCTS, INC.'S, JOINT FIRST SET OF INTERROGATORIES

Instruction # 1

The Plaintiff's object to instruction #1 because it contravenes the Federal Rules of Civil Procedure to the extent that it requires the Plaintiffs to either answer or object "in lieu of an answer" rather than answering that part of the interrogatory to which the Plaintiffs have no objection. This directly contradicts the plain language of Federal Rule of Civil Procedure 33 (b)(1), which specifically provides that each interrogatory shall be answered fully "unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable." Fed. R. Civ. P. 33 (b)(1).

INTERROGATORIES

1. Please provide the name, address, telephone number, place of employment and job title of any person who has, claims to have or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject matter of this action.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined term "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the six (6) pleadings filed in this action. *See Johnson* v. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006); *Socas v. Northwestern Mut. Life Ins. Co*., 2008 U.S. Dist. LEXIS 16683, *3 (S.D. Fla. 2008) ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *Colo. Structures Inc*., 2007 U.S. Dist. LEXIS 63532, at *5

(holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Puerto Rico Aqueduct & Sewer Auth. v. Clow Corp.*, 108 F.R.D. 304, 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts *pertaining to* this lawsuit" are overbroad or unduly burdensome) (emphasis added); *City of Wichita v. Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, *16-17 (D. Kan. 2000) (holding that an interrogatory requesting City to "identify any and all persons the City has contacted or interviewed with" was overbroad because City would have been required to identify many people who had "*no relevant knowledge concerning*" the case) (emphasis added); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Brooks v. S.C. Johnson & Son, Inc.*, 1990 U.S. Dist. LEXIS 19395, *7 (S.D. Ill. 1990) (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.). *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, 4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997). Such information should be sought under Federal Rule of Civil Procedure 45 and not Rule 33.

This interrogatory is also overbroad to the extent that it seeks witnesses with information as to "*any fact alleged in the pleadings*." As the Defendants are well aware, a complaint, amended complaints and a corrected pleading have been filed prior to the Fourth Amended Complaint and are now moot. This interrogatory requires a response as to each and every pleading filed in this action, including the 174 paragraphs in the Complaint [DE 1], 258 paragraphs in the Amended Complaint [DE 153-1], 261 paragraphs in the Corrected Amended Complaint [DE 156], 200 paragraphs in the Second Amended Complaint [DE 260], 200 paragraphs in the Third Amended Complaint [DE 333] and 188 paragraphs in the Fourth Amended Complaint [DE 349] for a total of 1,281 paragraphs. This one interrogatory, therefore, requires a response to 1,281 subparts which well exceeds the interrogatory limit for *all* Defendants. *See Lawrence v. First Kansas Bank& Trust Co.*, 169 FRD 657, 661 (D. Kan 1996) ("The Court could construe Interrogatories 7 through 14, each with four sub-parts, addressing denials of 58 separate paragraphs of the complaint, in substance as 232 separate interrogatories. See *Fed. R. Civ. P. 33(a)*."). "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." *Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. 614, 618 (D. Colo. 2007) (same proposition); *In re Vitamin Antitrust Litig.*, 2000 U.S. Dist. LEXIS 20962, *35-36 (D.D.C. 2000) (same); *Connectu LLC v.*

***Zuckerberg*, 522 F.3d 82, 96 (1st Cir. 2008) (an amended complaint, filed as of right, supersedes and replaces the original complaint); *Am. Guar. & Liab. Ins. Co. v. CTA Acoustics, Inc.*, 2008 U.S. Dist. LEXIS 35069, *5 (same); *Portis v. City of Chicago*, 2005 U.S. Dist. LEXIS 7972, *30-31 (N.D. Ill. 2005) (limit of 25 interrogatories in Federal Rule of Civil Procedure 33 applies to class actions. The nature of a class action does not allow for "unlimited" interrogatories).**

Moreover, broad requests such as these for "knowledge or information *pertaining to any fact alleged in the pleadings* (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action, or any fact underlying the subject matter of this action" are facially overbroad. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome) (internal quotations omitted); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at * 2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague). The only relevant information is contained in the Fourth Amended Complaint and compliance with *Federal Rule of Civil Procedure 26(a)(1)(A)* and *(B)* for mandatory disclosure of identities of persons with discoverable information and documents relevant to disputed facts alleged with particularity in the Fourth Amended Complaint obviates the need for redundant interrogatories about the same subject matter. *Hutter v. Frederickson*, 58 F.R.D. 52, 54 (D. Wis. 1972) (stating that interrogatories submitted must be "designed to elicit information properly discoverable by this method, questions must be tailored to the *present scope of the amended complaint*") (emphasis added); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. 497, 498 (S.D. Cal. 1975) ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"). *Rule 26(e)*, further requires parties to supplement their disclosures, as well as their responses to discovery. *AlphaMed Pharms. Corp. v. Arriva Pharms., Inc.*, 2005 U.S. Dist. LEXIS 45923, *23-24 (S.D. Fla. 2005); *Mannoia v. Farrow*, 476 F.3d 453, 457 (7th Cir. 2007); *Brennan's Inc. v. Dickie Brennan & Co. Inc.*, 376 F.3d 356, 374 (5th Cir. 2004).

The Plaintiffs further object to listing the place of employment as to lay witnesses. Since lay witnesses have factual information gained outside of and apart from their employment, it would be improper to list employment information since their employment has no correlation to their knowledge in this case and any use of their employment information may result in the harassment of witnesses. *D'Onofrio v. Sfx Sports Group, Inc.*, 247 F.R.D. 43, 53-54 (D.D.C. 2008) (refusing to grant motion to compel production of defendant's list

of lay witnesses); ***IBP, Inc. v. Mercantile Bank of Topeka*****, 179 F.R.D. 316, 323 (D. Kan. 1998) (same);** ***Robbins v. Camden City Bd. of Educ.*****, 105 F.R.D. 49, 58 (D.N.J. 1985) (same).**

The interrogatory is also overbroad to the extent that it seeks information "relating to" "any fact underlying the subject matter of this action." This expands the scope of this interrogatory beyond the Fourth Amended Complaint and thus the interrogatory fails to sufficiently specify the information that the Defendants are seeking. ***See*** **Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause).** ***Barrington v. Mortage IT, Inc.*****, 2007 U.S. Dist. LEXIS 90555, *9-10 (S.D. Fla. 2007);** ***McBride v. Rivers*****, 170 Fed. Appx. 648, 659 (11th Cir. 2006);** ***Naples Cmty. Hosp., Inc. v. Medical Sav. Ins. Co.*****, 2006 U.S. Dist. LEXIS 25894, *7 (M.D. Fla. 2006) (all recognizing the "good cause" requirement for expanding the scope of discovery to "any matter relevant to the subject matter involved" under Fed. R. Civ. P. 26(b)(1)).** ***See Lawrence v. First Kansas Bank & Trust Co.*****, 169 FRD 657, 659 (D. Kan 1996), which denied a motion to compel similar information. For example, in order to properly respond, the Plaintiffs would have to provide the name, address and telephone number of Senator Dick Durbin who conducted Congressional hearings on the largest pet food recall in the world in 2007 and whose committee heard testimony from the American Association of Feed Control Officials, the Pet Food Institute and the Federal Drug Administration about the largely self-regulated pet food industry.**

The Plaintiffs also object to providing their telephone numbers. Since they are represented by counsel it is improper and inappropriate for them to be contacted by any of the Defendants directly and listing their telephone numbers in documents that could be made public by filing them with the Court would potentially subject them to identity theft and harassment and unnecessarily invade their right to privacy. ***Chavez v. Daimler Chrysler Corp.*****, 206 F.R.D. 615, 622 (S.D. Ind. 2002) ("To the extent that Chavez seeks the names and phone numbers of current supervisory-level employees, such information may be redacted because these contacts are to be made through Defendant's counsel only");** ***Vogt v. Tex. Instruments, Inc.*****, 2006 U.S. Dist. LEXIS 67226, *11-12 (N.D. Tex. 2006) (stating privacy concerns, defendant objected to providing plaintiff with names, last known addresses, phone numbers, and social security numbers of employees at defendant's facility. In response, the court stated: "The Court agrees with Defendant's concerns regarding the privacy of its employees. At this stage, Plaintiffs have not demonstrated a need for locating information beyond names and addresses…If any notices are returned to Plaintiffs' counsel because the contact information is inaccurate, Plaintiffs may petition the District Court to order Defendant to produce the phone numbers and/or Social Security numbers of those potential opt-in plaintiffs");** ***In re B & H Towing, Inc.*****, 2006 U.S. Dist. LEXIS 42758, *14-15 (S.D. W. Va. 2006) (in response to an interrogatory seeking the disclosure of knowledge of company employees, the court required a redaction of social security numbers, phone numbers, addresses, and other private information);** ***Delgado v. Ortho-McNeil, Inc.*****, 2007 U.S. Dist. LEXIS 74731, *10 (C.D. Cal. Aug. 6, 2007) ("the Court agrees with Defendants that production of telephone numbers, email addresses, and social security numbers is inappropriate"). Courts have held that, insofar as discovery requests seek confidential information such as driver's licenses and social security numbers, privacy concerns are relevant, and the party requesting such information "must show that the**

value of the information sought would outweigh the privacy interests of the affected individuals." *Case v. Platte County*, 2004 U.S. Dist. LEXIS 18052, 2004 WL 1944777, at *2 (D. Neb. June 11, 2004)(citing *Onwuka v. Fed. Express Corp.*, 178 F.R.D. at 517). *See Walters v. Breaux*, 200 F.R. D. 271, 274 (W.D. La. 2001)(citing cases protecting legitimate privacy concerns with respect to social-security numbers). Even when social-security information is needed to help locate individuals, courts will decline to compel production of social-security numbers when other identifying and locating information is available. *See McDougal-Wilson v. Goodyear Tire and Rubber Co.*, 232 F.R.D. 246, 252 (E.D.N.C. 2005); *Raddatz v. Standard Register Co.*, 177 F.R.D. 446, 448 (D. Minn. 1997)(stating that court should not order the production of personnel files in their entirety where *less intrusive means may be used to obtain the relevant information*); *McGee v. City of Chicago*, 2005 U.S. Dist. LEXIS 30925, *7-8 (N.D. Ill. 2005) (Good cause exists to prohibit public disclosure of private information, including a drivers license number, because such disclosure may "cause the Individual Defendants unnecessary annoyance or embarrassment and would unfairly and gratuitously invade their privacy").

Such a request is also irrelevant and not reasonably calculated to lead to the discovery of evidence that will be admissible at trial. Courts have found that private information from represented parties such as telephone and social-security numbers are confidential and not reasonably calculated to lead to the discovery of admissible information. *See Mike v. Dymon*, No. 95-2405-EEO, 1996 U.S. Dist. LEXIS 17329, 1996 WL 674007, at *7 (D. Kan. November 14, 1996)("The court does not find that requests for social security numbers and dates of birth of all individuals who provided information to answer the interrogatories are reasonably calculated to lead to the discovery of admissible evidence.").

Finally the Plaintiffs object to providing this information at this time as it is far too premature in the proceeding to provide such information. *See* Rule 33(c) ((a court may order that such an interrogatory need not be answered until after designated discovery has been completed).

However, notwithstanding the objection, and without waiving it, the Plaintiffs provide the following information and will supplement same as required by Rule 26(e) as to the Plainitffs only and as to the time period of May 9, 2003 to May 9, 2007:

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Ava Cortazzo
910 Levitt Parkway
Rockledge, FL 32955

Janet Monaco
Pet Pros
3695 Murrell Road
Rockledge, FL 32955

Lori Lorenzo
1147 Acapella Drive
Melbourne, FL 32940

Rockledge Animal Clinic
1934 Fiske Blvd
Rockledge, FL 32955
Dr. Ben Morse, DVM
Dr. Greg Shinn

Affiliated Veterinary Specialists (AVS)
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Maitland, FL 32751

University of Florida
Veterinary Medical Center
Small Animal Hospital
PO Box 100101

Gainesville, FL

Emergency & Critical Care Center of Brevard
2261 W. Eau Gallie Blvd
Melbourne, FL

Veterinary Specialists- Dermatology
Maitland, FL

Brevard Animal Hospital
Cocoa Florida
Dr. John Eden

Animal Eye Associates
Melbourne and Maitland,FL
Dr. Daniel Priehs

Underhill Animal Hospital
Dr. Margaret David
Orlando FL

Michigan Animal Hospital
Orlando, FL

Corporate Representative of the Pet Food Institute
2025 M Street
Suite 800
Washington, D.C. 20036
(202) 367-1120

Corporate representatives of each Defendant

2. Please provide the name of each person whom you may use as an expert witness at the class certification hearing.

Objection. An interrogatory seeking this information is unnecessary and duplicative of the mandatory disclosure rules which already require the Plaintiffs to identify the witnesses and information that they will be relying on during all stages of this lawsuit. See Fed. R. Civ. P. 26(A)(1). The determination of what expert(s), if any, the Plaintiffs will rely upon in support of class certification will be determined at or near the time for moving for class certification and thus this interrogatory is premature.

3. For each person identified in Interrogatory No. 2, please state in detail the substance of the opinions to be provided by that person.

See response to interrogatory number 2 above, which is incorporated herein by reference.

4. Please identify each document (including electronically stored information) pertaining to any fact alleged in any pleading (as defined in Federal Rule of Civil Procedure 7(a) filed in this action).

Objection. This interrogatory is overbroad to the extent that it requests the Plaintiffs to identify "each document … pertaining to any fact alleged in *any pleading*." As the Defendants are well aware, there have been several amended complaints and the prior complaints are now moot. The Plaintiffs, therefore, object to identifying "each document … pertaining to any fact" in any pleading other than the Fourth Amended Complaint. Please see objection to interrogatory number 1 above, which is incorporated by reference herein.

Even when limited to the Fourth Amended Complaint, this interrogatory is still overbroad to the extent that it requests the Plaintiffs to identify "each document … pertaining to any fact" in the Fourth Amended Complaint. Courts have ruled that requesting a party to identify "any" or "all" facts is overbroad. *See Lawrence v. First Kansas Bank & Trust Co.*, 169 FRD 657, 662-63 (D. Kan 1996); *Kraft Foods N. Am.*, 238 F.R.D. at 658-59 ("[a] request may be overly broad on its face 'if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.' A request seeking documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.'"); *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (recognizing that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"); *Clow Corp.*, 108 F.R.D. at 313 (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome) (internal quotations omitted). Federal Rule of Civil Procedure 33(c) provides:

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, *but the court may order that such an interrogatory need not be*

answered until after designated discovery has been completed or until a pre-trial conference or other later time.

Fed.R.Civ.P. 33(c) (emphasis added). The advisory committee notes provide some clarification as to timing:

Since interrogatories involving mixed questions of law and fact may create disputes between the parties which are best resolved after much or all of the other discovery has been completed, the court is expressly authorized to defer an answer. Likewise, the court may delay determination until pretrial conference, if it believes that the dispute is best resolved in the presence of the judge.
Fed.R.Civ.P. 33(c) advisory committee notes (1970 Amendments). In other words, Rule 33(c) provides that contention interrogatories may not be answered until, at the earliest, after substantial discovery has taken place, or at the latest, at the final pre-trial conference.

Courts have required a moving party to present "specific, plausible grounds" as to why the party requires early answers to contention interrogatories. *See In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328, 338-339 (D.C. Cal. 1985) ("A party seeking early answers to contention interrogatories cannot meet its burden of justification by vague or speculative statements about what might happen if the interrogatories were answered. Rather, the propounding party must present specific, plausible grounds for believing that securing early answers to its contention questions will materially advance the goals of the Federal Rules of Civil Procedure"). *See In re H & R Block Mortg. Corp. Pre-Screening Litig.,2007 U.S. Dist. LEXIS 7104 **25-26 (*N.D. Ill. January 30, 2007).
Courts routinely delay compelling responses to contention interrogatories until after "considerable discovery." *See Auto Meter Products, Inc. v. Maxima Technologies & Systems, LLC*, No. 05-C-4587, 2006 U.S. Dist. LEXIS 81687, 2006 WL 3253636, *2 (N.D. Ill. Nov. 6,2006) ("When one party poses contention interrogatories *after considerable discovery*, and the opposing party refuses to answer the interrogatories, courts routinely compel the resisting party to answer the interrogatories") (emphasis added) (citations omitted); *see also Calobrace v. American Nat'l Can Co.*, No. 93-C-999,1995 U.S. Dist. LEXIS 1371,at *3 (N.D.Ill.Feb. 3,1995) (same); *Rusty Jones, Inc. v. Beatrice Co.*, No. 89-C-7381, 1990 U.S. Dist. LEXIS 12116, 1990 WL 139145, at *2 (N.D. Ill. Sept.14, 1990) (same); *S.S. White Burs, Inc. v. Neo-Flo, Inc.*, No. Civ.-A. 02-3656, 2003 U.S. Dist. LEXIS 7718, 2003 WL 21250553, at *1 (E.D. Pa. 2003) ("At times, courts will postpone to the end of discovery the responses of "contention interrogatories," which ask a party to state all facts and theories upon which it bases a contention, so that the party does not have to articulate theories of its case which are not yet fully developed").
The use of the words "pertaining to" makes any response to the interrogatory overly broad in that it is not limited to facts supporting the Fourth Amended Complaint, but any fact "pertaining to" the Fourth Amended Complaint, which expands the scope of discovery well beyond the four corners of the operative pleading. *Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (recognizing that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any

fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"); *Clow Corp.*, 108 F.R.D. at 313 (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome) (internal quotations omitted).

Finally, given that the Plaintiffs largely contend that the Defendants have no basis for their marketing representations as alleged in the Fourth Amended Complaint, the Plaintiffs cannot provide information when none exists, as the Defendants are well aware.

Literally thousands of pages of documents were reviewed and analyzed and hundreds of hours went into the preparation of the Fourth Amended Complaint over a period of many months. It would be extremely difficult to impossible isolate "[a]ll" of the documents out of the thousands of pages that were reviewed and analyzed to prepare the pleading and the request that the Plaintiffs do so is improper. *Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Western Resources v. Union Pacific R.R. Co.*, 2001 U.S. Dist LEXIS 24647 (D. Kan Dec. 5, 2001) (in a breach of contract suit, court found overly broad on its face a request for documents that referred or related to any alleged actual breaches of the contract at issue, the plaintiff's reasons for breaching the contract at issue and communications between the defendant and any other person regarding termination of the contract).

Moreover, as the Defendants are well aware, many of the documents are already in the Defendants' possession. For example, the Defendants already have all of the exhibits attached to all of the Plaintiffs' pleadings, which obviously constitute documents identified in, referred to, or relied upon to prepare the Fourth Amended Complaint yet the Defendants failed to exclude these documents.

Other publications upon which the Plaintiffs' counsel relied are lengthy documents such as the American Association of Feed Control Officials 2007 Official Publication ("AAFCO Publication"). The Defendants know that this publication was used to prepare the Fourth Amended Complaint because they have acknowledged same in documents filed with the Court and at hearings.

Notwithstanding the objection, and without waiving it, the Plaintiffs will make the AAFCO Publication and similar lengthy documents available for review and copying at a mutually convenient time, if the Defendants require it.

The Plaintiffs will also produce the documents that they relied upon in framing the issues in the Complaint to the best of the Plaintiff's counsel's recollection in lieu of a response pursuant to Federal Rule of Civil Procedure 33(d). [See Plaintiffs # 1 - 2570].

5. Please state each item of damage that you claim, whether as an affirmative claim or as a setoff, and include in your answer: the count or defense to which the item of damages relates; the category into which each item of damages falls, i.e., general damages, special or consequential damages (such as lost profits), interest, and any other relevant categories; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

Objection. This is a boiler plate interrogatory that is not tailored to the specific facts in this case and is thus intended to harass the Plaintiffs, at least in part. For example, nowhere in the Fourth Amended Complaint do the Plaintiffs ever seek lost profits. The interrogatory is thus overly broad and seeks information that is wholly irrelevant. *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Phillips v. Irvin*, 2007 U.S. Dist. LEXIS 64962, *15-16 (S.D. Ala. 2007) (holding that an interrogatory which inquired into fraudulent dealings, when fraud was not an issue in the case, was irrelevant); *Anderson v. Hartley*, 2006 U.S. Dist. LEXIS 74388, *4 (E.D. Cal. 2006) (stating that when an interrogatory propounds general questions not tailored specifically to the case, a specific answer is not required); *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may "require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit").

The Plaintiffs object because the request is facially overbroad based upon the defined term "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action may actually have any sort of damages, which is an irrelevant inquiry. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had "*no relevant knowledge concerning*" the case*); Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added); *Hydro Technologies*, 149 F.R.D. at 698 (holding that interrogatories not tailored to the relevant claims are overbroad and may "require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.). *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

Notwithstanding the objection and without waiving it, please see veterinarian bills and pet food expenses that will be produced as available. Additionally, the Plaintiffs are seeking information relating to purchase of pet food from the Defendants, the Defendants profits regarding same and other information necessary to calculate damages. This response will, therefore, be supplemented once sufficient discovery has been obtained to provide same.

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/Class Representatives,
vs.

MARS INC., *et al.*

Defendants.
_____/

PLAINTIFF ARNA CORTAZZO'S RESPONSES TO DEFENDANTS' JOINT FIRST REQUESTS FOR PRODUCTION

OBJECTIONS TO DEFINITIONS

Definition # 1

The Plaintiffs object to the definition of "you" "yours" and "yourselves" because it is overbroad to the extent that it includes a "spouse, relative, officers, employees, agents, investigators, representatives or other persons acting, or purporting to act, on behalf of the Plaintiffs. In the context of request for production number 2, the Defendants request "All documents pertaining to any fact alleged in the Complaint." See Request number 1. Thus, based on this definition, *as to only one request*, each Plaintiff would have to interview a spouse, relatives, representative, etc. about 1,281 paragraphs in six (6) pleadings *and* "any fact underlying the subject matter of the action." This is compounded where, for example, Request Number 22 seeks "All documents pertaining to any electronic communication you sent or received, directly or indirectly, regarding pet food during the last five (5) years, including emails and postings on websites, weblogs, electronic bulletin boards, or other electronic media." See Request number 22. This request would thus include any direct or "indirect" electronic communications from spouses, relatives, officers, employees, agents, investigators and representatives regarding pet food over a five (5) year period of time

The definition makes each and every request overbroad and unduly burdensome for the Plaintiffs to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) ("[a] request may be overly broad on its face 'if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.' A request seeking documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden,

within the scope of the request.'"). "Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests "must describe with reasonable particularity" each item or category of items to be produced." *Id.; Taylor v. Florida Atlantic University*, 132 F.R.D. 304, 305 (S.D. Fla. 1990) (same); *Horowitch v. Diamond Aircraft Indus*., 2007 U.S. Dist. LEXIS 29626 (M.D. Fla. 2007) (same); *Regan-Touhy v. Walgreen Co*., 2008 U.S. App. LEXIS 10704 (10th Cir. 2008) (same); *Schlafly v. Caro-Kann Corp*., 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); *R.W. Int'l Corp. v. Welch Foods, Inc*., 937 F.2d 11, 18 (1st Cir. 1991) (same); *United States v. Approximately $141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030 (E.D. Cal. 2007) (same); *Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. 614, 618 (D. Colo. 2007) (same).

Definition # 2

The Plaintiffs object to the definition of "document" which is also overbroad in that the definition seeks documents that "pertain directly or indirectly either to *any of the subjects listed below* or to *any other matter relevant to the issues in this action*." First, the use of the word "pertains," which is defined in Definition # 7, makes the definition overbroad because it encompasses two layers of definitional terms that are excessive. Thus, for example, in taking into account Definition # 7, the Plaintiffs would somehow have to figure out whether a document "indirectly" "relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts or contradicts" "either to any of the subjects listed below or to any other matter relevant to the issues in this action." It is further difficult to determine what the Defendants mean by the use of the word "indirectly."

Second, expanding the scope to any matter that is relevant to the *subject matter of this action* expands the scope beyond the Fourth Amended Complaint. *See* Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause).

Definition # 7

This definition expands the scope of each request exponentially since it encompasses documents which are not in the Plaintiffs' custody or control, documents which "indirectly" "pertain to" "any of the subjects listed below or to any other matter relevant to the issues in this action. *Kraft Foods N. Am.*, 238 F.R.D. at 658-59. Rule 34 allows any party to serve on any other party a request to produce for the inspection of the requesting party, any designated documents or data compilations from which information may be obtained within the scope of Rule 26(b), that are in the possession, custody or control of the party upon whom the request was served. *See Fed.R.Civ.P. 34(a)*. It is well established that the test for "control" is not defined as mere possession, but as the legal right to obtain such documents on demand. *Alexander v. FBI, 194 F.R.D. 299, 304 (D.D.C. 2000)* (citing *Searock v. Stripling, 736 F.2d 650, 653 (11th Cir. 1984)*; *Tavoulareas v. Piro, 93 F.R.D. 11, 20 (D.D.C. 1981)* (both holding that under *Rule 34(a)*, a party must produce those documents that he has a legal right to control or obtain); *see also* 8A Charles A. Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2210 (2d ed. 1994) ("Inspection can be had if the party to whom the request is made has the legal right to

obtain the document, even though in fact it has no copy")); *Tequila Centinela, S.A. de C.V. v. Bacardi & Co.*, 242 F.R.D. 1, 8-9 (D.D.C. 2007) (same); *Avocent Redmond Corp. v. Rose Elecs*, 491 F. Supp. 2d 1000, 1010 (W.D. Wash. 2007) (same); *Alexander v. FBI*, 194 F.R.D. 299, 301 (D.D.C. 2000); *Central States, Southeast & Southwest Areas Pension Fund v. R-W Serv. Sys.*, 742 F.2d 1454 (6th Cir. 1984) (same).

This definition is also incomprehensible as phrased. "Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Id; Taylor v. Florida Atlantic University*, 132 F.R.D. at 305 (same); *Horowitch v. Diamond Aircraft Indus*., 2007 U.S. Dist. LEXIS 29626 (same); *Regan-Touhy v. Walgreen Co*., 2008 U.S. App. LEXIS 10704 (same); *Schlafly v. Caro-Kann Corp*., 1998 U.S. App. LEXIS 8250 (same); *R.W. Int'l Corp. v. Welch Foods, Inc*., 937 F.2d 11, 18 (1st Cir. 1991) (same); *United States v. Approximately $141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030 (same); *Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. 614, 618 (D. Colo. 2007) (same).

Definition # 8

The definition of pet should be limited to the class period of May 9, 2003 to May 9, 2007. *See Bowman v. General Motors Corp.*, 64 F.R.D. 62, 68 (E.D. Pa. 1974)(information after time of incident denied); *Avirgan v. Hull*, 116 F.R.D. 591, 593 (S.D. Fla. 1987) (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Cherenfant v. Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, *8 (S.D. Fla. 2004) (in a discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Cohen v. Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, *2-3 (S.D. Fla. 2007) ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Adkins v. Christie*, 488 F.3d 1324, 1330 (11th Cir. 2007) (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde v. Bd. of Regents*, 2007 U.S. Dist. LEXIS 62700, *33-34 (S.D. Ga. 2007) (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Definition # 9

The Plaintiffs object to the definition of "pertain to" and "pertaining to" because, as discussed *supra,* it is subsumed in the definition of "documents" and thus expands the scope of any discovery request to make it overly broad, particularly when used with a broad request such as Request number 2, which seeks "All documents pertaining to any fact alleged in the Complaint, or any fact underlying the subject matter of this action." *See* Request Number 2. This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.,* 238 F.R.D. at 658-59; *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729

(Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, 12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" is a "vague and overbroad" request); *Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*, 2007 U.S. Dist. LEXIS 21190 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc. v. Union Pac. R.R. Co*., 2001 U.S. Dist. LEXIS 24647 (D. Kan. 2001) (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"). "Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Id.*

OBJECTION TO INSTRUCTION

Instruction # 1

This instruction is an overly broad and apparently boiler plate instruction since it requires documents that are within the possession, custody or control of the Plaintiffs' "former attorneys, investigators, accountants, auditors, consultants, experts, employees, or other agents, as well as any other persons acting on your behalf." While it is apparently intended to be directed to a corporate party, it is very overbroad in as to these particular Plaintiffs. For example, the Plaintiffs should not have to inquire of their employees as whether they have any relevant documents.

1. All documents identified in your interrogatory responses.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "documents" and "your" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not parties to this action actually have any sort of electronic communications, notes, etc., that were identified in the Plaintiffs' interrogatory responses. "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Taylor v. Florida Atlantic University*, 132 F.R.D. 304, 305 (S.D. Fla. 1990) (same); *Horowitch v. Diamond Aircraft Indus.*, 2007 U.S. Dist. LEXIS 29626, *5 (M.D. Fla. 2007) (same); *Regan-Touhy v. Walgreen Co.*, 2008 U.S. App. LEXIS 10704, *18 (10th Cir. 2008) (same); *Schlafly v. Caro-Kann Corp.*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); *R.W. Int'l* Corp. v. Welch Foods, Inc., 937 F.2d 11, 18 (1st Cir. P.R. 1991) (same); *United States v. Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030, *9 (E.D. Cal. 2007) (same); *Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. 614, 618 (D. Colo. 2007) (same). While "[t]he

legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, 4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997) (all citing the same proposition).

Notwithstanding the objection, and without waiving it, responsive documents will be produced solely as to Ms. Cortazzo to the extent that any documents may have been referenced in her responses to interrogatories.

2. All documents pertaining to any fact alleged in the Complaint, or any fact underlying the subject matter of this action.

Objection. This request for production is facially overbroad in that it requests all documents "pertaining to" *any fact* alleged in the Fourth Amended Complaint. The Plaintiffs reincorporate their objection to the definitions of "documents" and "pertaining to" as set forth *supra*. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Western Resources v. Union Pacific R.R. Co.*, 2001 U.S. Dist LEXIS 24647 (D. Kan Dec. 5, 2001) (in a breach of contract suit, court found overly broad on its face a request for documents that referred or related to any alleged actual breaches of the contract at issue, the plaintiff's reasons for breaching the contract at issue and communications between the defendant and any other person regarding termination of the contract); *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Brown v. Sun Healtcare Group, Inc.*, 2008 U.S. Dist. LEXIS 30517, *17-18 (E.D. Tenn. 2008) (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*, 2007 U.S. Dist. LEXIS 21190, *16 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad").

This request is further overbroad and vague to the extent that it seeks "All documents pertaining to…any fact underlying the subject matter of this action." *See* Fed. R. Civ. P. 26(b)(1) (discovery of any matter relevant to the subject matter involved in the action is permitted only upon a showing of good cause); *Barrington v. Mortage IT, Inc.*, 2007 U.S. Dist. LEXIS 90555 (S.D. Fla. 2007); *McBride v. Rivers*, 170 Fed. Appx. 648, 659 (11th Cir. 2006); *Naples Cmty. Hosp., Inc. v. Med. Sav. Ins. Co.*, 2006 U.S. Dist. LEXIS 25894 (M.D.

Fla. 2006) (all recognizing the "good cause" requirement for expanding the scope of discovery to "any matter relevant to the subject matter involved" under Fed. R. Civ. P. 26(b)(1)).

Additionally, even if the Defendants had already sought and obtained an order establishing good cause as to why they should be entitled to discovery beyond the scope of the claims made in the Fourth Amended Complaint, and they have not, discovery of "*any* fact *underlying* the *subject matter* of this action" is premature at this time. Even if the Defendants eventually seek and obtain an order based upon a showing of good cause to expand the scope of discovery available under Rule 26(b)(1), full responses will only be possible at the close of discovery. *Worthington ex rel. J.W. v. Elmore County Bd. of Educ*., 2006 U.S. Dist. LEXIS 21788 (M.D. Ala. 2006) (citing *Marsh v. Butler County, Ala*., 268 F.3d 1014, 1058 (11th Cir. 2001)) (recognizing that a plaintiff has limited ability to develop facts in the early stages of litigation).

Finally, the same information was requested in Defendant, Natura's, Joint First Set of Interrogatories and thus it is duplicative and intended to harass the Plaintiffs by driving up their attorney's fees and costs. See Natura Interrogatory # 4.

Notwithstanding the objection, and without waiving it, the Plaintiffs will respond with documents that are available at this time as to the relevant facts alleged in the factual predicate to the Fourth Amended Complaint only. [Plaintiffs # 1 - 2570].

3. All documents identified in, referred to, or relied upon to prepare the Complaint.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined term "documents" and the words "referred to" because it encompasses documents "referring to" a very broad definition of "documents," which makes the request vague, ambiguous and exceedingly difficult for the Plaintiffs to respond to it. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Sun Healtcare Group, Inc*., 2008 U.S. Dist. LEXIS 30517, at *17-18 (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.);

***Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc*., 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co*., 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.**

Literally thousands of pages of documents were reviewed and analyzed and hundreds of hours went into the preparation of the Fourth Amended Complaint over a period of many months. It would be extremely difficult to impossible isolate "[a]ll" of the documents out of the thousands of pages that were reviewed and analyzed to prepare the pleading and the request that the Plaintiffs do so is improper. *Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Western Resources v. Union Pacific R.R. Co.*, 2001 U.S. Dist LEXIS 24647 (D. Kan Dec. 5, 2001) (in a breach of contract suit, court found overly broad on its face a request for documents that referred or related to any alleged actual breaches of the contract at issue, the plaintiff's reasons for breaching the contract at issue and communications between the defendant and any other person regarding termination of the contract).

Moreover, as the Defendants are well aware, many of the documents are already in the Defendants' possession. For example, the Defendants already have all of the exhibits attached to all of the Plaintiffs' pleadings, which obviously constitute documents identified in, referred to, or relied upon to prepare the Fourth Amended Complaint yet the Defendants failed to exclude these documents.

Other publications upon which the Plaintiffs' counsel relied are lengthy documents such as the American Association of Feed Control Officials 2007 Official Publication ("AAFCO Publication"). The Defendants know that this publication was used to prepare the Fourth Amended Complaint because they have acknowledged same in documents filed with the Court and at hearings.

Notwithstanding the objection, and without waiving it, the Plaintiffs will make the AAFCO Publication available for review and copying at a mutually convenient time, if the Defendants require it.

The Plaintiffs will also produce documents that were relied upon or to which the Plaintiffs' counsel referred to the best of the Plaintiffs' counsel's recollection. [See Plaintiffs # 1 - 2570].

4. All documents that you may offer as evidence or use as an exhibit in connection with any hearing held on the issue of whether the alleged class should be certified.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "documents" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action may actually have any sort of document that might be used in support of class certification. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Awad v. Cici Enters*., 2006 U.S. Dist. LEXIS 85123, *3 (M.D. Fla. 2006) ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *Regan-Touhy v. Walgreen Co*., 526 F.3d 641, *18 (10th Cir. 2008) (upholding district court finding that requests for

"all documents relating or referring to" is overbroad); ***Loubser,*** **2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery."** ***Martinez v. Cornell Corrs. of Tex.*****, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.);** ***Marathon Ashland Petroleum LLC,*** **2007 U.S. Dist. LEXIS 29159, at *19-20;** ***Wang's Int'l, Inc.,*** **2006 U.S. Dist. LEXIS 38701, at *4-5;** ***Haas Co.,*** **1998 U.S. Dist. LEXIS 11141;** ***GMC,*** **173 F.R.D. at 224.**

Notwithstanding the objection, and without waiving it, the determination as to what ***the Plaintiffs*** **may offer or use as an exhibit has not been made at this time. Appropriate disclosures will be made pursuant to Federal Rule of Civil Procedure 26(e).**

5. All documents tending to support or rebut in any way any claim made in the Complaint.

Objection. This request is facially overly broad and burdensome in that it requires "[a]ll documents tending to support or rebut ***in any way any*** **claim" made in the Fourth Amended Complaint. "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced."** ***Kraft Foods N. Am.,*** **238 F.R.D. at 658-59;** ***Western Resources v. Union Pacific R.R. Co.,*** **2001 U.S. Dist LEXIS 24647 (D. Kan Dec. 5, 2001) (in a breach of contract suit, court found overly broad on its face a request for documents that referred or related to any alleged actual breaches of the contract at issue, the plaintiff's reasons for breaching the contract at issue and communications between the defendant and any other person regarding termination of the contract);** ***Awad v. Cici Enters.,*** **2006 U.S. Dist. LEXIS 85123, *4 (M.D. Fla. 2006);** ***Funke v. Life Fin. Corp.,*** **2003 U.S. Dist. LEXIS 5418 (S.D.N.Y. 2003); Ward v. Leclaire, 2008 U.S. Dist. LEXIS 31880, *11 (N.D.N.Y 2008).**

The request is also objectionable because it requires the Plaintiffs to produce documents rebutting their claims. The determination of which documents support a negative proposition, of course, requires the Plaintiffs to provide essentially a review of facts and commentary to support the Defendants' evaluation that the anticipated evidence of the Plaintiffs as to each disputed paragraph of the complaint simply lacks weight or credibility. The request for "all" documents to "rebut" the claims in the Fourth Amended Complaint, based not only upon knowledge, but also upon simple information and belief, adds a significant and unreasonable burden to the task of the answering party." ***See Lawrence v. First Kansas Bank & Trust Co.,*** **169 FRD 657, 663 (D. Kan 1996).** ***Larson v. Correct Craft, Inc.,*** **2006 U.S. Dist. LEXIS 78028 (M.D. Fla. 2006) ("courts have long held that an interrogatory asking a party to identify every fact, document or witness in support of a**

denial or allegation of fact creates an unreasonable burden on the responding party"); *Safeco Ins. Co. of Am. v. Rawstron*, 181 F.R.D. 441, 447-448 (C.D. Cal. 1998).

Additionally, the request is also objectionable because it is premature. Discovery has just opened and thus it is premature to request "*all* documents" that tend to support or rebut "in any way any claim" made in the Fourth Amended Complaint. Moreover, the Plaintiffs have not yet received a complete response to their requests for production from the Defendants who have almost all of the information tending to support the claims made in the Fourth Amended Complaint in their exclusive control. *Cici Enters.*, 2006 U.S. Dist. LEXIS 85123, at *3 ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *RoDa Drilling Co. v. Siegal*, 2008 U.S. Dist. LEXIS 42338, *6 (N.D. Okla. 2008) ("many of the parties' requests for production of documents are overbroad, as they request all documents relating to or concerning a subject") (internal quotations omitted); *Badr v. Liberty Mut. Group*, Inc., 2007 U.S. Dist. LEXIS 73437, *7-8 (discovery request for "any and all documents" is overbroad at any time in litigation)

Notwithstanding the objection, and without waiving it, the Plaintiffs will respond with documents that are available at this time that support their claims and will later supplement with any additional documents to support their claims as discovery continues. [See Plaintiffs # 1 - 2570].

6. All notes or other documents gathered, generated, sent, received, or maintained by you that contain any information pertaining to the claims alleged in the Complaint.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "pertain to, "documents" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually have any sort of electronic communications, notes, etc., that "pertain to" "any pet" that any of these non-parties to this action have gathered, generated, sent, received, or maintained. "A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Taylor*, 132 F.R.D. at 305 (same); *Horowitch*, 2007 U.S. Dist. LEXIS 29626, at *5 (same); *Walgreen Co.*, 2008 U.S. App. LEXIS 10704, at *18 (same); *Schlafly*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); *Welch Foods, Inc.*, 937 F.2d at 18 (same); *Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030, at *9 (same); *Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. at 618 (D. Colo. 2007) (same). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701,

4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

This request is also objectionable to the extent that it infringes on the Plaintiffs' First Amendment right to anonymous free speech for all communications made anonymously on the internet or in any other written communication. The First Amendment to the United States Constitution provides that "Congress shall make no law...abridging the freedom of speech." U.S. CONST. amend. I. It is a long-standing principle that anonymity plays an important role in free speech and expression and, accordingly, constitutional principles are invoked whenever a threat to that anonymity is posed such as the request at issue. Indeed, the right to speak anonymously or pseudonymously has its roots in a long tradition of American political thinkers who published their works anonymously. James Madison, Alexander Hamilton, and John Jay authored the Federalist Papers under the name "Publius," referring to a defender of the ancient Roman Republic. Dawn C. Nunziato, *Freedom of Expression, Democratic Norms, and Internet Governance, 52 Emory L.J. 187, 252 n. 250 (2003)*. "It has been asserted that, between 1789 and 1809, six presidents, fifteen cabinet members, twenty senators, and thirty-four congressman published anonymous political writings." Jennifer B. Wieland, *Note: Death of Publius: Toward a World Without Anonymous Speech, 17 J.L. & POL. 589, 592 (2001)* (relying on *Comment, The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 YALE L.J. 1084 (1961)).

The seminal case articulating the constitutionally protected privacy interests of an anonymous speaker is the 1995 Supreme Court case of *McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)*. There, the central issue was whether an Ohio statute, which prohibited the distribution of anonymous campaign literature, violated an individual's free speech rights to distribute anonymous pamphlets opposing a school tax levy. The Court found, that regarding issues of public concern, anonymous speech is protected under the First Amendment. The Court declared that Ohio could not "seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented." *McIntyre*, 514 U.S. at 357. *See also Talley v. California*, 362 U.S. 60, 65 (1960) (anonymous pamphlets seeking boycotts of allegedly racially discriminatory businesses); *Church of the Am. Knights of the Ku Klux Klan v. Kerik*, 232 F.Supp.2d 205 (S.D.N.Y. 2002) (right to wear masks at KKK rally).

Two years later, the Supreme Court applied the principle of constitutionally protected anonymous speech to internet postings in *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). The protection of anonymity takes on added significance on the Internet, a medium which provides individuals with unprecedented opportunities to both publish and receive information. While the expressive powers of the Internet have long been understood by its users, the medium's potential attained recognized constitutional status only in 1997. In *ACLU v. Reno*, the Supreme Court reviewed the Communications Decency Act, the first federal statute seeking to regulate Internet content. In a landmark decision defining the scope of the online medium's First Amendment protection, the Court noted that the Internet

> **provides relatively unlimited, low-cost capacity for communication of all kinds ...this dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.**

521 U.S. at 870. The Court concluded that there is "*no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium*." *Id.* What the Court described as "the vast democratic fora of the Internet" would be stifled if users were unable to preserve their anonymity online. *Id.* at 868. The courts have long recognized that compelled identification can chill expression.

In *Reno,* the Court was asked to review the constitutionality of the Communications Decency Act provisions seeking to protect minors from harmful material on the Internet. In that landmark decision defining free speech rights on the internet, the Court illustrated how the internet provides for virtually unlimited capacity for communication of all kinds. Indeed, the Court observed:

> **This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.**

***Reno v. ACLU,* 521 U.S. at 870. The Court, harkening back to its decision in *McIntyre,* ultimately concluded that "the vast democratic forum of the internet" would be stifled if users were unable to preserve their anonymity online. *Id.* at 868. Quoting *McIntyre,* the Court observed that compelled identification can have a chill on freedom of speech and expression, and that "anonymity is a shield from the tyranny of the majority…It thus exemplifies the purpose behind the Bill of rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation -- and their ideas from suppression -- at the hand of an intolerant society**." *McIntyre,* **514 U.S. at 357.**

Similarly, in *Columbia Ins. Co. v. Seescandy.com,* 185 F.R.D. 573 (N.D. Cal. 1999), the United States District Court for the Northern District of California sought to reach an equilibrium between the plaintiff's right to pursue a legitimate cause of action against concerns for the potential chilling effect of revealing online anonymity. Confronted with this dilemma, the court observed:

> **People are permitted to interact pseudonymously and anonymously with each other so long as those act are not in violation of the law. This ability to speak one's mind without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate . . . . People**

> **who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identities.**

Id. at 578. **Rather than haphazardly reveal the identities of anonymous speakers as a means of silencing unlawful speech, courts have instead relied on the speaker's audience to discern the content of the message.** ***See McIntyre, 514 U.S. at 348 n.11*** **(stating "don't underestimate the common man. People are intelligent enough to evaluate the source of an anonymous writing . . . . They can evaluate its anonymity along with its message, as long as they are permitted . . . to read that message.") (citations omitted).**

While it is abundantly clear nondisclosure of identity is a fundamental principle of a free society, it is also necessarily critical for the preservation of blogs which espouse unpopular or underrepresented views, engage in legitimate exposure of illegal practices, promote consumer safety issues or deal with issues n which government officials or those connected with the feed industry can speak anonymously with consumers without fear of retribution from corporate giants. ***See Abrams v. United States, 250 U.S. 616, 630 (1919)*** **(Holmes, J., dissenting);** ***see also Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969)*** **(stating that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail . . . ."). "In contemporary society, the individual is often overwhelmed by the size, wealth, and power of impersonal organizations, both in the private and public sectors." Richard S. Miller,** ***Tort Law and Power: A Policy-Oriented Analysis*****, 28 Suffolk U. L. Rev. 1069, 1076 (1994) (citing Allen M. Linden,** ***Tort Law as Ombudsman*****, 51 Can. B. Rev. 155 (1973)). Corporate Defendants should not be permitted to abuse the discovery process by discovery aimed at unmasking an anonymous critic as a scare tactic to chill continued criticism**. ***See, e.g.,*** **David Boies,** ***The Chilling Effect of Libel Defamation Costs: The Problem and Possible Solution*****, 39 ST. Louis U. L.J. 1207, 1210 (1995)(Lawsuits do not exist to provide discovery for its own sake (or to provide grist for publicity mills), or to punish (fair or unfair) by imposing the expense and disruption of litigation, or even to provide an outlet for dissatisfaction with criticism. Lawsuits are to vindicate a legal right.).**

The Internet embodies the democratic institution of the marketplace of ideas in the fullest sense. As the Supreme Court explained in ***Reno,*** **"from the publisher's point of view, [the Internet] constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers."** ***Reno v. ACLU,*** **521 U.S. 844, 853, 870 (1997). The fascination of the Internet lies in its potential for realizing the concept of public discourse at the heart of the Supreme Court's First Amendment jurisprudence."** ***See*** **Daniel A. Farber,** ***Free Speech Without Romance: Public Choice and the First Amendment,*** **105 Harv. L. Rev. 554, 580-82 (1991) (arguing that freedom of speech is essential to promoting the wide dissemination of public discourse). A prevalent metaphor and the central tenet for the First Amendment public discourse is the "marketplace of ideas."** ***See Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 56 (1988)*** **(stating that "'a central tenet of the First Amendment [is] that the government must remain neutral in the marketplace of ideas.'") (quoting** ***FCC v. Pacifica Found.,*** **438 U.S. 725, 745-46 (1978)). The "marketplace of ideas" metaphor originated in Justice Holmes'**

dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). The "marketplace of ideas" concept has remained prevalent theme of First Amendment jurisprudence ever since. *See Red Lion Broad. Co. v. FCC, 395 U.S. 367, 390 (1969)* (articulating that "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas . . . ."). "The marketplace of ideas is a sphere of discourse in which citizens can come together free from governmental interference or intervention to discuss a diverse array of ideas and opinions." *See* Eugene Volokh, *Cheap Speech and What It Will Do*, *104 YALE L.J. 1805, 1086 (1995)* (arguing that "the perfect 'marketplace of ideas' is one where all ideas, not just the popular or well-funded ones, are accessible to all."). "To the extent that this ideal isn't achieved, the promise of the First Amendment is only imperfectly realized." *Id.* Lyrissa Barnett Lidsky, *Silencing John Doe: Defamation & Discourse in Cyberspace*, 49 Duke L.J. 855, 893-94 (2000). "Scholars have touted the Internet as the living embodiment of the 'marketplace of ideas' metaphor that lies at the heart of First Amendment theory." *Id.* at 893.

The only relevant inquiry is the pet food products that the Plaintiffs purchased and the claims in the instant lawsuit. While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224. Discovery in this case is not a means for a corporate defendant to go on a fishing expedition to obtain information that is useful for another context that is wholly irrelevant to the clams at issue.

This request is also objectionable to the extent that it would encompass confidential and privileged attorney client and work product protected documents and information exchanged over the internet. It is thus improper. *Gutescu v. Carey Int'l, Inc.*, 2003 U.S. Dist. LEXIS 27503, *26 (S.D. Fla. 2003) (Noting that Southern District of Florida Rule 26(1)(G)(3)(c) does not require a privilege log for "written and oral communications between a party and its counsel after the commencement of the action and work product material created after the commencement of the action").

The temporal scope of this request for production is also overly broad in that it encompasses a five (5) year period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year

period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection and without waiving it, other than confidential attorney client communications regarding the lawsuit, the Plaintiffs have retained the following documents filed with the Court which are also in the Defendants' possession:

Original complaint and exhibits
Amended Complaint and exhibits
Corrected Amended Complaint and exhibits
Plaintiffs' Motion to Dismiss
Jurisdictional Motions to Dismiss for:
- **H.E. Butt**
- **Kroger**
- **Meijer Inc.**
- **Nestle SA**
- **New Albertsons**
- **Pet Supplies Plus and Pet Supplies Plus USA**
- **Safeway**
- **Stop & Shop**

Plaintiffs' Consolidated Motion to Dismiss
2nd Amended Complaint and exhibits
Corrected 2nd Amended Complaint and Exhibits
Plaintiffs' Motion for Leave to Conduct Personal Jurisdiction Discovery
Defendants' Memorandum in Opposition to Motion for Leave to Conduct Personal Jurisdiction Discovery
Plaintiffs' Reply in Support of Motion for Leave to Conduct Personal Jurisdiction Discovery and Cross Motion to Strike Portions of Defendants' Memorandum in Opposition
Defendants' Memorandum in Opposition to Cross Motion to Strike Portions of Response
Plaintiffs' Reply in Support of Cross Motion to Strike Portions of Response
Order Granting Motion for Leave to Conduct Personal Jurisdiction Discovery
Defendants' Motion to Dismiss Second Amended Complaint
Third Amended Complaint
Defendants' Motion to Dismiss Third Amended Complaint
Plaintiffs' Response to Motion to Dismiss Third Amended Complaint
Defendants' Reply in Support of Motion to Dismiss Third Amended Complaint
Order on Motion to Dismiss Third Amended Complaint
Fourth Amended Complaint
Defendant Natura's First Interrogatories to each individual Plaintiff
Defendant Mars' First Interrogatories to each individual Plaintiff
Defendants' Joint Request for Production to each individual Plaintiff

Plaintiffs' First, Second and Third Requests for Production to Manufacturer Defendants

7. All notes or other documents gathered, generated, sent, received, or maintained by you that pertain to any pet, as defined above, including journals, diaries, letters, or scrapbooks referencing any pet.

Objection. To the extent that this request seeks any anonymous electronic and/or internet documents as set forth *supra* in the Plaintiffs' response to request number 6, the Plaintiffs reassert the same objection.

The Plaintiffs also object because the request is facially overbroad based upon the defined terms "pertain to, "documents" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually have any sort of electronic communications, notes, etc., that "pertain to" "any pet" that any of the non-parties to this action may have gathered, generated, sent, received, or maintained. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Sun Healtcare Group, Inc*., 2008 U.S. Dist. LEXIS 30517, at *17-18 (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc*., 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co*., 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

This request is also overbroad in that it seeks every document and piece of paper that may have anything at all to do with any of the Plaintiffs' cats and dogs, whether or not the notes or documents "gathered, generated, sent, received, or maintained" actually relate to the issues in this lawsuit or not. The request is therefore overly broad and improper. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Cici Enters*., 2006 U.S. Dist. LEXIS 85123, at *3 ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *Walgreen Co.*, 526 F.3d 641, at *18 (upholding district court finding that requests for "all documents relating or referring to" is overbroad); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"). While "[t]he legal tenet that relevancy in

the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)

The temporal scope of this request for production is also overly broad in that it encompasses an unlimited period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four (4) year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. A request that is unlimited in terms of temporal scope is overly broad and therefore improper. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection, and without waiving it, as to Ms. Cortazzo only, veterinary records, bills and photos will be produced as available for the period of time between May 9, 2003 and May 9, 2007.

8. All documents that pertain to any damages allegedly suffered by you or any pet owned by you as the result of the conduct alleged in the Complaint.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "pertain to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually have documents that "pertain to" "health concerns" that any of the non-partiers to this action have had "as to any pet, including research" etc. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Sun Healtcare Group, Inc*., 2008 U.S. Dist. LEXIS 30517, at *17-18 (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of

five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"); *Cici Enters.*, 2006 U.S. Dist. LEXIS 85123, at *3 ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *Walgreen Co.*, 526 F.3d 641, at *18 (upholding district court finding that requests for "all documents relating or referring to" is overbroad); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

Notwithstanding the objection, veterinarian records, bills and pet food receipts for the period of time between May 9, 2003 and May 9, 2007 will be produced as to Ms. Cortazzo only as they are available.

9. All documents that pertain to any consultations with or visits to a veterinarian or other professional for any pet including bills, insurance records, notes and medical records from all such visits or consultations.

Objection. The temporal scope of this request for production is overly broad in that it encompasses an unlimited period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four (4) year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. A request that is unlimited in terms of temporal scope is overly broad and therefore improper. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection, veterinarian records and bills will be produced as to the pets that Ms. Cortazzo had between May 9, 2003 to May 9, 2007, as they are available.

10. All documents that pertain to any health concern you have or have had as to any pet, including any research regarding the causes of or treatments for that health concern.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "pertain to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually have documents that "pertain to" "health concerns" that any of the non-partiers to this action have had "as to any pet, including research" etc. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Sun Healthcare Group, Inc*., 2008 U.S. Dist. LEXIS 30517, at *17-18 (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"); *Cici Enters*., 2006 U.S. Dist. LEXIS 85123, at *3 ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *Walgreen Co.*, 526 F.3d 641, at *18 (upholding district court finding that requests for "all documents relating or referring to" is overbroad); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex*., 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc*., 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co*., 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

The temporal scope of this request for production is overly broad in that it encompasses an unlimited period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four (4) year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. A request that is unlimited in terms of temporal scope is overly broad and therefore improper. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts

"occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection, veterinarian records for the pets that Ms. Cortazzo had between May 9, 2003 to May 9, 2007 will be produced as they are available. This response relates to Ms. Cortazzo only.

11. All documents that pertain to any amounts spent on care for any pet, including receipts for food, medicine or medical treatments, or health care or insurance.

Objection. The temporal scope of this request for production is overly broad in that it encompasses an unlimited period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four (4) year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. A request that is unlimited in terms of temporal scope is overly broad and therefore improper. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection, pet food receipts and veterinarian bills will be produced for Ms. Cortazzo only and only as to the pets that she had between of May 9, 2003 to May 9, 2007, as they are available.

12. All documents that pertain to any amounts spent to purchase and/or rescue any pet.

Objection. This request is overbroad to the extent that it seeks the production of documents as to "any" pet. The only relevant inquiry would be for the cats and dogs that each Plaintiff cared for and considered part of their family during the four year class period of May 9, 2003 to May 9, 2007. While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

Notwithstanding the objection, relevant documents will be produced as to the pets that only Ms. Cortazzo had between May 9, 2003 to May 9, 2007, as they are available.

13. All photographs, videorecordings, or other visual records of any pets.

Objection. This request is overbroad to the extent that it seeks "*[a]ll*" photographs, etc. of "any" cats and dogs for which the Plaintiffs provided or purchased pet food. Requesting the Plaintiffs to produce each and every photograph of all cats or dogs for which they provided or purchased food is over broad and not likely to lead to the discovery of admissible evidence and is clearly intended to harass the Plaintiffs. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Socas v. Northwestern Mut. Life Ins. Co.*, 2008 U.S. Dist. LEXIS 16683, *3 (S.D. Fla. 2008) ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *Paluch v. Dawson*, 2007 U.S. Dist. LEXIS 91191, *10 (M.D. Pa. 2007) ("Photographs of all Defendants" is, without an adequate demonstration of the relevancy of this request, overbroad and relevant when plaintiff already possess relevant photographs). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.). *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224. This request is so broad that it would include stray cats or dogs for which a Plaintiff may have occasionally provided food.

Moreover, many of the Plaintiffs have hundreds to thousands of pictures of their companion cats and dogs, which would be overly burdensome, expensive and time consuming to produce. Producing each and every photograph or video is unnecessary, cost prohibitive and not likely to lead to the discovery of evidence that will be admissible at trial.

The temporal scope of this request for production is overly broad in that it encompasses an unlimited period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four (4) year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery.

A request that is unlimited in terms of temporal scope is overly broad and therefore improper. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection and without waiving it, as to only Ms. Cortazzo, representative photographs will be produced for pets that she had between May 9, 2003 to May 9, 2007.

14. All documents pertaining to any communication between you and any other person about fronting, defraying, covering, or paying for the expenses of this action.

Objection. The Plaintiffs also object because the request is facially overbroad based upon the defined terms "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually made a communication to "any other person" "pertaining to" "fronting, defraying, covering, or paying for the expenses of this action." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Sun Healtcare Group, Inc.*, 2008 U.S. Dist. LEXIS 30517, at *17-18 (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"); *Cici Enters.*, 2006 U.S. Dist. LEXIS 85123, at *3 ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *Walgreen Co.*, 526 F.3d 641, at *18 (upholding district court finding that requests for "all documents relating or referring to" is overbroad); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (a request for "all documents…pertaining to" state action

over the course of five years is "vague and overbroad"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.) .); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

Notwithstanding the objection, none solely as to Ms. Cortazzo other than the retainer agreement with counsel, which is irrelevant until after judgment pursuant to Federal Rule of Civil Procedure 69. *See Sanderson v. Winner*, 507 F.2d 477, 479-80 (10th Cir. 1974); *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 2006 U.S. Dist. LEXIS 1308 **3 fn 2 (D. Md. January 9, 2006) (denying defendants' motion to compel production of named plaintiffs' fee retainer agreements with class counsel because they are irrelevant until after judgment under Federal Rule of Civil Procedure 69 and noting that due the sensitive nature of the retainer agreement, courts have treated them in a similar manner to tax returns); *In re Intel Corp. Microprocessor Antitrust Litig.*, 526 F. Supp. 461, 464 (D. Delaware December 6, 2007); *Stahler v. Jamesway Corp.*, 85 F.R.D. 85, 86 (E.D. Pa. 1979); *In re McDonnell Douglas Corp. Securities Litigation*, 92 F.R.D. 761, 763 (E.D. Mo. 1981); *In re Nissan Motor Corp. Antitrust Litigation*, 1975 WL 166141, *2 (S.D. Fla. 1975). *See also* 7 A. Conte and H. Newberg, *Newberg on Class Actions*, § 22:79 (4th ed. 2005) ("Defendants often request discovery regarding fee arrangements between the plaintiffs and their counsel, but courts usually find such discovery to be irrelevant to the issue of certification."); Manual for Complex Litigation §21.141(4th ed.2004) ("Precertification inquiry into the named parties' finances of the financial arrangements between the class representatives and their counsel are rarely appropriate, except to obtain information necessary to determine whether the parties and their counsel have the resources to represent the class adequately. Ethics rules permit attorneys to advance court costs and expenses of litigation the repayment of which may be contingent on the outcome of the matter …"). Class counsel is advancing the costs of the litigation and the Plaintiffs' counsel stipulates that they have the financial means to underwrite the expenses of the litigation. Any inquiry other than that is improper. *See Buford v. H&R Block*, 168 F.R.D. 340 (S.D. Ga. 1996).

15. All documents pertaining to any communication between you and any other person about splitting, sharing, or dividing any potential recovery in this action.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually made a communication to "any other person" "pertaining to" "fronting, defraying, covering, or paying for the expenses of this action." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, at *29-30 (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop.*, 79 Fed. Cl. at 729 (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Sun Healtcare Group, Inc.*, 2008 U.S. Dist.

LEXIS 30517, at *17-18 (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (holding that a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"); *Wagener*, 2007 U.S. Dist. LEXIS 21190, at *16 (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res.*, 2001 U.S. Dist. LEXIS 24647, at *10 (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"); *Cici Enters.*, 2006 U.S. Dist. LEXIS 85123, at *3 ("[a]ll document and records which you believe pertain to any of the issues in this lawsuit" is overbroad); *Walgreen Co.*, 526 F.3d 641, at *18 (upholding district court finding that requests for "all documents relating or referring to" is overbroad); *Loubser*, 2007 U.S. Dist. LEXIS 91314, at *12-13 (a request for "all documents…pertaining to" state action over the course of five years is "vague and overbroad"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.). *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

Notwithstanding the objection, none solely as to Ms. Cortazzo other than the retainer agreement with counsel. See response to number 14 above. The Plaintiffs reassert the objection raised in number 14 above and incorporate it herein by reference.

16. All documents pertaining to any communications between you and any other person regarding possible or actual participation in this or any other lawsuit regarding pet food products.

Objection. The Plaintiffs also object because the request is facially overbroad based upon the defined terms "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action actually made a communication to "any other person" "pertaining to" "any communications" "regarding possible or actual participation in this or any other lawsuit regarding pet food products." "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Horowitch v. Diamond Aircraft Indus.*, 2007 U.S. Dist. LEXIS 29626 (M.D. Fla. 2007); *Taylor v. Florida Atlantic University*, 132 F.R.D. 304, 305 (S.D. Fla. 1990); *Regan-Touhy v. Walgreen Co.*, 2008 U.S. App. LEXIS 10704 (10th Cir. Okla. May 20, 2008); *Schlafly v. Caro-Kann Corp.*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998); *R.W. Int'l* Corp. v. Welch Foods, Inc., 937 F.2d 11, 18 (1st Cir. 1991); *United States v.*

***Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030 (E.D. Cal. 2007); *Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. 614, 618 (D. Colo. 2007) (all for the same proposition). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, 4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).**

This request calls for the production of documents and communications with counsel are confidential and attorney client privileged communications. Preliminary communications prior to the formation of the attorney client relationship are as privileged as confidential communications occurring thereafter. *See Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d1311, 1319 (7th Cir. 1978); *Barton v. U.S. Dist. Court for the Cent. Dist. of Cal.*, 410 F.3d1104, 1111 (9th Cir.2005); *Connelly v. Dun & Bradstreet, Inc.*, 96 F.R.D. 339, 341-42 (D. Mass. 1982); *United States v. Dennis*, 843 F.2d 652, 656-67 (2d Cir. 1988); *Kearns v. Fred Lavery Porsche Audi Co.*,745F.2d 600, 603 (Fed. Cir. 1984); *Banner v. City of Flint*, 136 F. Supp. 2d678, 683 (E.D. Mich. 2000); *Bennett Silverstein Assocs. v. Furman*, 776 F.Supp. 800, 803 (S.D.N.Y. 1991). *In re Sahlen & Assoc., Inc.*, 1990 U.S. Dist. LEXIS 18793, 5-6 (S.D. Fla. 1990); *United States v. Aronson*, 610 F. Supp. 217, 221 (S.D. Fla. 1985); *AARP v. Kramer Lead Mktg. Group*, 2005 U.S. Dist. LEXIS 36970 (M.D. Fla. July 26, 2005); *In re Grand Jury Subpoena (Bierman)*, 788 F.2d 1511, 1512 (11th Cir. 1986).

The Plaintiffs further object to this request to the extent that it seeks information about "any other lawsuit regarding pet food products." The only relevant inquiry is the pet food products that the Plaintiffs purchased and the claims in the instant lawsuit. While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, 4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997). Discovery in this case is not a means for a corporate defendant to go on a fishing expedition to obtain information that is useful for another context that is wholly irrelevant to the clams at issue.

Notwithstanding the objection, none other than the retainer agreement with counsel in this case. See response to number 14 above. The Plaintiffs reassert the objection raised in number 14 above and incorporate it herein by reference.

17. All documents pertaining to any lawsuits, arbitrations, or other legal or regulatory proceedings in which you have been a party or testified during the last ten (10) years.

Objection. This request clearly contemplates the production of documents that are attorney client privileged and work product protected documents because the request fails to exclude such confidential information from the broad request for "[a]ll documents."

The Plaintiffs also object because the request is facially overbroad based upon the defined terms "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action have been parties any lawsuits, arbitrations, or other legal or regulatory proceedings over the last ten (10) years. "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Horowitch v. Diamond Aircraft Indus.*, 2007 U.S. Dist. LEXIS 29626 (M.D. Fla. 2007); *Taylor v. Florida Atlantic University*, 132 F.R.D. 304, 305 (S.D. Fla. 1990); *Regan-Touhy v. Walgreen Co.*, 2008 U.S. App. LEXIS 10704 (10th Cir. May 20, 2008); *Schlafly v. Caro-Kann Corp.*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998); *R.W. Int'l* Corp. v. Welch Foods, Inc., 937 F.2d 11, 18 (1st Cir. 1991); *United States v. Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030 (E.D. Cal. 2007); *Cache La Poudre Feeds, LLC v. Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. 614, 618 (D. Colo. 2007). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, 4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

The temporal scope of this request for production is also overly broad in that it encompasses a ten (10) year period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. Ten (10) years well exceeds the outermost bound of the temporal scope of discovery. *Avirgan v. Hull*, 116 F.R.D. 591, 593 (S.D. Fla. 1987) (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Cherenfant v. Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458 (S.D. Fla. 2004) (in a discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Cohen v. Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, 2-3 (S.D. Fla. 2007) ("if discovery is sought nationwide for a

ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Adkins v. Christie*, 488 F.3d 1324, 1330 (11th Cir. 2007) (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde v. Bd. of Regents*, 2007 U.S. Dist. LEXIS 62700, 33-34 (S.D. Ga. 2007) (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection, the Plaintiffs will respond to this request for the time period between May 9, 2003 and May 9, 2007, which is the Class Period defined in the Fourth Amended Complaint.

As to Ms. Cortazzo only, between May 9, 2003 and May 9, 2007, none.

18. A copy of any transcript of testimony given by you at any trial, evidentiary hearing, or deposition.

Objection. See response to number 17 above. The Plaintiffs reassert the objections raised in number 17 above and incorporate them herein by reference.

Notwithstanding the objection, the Plaintiffs will respond to this request for the time period between May 9, 2003 and May 9, 2007, which is the Class Period defined in the Fourth Amended Complaint.

As to Ms. Cortazzo only, between May 9, 2003 and May 9, 2007, none.

19. A copy of any affidavit, declaration, or sworn statement executed or signed by you relating to any lawsuits, arbitrations, or other legal or regulatory proceedings in which you have been a party or testified during the last ten (10) years.

Objection. See response to number 17 above. The Plaintiffs reassert the objections raised in number 17 above and incorporate them herein by reference.

As to Ms. Cortazzo only, between May 9, 2003 and May 9, 2007, none.

20. All documents pertaining to any communication you sent or received, directly or indirectly, regarding pet food during the last five (5) years, including letters or newsletters.

Objection. This request for production is also vague, ambiguous and unclear as to what is meant by "any communication…sent or received, …indirectly, … ." The Plaintiffs are unable to respond since they are unclear what communications that they could have sent or received "indirectly. *In re John Does*, 1990 U.S. Dist. LEXIS 13793 (D. Nev. 1990) (a summons seeking the names and social security numbers of all "directly" and "indirectly" tipped gaming employees can not be enforced to the extent it seeks the names of employees

"indirectly" tipped, because the term is "undefined and imprecise" and is "not clear which employees it refers to").

Additionally, the request is also overbroad since it requests all documents "pertaining" to communications regarding "pet food" in general. The use of the defined term "pertaining to" combined with the defined terms "documents" and "you," as set forth above, make this request facially overly broad and the Plaintiffs are unable to frame a proper response based upon the ambiguities created by the overly broad definitional terms. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59**;** ***Cooper v. Meridian Yachts, Ltd.*****, 2008 U.S. Dist. LEXIS 41902, 29-30 (S.D. Fla. 2008) (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad);** ***Dairyland Power Coop. v. United States*****, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive");** ***Brown v. Sun Healtcare Group, Inc*****., 2008 U.S. Dist. LEXIS 30517, 17-18 (E.D. Tenn. 2008) (holding that a request for "information** ***related to*** **any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added);** ***Loubser v. Pala*****, 2007 U.S. Dist. LEXIS 91314, 12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" is "vague and overbroad");** ***Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*****, 2007 U.S. Dist. LEXIS 21190 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad");** ***Western Res., Inc. v. Union Pac. R.R. Co*****., 2001 U.S. Dist. LEXIS 24647 (D. Kan. 2001) (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"). Because the term "you" is defined to include a spouse, relatives, directors, officers, employees, agents, investigators, representatives or other persons acting, or purporting to act on their behalf," the Plaintiffs would have to investigate whether their spouse or "relatives" and employees sent or received directly or** ***indirectly*** **documents, which is an extensively defined term that is in and of itself overbroad, "pertaining to," which, according to the definition, means "refers to," among many other things, communications regarding "pet food." This request is patently overbroad.**

Additionally, the request is also objectionable because, as the Defendants have repeatedly stated in court papers, the only relevant inquiry is as to the specific pet food purchased by the Plaintiffs during the relevant time period. Discovery in this case is not a means for a corporate defendant to go on a fishing expedition to obtain information that is useful for another context that is wholly irrelevant to the clams at issue. ***Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*****, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007);** ***Hartco Eng'g, Inc. v. Wang's Int'l, Inc*****., 2006 U.S. Dist. LEXIS 38701, 4-5 (E.D. La. 2006);** ***Claude P. Bamberger Int'l v. Rohm & Haas Co*****., 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998);** ***Piacenti v. GMC*****, 173 F.R.D. 221, 224 (N.D. Ill. 1997). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery."** ***Martinez v. Cornell Corrs. of Tex*****., 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.);** ***Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*****, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007);** ***Hartco Eng'g, Inc. v. Wang's Int'l, Inc*****., 2006 U.S. Dist. LEXIS 38701,**

4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

This request is also objectionable to the extent that it infringes on the Plaintiffs First Amendment right to anonymous free speech for all communications made anonymously on the internet and otherwise. The Plaintiffs thus specifically object to the portion of the defined term "documents" that includes messages, email, instant messages, electronic postings, weblogs or any other infringement on their right to free anonymous speech. The Plaintiffs hereby adopt and incorporate by reference their response to request number 6 as to the First amendment objection. See Response to number 6 above.

This request is also objectionable to the extent that it would encompass confidential and privileged attorney client and work product protected documents and information exchanged over the internet. It is thus improper. *Sun-Sentinel Co. v. United States Dep't of Homeland Sec.*, 431 F. Supp. 2d 1258, 1277 (S.D. Fla. 2006) (holding that emails "were properly withheld in their entirety because the information contained in the e-mails falls within the scope of attorney-client privilege."); *Judicial Watch, Inc. v. DOJ*, 369 U.S. App. D.C. 49 (D.C. Cir. 2005) (holding that the "e-mails at issue in this case are attorney work product, the entire contents of these documents - i.e., facts, law, opinions, and analysis - are exempt from disclosure"); *Retail Brand Alliance, Inc. v. Factory Mut. Ins. Co.*, 2008 U.S. Dist. LEXIS 17746 (S.D.N.Y. 2008) (holding that part of an attachment to an email is protected by the work product doctrine).

This request is also facially overly broad in that it "pertains to" the general topic of "pet food" rather than any specific pet food in this lawsuit. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, 29-30 (S.D. Fla. 2008) (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Brown v. Sun Healtcare Group, Inc.*, 2008 U.S. Dist. LEXIS 30517, 17-18 (E.D. Tenn. 2008) (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, 12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" is "vague and overbroad"); *Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*, 2007 U.S. Dist. LEXIS 21190 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc. v. Union Pac. R.R. Co.*, 2001 U.S. Dist. LEXIS 24647 (D. Kan. 2001) (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome").

The temporal scope of this request for production is also overly broad in that it encompasses a five (5) year period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of

discovery. *Avirgan v. Hull*, 116 F.R.D. 591, 593 (S.D. Fla. 1987) (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Cherenfant v. Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458 (S.D. Fla. 2004) (in a discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Cohen v. Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, 2-3 (S.D. Fla. 2007) ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Adkins v. Christie*, 488 F.3d 1324, 1330 (11th Cir. 2007) (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde v. Bd. of Regents*, 2007 U.S. Dist. LEXIS 62700, 33-34 (S.D. Ga. 2007) (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the above objection, as for Ms. Cortazzo only, excluding anonymous internet postings, and as to *direct* communications only, between May 9, 2003 and May 9, 2007, none.

21. All documents pertaining to any communication you sent to any federal or state agency, advocacy group, media outlet, or company involved in any way with the manufacture, distribution, or sale of pet food regarding pet food or the pet food industry.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "documents," "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action have sent any communications "to any federal or state agency, advocacy group, media outlet, or company involved in any way with the manufacture, distribution, or sale of pet food regarding pet food or the pet food industry." "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Taylor*, 132 F.R.D. at 305 (same); *Horowitch*, 2007 U.S. Dist. LEXIS 29626, at *5 (same); *Walgreen Co.*, 2008 U.S. App. LEXIS 10704, at *18 (same); *Schlafly*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); Welch Foods, Inc., 937 F.2d at 18 (same); *Approximately $141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030, at *9 (same); *Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. at 618 (same). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v.*

***Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.**

This request is also overbroad to the extent that it seeks "All documents pertaining to any communication…regarding pet food or the pet food industry." This exceeds the factual and legal issues in the Fourth Amended Complaint in that it seeks documents "pertaining to" pet food in general or the entire pet food industry rather than the specific Defendants in this case and the particular pet food products purchased by the Plaintiffs during the four year class period of May 9, 2003 to May 9, 2007. The request is so overbroad that it would even include those Defendants who have been exempted from the Defendant class definition and would encompass communications regarding, for example, legislation, which is not an issue in this lawsuit. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59**; *Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, 2008 U.S. Dist. LEXIS 16799, *17-18 (E.D. Pa. 2008) (holding that a request for production which would encompass communications that are not relevant to the claims or defenses at issue is overbroad and unduly burdensome); *Dobrich v. Walls*, 2006 U.S. Dist. LEXIS 65801, *7-9 (D. Del. 2006) (holding a request for production which would encompass communications regarding a settlement agreement, which were not an issue in the lawsuit, are irrelevant as to the claim at issue). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.**

The temporal scope of this request for production is overly broad in that it encompasses an unlimited period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. A time period unlimited in scope is overly broad and therefore improper. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Notwithstanding the objection and without waiving it, for the time period between May 9, 2003 and May 9, 2007 there are no documents as to the manufacture, sale or distribution of pet food purchased by Ms. Cortazzo for Hudson, Patches, Diego, Matilda or Frankie.

22. All documents pertaining to any electronic communication you sent or received, directly or indirectly, regarding pet food during the last five (5) years, including emails and postings on websites, weblogs, electronic bulletin boards, or other electronic media.

Objection. This request for production is vague, ambiguous and unclear as to what is meant by "any communication…sent or received, …indirectly, … ." The Plaintiffs are unable to respond since they are unclear wheat communications that they could have sent or received "indirectly." ***In re John Does,*** **1990 U.S. Dist. LEXIS 13793, *10-11 (D. Nev. 1990) (a summons seeking the names and social security numbers of all "directly" and "indirectly" tipped gaming employees can not be enforced to the extent it seeks the names of employees "indirectly" tipped, because the term is "undefined and imprecise" and is "not clear which employees it refers to").**

The Plaintiffs object because the request is facially overbroad based upon the defined terms "documents," "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action have sent any electronic communications "directly or indirectly, regarding pet food during the last five (5) years, including emails and postings on websites, weblogs, electronic bulletin boards, or other electronic media." "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." ***Kraft Foods N. Am.,*** **238 F.R.D. 648, 658-59;** ***Taylor,*** **132 F.R.D. at 305 (same);** ***Horowitch,*** **2007 U.S. Dist. LEXIS 29626, at *5 (same);** ***Walgreen Co.,*** **2008 U.S. App. LEXIS 10704, at *18 (same);** ***Schlafly,*** **1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); Welch Foods, Inc., 937 F.2d at 18 (same);** ***Approximately $141,932.00 in United States Currency,*** **2007 U.S. Dist. LEXIS 54030, at *9 (same);** ***Land O'Lakes Farmland Feed,*** **LLC, 244 F.R.D. at 618 (same). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery."** ***Martinez v. Cornell Corrs. of Tex.,*** **229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.);** ***Marathon Ashland Petroleum LLC,*** **2007 U.S. Dist. LEXIS 29159, at *19-20;** ***Wang's Int'l, Inc.,*** **2006 U.S. Dist. LEXIS 38701, at *4-5;** ***Haas Co.,*** **1998 U.S. Dist. LEXIS 11141;** ***GMC,*** **173 F.R.D. at 224.**

See response to number 6 above as to anonymous electronic communications. The Plaintiffs reassert the objection raised in number 6 above and incorporate it herein by reference.

The temporal scope of this request for production is also overly broad in that it encompasses a five (5) year period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Additionally, the scope of the request is overbroad to the extent that it seeks documents "pertaining to" "pet food" generally and not the specific products purchased by the Plaintiffs over the four year Class Period from May 9, 203 to May 9, 2007. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, 29-30 (S.D. Fla. 2008) (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Brown v. Sun Healtcare Group, Inc.*, 2008 U.S. Dist. LEXIS 30517, 17-18 (E.D. Tenn. 2008) (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, 12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" is "vague and overbroad"); *Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*, 2007 U.S. Dist. LEXIS 21190 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc. v. Union Pac. R.R. Co.*, 2001 U.S. Dist. LEXIS 24647 (D. Kan. 2001) (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.).

23. A copy of all web sites, weblogs, electronic bulletin boards or other electronic media maintained in whole or in part by you, including any past or archived information during the last five (5) years, which in any way pertain to pet food.

Objection. See response to number 6 above. The Plaintiffs reassert the objection raised in number 6 above as to anonymous communications and incorporate it herein by reference.

The temporal scope of this request for production is also overly broad in that it encompasses a five (5) year period of time. The relative time period defined in the Fourth Amended Complaint is May 9, 2003 through May 9, 2007, which encompasses a four year period of time. Cases in this jurisdiction have held that an appropriate time period for discovery is between 3 and 5 years with 5 being the outermost edge of the proper scope of discovery. *Hull*, 116 F.R.D. at 593 (In limiting discovery to approximately four years, the court stated "there is no logical need to permit discovery into predicate acts alleged to have occurred ten or fifteen years ago" when the plaintiff has established that the requisite acts "occurred within a specified time frame"); *Nationwide Credit, Inc.*, 2004 U.S. Dist. LEXIS 30458, at *8 (in discrimination case, the court held that a five year discovery time period was appropriate when it sufficiently covered the discriminatory acts in question); *Status-One Invs., Inc.*, 2007 U.S. Dist. LEXIS 74365, at *2-3 ("if discovery is sought nationwide for a ten-year period, and the responding party objects on the grounds that only a five-year period limited to activities in the state of Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period as to the State of Florida"); *Christie*, 488 F.3d at 1330 (finding no abuse of discretion when trial court reduced discovery from a seven to five years to pertain to the relevant time period); *Mawulawde*, 2007 U.S. Dist. LEXIS 62700, at *33-34 (stating that three to five years is the norm for discovery in district courts for employment discrimination cases).

Additionally, the scope of the request is overbroad to the extent that it seeks documents which "in any way pertain to pet food" generally and not the specific products purchased by the Plaintiffs for the companion cats and dogs at issue over the four year Class Period from May 9, 2003 to May 9, 2007. *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, 29-30 (S.D. Fla. 2008) (noting that in the absence of limiting language, the use of terms like "relating to" is impermissibly overbroad); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"); *Brown v. Sun Healtcare Group, Inc.*, 2008 U.S. Dist. LEXIS 30517, 17-18 (E.D. Tenn. 2008) (holding that a request for "information *related to* any disciplinary action of any employee relating to improper resident care during…" is overbroad and unduly burdensome) (emphasis added); *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, 12-13 (N.D. Ind. 2007) (holding that a request for "all documents…pertaining to" is "vague and overbroad"); *Wagener v. SBC Pension Benefit Plan-Non-Bargained Program*, 2007 U.S. Dist. LEXIS 21190 (D.D.C. 2007) (holding that a request for documents that "relate to" anything about the pay amendments or program in question is "tremendously overbroad"); *Western Res., Inc. v. Union Pac. R.R. Co.*, 2001 U.S. Dist. LEXIS 24647 (D. Kan. 2001) (holding that requests using the "omnibus" phrase "relate to" are "overbroad and unduly burdensome"). While "[t]he legal tenet that

relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

The Plaintiffs object because the request is facially overbroad based upon the defined terms "documents," "pertaining to" and "you" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action maintain "web sites, weblogs, electronic bulletin boards or other electronic media," "which in any way pertain to pet food" over a five (5) year period of time. "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Taylor*, 132 F.R.D. at 305 (same); *Horowitch*, 2007 U.S. Dist. LEXIS 29626, at *5 (same); *Walgreen Co.*, 2008 U.S. App. LEXIS 10704, at *18 (same); *Schlafly*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); Welch Foods, Inc., 937 F.2d at 18 (same); *Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030, at *9 (same); *Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. at 618 (same). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

24. Copies of all drivers licenses you have had during the last five (5) years.

Objection. Production of the Plaintiffs' Driver's Licenses is an inappropriate infringement on their personal identification information which could unnecessarily subject the Plaintiffs to identity theft and is an unwarranted intrusion on the Plaintiffs' right to privacy. Courts have held that, insofar as discovery requests seek confidential information such as driver's licenses and social security numbers, privacy concerns are relevant, and the party requesting such information "must show that the value of the information sought would outweigh the privacy interests of the affected individuals." *Case v. Platte County*, 2004 U.S. Dist. LEXIS 18052, 2004 WL 1944777, at *2 (D. Neb. June 11, 2004)(citing *Onwuka v. Fed. Express Corp.*, 178 F.R.D. at 517). *See Walters v. Breaux*, 200 F.R. D. 271, 274 (W.D. La. 2001)(citing cases protecting legitimate privacy concerns with respect to social-security numbers). Even when social-security information is needed to help locate individuals, courts will decline to compel production of social-security numbers when other identifying and locating information is available. *See McDougal-Wilson v. Goodyear Tire and Rubber*

_Co._, 232 F.R.D. 246, 252 (E.D.N.C. 2005); _Raddatz v. Standard Register Co._, 177 F.R.D. 446, 448 (D. Minn. 1997)(stating that court should not order the production of personnel files in their entirety where less intrusive means may be used to obtain the relevant information). _McGee v. City of Chicago_, 2005 U.S. Dist. LEXIS 30925, *7-8 (N.D. Ill. June 23, 2005) (Good cause exists to prohibit public disclosure of private information, including a drivers license number, because such disclosure may "cause the Individual Defendants unnecessary annoyance or embarrassment and would unfairly and gratuitously invade their privacy").

Such a request is also irrelevant and not reasonably calculated to lead to the discovery of evidence that will be admissible at trial. Courts have found that social-security numbers are confidential and not reasonably calculated to lead to the discovery of admissible information. _See Mike v. Dymon_, No. 95-2405-EEO, 1996 U.S. Dist. LEXIS 17329, 1996 WL 674007, at *7 (D. Kan. November 14, 1996)("The court does not find that requests for social security numbers and dates of birth of all individuals who provided information to answer the interrogatories are reasonably calculated to lead to the discovery of admissible evidence.").

25. Documents sufficient to identify all addresses at which you have lived or worked during the last five (5) years.

Objection. This same information was requested in Defendant Mars Inc.'s interrogatories which requested a list of "all addresses at which you have lived for the past ten (10) years." Please see Interrogatory number five (5). The Plaintiffs therefore object to providing documents identifying the very same addresses that they have already identified in their responses to Defendant, Mars Inc.'s, interrogatory number five (5). This request is therefore overly burdensome, duplicative and intended to harass the Plaintiffs by causing the Plaintiffs and their attorneys additional and unnecessary labor and expense in responding to this request that will not lead to the discovery of any evidence that their responses to interrogatory number five (5) would not provide. _United States ex rel. Fisher v. Network Software Assoc._, 227 F.R.D. 4, 7 (D.D.C. 2005) (Granting a motion for protective order because request sought information "already produced" and was therefore duplicative and unnecessary); _EEOC v. Wal-Mart Stores, Inc._, 2001 U.S. Dist. LEXIS 23027, *23-24 (W.D.N.Y. 2001) ("Where a request is duplicative or cumulative of other discovery already provided, the defendant may refer the plaintiffs to the previously produced discovery, provided that such a referral is sufficiently specific to allow the plaintiffs to identify the actual responsive documents previously produced"); _Aluminum Distributors, Inc. v. Gulf Aluminum Rolling Mill Co._, 1988 U.S. Dist. LEXIS 11222, *17-18 (N.D. Ill. 1988) ("As it appears that much of the information being allowed here has previously been produced, we admonish ADI that duplicative discovery request will result in sanctions. Discovery beyond these four customers will not be allowed because it is irrelevant").

The Plaintiffs object to providing employment address for the past five (5) years as that is irrelevant to this case and is therefore not intended to lead to the discovery of evidence admissible at trial. _Rivera v. NIBCO, Inc._, 384 F.3d 822, 825 (9th Cir. 2004) (discovery of plaintiff's birthplace is irrelevant); _Myricks v. FRB_, 480 F.3d 1036, 1042 (11th Cir. 2007) (Upholding district court's decision to deny "irrelevant discovery" of severance agreements

not related to the claim); *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 95 (Fla. 1995) (a litigant is not "entitled carte blanche to irrelevant discovery").

Notwithstanding the objection and without waiving it, please see response to Defendant Mars Inc.'s Interrogatories number five (5) for addresses for the past five (5) years.

26. Documents sufficient to identify all members of your household at all times during the last five (5) years.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "documents" and "your" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action have had members of their household other than the Plaintiff over the past five (5) years. The inquiry is burdensome and irrelevant. "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Taylor*, 132 F.R.D. at 305 (same); *Horowitch*, 2007 U.S. Dist. LEXIS 29626, at *5 (same); *Walgreen Co.*, 2008 U.S. App. LEXIS 10704, at *18 (same); *Schlafly*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); Welch Foods, Inc., 937 F.2d at 18 (same); *Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030, at *9 (same); *Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. at 618 (same). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.). *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

This request is also overbroad to the extent that it would require the Plaintiffs to provide information concerning individuals who are not members of the Plaintiffs family. For example, if a plaintiff lived in a duplex, this request is so broad that it could be construed as requiring documents to identify the individuals in that duplex, regardless of whether a Plaintiff even knew the resident(s) or not.

Nothwithstanding the objection and without waiving it, in lieu of producing documents, as to all family members in Ms. Cortazzo's household, Hudson, Patches, Diego, Matilda and Frankie.

27. All receipts for pet foods and pet treats purchased by you or any member of your household during the last five (5) years.

Objection. The Plaintiffs object because the request is facially overbroad based upon the defined terms "you" and "your" because the Plaintiffs would have to inquire as to a spouse, relatives, employees, etc. to determine whether any of these persons who are not a party to this action have or had members of their household other than the Plaintiff over the past five (5) years purchased pet food. The inquiry is burdensome and irrelevant because it is not even related to the Paintiffs companion cats and dogs during the relevant time period of May 9, 2003 to May 9, 2007. "[S]uch broad language 'make[s] arduous the task of deciding which of numerous documents may conceivably fall within its scope." A request that seeks all documents 'pertaining to' or 'concerning' a broad range of items 'requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.' Such a request violates the basic principle of Federal Rule Civil Procedure 34(a) that requests 'must describe with reasonable particularity' each item or category of items to be produced." *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59; *Taylor*, 132 F.R.D. at 305 (same); *Horowitch*, 2007 U.S. Dist. LEXIS 29626, at *5 (same); *Walgreen Co.*, 2008 U.S. App. LEXIS 10704, at *18 (same); *Schlafly*, 1998 U.S. App. LEXIS 8250 (Fed. Cir. 1998) (same); Welch Foods, Inc., 937 F.2d at 18 (same); *Approximately $ 141,932.00 in United States Currency*, 2007 U.S. Dist. LEXIS 54030, at *9 (same); *Land O'Lakes Farmland Feed*, LLC, 244 F.R.D. at 618 (same). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, at *19-20; *Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, at *4-5; *Haas Co.*, 1998 U.S. Dist. LEXIS 11141; *GMC*, 173 F.R.D. at 224.

Notwithstanding the objection and without waiving it, Ms. Cortazzo will provide receipts as to the pet food and/or treats that she purchased for the time period of May 9, 2003 to May 9, 2007.

Dated: September 3, 2008
Miami, FL

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that these responses were served on all counsel or parties of record on the attached Service List via e-mail on September 3, 2008.

/s Catherine J. MacIvor
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