

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:07-21221-CIV-ALTONAGA/BROWN

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

vs.

MARS, INCORPORATED, *et al.*,
Defendants.

**EVIDENTIARY OBJECTION BY NATURA PET PRODUCTS, INC.
TO THE SUPPLEMENTAL DECLARATION OF CATHERINE
J. MACIVOR AND EXHIBIT ATTACHED THERETO**

Natura Pet Products, Inc. (“Natura”) hereby objects to the Supplemental Declaration of Catherine J. MacIvor executed on September 5, 2008, and the exhibit attached thereto. (D.E. 471.) Natura generally objects to the Supplemental Declaration of Catherine J. MacIvor and exhibit attached thereto to the extent that it is offered for consideration with Plaintiffs’ Reply Brief in support of their Motion to Add and/or Substitute Arna Cortazzo as a Plaintiff/Class Representative. Plaintiffs are barred from offering any new arguments and evidence with their Reply other than rebuttal arguments and evidence strictly limited to the rebuttal of matters raised in the opposition. *See* Local Rule 7.1.C; *see also* *Martinez v. Weyerhaeuser Mortg. Co.*, 959 F. Supp. 1511, 1515 (S.D. Fla. 1996); *Fisher v. Ciba Specialty Chems. Corp.*, 238 F.R.D. 273, 311 n.82 (S.D. Ala. 2006). After failing to submit any evidence in support of their original moving papers, Plaintiffs have attempted to introduce evidence for the first time in their Reply. The evidence submitted in the Supplemental Declaration of Catherine J. MacIvor and exhibit attached thereto relates to the issues of the timeliness and diligence of Plaintiffs’ request to add Arna Cortazzo as a new and/or substitute plaintiff. These issues were first raised in the original

moving papers. As such, it is improper to introduce for the first time evidence in support of those issues in the Reply Brief.

Natura also generally objects to the Supplemental Declaration of Catherine J. MacIvor and exhibit attached thereto to the extent they were not filed simultaneously with the Reply Brief. While the Eleventh Circuit and the Southern District of Florida have not specifically addressed this issue, another U.S. District Court has held that “...any affidavit supporting a Reply must be filed simultaneously with the Reply in the same manner that an affidavit supporting a motion must be filed simultaneously with the motion.” *McGinnis v. S.E. Anesthesia Assocs., P.A.*, 161 F.R.D. 41, 42 (W.D.N.C. 1995); *see also DL v. Dist. of Columbia*, 450 F. Supp. 2d 11, 20 (D.D.C. 2006) (citing Fed. R. Civ. P. 6(b) for proposition that five-day deadline for reply means “that the entire brief, including affidavits and attachments, must be filed within five days. Parties may seek an extension of time ... but cannot delay filing the supporting documents for their brief until whatever date they choose.”). Accordingly, Natura requests the instant Court follow the learned reasoning in *McGinnis* and deny consideration of the Supplemental Declaration of Catherine J. MacIvor and the exhibit attached thereto as they were filed subsequent to the filing of the Reply Brief.

Natura objects to the exhibit attached to the Supplemental Declaration of Catherine J. MacIvor on the grounds that the exhibit is hearsay. *See* Fed. R. Evid. 802.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 11, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the counsel so indicated on the attached Service List, except for unrepresented plaintiffs Rice and MacDonald who will each be served by U.S. Mail on September 12, 2008 in a manner authorized by law at the addresses indicated below as required by the Court.

s/ Michael M. Giel

Attorney

CERTIFICATE OF SERVICE

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Case No. 07-21221-CIV-ALTONAGA/TURNOFF**

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