

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21221 CIV ALTONAGA/Turnoff

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

Plaintiffs/Class Representatives,

vs.

MARS INC., *et al.*

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO
SUPPLEMENT MOTION TO ADD AND/OR SUBSTITUTE
ARNA CORTAZZO AS A PLAINTIFF/CLASS REPRESENTATIVE¹**

Plaintiffs, Renee Blaszkowski, *et al.*, respectfully request this Court to enter an Order granting the Plaintiffs leave to file supplemental materials relating to its Motion to Add and/or Substitute Arna Cortazzo as a Plaintiff/Class Representative [DE 457] and as grounds therefor, states:

On August 22, 2008, the Plaintiffs filed a Motion to Add and/or Substitute Arna Cortazzo as a Plaintiff/Class Representative because the Plaintiffs were in the process of entering voluntary dismissals of all Plaintiffs' claims against all Defendants except Defendant, Natura Pet Products, Inc. ("Natura"). In fact, the dismissals against all other Defendants have since been entered. [DE 480-81]. At the time of filing the Motion, the Plaintiffs were relying on the Plaintiffs' responses to the Defendants' interrogatories to determine which Plaintiff purchased

¹ The Plaintiffs filed several documents in support of the Motion, but later withdrew them without prejudice at the request of Natura's counsel in an abundance of caution, even though counsel disagreed with Natura's contentions, to avoid burdening the Court with unnecessary motion practice regarding same.

pet food from which Defendants. Based on the interrogatories, neither Plaintiff Raul Isern nor Patricia Davis had purchased a Natura product despite the fact that the interview of Ms. Davis had indicated that she fed Natura pet food products to her cats and/or dogs. Since the case is solely going forward as to Natura, the Plaintiffs sought to add and/or substitute Arna Cortazzo as a Florida Plaintiff/Class Representative to retain jurisdiction against Natura.

Natura filed an “interim” response on August 25, 2008. [DE 458]. This Court allowed the Defendants additional time to provide any supplemental response by August 29, 2008 and the Plaintiffs were required to file a reply by September 3, 2008. [DE 459]. On Friday, August 29, 2008, Natura filed a sixteen (16) page “supplemental” response and the non-Natura Defendants (all others in this case) filed a response indicating that they took no position as to the Motion to Add and/or Substitute. [DE 462-63]. Both of these responses were filed within approximately one half hour prior to the time that the CM/ECF system went down for maintenance until 1:00 p.m. on Sunday, August 31, 2008 and, thus, the Plaintiffs were not able to retrieve these responses until after that time. While the Plaintiffs worked on the responses during the remainder of the Labor Day weekend, a national holiday, the Plaintiffs were unable to complete all of the factual research and thus seek to supplement the Motion and/or Reply.

I. Specific documents that the Plaintiffs request leave to file

Natura’s Response contained shrill and hyperbolic condemnations of purported ethical violations and demands for sanctions and dismissal of a case that Natura has already been advised will continue after the dismissal of all other Defendants. The documents that the Plaintiffs filed after the Reply was due were voluntarily withdrawn without prejudice [DE 476] based upon Natura’s objection to same in an abundance of caution and filed this Motion for

Leave so that the Court can consider these documents in ruling on the Motion to Add and/or Substitute Ms. Cortazzo.

A. The declaration of Catherine MacIvor attaching 6/30/08 fax cover sheet [DE 471]

Natura's Response contained significant unsubstantiated claims of purported ethical violations of the Plaintiffs' counsel having allegedly "solicited" Ms. Cortazzo and unnamed "others." This claim was purportedly based on an e-mail directed to persons who had contacted the Plaintiffs' counsel, asking the recipients to provide documents and photographs, etc. if they had experienced problems with Natura pet food.² [DE 483 pp. 10-11]. Natura's Response *assumed* that the e-mail was "unsolicited," and Natura also made the quantum leap that the Plaintiffs' counsel has somehow sought assistance from the general public rather than with those persons who had previously contacted the Plaintiffs' counsel concerning obtaining legal advice, representation and participation in this lawsuit. The Plaintiffs filed the declarations of both Catherine J. MacIvor and Arna Cortazzo, indicating that Natura's allegation was categorically false. [DE 466-67]. Due to the short period of time that the Plaintiffs' counsel had to prepare a reply to two (2) responses over the latter portion of a national holiday weekend, the undersigned was not able to research and produce to the Court the telefax confirming contact with Ms. Cortazzo on June 30, 2008, which was filed as an attachment to the declaration of Catherine J. MacIvor and subsequently filed with this Court. [DE 471]. Natura has now objected to the filing of this declaration and telefax cover sheet because it was not filed with the Reply on September

² How this document came into Natura's possession raises significant questions, but without *evidence* of impropriety, the Plaintiffs have remained silent on that issue.

3, 2008, even though the real reason is that it completely undermines one of many of Natura's many unfounded allegations.³ [DE 479].

The Plaintiffs respectfully request this Court to overrule Natura's objection to this telefax cover sheet, which unequivocally demonstrates that Ms. Cortazzo contacted the Plaintiffs' counsel well before the August 7, 2008 email was sent.

B. Declaration of Patricia Davis [DE 472]

During the preparation of the Reply to Natura's Response, wherein Natura asked for sanctions and dismissal of the case so that the Plaintiffs would be forced to refile, the Plaintiffs' counsel were unable to get in touch with Ms. Davis in order to provide a declaration clarifying Ms. Davis' response to her interrogatories. As set forth in the Plaintiffs' Reply, the Plaintiffs' counsel had learned through interviews with staff that Ms. Davis had obtained Natura pet food and had fed same to her cats and/or dogs, but Ms. Davis' interrogatories omitted Natura, which was the basis for seeking to add Ms. Cortazzo. At the time that counsel analyzed the interrogatory responses, Ms. Davis had not listed Natura as a product that she used. As a result, the Plaintiffs sought to add Ms. Cortazzo and included Ms. Davis as a non-Natura Plaintiff who was potentially going to dismiss her claims. The Plaintiffs were unable to reach Ms. Davis during the two (2) business days that the Plaintiffs had to finalize two (2) replies to two separate responses. The Plaintiffs were finally able to reach Ms. Davis after the filing of the Reply, at which time Ms. Davis' declaration was filed stating that she had omitted listing Natura from her interrogatory responses because she had interpreted the question to ask for pet food that she had purchased. [DE 472].

³ Natura's "Objection" in and of itself is an end run on Rule 7.1 requirement to confer with counsel prior to filing a Motion. Since the "objection," in fact, seeks affirmative relief, call it what you like, it is still a Motion and is improper under the Local Rules.

The Plaintiffs' withdrew without prejudice Ms. Davis declaration based upon a claim of untimeliness from Natura to try to avoid unnecessary motion practice and determined to file this Motion instead. The Court allowed Natura additional time to file its second Response because Natura balked that it had to file a Response over the weekend and while Natura's counsel was travelling. The Plaintiffs likewise had to prepare two (2) replies over the latter portion of a national holiday weekend and only had two (2) business days to complete two (2) replies. The Plaintiffs believe that Natura's position that the declaration is untimely is unfair and an attempt to try to keep the truth from the Court. The Plaintiffs therefore respectfully request this Court to grant the Plaintiffs leave to file Ms. Davis' declaration.

C. Notice of Supplemental Authority [DE 474]

The Plaintiffs also filed a Notice of Supplemental Authority attaching a number of cases indicating that there need not be a purchase of a product under Florida law. Had the Plaintiffs been able to reach Ms. Davis during the two (2) business days that they had to prepare the Replies at issue, they would have included these authorities and now seek leave to have the Court consider them now.

D. Declaration of Arna Cortazzo [DE 468]

Natura has filed an "objection" to the declaration of Arna Cortazzo claiming that it was somehow added new arguments and was not strictly limited to a rebuttal. As discussed above, this allegation is not only blatantly disingenuous, but has no merit whatsoever as Natura's Response specifically argued that the Plaintiffs had solicited Ms. Cortazzo in an email sent on August 7, 2008 without any factual basis for that statement whatsoever. [DE 483 pp. 10-11]. Ms. Cortazzo's declaration responded to those unsubstantiated claims and clearly and unequivocally demonstrated that Natura's assumptions and innuendo in the Response were

wrong. Ms. Cortazzo had contacted the Plaintiffs on June 30, 2008 because she had been injured by Natura products and for no other reason.

The Plaintiffs respectfully request this Court to overrule Natura's objections which are simply an attempt to circumvent the Local Rule to obtain relief without first conferring with counsel and supplemental memoranda in violation of Local Rule 7.1 and for the Court to consider this Declaration.

E. Notice of Correction Regarding Motion to Substitute and/or Add Party [DE 475]

The Plaintiffs filed the Notice of Correction to simply correct a statement in the Motion after having conferred with Ms. Davis so that it would be accurate. As discussed above, Natura objected to the filing of this correction that could not have been made prior to the time that counsel conferred with Ms. Davis. Since counsel were unable to reach Ms. Davis prior to the filing of the Reply, the Plaintiffs filed the Notice of Correction on the same day that counsel conferred with Ms. Davis.

The Plaintiffs therefore respectfully request this Court to grant leave to allow the correction and so that the Court may consider same.

WHEREFORE, the Plaintiffs, Renee Blaszkowski, *et al*, respectfully request this Court to enter an Order granting the Plaintiffs leave to re-file the above-referenced documents and so that the Court will consider same.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(3)

Prior to filing this Motion and pursuant to this Court's local rules, the undersigned hereby certifies that she conferred with Natura's counsel, Kristen Caverly, who advised that she objected to the Motion and requests a week's response time if the documents are permitted to be filed.

Dated: September 12, 2008

Miami, FL

/s Catherine J. MacIvor
CATHERINE J. MACIVOR (FBN 932711)
cmacivor@mlegal.com
One Biscayne Tower
2 South Biscayne Boulevard -Suite 2300
Miami, Florida 33131
Tel: 305-358-6555 / Fax: 305-374-9077

PATRICK N. KEEGAN
pkeegan@keeganbaker.com
JASON E BAKER
jbaker@keeganbaker.com
KEEGAN & BAKER, LLP
4370 La Jolla Village Drive
Suite 640
San Diego, CA 92122
Tel: 858-552-6750 / Fax 858-552-6749

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on September 12, 2008. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

/s Catherine J. MacIvor

Catherine J. MacIvor

SERVICE LIST

CASE NO. 07-21221 ALTONAGA/Brown

CATHERINE J. MACIVOR

cmacivor@mlegal.com

JEFFREY B. MALTZMAN

jmaltzman@mlegal.com

JEFFREY E. FOREMAN

jforeman@mlegal.com

DARREN W. FRIEDMAN

dfriedman@mlegal.com

MALTZMAN FOREMAN, PA

One Biscayne Tower

2 South Biscayne Boulevard -Suite 2300

Miami, Florida 33131

Tel: 305-358-6555 / Fax: 305-374-9077

Attorneys for Plaintiffs

ROLANDO ANDRES DIAZ

E-Mail: rd@kubickdraper.com

MARIA KAYANAN

E-Mail: mek@kubickdraper.com

KUBICKI DRAPER

25 W. Flagler Street

Penthouse

Miami, Florida 33130-1712

Telephone: (305) 982-6708

Facsimile: (305) 374-7846

Attorneys for Defendant Pet Supermarket, Inc.

JOHN B.T. MURRAY, JR.

E-Mail: jbmurray@ssd.com

ROBIN L. HANGER

E-Mail: rlhanger@ssd.com

SQUIRE, SANDERS & DEMPSEY LLP

1900 Phillips Point West

777 South Flagler Drive

West Palm Beach, Florida 33401-6198

Telephone: (561) 650-7200

Facsimile: (561) 655-1509

Attorneys for Defendants PETCO Animal Supplies Stores Inc., PetSmart, Inc., Wal-Mart Stores, Inc. and Target Corporation

ALEXANDER SHAKNES

E-Mail: Alex.Shaknes@dlapiper.com

AMY W. SCHULMAN

E-Mail: Amy.schulman@dlapiper.com

LONNIE L. SIMPSON

E-Mail: Lonnie.Simpson@dlapiper.com

S. DOUGLAS KNOX

E-Mail: Douglas.knox@dlapiper.com

DLA PIPER RUDNICK GRAY CARY US LLP

1251 Avenue of the Americas

New York, New York 10020

Telephone: (212) 335-4829

Attorneys for Defendants Menu Foods, Inc. and Menu Foods Income Fund

WILLIAM C. MARTIN
E-Mail: william.martin@dlapiper.com
**DLA PIPER RUDNICK GRAY CARY US
LLP**
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601-1293

*Attorneys for Defendants Menu Foods, Inc.
and Menu Foods Income Fund*

JEFFREY S. YORK
E-Mail: gyork@mcguirewoods.com
MICHAEL GIEL
E-Mail: mgiel@mcguirewoods.com
McGUIRE WOODS LLP
50 N. Laura Street, Suite 3300
Jacksonville, FL 32202
Telephone: (904) 798-2680
Facsimile: (904) 360-6330

*Attorneys for Defendant Natura Pet Products,
Inc.*

OMAR ORTEGA
Email: ortegalaw@bellsouth.net
DORTA & ORTEGA, P.A.
Douglas Entrance
800 S. Douglas Road, Suite 149
Coral Gables, Florida 33134
Telephone: (305) 461-5454
Facsimile: (305) 461-5226

*Attorneys for Defendant Mars, Inc.
and Mars Petcare U.S. and Nutro Products,
Inc.*

HUGH J. TURNER, JR.
E-Mail: hugh.turner@akerman.com
AKERMAN SENTERFITT & EDISON
350 E. Las Olas Boulevard
Suite 1600
Fort Lauderdale, Florida 33301-2229
Telephone: (954)463-2700
Facsimile: (954)463-2224

*Attorneys for Defendant Publix Super Markets,
Inc.*

KRISTEN E. CAVERLY
E-Mail: kcaverly@hcesq.com
TONY F. FARMANI
tfarmani@hcesq.com
HENDERSON & CAVERLY LLP
16236 San Dieguito Road, Suite 4-13
P.O. Box 9144 (all US Mail)
Rancho Santa Fe, CA 92067-9144
Telephone: 858-756-6342 x)101
Facsimile: 858-756-4732

Attorneys for Natura Pet Products, Inc.

DANE H. BUTSWINKAS
E-Mail: dbutswinkas@wc.com
PHILIP A. SECHLER
E-Mail: psechler@wc.com
THOMAS G. HENTOFF
E-Mail: thentoff@wc.com
PATRICK J. HOULIHAN
E-Mail: phoulihan@wc.com
AMY R. DAVIS
adavis@wc.com
JULI ANN LUND
jlund@wc.com
WILLIAMS & CONNOLLY LLP
725 12th Street, N.W.
Washington, DC 20005
Telephone: (202)434-5000

*Attorneys for Defendants Nutro Products, Inc.
Mars, Incorporated and Mars Petcare U.S.*

BENJAMIN REID

E-Mail: bried@carltonfields.com

ANA CRAIG

E-Mail: acraig@carltonfields.com

CARLTON FIELDS, P.A.

100 S.E. Second Street, Suite 4000

Miami, Florida 33131-0050

Telephone: (305)530-0050

Facsimile: (305) 530-0050

Attorneys for Defendants Hill's Pet Nutrition, Inc.

KARA L. McCALL

kmccall@sidley.com

SIDLEY AUSTIN LLP

One S. Dearborn Street

Chicago, ILL 60633

Telephone: (312) 853-2666

Attorneys for Defendants Hill's Pet Nutrition, Inc.

SHERRIL M. COLOMBO

E-Mail: scolombo@cozen.com

COZEN O'CONNOR

200 South Biscayne Boulevard

Suite 4410

Miami, Florida 33131

Telephone: (305) 704-5945

Facsimile: (305) 704-5955

Attorneys for Defendant Del Monte Foods Co.

JOHN J. KUSTER

jkuster@sidley.com

JAMES D. ARDEN

jarden@sidley.com

SIDLEY AUSTIN LLP

787 Seventh Avenue

New York, New York 10019-6018

Telephone: (212) 839-5300

Attorneys for Defendants Hill's Pet Nutrition, Inc.

RICHARD FAMA

E-Mail: rfama@cozen.com

JOHN J. McDONOUGH

E-Mail: jmcdonough@cozen.com

COZEN O'CONNOR

45 Broadway

New York, New York 10006

Telephone: (212) 509-9400

Facsimile: (212) 509-9492

Attorneys for Defendant Del Monte Foods

C. RICHARD FULMER, JR.

E-Mail: rfulmer@Fulmer.LeRoy.com

**FULMER, LEROY, ALBEE, BAUMANN,
&**

GLASS

2866 East Oakland Park Boulevard

Fort Lauderdale, Florida 33306

Telephone: (954) 707-4430

Facsimile: (954) 707-4431

Attorneys for Defendant The Kroger Co. of Ohio

JOHN F. MULLEN

E-Mail: jmullen@cozen.com

COZEN O'CONNOR

1900 Market Street

Philadelphia, PA 19103

Telephone: (215) 665-2179

Facsimile: (215) 665-2013

Attorneys for Defendant Del Monte Foods, Co.

CAROL A. LICKO

E-Mail: calicko@hhlaw.com

HOGAN & HARTSON

Mellon Financial Center

1111 Brickell Avenue, Suite 1900

Miami, Florida 33131

Telephone (305) 459-6500

Facsimile (305) 459-6550

*Attorneys for Defendants Nestle Purina
Petcare Co.*

ROBERT C. TROYER

E-Mail: rtroyer@hhlaw.com

HOGAN & HARTSON

1200 17th Street

One Tabor Center, Suite 1500

Denver, Colorado 80202

Telephone: (303) 899-7300

Facsimile: (303) 899-7333

*Attorneys for Defendants Nestle Purina
Petcare Co.*

CRAIG A. HOOVER

E-Mail: cahoover@hhlaw.com

MIRANDA L. BERGE

E-Mail: mlberge@hhlaw.com

HOGAN & HARTSON L.L.P.

555 13th Street, N.W.

Washington, D.C. 20004

Telephone: (202) 637-5600

Facsimile: (202) 637-5910

*Attorneys for Defendants Nestle Purina
Petcare Co.*

JAMES K. REUSS

E-Mail: jreuss@lanealton.com

LANE ALTON & HORST

Two Miranova Place

Suite 500

Columbus, Ohio 43215

Telephone: (614) 233-4719

*Attorneys for Defendant The Kroger Co. of
Ohio*

ALAN G. GREER

agreer@richmangreer.com

RICHMAN GREER WEIL BRUMBAUGH

MIRABITO & CHRISTENSEN

201 South Biscayne Boulevard

Suite 1000

Miami, Florida 33131

Telephone: (305) 373-4000

Facsimile: (305) 373-4099

Attorneys for Defendants The Iams Co.

D. JEFFREY IRELAND
E-Mail: djireland@ficlaw.com
BRIAN D. WRIGHT
E-Mail: bwright@ficlaw.com
LAURA A. SANOM
E-Mail: lsanom@ficlaw.com
FARUKI IRELAND & COX
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, Ohio 45402

Attorneys for Defendant The Iams Co.

RALPH G. PATINO
E-Mail: rpertino@patinolaw.com
DOMINICK V. TAMARAZZO
E-Mail: dtamarazzo@patinolaw.com
CARLOS B. SALUP
E-Mail: csalup@patinolaw.com
PATINO & ASSOCIATES, P.A.
225 Alcazar Avenue
Coral Gables, Florida 33134
Telephone: (305) 443-6163
Facsimile: (305) 443-5635

*Attorneys for Defendants Pet Supplies "Plus"
and Pet Supplies Plus/USA, Inc.*

CRAIG P. KALIL
E-Mail: ckalil@aballi.com
JOSHUA D. POYER
E-Mail: jpoyer@abaili.com
ABALLI MILNE KALIL & ESCAGEDO
2250 Sun Trust International Center
One S.E. Third Avenue
Miami, Florida 33131
Telephone: (303) 373-6600
Facsimile: (305) 373-7929

*Attorneys for New Albertson's Inc. and
Albertson's LLC*

W. RANDOLPH TESLIK
E-Mail: rteslik@akingump.com
ANDREW J. DOBER
E-Mail: adober@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
1333 New Hampshire Avenue, NW
Washington, D.C. 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

*Attorneys for Defendants New Albertson's Inc.
and Albertson's LLC*