

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

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

vs.

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

**NATURA PET PRODUCTS, INC.’s STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant Natura Pet Products, Inc., (“Natura”) pursuant to Federal Rules of Civil Procedure Rule 56 and Local Rule 7.5, and in support of the motion for summary judgment filed concurrently with this document, submits this statement of the material facts as to which there is no genuine issue to be tried.

1. Plaintiffs Linda Brown, Tone Gaglione, Jane Herring, Deborah Hock, Raul Isern, Claire Kotzampaltiris, Michele Lucarelli, Marian Lupo, Sharon Mathiesen, Deborah McGregor, Julie Nelson, Ann Quinn, Marlena Rucker, Sandy Shore, Stephanie Stone, Beth Wilson, Patricia Hanrahan, Donna Hopkins-Jones, Danielle Valoras, Carolyn White, and Lou Wiggins (collectively “Non-Natura Plaintiffs”) each cannot prevail on any of the six counts identified in the Fourth Amended Complaint against Natura. *See* Notice Of Pending And Dismissed Claims (“Plaintiffs’ Notice”) [D.E. 494]; Non-Natura Plaintiffs’ responses to Interrogatory #4 propounded by defendant Mars Inc. (Exhibits A-R attached to the Declaration of Kristen E. Caverly, dated October 9, 2008, in Support of the Motion for Summary Judgment).

2. Natura was added as a defendant to this action with the filing of the Second Amended Complaint. *See* Second Amended Complaint. [D.E. 260-61.]

3. The Non-Natura Plaintiffs, except for Linda Brown, Tone Gaglione and Deborah McGregor, pled claims against Natura in the Second Amended Complaint. *See* Second Amended Complaint. [D.E. 260-61.]

4. Plaintiffs Linda Brown, Tone Gaglione and Deborah McGregor joined the action with the filing of the Third Amended Complaint. *See* Third Amended Complaint. [D.E. 333.]

5. Non-Natura Plaintiffs each pled claims against Natura in the Third Amended Complaint. *See* Third Amended Complaint. [D.E. 333.]

6. The Fourth Amended Complaint is the current operative complaint in this matter. *See* Fourth Amended Complaint. [D.E. 349.]

7. Non-Natura Plaintiffs each pled claims against Natura in the Fourth Amended Complaint. *See* Fourth Amended Complaint. [D.E. 349.]

8. As of the filing of this motion, Non-Natura Plaintiffs continue to be parties to this action. *See* Second Amended Complaint [D.E. 260-61]; Third Amended Complaint [D.E. 333]; and Fourth Amended Complaint. [D.E. 349.]

9. As of the date of the filing of this motion, Non-Natura Plaintiffs have neither dismissed their claims against Natura nor have they had any judgment rendered upon them.

McGUIREWOODS LLP

By: s/Michael M. Giel
Jeffrey S. York
Florida Bar No. 0987069
Michael M. Giel
Florida Bar No. 0017676
50 N. Laura Street, Suite 3300
Jacksonville, Florida 32202
(904) 798-2680
(904) 360-6330 (fax)
jjork@mcguirewoods.com
mgiel@mcguirewoods.com

and

HENDERSON & CAVERLY LLP
Kristen E. Caverly
Admitted Pro Hac Vice
Post Office Box 9144
Rancho Sante Fe, California 92067
(858) 756-6342
(858) 756-4732 (fax)
kcaverly@mcesq.com

ATTORNEYS AND TRIAL COUNSEL
FOR DEFENDANT NATURA PET
PRODUCTS, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 10, 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.

s/Michael M. Giel

Attorney

CERTIFICATE OF SERVICE
RENEE BLASZKOWSKI, ET AL., VS. MARS, INCORPORATED, ET AL.
Case No. 1:07-21221-CIV-ALTONAGA/TURNOFF
SERVICE LIST

Catherine J. MacIvor, Esquire
Jeffrey Eric Foreman, Esquire
Jeffrey Bradford Maltzman, Esquire
Darren W. Friedman, Esquire

Bjorg Eikeland

MALTZMAN FOREMAN PA

One Biscayne Tower
2 South Biscayne Boulevard, Suite 2300
Miami, FL 33131-1803
Telephone: (305) 358-6555
Facsimile: (305) 374-9077

cmacivor@mflegal.com

jforeman@mflegal.com

jmaltzman@mflegal.com

dfriedman@mflegal.com

beikeland@mflegal.com

Attorneys for Plaintiffs

Patrick N. Keegan, Esquire
Jason E. Baker, Esquire
KEEGAN & BAKER, LLP
4370 La Jolla Village Drive, Suite 640
San Diego, CA 92122
Telephone: (858) 552-6750
Facsimile: (858) 552-6749

pkeegan@keeganbaker.com

jbaker@keeganbaker.com

Attorneys for Plaintiffs

John B.T. Murray, Jr., Esquire
SQUIRE, SANDERS & DEMPSEY L.L.P.
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, Florida 33401-6198
Telephone: (561) 650-7200
Facsimile: (561) 655-1509
jbmurray@ssd.com

*Attorneys for Defendants PETCO Animal
Supplies Stores, Inc., PetSmart, Inc., Wal-Mart*

Stores, Inc., Target Corporation and Meijer, Inc.

Mark C. Goodman, Esquire
SQUIRE, SANDERS & DEMPSEY L.L.P.

One Maritime Plaza, Suite 300
San Francisco, CA 94111
Telephone: (415) 954-0200

jbmurray@ssd.com

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

Rolando Andres Diaz, Esquire

Peter S. Baumberger, Esquire

KUBICKI DRAPER

25 W. Flagler Street

Penthouse

Miami, FL 33130-1712

Telephone: (305) 982-6708

Facsimile: (305) 374-7846

rd@kubickdraper.com

cyd@kubickdraper.com

psb@kubickdraper.com

Attorneys for Defendant Pet Supermarket, Inc.

Lonnie L. Simpson, Esquire

S. Douglas Knox, Esquire

DLA PIPER LLP

100 N. Tampa Street

Suite 2200

Tampa, Florida 33602-5809

Lonnie.simpson@dlapiper.com

Douglas.knox@dlapiper.com

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

Alexander Shaknes, Esquire

DLA PIPER LLP

1251 Avenue of the Americas

New York, New York 10020-1104

Alex.Shaknes@dlapiper.com

amy.schulman@dlapiper.com

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

William C. Martin, Esquire
DLA PIPER LLP
203 North LaSalle Street
Suite 1900
Chicago, Illinois 60601-1293
William.Martin@dlapiper.com
*Attorneys for Defendants Menu Foods, Inc.
and Menu Foods Income Fund*

Hugh J. Turner, Jr., Esquire
AKERMAN SENTERFITT
350 E. Las Olas Boulevard
Suite 1600
Fort Lauderdale, FL 33301-2229
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
hugh.turner@akerman.com
*Attorneys for Defendants Publix Super
Markets, Inc and H.E. Butt Grocery Co.*

Gary L. Justice, Esquire
Gail E. Lees, Esquire
Omar Ortega, Esquire
DORTA AND ORTEGA, P.A.
Douglas Entrance
800 S. Douglas Road, Suite 149
Coral Gables, Florida 33134
Telephone: (305) 461-5454
Facsimile: (305) 461-5226
ortega@dortaandortega.com
*Attorneys for Defendant Mars, Incorporated,
Mars Petcare U.S., and Nutro Products, Inc.*

Dane H. Butswinkas, Esquire
Philip A. Sechler, Esquire
Thomas G. Hentoff, Esquire
Patrick J. Houlihan, Esquire
Amy R. Davis, Esquire
Juli Ann Lund, Esquire
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
dbutswinkas@wc.com
psechler@wc.com
thentoff@wc.com

cdangelo@wc.com
phoulihan@wc.com
adavis@wc.com
jlund@wc.com

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

Benjamin Reid, Esquire
Olga M. Vieira, Esquire
CARLTON FIELDS, P.A.
100 S.E. Second Street, Suite 4000
Bank of America Tower at International Place
Miami, Florida 33131-9101
Telephone: (305) 530-0050
Facsimile: (305) 530-0055
breid@carltonfields.com
ovieira@carltonfields.com
*Attorneys for Defendants Colgate-Palmolive
Company and Hill's Pet Nutrition, Inc.*

John J. Kuster, Esquire
James D. Arden, Esquire
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
jkuster@sidley.com
jarden@sidley.com
*Attorneys for Defendants Colgate-Palmolive
Company and Hill's Pet Nutrition, Inc.*

Kara L. McCall, Esquire
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, Illinois 60603
Telephone: (312) 853-2666
kmccall@Sidley.com
*Attorneys for Defendants Colgate-Palmolive
Company and Hill's Pet Nutrition, Inc.*

Marcos Daniel Jiménez, Esquire
Robert J. Alwine II, Esquire
KENNY NACHWALTER, P.A.
1100 Miami Center
201 South Biscayne Boulevard

Miami, Florida 33131
Telephone: (305) 373-1000
Facsimile: (305) 372-1861
mdj@kennynachwalter.com
ralwine@kennynachwalter.com
*Attorneys for Defendants Safeway, Inc. and
The Stop & Shop Supermarket Company LLC*

Sherril M. Colombo, Esquire
COZEN O'CONNOR
Wachovia Center, Suite 4410
200 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 704-5945
Facsimile: (305) 704-5955
scolombo@cozen.com
Attorneys for Defendant Del Monte Foods, Co.

Richard Fama, Esquire
John J. McDonough, Esquire
COZEN O'CONNOR
45 Broadway
New York, New York 10006
Telephone: (212) 509-9400
Facsimile: (212) 509-9492
rfama@cozen.com
jmcdonough@cozen.com
Attorneys for Defendant Del Monte Foods

John F. Mullen, Esquire
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-2179
Facsimile: (215) 665-2013
jmullen@cozen.com
Attorneys for Defendant Del Monte Foods, Co.

Carol A. Licko, Esquire
HOGAN & HARTSON L.L.P.
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 459-6500
Facsimile: (305) 459-6550
calicko@hhlaw.com

*Attorneys for Defendants Nestlé USA, Inc. and
Nestlé Purina Petcare Co.*

Robert C. Troyer, Esquire
HOGAN & HARTSON L.L.P.

1200 17th Street
One Tabor Center, suite 1500
Denver, Colorado 80202
Telephone: (303) 899-7300
Facsimile: (303) 899-7333
rtroyer@hhlaw.com

*Attorneys for Defendants Nestlé USA, Inc. and
Nestlé Purina Petcare Co.*

Craig A. Hoover, Esquire
Miranda L. Berge, Esquire
E. Desmond Hogan, Esquire
HOGAN & HARTSON L.L.P.

555 13TH Street, NW
Washington, D.C. 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
cahoover@hhlaw.com
mlberge@hhlaw.com

*Attorneys for Defendants Nestlé USA, Inc. and
Nestlé Purina Petcare Co.*

James K. Reuss, Esquire
LANE ALTON & HORST, LLC

Two Miranova Place
Suite 500
Columbus, Ohio 43215
Telephone: (614) 233-4719
JReuss@lanealton.com

*Attorneys for Defendant The Kroger Co. of
Ohio*

Alan G. Greer, Esquire
RICHMAN GREER, P.A.

Miami Center – Suite 1000
201 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 373-4000
Facsimile: (305) 373-4099
agreer@richmangreer.com

Attorneys for Defendants Procter & Gamble

Co. and The Iams Co.

D. Jeffrey Ireland, Esquire
Brian D. Wright, Esquire
Laura A. Sanom, Esquire
FARUKI IRELAND & COX P.L.L.

500 Courthouse Plaza, S.W.

10 North Ludlow Street

Dayton, Ohio 45402

djireland@ficlaw.com

Bwright@ficlaw.com

lsanom@ficlaw.com

*Attorneys for Defendant Procter & Gamble
Co. and The Iams Co.*

Robin L. Hanger, Esquire
SQUIRE, SANDERS & DEMPSEY L.L.P.

200 S. Biscayne Boulevard

40th Floor

Miami, Florida 33131-2398

Telephone: (305) 577-7040

Facsimile: (305) 577-7001

rlhanger@ssd.com

*Attorneys for Defendants PETCO Animal
Supplies Stores, Inc.*

Ralph G. Patino, Esquire
Dominick V. Tamarazzo, Esquire
Carlos B. Salup, Esquire
PATINO & ASSOCIATES, P.A.

225 Alcazar Avenue

Coral Gables, Florida 33134

Telephone: (305) 443-6163

Facsimile: (305) 443-5635

rpatino@patinolaw.com

dtamarazzo@patinolaw.com

csalup@patinolaw.com

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

Robert Valadez, Esquire
Javier Thomas Duran, Esquire
SHELTON & VALADEZ, P.C.

600 Navarro, Suite 500

San Antonio, Texas 78205

Telephone: (210) 349-0515

Facsimile: (210) 349-3666
rvaladez@shelton-valadez.com
jduran@shelton-valadez.com
Attorneys for Defendant H.E. Butt Grocery Co.

Craig P. Kalil, Esquire
Joshua D. Poyer, Esquire
ABALLI, MILNE, KALIL & ESCAGEDO, P.A.
2250 Sun Trust International Center
One Southeast Third Avenue
Miami, Florida 33131
Telephone: (305) 373-6600
Facsimile: (305) 373-7929
ckalil@aballi.com
jpoyer@abailli.com
*Attorneys for Defendants New Albertson's Inc.
and Albertson's LLC*

W. Randolph Teslik, Esquire
Andrew Dober, Esquire
AKIN GUMPSTRAUSS HAUER & FELD LLP
1333 New Hampshire Avenue, NW
Washington, D.C. 20036
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
rteslik@akingump.com
adober@akingump.com
*Attorneys for Defendants New Albertson's Inc.
and Albertson's LLC*

C. Richard Fulmer, Jr., Esquire
FULMER, LeROY, ALBEE, BAUMANN & GLASS, PLC
2866 East Oakland Park Boulevard
Fort Lauderdale, Florida 33306
Telephone: (954) 707-4430
Facsimile: (954) 707-4431
rfulmer@Fulmer.LeRoy.com
*Attorneys for Defendant The Kroger Co. of
Ohio*

Jason Joffe, Esquire
SQUIRE SANDERS & DEMPSEY, LLP
200 South Biscayne Boulevard
Suite 4000
Miami, Florida 33131
Telephone: (305) 577-7000

Facsimile: (305) 577-7001
jjoffe@ssd.com
Attorneys for Defendant Meijer, Inc.

\6636775.1