

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.

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**PLAINTIFFS', LINDA BROWN, ET AL., STATEMENT OF MATERIAL FACTS IN  
OPPOSITION TO DEFENDANT'S, NATURA PET PRODUCTS, INC.,  
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, Linda Brown, *et al.*, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 7.5, and in support of the Plaintiffs' Response to Defendant's, Natura Pet Products, Inc. ("Natura"), Motion for Summary Judgment Against Plaintiffs Linda Brown, *et al.* ("Motion"), [DE 515], submits this statement of material facts.

1. 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 (the "non-Natura Plaintiffs") have never asserted claims against Natura and have never possessed claims against Natura. [DE 494].

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

3. The non-Natura Plaintiffs never individually pled claims against Natura in the Second Amended Complaint. [DE 260-61].

4. Non-Natura Plaintiffs Linda Brown, Tone Gaglione, and Deborah McGregor joined this action with the filing of the Third Amended Complaint. [DE 533].

5. The non-Natura Plaintiffs never individually pled claims against Natura in the Third Amended Complaint. [DE 333 ¶¶3-32] In fact, in the Third Amended Complaint, each Plaintiff, including the non-Natura Plaintiffs, pled individual allegations. [DE 333 ¶¶3-32].

6. The Fourth Amended Complaint (“FAC”) is the operative Complaint in this case and the only Complaint that, at the time of Natura’s filing of this Motion, matters for purposes of this Motion. [DE 349].

7. The non-Natura Plaintiffs did not individually plead claims against Natura in the FAC. Plaintiff Linda Brown did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶6]. Plaintiff Tone Gaglione did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶32]. Plaintiff Jane Herring did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶12]. Plaintiff Deborah Hock did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶7]. Plaintiff Raul Isern did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶23]. Plaintiff Claire Kotzampaltiris did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶9]. Plaintiff Michele Lucarelli did not plead any claims against Natura in the FAC, and thus entry of

summary judgment is not only disputed, but is inappropriate. [DE 349 ¶22]. Plaintiff Marian Lupo did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶11]. Plaintiff Sharon Mathiesen did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶18]. Plaintiff Deborah McGregor did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶31]. Plaintiff Julie Nelson did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶29]. Plaintiff Ann Quinn did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶17]. Plaintiff Marlena Rucker did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶28]. Plaintiff Sandy Shore did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶19]. Plaintiff Stephanie Stone did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶14]. Plaintiff Beth Wilson did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶8]. Plaintiff Patricia Hanrahan did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶15]. Plaintiff Donna Hopkins-Jones did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶10]. Plaintiff Danielle Valoras did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶24]. Plaintiff Carolyn White did

not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶20]. Plaintiff Lou Wiggins did not plead any claims against Natura in the FAC, and thus entry of summary judgment is not only disputed, but is inappropriate. [DE 349 ¶21].

8. The claims of the non-Natura Plaintiffs were against only the non-Natura Defendants, [349 ¶¶6-12, 14-15, 17-24, 28-29, 31-32], and were rendered moot as a consequence of the settlement agreement reached in *In re Pet Food Products Liability Litigation*, CIV NO.: 07-2867 (NLH/AMD), a Multi-District Litigation case in the United States District Court for the District of New Jersey (“the Multi-District Case”). After the settlement was reached in the Multi-District Case, the non-Natura Plaintiffs entered into joint stipulations with the non-Natura Defendants to dismiss both the non-Natura Plaintiffs’ claims as well as the non-Natura Defendants from this case. [DE 480, 481].

9. The non-Natura Defendants and all of the claims by the non-Natura Plaintiffs were dismissed with prejudice upon the entry of two Orders by this Court. [DE 482, 483]. As a result, the non-Natura Plaintiffs, who never alleged claims against Natura, no longer possess any claims in this case and are therefore no longer parties to this action because each and every one of their claims were dismissed with prejudice. [DE 494].

10. This is a multi-plaintiff, multi-defendant case. [DE 349].

11. Every time the FAC refers to “Plaintiffs” and “Defendants,” these words are generally used for jurisdiction and standing purposes in this multi-plaintiff and multi-defendant case and are nowhere alleged in the FAC to refer to each Plaintiff having a claim against each Defendant, particularly where Paragraphs 3 through 32 of the FAC clearly demonstrate the specific Defendants against which each Plaintiff has a claim.

12. Rather, in the FAC, each Plaintiff, Natura and non-Natura alike, pled individual allegations against the Defendants from whom they sought relief. [DE 349 ¶¶3-32]. For example, non-Natura Plaintiff Linda Brown alleged:

Plaintiff/Class Representative, **Linda Brown**, is a resident of Minnesota during the class period. Plaintiff Brown regularly purchased pet food during the class period for daily consumption for her cat(s)/dog(s) in Minnesota, which was manufactured and marketed by Defendants, **Nestle Purina Petcare, Hill's, Del Monte**, and on information and belief **Menu Foods**. Defendants, **Wal-Mart** and **Petco** marketed and sold Plaintiff Brown pet food from the above-referenced manufacturers and marketers, which purchases were made based upon the above referenced Defendant's marketing.

[DE 349 ¶6 (emphasis added)]. All other non-Natura Plaintiffs similarly pled their allegations and did not include Natura in any of them. [DE 349 ¶¶6-12, 14-15, 17-24, 28-29, 31-32].

13. Paragraphs 3-32 are incorporated into each individual Count alleged by the Plaintiffs, and these Counts cannot be properly construed without referring to Paragraphs 3-32. [DE 349 ¶¶126, 135, 144, 155, 162, 166, 174, 180]. For example, Count I begins:

**COUNT I**  
**Fraudulent Misrepresentation and Concealment<sup>1</sup>**  
**As to All Defendants**

126. Plaintiffs/Class Representatives hereby adopt and incorporate by reference paragraphs 1-125 as if set forth more fully herein.

[FN1] And other state fraudulent misrepresentation and concealment laws of the various states where Plaintiff Class members reside.

[DE 349 ¶126]. Thus, the allegations raised in Paragraphs 3-32 are expressly incorporated into every Count of the FAC and, correspondingly, each Count is therefore limited by these allegations. [DE 349 ¶¶126, 135, 144, 155, 162, 166, 174, 180].

14. For jurisdictional purposes, the Natura Plaintiffs specifically allege that Natura has caused harm to the Natura Plaintiffs, which, if certified, would be a subclass. [DE 349 ¶40].

15. In order to satisfy the requirements of the juridical links doctrine to allege standing to bring this multi-plaintiff, multi-defendant case, the Plaintiffs alleged, in the joinder section, a description that the Defendants have acted in concert with each other and are bound by a common course of conduct. [DE 349 ¶110]. Paragraph 110 does not allege that each Defendants' liability is predicated on "conspiracy" with the other Defendants other than alleging standing. [DE 349 ¶110]. The word "conspiracy" is not even contained anywhere in the entire FAC. [DE 349]. Further, Paragraph 110 does not create a separate cause of action as it is not a separate claim and simply is pled for the purposes of standing. [DE 349 ¶110].

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on this 27th day of October, 2008. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

s/ Catherine J. MacIvor \_\_\_\_\_  
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