

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.

**EVIDENTIARY OBJECTIONS BY NATURA PET PRODUCTS, INC.,
TO DECLARATION OF CATHERINE J. MACIVOR**

Natura Pet Products, Inc. (“Natura”) hereby objects to the Declaration of Catherine J. MacIvor executed on October 27, 2008. [D.E. 526-2.] Natura objects as follows:

1. Paragraph 5:

These allegations were included for the benefit of the Defendants as early as the Third Amended Complaint to avoid protracted litigation regarding standing.

Natura objects to the above as (i) irrelevant and (ii) impermissible attorney argument. *See* Fed. R. Evid. 402; *see also In re Jackson*, 92 B.R. 987, 992 (Bankr. E.D. Pa. 1988) (citing *Mercantile Nat'l Bank v. Franklin Life Ins. Co.*, 248 F.2d 57, 59 (5th Cir. 1957)); *Bender v. Southland Corp.*, 749 F.2d 1205, 1211 (6th Cir. 1984).

2. Paragraph 7:

The FAC was specifically prepared so that Paragraphs 3-32 were incorporated into each substantive Count of the FAC by the same language contained in each Count: “Plaintiffs/Class Representatives and other Class members re-allege paragraphs 1-125 as if more fully set forth herein.”

Natura objects to the above as (i) hearsay that (ii) violates the Best Evidence Rule.

See Fed. R. Evid. 802, 1002.

3. Paragraph 10:

Due to 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, which extinguished all of the claims of the non-Natura Plaintiffs, on September 12, 2008, the non-Natura Plaintiffs and the non-Natura Defendants entered into two stipulations to dismiss with prejudice the claims of the non-Natura Plaintiffs against the non-Natura Defendants.

Natura objects to the above as (i) irrelevant (ii) hearsay. *See* Fed. R. Evid. 402, 802.

4. Paragraph 13:

Because counsel for Natura was purportedly “confused” by which claims remained against her client, as a courtesy, the Plaintiffs filed a Notice of Pending and Dismissed Claims identifying with specificity which Plaintiffs still had claims against Natura and which Plaintiffs were no longer party to this suit, although the Plaintiffs had already advised Kristen Caverly that paragraphs 3-32 of the FAC made that clear. [DE 494]. It was obvious to the Plaintiffs’ counsel that Natura was not confused about the pleading and that the real intent was to use this purported “confusion” as some sort of alleged basis to claim that it is a prevailing party to seek fees and costs against these Plaintiffs who never had a claim against Natura.

Natura objects to the above as (i) hearsay, (ii) irrelevant, and (iii) impermissible attorney argument. *See* Fed. R. Evid. 802, 402; *see also In re Jackson*, 92 B.R. 987, 992 (Bankr. E.D. Pa. 1988) (citing *Mercantile Nat’l Bank v. Franklin Life Ins. Co.*, 248 F.2d 57, 59 (5th Cir. 1957)); *Bender v. Southland Corp.*, 749 F.2d 1205, 1211 (6th Cir. 1984).

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)
[jyork@mcguirewoods.com](mailto: jyork@mcguirewoods.com)
[mgiel@mcguirewoods.com](mailto: mgiel@mcguirewoods.com)

and

HENDERSON, CAVERLY, PUM &
CHARNEY LLP
Kristen E. Caverly
Admitted Pro Hac Vice
Robert C. Mardian III
Admitted Pro Hac Vice
Post Office Box 9144
Rancho Sante Fe, California 92067
(858) 756-6342
(858) 756-4732 (fax)
[kcaverly@hcesq.com](mailto: kcaverly@hcesq.com)
[rmardian@hcesq.com](mailto: rmardian@hcesq.com)

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 5, 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
oortega@dortaandortega.com
*Attorneys for Defendant Mars, Incorporated,
Mars Petcare U.S., and Nutro Products, Inc.*

Benjamine 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.

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