

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 REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST 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 PURSUANT TO RULE 56

Defendant Natura Pet Products, Inc. (“Natura”) hereby submits its reply in support of its Motion for Summary Judgment (the “Motion”) against 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, “Dismissing Plaintiffs”) pursuant to Federal Rule of Civil Procedure (“Rule”) 56 and Local Rules 7.1.C. and 7.5.

I. INTRODUCTION

Dismissing Plaintiffs concede that they cannot prevail on any claims against Natura [D.E. 527-2 at ¶1], but argue their claims should die an uncertain death by way of their Plaintiffs’ Notice Of Pending And Dismissed Claims (“Plaintiff’s Notice”). [D.E.

494.] The fate of claims cannot remain uncertain. The Dismissing Plaintiffs' acknowledgment that no Natura products are identified in the Fourth Amended Complaint ("FAC") among the lists of pet food that they allegedly purchased does nothing to create the needed certainty because plaintiffs Jo-Ann Murphy, Susan Peters, Cindy Tregoe and Jennifer Damron—who still pursue claims against Natura or are actively seeking dismissal as to Natura—also did not include Natura products in their lists of alleged purchases in the FAC. Plaintiffs' Notice [D.E. 494] asserts that Jennifer Damron, Cindy Tregoe, Jo-Ann Murphy, and Susan Peters *have* pending claims against Natura despite a complaint that is exactly the same as to their allegations as those plaintiffs subject to this motion. Plaintiffs cannot have it both ways.

Either Natura is entitled to judgment against the Dismissing Plaintiffs, or Plaintiffs Damron, Tregoe, Murphy and Peters must also be precluded from pursuing claims against Natura in this case. Though Natura prefers the latter result, the FAC controls and judgment is proper against those plaintiffs who admit they cannot establish use or purchase of Natura products.

II. REBUTTAL ARGUMENTS

A. FAC ¶¶ 3-32 Fail to Demonstrate that Dismissing Plaintiffs Did Not Plead Claims against Natura.

The Opposition claims that Paragraphs 3 through 32 of the FAC identify which Plaintiffs assert claims against Natura. Natura wishes this were true, but Plaintiffs Damron, Tregoe, Murphy, and Peters simultaneously assert that they have claims against Natura despite not pleading Natura purchases or use in the FAC. For example, compare Paragraph 6 regarding Dismissing Plaintiff Linda Brown:

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, Nestlé 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.

to Paragraph 26 regarding Plaintiff Cindy Tregoe:

Plaintiff/Class Representative, Cindy Tregoe, is a resident of Maryland during the class period. Plaintiff Tregoe regularly purchased pet food during the class period for daily consumption for her cat(s)/dog(s) in Maryland, which was manufactured and marketed by Defendants, Mars and Mars Pet Care, Iams, Hill's, Nestlé Purina Petcare, Nutro, Del Monte and on information and belief Petsmart and/or Menu Foods. Defendants, Target, Wal-Mart, Petco and Petsmart marketed and sold Plaintiff Tregoe pet food from the above-referenced manufacturers and marketers, which purchases were made based upon the above referenced Defendants' marketing.

[D.E. 349 at ¶¶ 6 & 26.]

Similarly, compare Paragraph 12 regarding Dismissing Plaintiff Jane Herring:

Plaintiff/Class Representative, Jane Herring, a resident of South Carolina during the class period. Plaintiff Herring regularly purchased pet food during the class period for daily consumption for her cat(s)/dog(s) in South Carolina, which was manufactured and marketed by Defendants, Mars and Mars Pet Care, Nestlé Purina Petcare, Iams and Del Monte and on information and belief Wal-Mart and/or Menu Foods. Defendants, Wal-Mart marketed and sold Plaintiff Herring pet food from the above referenced manufacturers and marketers, which purchases were made based upon the above-referenced Defendants' marketing.

to Paragraph 13 regarding Plaintiff Jo-Ann Murphy:

Plaintiff/Class Representative, Jo-Ann Murphy, is a resident of Tennessee during the class period. Plaintiff Murphy regularly purchased pet food during the class period for daily consumption for her cat(s)/dog(s) in Tennessee, which was manufactured and marketed by Defendants, Nutro and on information and belief Wal-Mart and/or Menu Foods. Defendants, Petco, Petsmart and Wal-Mart marketed and sold Plaintiff Murphy pet food from the above referenced manufacturers and marketers, which purchases were made based upon the above-referenced Defendants' marketing.

[D.E. 349 at ¶¶ 12-13.]

Natura is nowhere to be found in Ms. Tregoe's allegations in Paragraph 26 or in Ms. Murphy's allegations in Paragraph 13. Nevertheless, Plaintiffs' Notice, filed just 34 days before the Opposition, states:

...the following Plaintiffs still have pending claims against Natura, despite having dismissed their claims against all other Defendants in this case: Renee Blaszkowski, Jennifer Damron, Cindy Tregoe, Jo-Ann Murphy, Susan Peters, and Yvonne Thomas.

[D.E. 494 at 1.]

Of these six Plaintiffs identified as maintaining claims against Natura, four did not mention purchasing or using Natura anywhere in the FAC. The pleadings regarding the claims of Ms. Peters, Ms. Damron, Ms. Tregoe, and Ms. Murphy are virtually identical to Dismissing Plaintiffs' pleadings with respect to Natura; yet Plaintiffs contend one group has pled claims against Natura, but the other has not. In the case of Ms. Damron, she moved for voluntary dismissal [D.E. 518] despite never having identified any Natura purchases in Paragraphs 3 through 32 of the FAC.¹ Plaintiffs' positions are irreconcilable.

Plaintiffs cannot in good faith argue that Paragraphs 3 through 32 of the FAC are determinative for some Plaintiffs but not for others. Based on the Opposition, Plaintiffs Peters, Damron, Tregoe, and Murphy must similarly be declared non-parties to the instant action as of the date they dismissed the non-Natura defendants.

On the other hand, if the Court finds that the counts control which parties have asserted claims against Natura,² then Natura is entitled to the summary judgment requested. It is one or the other. Plaintiffs cannot avoid judgments for some while pursuing claims by others based on identical allegations within the pleadings.

¹ Damron's motion to dismiss was filed 14 days before the Opposition was filed.

² The function of interpreting the pleadings rests primarily on the trial judge. *Lilly v. Grand T. W. R. Co.*, 317 U.S. 481, 491-490 (U.S. 1943); See also *Warren v. Wirum*, 378 B.R. 640, 646 (N.D. Cal. 2007).

B. Natura Relies on Federal Rule of Civil Procedure 56 to Allow the Court to Grant Summary Judgment.

The Opposition contends that Natura did not cite adequate legal grounds to permit the Court to grant summary judgment. This is incorrect. In its moving papers, Natura cites Rule 56 as grounds to grant summary judgment. Natura stated:

The Court may grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

[D.E. 515 at 9.]

Natura has established that there is no genuine issue of any material fact because the Dismissing Plaintiffs admit that they cannot prevail against Natura on any of the claims present in the FAC. [Natura’s Statement of Material Fact (“M.F.”) #1; Dismissing Plaintiffs’ M.F. #1.] Therefore, Natura is entitled to summary judgment.

III. CONCLUSION

Based upon the foregoing, Natura respectfully requests the Court grant summary judgment in favor of Natura on all claims brought by 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, and grant Natura such other relief as this Court may deem fit and proper. In the alternative, Natura requests that Plaintiffs Peters, Murphy, Tregoe, and Damron be determined to have asserted no claims against Natura. This will leave Plaintiffs Davis and Thomas with asserted claims against Natura because only those Plaintiffs pled purchases of Natura products.

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