

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.

NOTICE OF ISSUANCE OF SUBPOENA

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that pursuant to Rule 45 of the Federal Rules of Civil Procedure,
defendant Natura Pet Products, Inc. will serve the attached subpoena on Maltzman Foreman, PA.

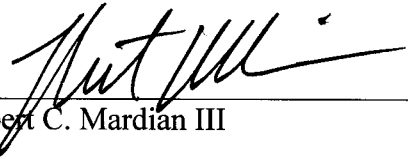


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Attorneys for Defendant Natura Pet Products, Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the counsel so indicated on the attached Service List by e-mail on October 15, 2008.



Robert C. Mardian III

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Issued by the
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RENEE BLASZKOWSKI, *et al.*,
Plaintiffs,

v.

MARS, INCORPORATED, *et al.*,
Defendants

SUBPOENA IN A CIVIL CASE

CASE NUMBER:¹ 07-21221 CIV ALTONAGA/Brown

TO: Maltzman Foreman, PA
2 South Biscayne, Blvd., Suite 2300
Miami, FL 33131

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the date, place, and time specified below to testify at the taking of a deposition in the above case, on the subjects described in attachment A.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached.

PLACE Network Reporting 44 Flagler Street, Suite 1200 Miami, FL 33130	DATE AND TIME November 6, 2008 9:00 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Counsel for Defendant Natura Pet Products	DATE October 14, 2008
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ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER Robert C. Mardian III Henderson, Caverly, Pum & Charney LLP P.O. Box 9144 (all U.S. Mail) 16236 San Dieguito Road, Ste 4-13 Rancho Santa Fe, CA 92067	Tel: (858) 756-6342
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(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct:

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take responsible steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause

(c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A

DEFINITIONS

1. The term, "Documents," as used herein, shall have the full meaning ascribed to it by the Federal Rules of Civil Procedure, and shall include without limitation, information stored in electronic, magnetic, or optical media. "Document(s)" further mean the original and each non-identical copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic, or other matter, in whatever form, whether in final or draft, including, but not limited to all materials that constitute "writings" or "recordings" within the meaning of Rule 1001 of the Federal Rules of Evidence and all materials that constitute "document(s)" within the meaning of Rule 34 of the Federal Rules of Civil Procedure. The term "document(s)" includes without limitation electronic mail, information stored on computer drives, diskettes, tapes, or other computer media, and any other information stored magnetically or electronically.
2. The terms, "and" and "or," as used herein, shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.
3. The term "communication(s)," as used herein, shall mean all discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, memoranda, telegrams, advertisements or other forms of information sent to or received from any person or entity, whether oral, written, or electronic.
4. The term "including," as used herein, shall mean including but not limited to. Under no circumstances shall any use of the word "including" in any request be used to limit the scope of documents responsive to any request.

5. The term, “reflect or relate to,” as used herein, shall include and, depending upon the context of the subject matter of inquiry, be synonymous with the following terms and/or phrases: analyze, comment on, connect, constitute, contain, contradict, deal with, describe, discuss, embody, evaluate, identify, note, mention, pertain to, record, refer to, respect, support, refer to, is relevant to, respond to, state, study, or is in any way pertinent to that subject matter, including documents concerning the presentation of other documents.
6. The use of the singular form of any word includes the plural and vice versa, as may be necessary for grammatical or other purposes to make the request intelligible.

INSTRUCTIONS

1. You are to produce and permit Defendants to inspect and copy each of the documents or tangible things requested within your possession, custody, or control, or in the possession, custody, or control of your agents, attorneys, servants, or employees.
2. Documents that exist in digital form and constitute or comprise databases or other tabulations or collections of data or information should be produced in a mutually agreed upon machine-readable format. Documents that exist in digital form and constitute or comprise written communications between natural persons (by way of example only: e-mail messages, internal memos, letter) should be produced both in a mutually agreed upon machine-readable format and on paper.
3. If any document requested herein was formerly in your possession, custody, or control, or the possession, custody, or control of your employees, agents, attorneys, or representatives, and has been lost or destroyed, you shall submit a written statement for each such document which:

- a. identifies all authors and recipients of the document, the date of the document, and a description of the document and its contents; and
 - b. specifies the date on or about which the document was lost or destroyed, and if destroyed, the reason for the destruction and person(s) requesting the destruction.
4. If your response to any request is that a particular document is not in your possession, custody or control, describe in detail all efforts made by you to locate the document and identify who has possession, custody or control of, and the location of, that document.
5. For any documents no longer in existence, which cannot be located, or which passed out of your custody or control, identify the document, state how and when it passed out of existence, why it cannot be located, or when it passed out of your custody or control, and identify each person having knowledge concerning such disposition or loss.
6. This request is continuing in character so as to require you to produce for inspection and copying any documents not previously produced which you may, from time to time, acquire, obtain, locate, or identify.
7. Should you claim that any particular request is beyond the scope of permissible discovery, specify in detail each and every ground on which such claim rests.
8. Each document sought shall be produced in and with the file folders and other identifying documents or containers (*e.g.*, envelope, file cabinet market, binder tab) in which such document was located when the request was served.
9. If you believe that any request is unclear, vague, or susceptible of multiple or varying interpretations, you are instructed to adopt the most reasonably expansive interpretation or interpretations, and produce all documents responsive to that interpretation.

10. If you believe that the volume of documents requested is too voluminous to produce, or unduly burdensome, you are instructed to produce those documents which, you believe, are not voluminous or burdensome, and indicate in your response and objections the location, nature, and volume of any documents not produced based on such objection.

DOCUMENT REQUESTS

1. All documents dated January 16, 2008, that indicate that plaintiff Patricia Davis used products manufactured or distributed by Natura Pet Products, Inc.
2. The documents identified in the email sent on Friday, September 12, 2008, at 3:17 p.m. from CMacIvor@mfllegal.com to kcaverly@hcesq.com, which is attached hereto as Exhibit 1.
3. Interrogatory responses, drafts and final, prepared by plaintiff Patricia Davis.
4. All documents received from plaintiff Patricia Davis which indicate that she used products manufactured or distributed by Natura Pet Products, Inc.

EXHIBIT 1

Kristen Caverly

From: Catherine J. MacIvor [CMacIvor@mflegal.com]
Sent: Friday, September 12, 2008 3:17 PM
To: Kristen Caverly
Subject: Blaszkowski - Davis Declaration

Kristen,

I was not able to participate in the telephone conference today, but Jeffrey Maltzman advised that you claim that Ms. Davis' allegedly waived the attorney client privileged in her recent declaration and have asked if we will show you a document indicating that Ms. Davis advised us that she used Natura pet food. First, there was no waiver of the attorney client privilege and I certainly am not willing to show you any attorney client privileged and work product protected document. However, if you determine to forge ahead with more of these baseless allegations concerning Ms. Davis or the Plaintiffs' counsel, I am prepared to show the Court *in camera* a document dated January 16, 2008 that indicates that Pat Davis had used Natura Innova.

I hope we can soon move on to the substantive issues in this case.

Regards,

Cathy

CATHERINE J. MACIVOR

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9/15/2008