

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.

**DEFENDANT NATURA PET PRODUCTS, INC.'S OBJECTION TO OR,
IN THE ALTERNATIVE, MOTION TO STRIKE PLAINTIFFS' AGREED
MOTION TO FILE FINANCIAL AFFIDAVITS AND SUPPORTING
DOCUMENTS OF RENEE BLASZKOWSKI AND JENNIFER DAMRON
AND ACCOMPANYING MEMORANDUM OF LAW**

Pursuant to Federal Rule of Civil Procedure Rule (“Rule”) 5(a)(1)(D), Natura Pet Products, Inc. (“Natura”) hereby objects to the Plaintiffs’ Agreed Motion to File Financial Affidavits and Supporting Documents of Renee Blaszkowski and Jennifer Damron under Seal and all supporting documents, including the evidence to be sealed, filed on November 6, 2008 (collectively, “Motion to File under Seal”). [D.E. 539.] In the alternative, pursuant to Rule 12(f), Natura hereby moves to strike the Motion to File under Seal. In support, Natura states as follows:

1. Plaintiffs’ Motion to File under Seal and its supporting documents and evidence were not exchanged with or served upon Natura.
2. Plaintiffs’ Motion to File under Seal is an immaterial, impertinent, and/or scandalous matter that should be stricken because it seeks to admit evidence offered in support of a reply brief in violation of Local Rule 7.1.C.3.

In support of this objection and motion in the alternative, which is justified by the filings of record in this case, Natura submits the attached Memorandum of Law.

MEMORANDUM OF LAW

I. INTRODUCTION

Natura objects to Plaintiffs' Motion to File under Seal because it was never served on Natura and Natura is unaware of its contents. Because Natura does not know what the Motion to File under Seal states, the motion is not an "agreed" motion. Until the issuance of Judge Altonaga's order [D.E. 546] denying the Motion to File under Seal on November 14, 2008, Natura was unaware that the Motion to File under Seal had been filed. Natura was under the impression that Docket Entry 539 contained only financial documents related to Plaintiffs Blaszkowski and Damron that have not been provided to Natura.

Through the financial documents, Plaintiffs Blaszkowski and Damron improperly seek to have the Court grant their Motion for Voluntary Dismissal with Prejudice without an Award of Costs and Fees ("Motion for Dismissal") [D.E. 518] based upon evidence never provided to Natura and filed under seal in support of a reply brief. The issue of Blaszkowski and Damron's alleged financial hardship was first raised in the Motion for Dismissal's original moving papers, not Natura's opposition. Accordingly, the evidence is not permitted to be introduced with the reply and should be stricken.

II. BACKGROUND

On October 13, 2008, the plaintiffs Blaszkowski and Damron filed their Motion for Dismissal. [D.E. 518.] The Motion for Dismissal argued that Blaszkowski and Damron should be dismissed from this action because they were allegedly financially unable to continue. [D.E. 518.] In support of this contention, Blaszkowski and Damron each filed declarations with the Motion for Dismissal. [D.E. 516 & D.E. 517.] On October 20, 2008, Natura filed its opposition to the Motion for Dismissal. [D.E. 522.]

On or about October 30, 2008, Plaintiffs' attorney Jonathan C. Schwartz contacted Natura's counsel, Kristen E. Caverly, to request a stipulation allowing plaintiffs Blaszkowski and Damron to file financial documents under seal in support of their upcoming reply brief. (Caverly Decl., Nov. 14, 2008.) Natura informed Plaintiffs that the submission of evidence with a reply brief was inappropriate and that Natura would object. As Natura informed Plaintiffs, it generally does not oppose the filing of sensitive financial documents under seal if they are being offered for a proper purpose. Here, however, no proper purpose was present. Natura further made clear that it would not stipulate to the filing of any motion and documents under seal unless Natura first had an opportunity to review and consent to the proposed motion and documents. (Caverly Decl.) Plaintiffs' counsel subsequently represented that Natura would be provided with a copy of the motion and all documents that Plaintiffs sought to submit under seal prior to their filing. (Caverly Decl., ex. A.)

On November 6, 2008, Plaintiffs filed their reply brief in support of the Motion for Dismissal [D.E. 541] and their Motion to File Under Seal [D.E. 539]. To date, Natura has not seen the contents of the Motion to File Under Seal. (Caverly Decl.) Natura objects here and files the instant motion to strike the Motion to File under Seal on the grounds that it violates Local Rule 7.1.C.3. and that the contents of Plaintiffs' Motion have never been disclosed to Natura.

III. LEGAL ARGUMENT

A. Plaintiffs May Not File Evidence With Their Reply.

Rule 12(f) permits the Court to strike from pleadings any redundant, immaterial, impertinent, or scandalous matter on its own or upon the motion of a party. Local Rule 7.1.C.3. provides that evidence filed in support of a reply memorandum is strictly limited to the rebuttal of matters raised in the opposing memorandum. The issue of Plaintiffs Blaszkowski's and Damron's alleged financial hardship was raised in Plaintiffs' moving

papers, not the opposing memorandum. [D.E. 518.] Therefore, the Sealed Document that offers evidence regarding Blaszkowski's and Damron's financial condition may not be submitted with the reply.

B. Natura is Prejudiced because It Was Not Served with the Motion to File under Seal.

Rule 5(a)(1)(D) requires that written motions be served on all parties. Here, plaintiffs never served Natura with the Motion to File under Seal or the documents presumably attached. Further, Natura is unable to obtain the Motion to File under Seal from the Court because it is under seal. Natura is unaware of the exact contents of Plaintiffs' Motion. Consequently, Natura is unable to make relevant evidentiary objections or opposing legal argument that may apply to the Motion to File under Seal. As a result, it is possible that the Court will grant the motion under the false assumption that Natura agreed to it. Additionally, Natura would be prejudiced if the Court, in ruling on the Motion for Dismissal, considered inadmissible evidence in support Plaintiffs' the reply brief to which Natura had no opportunity to object. To prevent prejudice to Natura, the Court should disregard the contents of the Motion to File under Seal.

IV. CONCLUSION

For the foregoing reasons, Defendant Natura Pet Products, Inc. respectfully requests that the Court sustain Natura's objection to the Motion to File under Seal or, in the alternative, grant Defendant's Motion to strike Plaintiffs' Motion to File Financial Affidavits and Supporting Documents of Renee Blaszkowski and Jennifer Damron under Seal and all supporting documents, including the evidence to be sealed. [D.E. 539.]

RULE 7.1 CERTIFICATE

Prior to filing this motion, Natura's attorney, Robert C. Mardian III, made reasonable efforts to confer with the plaintiffs in a good faith effort to resolve the issue raised in this motion. Plaintiffs did not respond to the meet and confer efforts, thus necessitating the instant motion.

McGUIREWOODS LLP

By: s/Jeffrey S. York

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, 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
rmardian@hcesq.com

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 17, 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/Jeffrey S. York

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@mlegal.com
jforeman@mlegal.com
jmaltzman@mlegal.com
dfriedman@mlegal.com
beikeland@mlegal.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.*

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@abaili.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*

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.

\6711487.1