

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.

**REPLY TO PLAINTIFFS' RESPONSE TO NATURA PET PRODUCTS, INC.'S
MOTION TO STRIKE PLAINTIFFS' EVIDENTIARY OBJECTION TO REPLY
BRIEF AND CROSS-MOTION TO ALLOW LEAVE TO FILE**

Natura Pet Products, Inc., (“Natura”) hereby replies to plaintiffs’ Response to Motion to Strike Plaintiffs’ Evidentiary Objections to Reply Brief and Cross-Motion to Allow Leave to File Objection (“Opposition to the Motion to Strike”) [D.E. 567].

I. INTRODUCTION.

The Court should strike the Evidentiary Objection by Plaintiffs to Natura Pet Products, Inc.’s Reply in Support of Its Motion For Summary Judgment Against Non-Natura Plaintiffs Linda Brown, *et al.* (“Plaintiffs’ Sur-Reply”) [D.E. 543] because it fails to specify the evidence to which it objects and constitutes an impermissible sur-reply. Not until the Opposition to the Motion to Strike do Plaintiffs identify the “evidence” that Plaintiffs’ Sur-Reply purports to object. The allegedly objectionable evidence consists of three pleadings, all of which were prepared and filed by Plaintiffs. Two of the pleadings were specifically identified in Natura’s Request for Judicial Notice [D.E. 515-2] filed concurrently with the underlying Motion for Summary Judgment, and were, therefore, not raised for the first time in Natura’s Reply Brief [D.E. 534]. The third pleading at

issue was utilized to directly refute an argument raised in Plaintiffs' Opposition to the Motion for Summary Judgment [D.E. 528]. As such, Natura's reliance upon it was proper. Accordingly, Plaintiffs have no valid grounds to pose evidentiary objections to Natura's Reply Brief. In addition, Plaintiffs' Sur-Reply is also improper because it cites and discusses case authorities that do not pertain to the admissibility of evidence, but attempt to attack legal argument contained in Natura's Reply Brief. Plaintiff's Sur-Reply is not an evidentiary objection, but is, in fact, an impermissible sur-reply and must be stricken.

II. NATURA'S REPLY BRIEF DOES NOT INCLUDE IMPROPER EVIDENCE.

In the Opposition to the Motion to Strike, Plaintiffs identify for the first time the evidence to which the Plaintiffs' Sur-Reply allegedly objects. The "evidence" identified as objectionable in the Opposition to the Motion to Strike is Natura's reference to:

1. Fourth Amended Complaint [D.E. 349];
2. Plaintiffs' Notice of Pending and Dismissed Claims [D.E. 494]; and
3. Plaintiffs' Motion for Voluntary Dismissal [D.E. 518].

It is with great irony that Plaintiffs now object to the Court's consideration of the above three documents since they were all prepared and filed by Plaintiffs. Plaintiffs cannot argue that they were caught of guard by the contents of those papers. Indeed, two of the three documents identified above were specifically included in Natura's Request for Judicial Notice [D.E. 515-2] filed concurrently with the underlying Motion for Summary Judgment. Accordingly, Plaintiffs claim that the Fourth Amended Complaint [D.E. 349] and Notice of Pending and Dismissed Claims [D.E. 494] are new evidence offered for the first time in Natura's Reply is simply false.

The reference to Plaintiffs' Motion for Voluntary Dismissal is specifically raised to rebut the validity of Plaintiffs' contention, raised in the Opposition to the Motion to for Summary Judgment, that Paragraphs 3 through 32 of the Fourth Amended Complaint

exclusively control which Plaintiffs asserted claims against Natura. If it were true that Plaintiffs believed that Paragraphs 3 through 32 controlled, then Plaintiffs would have never filed Plaintiffs' Motion for Voluntary Dismissal. Accordingly, reference to Plaintiff's Motion for Voluntary Dismissal is offered only to rebut issues raised in Plaintiffs' Opposition to the Motion to for Summary Judgment, and is, thus, proper to raise in a reply brief pursuant to Local Rule 7.1.

III. NATURA'S REPLY BRIEF DOES NOT INTRODUCE NEW ISSUES.

Natura's Reply Brief rebuts Plaintiffs' Opposition to the Motion to for Summary Judgment by illustrating the absurdity of the arguments it puts forth. 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' acknowledgment that no Natura products are identified in the Fourth Amended Complaint among the lists of pet food that they allegedly purchased does nothing to create the needed certainty regarding pending claims against Natura because Plaintiffs Jo-Ann Murphy, Susan Peters, Cindy Tregoe, and Jennifer Damron, who pursued claims against Natura also did not include Natura products in their lists of alleged purchases in the Fourth Amended Complaint. The issue of whether Paragraphs 3 through 32 of the Fourth Amended Complaint controls which Plaintiffs have claims against Natura was raised by Plaintiffs, not Natura. Therefore, Natura's discussion and rebuttal of that issue in its Reply Brief is both necessary and appropriate under Local Rule 7.1.

IV. CONCLUSION

For the foregoing reasons and the reasons set forth in Natura's Motion to Strike, Natura respectfully requests that the Evidentiary Objection by Plaintiffs to Natura Pet Products, Inc.'s Reply in Support of Its Motion For Summary Judgment Against Non-

Natura Plaintiffs Linda Brown, *Et. Al.* (“Plaintiffs’ Sur-Reply”) [D.E. 543] be stricken, and that this Court deny Plaintiffs’ request in the alternative for leave to file a sur-reply [D.E. 567].

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 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

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