

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 07-21221-CIV-ALTONAGA/BROWN

RENEE BLASZOWSKI, *et al.*,  
individually and on behalf of  
others similarly situated,

Plaintiffs,

vs.

MARS, INCORPORATED, *et al.*,

Defendants.

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**DECLARATION OF ROBERT C. MARDIAN III IN SUPPORT OF DEFENDANT  
NATURA PET PRODUCTS, INC.'S MOTION TO COMPEL RESPONSES TO  
DEFENDANT NATURA PET PRODUCTS, INC.'S FIRST SET OF REQUESTS  
FOR THE PRODUCTION OF DOCUMENTS TO PLAINTIFF PATRICIA DAVIS**

1. I, Robert C. Mardian III, am over the age of 18 and have personal knowledge of the facts set forth herein or know of such facts from my review of the case files for this action, which are maintained by my office in the normal course of business. I am counsel for defendant Natura Pet Products, Inc., and admitted *pro hac vice* in this action.

2. From September 24-27, 2008, Natura took the depositions of plaintiffs. Patricia Davis, Cindy Tregoe and Jo-Ann Murphy.

3. Subsequent to the depositions, Natura sent to Davis requests for production of documents.

4. Davis requested an extension within which to respond to discovery. Natura agreed so long as Davis promised to provide substantive responses to each request.

5. Attached hereto as Exhibit A is a true and correct copy Natura's First Set of Requests for Production to Plaintiff Patricia Davis dated October 17, 2008.

6. Attached hereto as Exhibit B is a true and correct copy of Patricia Davis' Amended Responses Natura's First Set of Requests for Production to Plaintiff Patricia Davis dated November 24, 2008.

7. Attached hereto as Exhibit C is a true and correct copy of excerpts of the transcript from the Videotaped Deposition of Patricia Davis, taken on September 24, 2008, in Washington, D.C.

8. On December 24, 2008, Natura met and conferred with plaintiffs' counsel regarding the issues raised in Natura's motions to compel production, interrogatory responses and motion regarding the sufficiency of answers and objections. On December 29, 2008, plaintiffs requested additional time to meet and confer. Natura agreed to the extension until January 9, 2009, to meet and confer. Plaintiffs agreed to permit Natura until January 16, 2009, to file its motions to compel and motion regarding sufficiency of answers and objections if the meet and confer efforts failed to resolve the outstanding discovery issues.

I declare the above under penalty of perjury under the laws of the United States of America on this 12<sup>th</sup> day of January, 2009 in Rancho Santa Fe, California.

  
Robert C. Mardian III

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 07-21221-CIV-ALTONAGA/BROWN

RENEE BLASZOWSKI, *et al.*,  
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**DEFENDANT NATURA PET PRODUCT'S FIRST SET  
OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS  
TO PLAINTIFF PATRICIA DAVIS**

Pursuant to Federal Rule of Civil Procedure 34 and Local Rule 26.1.G, Defendants, by their undersigned attorneys, request Plaintiff Patricia Davis to produce and make available for inspection and duplication all documents specified herein. You are requested to make such production at 10:30 a.m. on November 17, 2008, at the offices of Keegan & Baker, LLP, at 4370 La Jolla Village Drive, Ste 640, San Diego, CA 92122, or at some other time and location mutually agreed upon by the parties.

**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 computers you used to view Natura Pet Products, Inc.'s website prior to your alleged use of products manufactured or distributed by Natura Pet Products, Inc.

2. All computers you used to prepare your June 2008 responses to interrogatories propounded by defendant Mars, Inc.
3. All receipts you received from any and all Ocala Breeders Feed & Supply stores in 2006.

Date: October 17, 2008

Respectfully submitted,



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Robert C. Mardian III

*rmardian@hcesq.com*

**HENDERSON, CAVERLY, PUM &  
CHARNEY LLP**

P.O. Box 9144

16236 San Dieguito Road, #4-13

Rancho Santa Fe, CA 92067

Tel: 858-756-6342

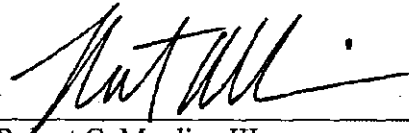
Fax: 858-756-4732

*Attorneys for Defendant Natura Pet  
Products Inc.*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was sent via electronic mail to all counsel on the attached service list on October 17, 2008.

A handwritten signature in black ink, appearing to read "R. Mardian III", written over a horizontal line.

Robert C. Mardian III

**SERVICE LIST**

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*Products, Inc.*

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**HENDERSON, CAVERLY,**

**PUM & CHARNEY LLP**

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Facsimile: 858-756-4732

*Attorneys for Defendant Natura Pet*

*Products, Inc.*

# EXHIBIT B

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/Class Representatives,

vs.

MARS INC., *et al.*

Defendants.

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**PLAINTIFF PATRICIA DAVIS' AMENDED RESPONSES TO DEFENDANT  
NATURA PET PRODUCT'S FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS**

**OBJECTIONS TO DEFINITIONS**

Plaintiff makes the following general objections, whether or not separately set forth in response to each and every document request, to each and every definition, and to each and every document request made in Defendant's Request for Production of Documents:

1. Plaintiff objects to all document requests insofar as any such request seeks production of documents or information protected by the attorney-client privilege and the attorney-client work product doctrine.
2. Plaintiff objects to all document requests on the grounds that each and every request is improper in form and in violation of Rule 30(b)(1) of the FRCP because each request is not full and complete in that it contains: subparts; compound, conjunctive or disjunctive questions; a preface or instructions; or special definitions of terms carried over from request to request.
3. Plaintiff objects to all document requests to the extent that the document requests are unreasonably cumulative, duplicative and/or disproportionate subjecting Respondent to unreasonable and undue annoyance, oppression, burden, and expense.
4. Plaintiff objects to all document requests to the extent that the document requests are duplicative of existing document requests of the Propounding Party

subjecting Respondent to unreasonable and undue annoyance, oppression, burden, and expense.

5. Plaintiff objects to the introductory definitions and instructions to the Propounding Party's documents request to the extent said definitions or instructions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific request on the ground that such enlargement, expansion, or alteration renders said request vague, ambiguous, unintelligible, unduly broad, and uncertain.

6. Plaintiff objects to all instructions, definitions and document requests to the extent they seek documents not currently in Plaintiff's possession, custody or control, or refer to persons, entities or events not known to Plaintiff, on the grounds that such instructions, definitions, or requests seek to require more instructions, definitions, or requests seek to require more of Plaintiff than any obligation imposed by law, would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense, and would seek to impose upon Plaintiff an obligation to investigate or discover information or material from third parties or sources who are equally accessible to the Propounding Party.

7. Plaintiff objects to all definitions, instructions, and document requests in which the terms "reflect or relate to" appear. The terms "reflect or relate to" are overly broad, vague, ambiguous, and unintelligible, require subjective judgment on the part of Respondent and its attorneys, and would require a conclusion or opinion of counsel in violation of the attorney work product doctrine.

8. Plaintiff objects to all instructions, definitions and document requests to the extent they seek production of documents on a continuing basis, on the ground that said instruction seeks unilaterally to impose an obligation to provide supplemental information greater than the required by the FRCP and would subject Plaintiff to unreasonable and undue annoyance, oppression, burden, and expense and will not be regarded as continuing in nature.

9. Plaintiff objects to all definitions, instructions, and document requests to the extent they seeks to require Plaintiff's to search for information about documents no longer in existence or in its possession, custody or control, on the grounds that said instruction is overly broad, would subject Plaintiff to undue annoyance, oppression, burden, and expenses, and seeks to impose upon Respondent an obligation to investigate information or materials from third parties or services who are equally accessible to the Propounding Party.

## **RESPONSE TO REQUEST FOR DOCUMENTS**

### **Request for Document No. 1:**

All computers you used to view Natura Pet Products, Inc.'s website prior to your alleged use of products manufactured or distributed by Natura Pet Products, Inc.

**Response to Request for Document No. 1:**

Plaintiff Patricia Davis objects to the Request on the grounds that it is overly broad, vague and ambiguous in that it does not specify what, if any, information or documentation is being sought, that it is burdensome and oppressive in that it seeks the production of computer equipment, that it seeks the production of personal information or documentation not relevant to the issues in this lawsuit nor calculated to lead to the discovery of relevant admissible evidence, that it seeks information in violation of her right to privacy and privileges and protections which exist which preclude its production, that it seeks the production of the instrument used to store information/documentation sought and not the information/documentation itself, that it may seek information protected by the attorney/client privilege and the attorney work product doctrine and that it is propounded in bad faith intended harass rather than as a reasonable discovery request for relevant information.

Plaintiff did not look at the Natura Website prior to feeding the Innova Senior.

**Request for Document No. 2:**

All computers you used to prepare your June 2008 response to interrogatories propounded by defendant Mars, Inc.

**Response to Request for Document No. 2:**

Plaintiff Patricia Davis objects to the Request on the grounds that it is overly broad, vague and ambiguous in that it does not specify what, if any, information or documentation is being sought, that it is burdensome and oppressive in that it seeks the production of computer equipment, that it seeks the production of personal information or documentation not relevant to the issues in this lawsuit nor calculated to lead to the discovery of relevant admissible evidence, that it seeks information in violation of her right to privacy and privileges and protections which exist which preclude its production, that it seeks the production of the instrument used to store information/documentation sought and not the information/documentation itself, that it may seek information protected by the attorney/client privilege and the attorney work product doctrine and that it is propounded in bad faith intended harass rather than as a reasonable discovery request for relevant information. Still further the computer at issue is also used in her employment creating additional confidentiality and privacy issues and additional hardship.

**Request for Document No. 3:**

All receipts you received from any and all Ocala Breeders Feed & Supply store in 2006.

**Response to Request for Document No. 3:**

Plaintiff Patricia Davis objects to this request on the ground that the request is vague and ambiguous, impermissibly over broad, and unduly burdensome and oppressive constituting unwarranted annoyance, embarrassment or unjust burden. Plaintiff further objects to this request on the ground that the request is impermissibly compound, conjunctive and disjunctive constituting unwarranted annoyance, embarrassment or unjust burden.

Notwithstanding these specific objections and the general objections, Plaintiff will produce all non-privileged documents responsive to this request, to the extent Plaintiff has such documents in her possession or that Plaintiff can locate after a diligent search and reasonable inquiry has been conducted. Nineteen (19) receipts will be produced in PDF form.

Dated: November 24, 2008

Law Offices of Edgar R. Nield



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Edgar R. Nield, Esq.  
Attorney for Plaintiffs

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/Class Representatives,

vs.

MARS INC., *et al.*

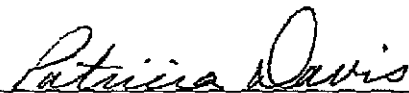
Defendants.

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VERIFICATION

I, Patricia Davis, declare and state foregoing responses to first set of requests for production of documents are true and correct under penalty of perjury.

Executed on November 24, 2008.

  
Patricia Davis



# EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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RENEE BLASZKOWSKI, et al.,

Plaintiffs,

vs.

MARS, INCORPORATED, et al.,

Defendants.  
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| Case No.

| 07-21221-CIV

| ALTONAGA/BROWN  
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Videotaped Deposition of PATRICIA DAVIS

Washington, D.C.

September 24, 2008

9:00 a.m.

Reported by: Michele E. Eddy

1 Videotaped Deposition of

2 PATRICIA DAVIS

3

4 Held at the offices of:

5 WILLIAMS & CONNOLLY  
6 725 Twelfth Street, Northwest  
7 Washington, D.C. 20005

8 (202) 434-5000

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17 Pursuant to Notice, before Michele E. Eddy,  
18 Registered Professional Reporter, Certified Realtime  
19 Reporter, and Notary public in and for the District of  
20 Columbia.

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

EDGAR R. NIELD, ESQUIRE  
LAW OFFICES OF EDGAR R. NIELD  
4370 La Jolla Village Drive, Suite 640  
San Diego, California 92122  
Telephone: (858) 552-6745

ON BEHALF OF THE DEFENDANT NATURA PET PRODUCTS, INC:

KRISTEN E. CAVERLY, ESQUIRE  
HENDERSON & CAVERLY, LLP  
16236 San Dieguito Road, Suite 4-13  
Rancho Santa Fe, California 92067  
Telephone: (858) 756-6342

ALSO PRESENT:

Terry Michael King, Videographer

09:47:19 1 prepare the timeline?

09:47:21 2 MR. NIELD: Well, I'm going to object as  
09:47:24 3 attorney-client privilege. To the extent that it has  
09:47:27 4 anything to do with any conversation you had with your  
09:47:29 5 attorney, that's protected information, otherwise you  
09:47:35 6 can respond to the question.

09:47:38 7 A Just the date on it that I joined the  
09:47:39 8 lawsuit.

09:47:41 9 Q What was the date on the e-mail that you're  
09:47:42 10 referring to that you've included in your timeline?

09:47:46 11 A 4-24-07.

09:48:04 12 Q Other than what you've told me, have you  
09:48:06 13 looked at any other documents in preparation of the  
09:48:08 14 timeline that you're referring to in front of you?

09:48:13 15 A I went to the Del Monte website to find out  
09:48:19 16 when Pounce was actually put on the recall list, and  
09:48:24 17 I've got that here, too.

09:48:26 18 Q Now other than what you've told me, is there  
09:48:28 19 anything else that you've relied on in putting  
09:48:30 20 together the timeline that's in front of you?

09:48:32 21 A Oh, I've got computer crash here, yes. I  
09:48:35 22 looked at when my documents were recovered, the date  
09:48:37 23 on the recovered documents, so I could have on here  
09:48:41 24 when my computer crashed.

09:48:45 25 Q How is that relevant to your timeline?

09:48:47 1           A     I think to prepare the interrogatory, is  
09:48:49 2           that the way you say that? That you asked for e-mails  
09:48:53 3           that I might have sent and I couldn't find any record  
09:48:56 4           of any of that stuff because I couldn't recover the  
09:49:00 5           PST and LST files from Outlook because the computer  
09:49:05 6           crashed.

09:49:06 7           Q     Do you still have the computer that crashed?

09:49:10 8           A     Yes.

09:49:11 9           Q     Other than yourself, have you had anyone  
09:49:11 10          look at it to see if the Outlook or e-mails files  
09:49:13 11          could be recovered?

09:49:14 12          A     My brother.

09:49:16 13          Q     Is he a computer person?

09:49:18 14          A     Yes, he built it.

09:49:23 15                    I've got my A+ certification so I'm pretty  
09:49:26 16          much a computer person, too.

09:49:27 17          Q     And neither one of you were able to recover  
09:49:30 18          any of those files, correct?

09:49:31 19          A     No, I tried four different programs, four  
09:49:33 20          different recovery programs I bought to try to get it  
09:49:33 21          back because all of my financial, Quicken, all of that  
09:49:36 22          for the last ten years or so got lost.

09:49:41 23          Q     You didn't have a backup disc or data  
09:49:45 24          anywhere?

09:49:46 25          A     I had two mirrored drives. Both of the

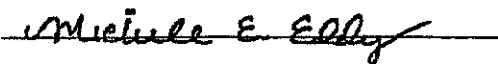
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CERTIFICATE OF SHORTHAND REPORTER

I, Michele E. Eddy, Registered Professional Reporter and Certified Realtime Reporter, the court reporter before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 6th day of October, 2008.

My commission expires: June 14, 2012

  
MICHELE E. EDDY  
NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

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