

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.

DECLARATION OF CATHERINE J. MACIVOR

I, Catherine J. MacIvor, declare and state the following is true and correct under penalty of perjury:

1. My name is Catherine J. MacIvor. I am over the age of eighteen and I have personal knowledge of all of the facts contained herein.

2. I am a partner at the law firm of Maltzman Foreman, P.A. and have been licensed to practice law in Florida for sixteen (16) years. I am a member in good standing of the Florida Bar as well as the United States Supreme Court, the First, Fifth, Ninth and Eleventh Circuit Courts of Appeal and the Southern District of Florida. I am co-lead counsel for the Plaintiffs in this case.

3. I have reviewed the Defendant, Natura Pet Products, Inc.'s ("Natura"), Opposition to the Plaintiffs' Motion for Class Certification.

4. Natura's Response to the Plaintiff's Motion for Class Certification, Section XI, argues that Maltzman Foreman P.A. are not adequate class counsel. The alleged bases for this argument is: (1) the Plaintiffs have on occasion requested "some sort of modification to the Court's schedule, to the normal briefing schedule under the Local Rules, or for an outright stay of the entire proceedings," (2) the Court or the Court's clerk has admonished the Plaintiffs six times for submitting improper filings which have twice resulted in an order denying the requested relief, (3) the Plaintiffs have somehow failed to adequately respond to discovery and produce the Plaintiffs for deposition which resulted in motions to compel document production, interrogatory responses and depositions of Plaintiffs, (4) Maltzman Foreman P.A. "complicated the proceedings by their lack of familiarity with Plaintiff, Patricia Davis, claims, and (5) the Plaintiffs support their Motion for Class Certification with Patricia Davis' deposition, which Natura claims is hearsay without an exception when used by her and by repeating privileged settlement discussions with Natura's counsel.

5. From May 9, 2007 until May of 2008, the undersigned was primarily responsible for the prosecution of this case as a class action. After May 2008, the undersigned was the partner at Maltzman Foreman, P.A. with primary responsibility for the case that was shared with co-counsel, Patrick Keegan of Keegan and Baker, LLC. Prior to May 2008, the undersigned was responsible for investigating the facts of the claims, which was very complicated given the nature of the pet food industry. This entailed a study of pet food regulations, or lack thereof, under the American Association of Feed Control Officials (AAFCO) and other applicable law, investigating the legal claims, interviewing clients and witnesses who had contacted the undersigned and assessing their claims and information, studying the factual bases for the claims and researching the manner in which pet food is marketed and how it is made. Once that study

was completed, the undersigned drafted the Class Action Complaint and successfully defended an amended version of it against a veritable army of lawyers who were associated with many of the leading law firms in the country. Additionally, the undersigned prepared and produced responses to interrogatories and two separate requests for production, which included 898 documents in late June 2008. Pursuant to an agreement with opposing counsel, the undersigned continued to collect documents during July 2008 and ultimately produced 35,571 documents in early August 2008 prior to receiving a single sheet of paper from Natura.

6. Natura's responses to the Plaintiffs discovery requests had been pending since early April of 2008, but were not produced by Natura until just days before Natura's corporate representative deposition in November 2008, and after every Plaintiffs' deposition had been concluded (and just weeks before the Plaintiffs were required to move for class certification). Moreover, while I did not attend the deposition of Natura's corporate representative, I understand that Natura produced several thousand documents just days before that deposition.

7. By the time that Natura took the depositions of each Plaintiff, Natura had all of the production for each Plaintiff well in advance in order to be able to properly prepare for the depositions.

8. All plaintiffs who wished to remain in the case in the wake of the nationwide class action settlement against the other pet food manufacturer Defendants were produced for deposition in a timely manner as agreed upon with the exception of Patricia Davis, who was produced in Washington, D.C. at no additional expense to Natura and at a time when Natura's counsel was already scheduled to be in Washington, D.C. for other Plaintiffs' depositions. Yvonne Thomas did not appear as originally scheduled due to health reasons and was unable to appear for her deposition that had been coordinated and attended by Patrick Keegan's office due

to a severe snowstorm (While Patrick Keegan's office handled this matter, I understand that Ms. Thomas suffers from a condition with her vision that makes it difficult to see and thus driving through the storm would have been dangerous). In any event, the appearance of Plaintiffs at depositions is not within the control of the Plaintiffs' counsel as counsel can only advise individuals of dates, clear them and explain the need to attend.

9. As for the allegation that counsel for Maltzman Foreman, P.A. filed 13 Notices of Unavailability covering absences of 110 court days since the inception of this case, not one of the Notices impacted the timely or vigorous prosecution of this proceeding. The purpose of these notices was to provide written notification to Plaintiffs counsel when one or another of the Maltzman Foreman lawyers working on this matter was going to be out of the office, in trial, or otherwise unable to immediately respond to communications. Maltzman Foreman served such notices in large part because absent such notices counsel for Defendants had a habit of drafting emails or letters and demanding immediate responses which were impossible when Maltzman Foreman attorneys were out of the country on deposition trips, in trial on other matters, on vacation, or ill. For example, in October, 2007, the undersigned was on vacation in California in a remote area with little access to a computer. During the period of time that the undersigned had filed a Notice of Unavailability, the Court entered an Order requesting an expedited response as to the Defendants' Motion for Rehearing on the Plaintiffs' request for jurisdictional discovery and despite the difficulty, including the unavailability of the internet, the undersigned worked with an associate by telephone to timely file a response.¹ [DE 192, 245, 247]. In other words, Maltzman Foreman's work continued despite my absence from the jurisdiction and that was not atypical as Defendants, including Natura's counsel has been on vacation and otherwise

¹ While the Response was not of the quality that the undersigned usually files, it was filed timely despite the unavailability of the internet and while the undersigned was on vacation. [DE 247].

unavailable with the only difference being that no notices of unavailability were filed. Natura also claims that when the undersigned was hospitalized and requested a four (4) day extension of time to file a reply due to the undersigned's hospitalization is somehow a ground for alleged inadequacy, a situation completely beyond the undersigned's control. [DE 491]. Natura requested and the Plaintiffs agreed to extend the time to respond to class certification because Natura's lead counsel had a death in her family, which was also beyond Natura's counsel's control. [DE 572, 573].

10. Many of the Notices of Unavailability related to the undersigned's investigation of this case or other cases that the undersigned handles. For example, during July 31, 2007 – August 7, 2007, the undersigned travelled to and attended an AAFCO semi-annual meeting, among other things, to gather information to use in the prosecution of the case. The undersigned was, in fact, made an alternate member of AAFCO for a consumer pet organization, Defend Our Pets, and attended on their behalf. Nonetheless, although working on this case, the undersigned filed a Notice of Unavailability for such time period to ensure that defense counsel were aware that the undersigned was out of the office and unable to respond to correspondence demanding an immediate reply.

11. The Notices of Unavailability that were filed had absolutely no impact on the timely and vigorous prosecution of this case because during the time that the undersigned was working on other matters or on vacation, the undersigned continued to take calls from the Defendants and to handle various aspects of the case. In addition, several of the Notices of Unavailability occurred during national holidays when defense counsel were also taking time off [DE 520, 521], or for a period of time after the Motion for Class certification was filed and before a Reply was due. [DE 576].

12. Plaintiffs have met all of the deadlines in the Court's scheduling orders, including the filing of the Motion for Class Certification.² Moreover, even as to the Motion for Class Certification, the Plaintiffs obviously did not oppose Natura's request to extend the time to file a response to Class Certification due to a death in her family. Thus, the time for a Response and Reply to class certification were re-set at Natura's – not the Plaintiffs' - request. [DE 572].

13. Natura next claims that Maltzman Foreman is allegedly inadequate because extensions of time or modifications of the Court's scheduling orders have been requested. The first example was an extension of time to respond to a 78 page Motion to Dismiss that multiple Defendants had five (5) months to prepare. [DE 240]. The undersigned requested that the time for a Response be extended until after personal jurisdiction discovery had concluded or that Maltzman Foreman, P.A. be given sixty (60) days to respond to a 78 page potentially dispositive motion. [DE 240 p. 3]. The second extension related to an amendment of the class action pleading to clarify issues that the Defendants had raised so that personal jurisdiction discovery could go forward. [DE 255]. Because no discovery had been allowed to take place based upon the Court *sua sponte* staying all discovery, the undersigned requested that the time to join parties and/or amend pleadings be extended because at the time of the original scheduling conference it was determined that such deadline should take place after the Plaintiffs had obtained at least some discovery. Natura's other examples of extensions of time requested by the undersigned relate to bona fide conflicts that the undersigned had as well as difficulty in responding to voluminous Motions on an expedited basis. [DE 392]. The undersigned nevertheless appeared as requested by the Court. Another Motion for Enlargement of Time relates to the Court's Order to

² As is discussed in paragraph 22, below, and as is shown in the attached redlined exhibit, Plaintiffs timely filed their Motion for Class Certification. A few days later Plaintiffs filed a corrected motion which made no substantive changes but instead was filed principally to correct the omission of partner Jeffrey Maltzman and Jeffrey Foreman's name from the signature block and to correct a few minor typographical or dictation errors.

provide a name for a Special Master because the undersigned intended to seek rehearing and needed to obtain a transcript in order to prepare it, which Motion was ultimately granted. [DE 404, 414].

14. As for requesting a stay of the case, Patrick Keegan of Keegan and Baker, LLP, prepared³ and filed the Plaintiffs' Motion for Stay of this case as to all Defendants *except* Natura based upon his analysis that *In Re: Pet Products Liability Litigation* (Civil Action No. 07-2867-NLH) pending in the District of New Jersey would ultimately preclude litigation of claims against all of the other Defendants in the case except Natura. Mr. Keegan analyzed the legal issue, conducted the Rule 7.1 conference prior to seeking this relief, conferred with defense counsel orally and in writing and drafted the motion. [DE 421]. The Court *sua sponte* denied the Motion without prejudice so that the parties could confer about staying the entire case. [DE 424]. Mr. Keegan prepared a renewed Motion for Stay based upon his discussions with defense counsel and appeared by telephone to argue on behalf of the Plaintiffs. [DE 437].

15. Natura also cites a Motion to Continue a Hearing Set by Judge Brown on July 31, 2008 as a purported ground for Maltzman Foreman's inadequacy of counsel, but the undersigned had been previously scheduled to appear before Judge Torres at a pre-trial conference to argue twelve (12) motions in the case of *Levenshon v. Randall*, Case No. 05-61664, which was special set for trial the following week. Co-counsel Patrick Keegan could not appear for the hearing either because he appeared before this Court for a hearing on the renewed Motion for Stay. [DE 439]. Thus, neither the undersigned nor Mr. Keegan could appear before Judge Brown due to court conflicts. Most importantly, Mr. Keegan had been working with defense counsel to work out the issues relating to the subject of a motion to compel, which largely related to the

³ Maltzman Foreman must file all of the Plaintiffs' motions since the Local Rules do not allow attorneys admitted *pro hac vice* to electronically file.

scheduling of depositions. At the same time, the undersigned was preparing the approximate 35,000 additional documents for production. The Plaintiffs produced additional supplemental responses and approximately 35,000 documents by August 8, 2008.

16. The Plaintiffs have also filed one motion to Add and/or Substitute Arna Cortazzo as a defendant in this case and a Motion for reconsideration relating to Ms. Cortazzo. [DE 457, 524]. While these requests came after the time to Add and/or Substitute parties, the requests have not impacted the vigorous prosecution of the case and the Plaintiffs produced Mrs. Cortazzo for deposition by Natura even though the court has not yet made her a party to this litigation. In fact, the Plaintiffs volunteered to provide Ms. Cortazzo's responses to the same discovery requested of all of the other Plaintiffs as if Natura had formally sent it to her at the time that the Plaintiffs moved to add Ms. Cortazzo. [DE 427]. The Plaintiffs Moved for Reconsideration as to their request to Add and/or substitute Ms. Cortazzo in anticipation that Natura would argue that Plaintiff Davis is inadequate. [DE524]. The motion has not caused any delay in the ruling on class certification or the timely prosecution of the case and was simply intended to ensure that Florida uses of Natura's products which were promoted through Natura's false and deceptive claims would have their day in court.

17. Natura next raises six (6) "admonishments" by the Clerk of the Court concerning Electronic filing which allegedly resulted in twice denying the relief requested as a basis for purported inadequacy of counsel. None of the Clerk's Notices of Instruction to Filer ever resulted in any adverse action. [DE 79, 176, 184, 259]. Moreover, Natura has also received such a Notice from the Clerk. [DE 327]. The Court denied without prejudice the Plaintiff's Agreed motion to File Financial Affidavits in Support of their Motion to Dismiss Plaintiffs Renee Blaszkowski and Jennifer Damron because a proposed Order had not been sent to the Court with

the motion. [DE 546]. The Motion was ultimately granted, over Natura's objection and neither fees nor costs were awarded to Natura. [DE 546, 574]. As for the only other instance, a Motion to Quash erroneously did not contain a Rule 7.1 certificate and was denied. [DE 559]. It was not necessary to request any further relief since Natura withdrew the request for the improper discovery that necessitated the motion in the first place.

18. Natura also alleges that Maltzman Foreman failed to "adequately" respond to discovery and to produce Plaintiffs for deposition. As noted above, the Plaintiffs timely produced 25 separate answers to interrogatories and 25 responses to two separate requests for production by June 23, 2008. 898 documents were produced and the parties agreed to a rolling production as to the remainder. Moreover, the parties further agreed to produce certain documents at various intervals so that the Defendants would be able to properly prepare for each Plaintiff deposition. The Plaintiffs produced an additional 35,371 documents by August 8, 2008. At the same time, co-counsel Patrick Keegan worked with defense counsel on the discovery schedule of the Plaintiffs' depositions. At the time that Judge Brown entered the order on discovery, Patrick Keegan had worked out the dispute. [DE 442, 447]. Moreover, all documents were produced and would have been produced notwithstanding Judge Brown's order. It just takes time to assemble 35,571 documents from 25 separate individuals from all over the country, review them for privilege and responsiveness, and prepare them for production.

19. Additionally, while the Plaintiffs were producing the above-described voluminous discovery, Patrick Keegan was discussing the impact of the Multi-District pet food litigation in New Jersey with the Defendants and the undersigned was in negotiations with all of the Defendants except Natura regarding the dismissal of the Plaintiffs. Neither the undersigned nor Mr. Keegan wanted the Defendants to go to the unnecessary expense of flying to depositions that

would not go forward because the Plaintiffs would be seeking dismissals. Several plaintiffs had changed circumstances. For example, Plaintiff, Debbie MacGregor, had contracted cancer and Plaintiff, Donna Hopkins-Jones, had lost her home due to financial difficulties. Others such as Jane Herring and Debbie Rice, for example, experienced economic difficulties in obtaining the funds to travel to their depositions due to changed financial circumstances that they did not anticipate at the time that they agreed to be Plaintiffs. There were some slight delays of some depositions while the Plaintiffs tried to work out the dismissals and a revised schedule for the remaining Plaintiffs. Nonetheless, all depositions of all remaining Plaintiffs who had not been dismissed concluded well prior to the time that the Plaintiff moved for class certification and months before Natura filed its Response to Class Certification. Co-counsel, Patrick Keegan's firm, worked on the stipulation as to the depositions of all of the Plaintiffs' depositions and the rescheduling of the deposition of Yvonne Thomas, who has since sought dismissal from the case in any event based on her health. Plaintiff Davis was not produced in Miami in August, but was produced when Natura's counsel was in Washington, D.C. for other depositions and Natura was notified in advance that Ms. Davis would need to appear in Washington and counsel for Natura took her deposition.

20. Natura also alleges that Maltzman Foreman, P.A. is somehow inadequate class counsel because this proceeding has been "complicated" by the firm's unfamiliarity with Ms. Davis' claims. Maltzman Foreman is very familiar with Ms. Davis' claims. The undersigned cannot reveal attorney client privileged information, but the confusion regarding her claims was not based upon Maltzman Foreman, P.A. The best evidence of that is that Ms. Davis is the only one of 30 Plaintiffs who ever had an issue regarding her claims. The undersigned can only report to the Court and to opposing counsel through discovery and court filings the information that is

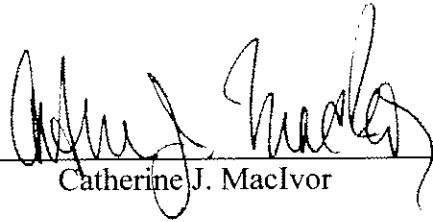
relayed at the time it is relayed. Moreover, the undersigned has a ethical duty to represent the class to the best of her ability and an ethical duty to represent the facts in the case accurately. Thus, if motions need to be filed or discovery amended based upon newly discovered information or subsequent discussions with a client, then the undersigned must file those motions to correct the record and supplement discovery based on those discussions and to zealously represent the class. That is exactly what the undersigned has done in this case.

21. As for whether discovery responses were correct or incorrect, the undersigned presented the discovery that was determined by the client to be correct at the time that it was filed. Ms. Davis was presented for her deposition and was obviously available to correct any errors or explain any apparent inconsistency verbally. While the undersigned did not defend her deposition, the undersigned worked with Ms. Davis to file corrected responses when Ms Davis wanted to correct some of the answers after her deposition. The corrected responses were filed shortly after the deposition. When a client wants to correct responses that were previously given, the undersigned has a duty to correct the information to make sure that it is accurate. Again, Ms. Davis was unique in this regard

22. Finally, Natura claims that the "corrected" motion for class certification was untimely. The original motion was timely filed. Early the next morning, Maltzman Foreman, P.A. added the names of partners Jeffrey Maltzman and Jeffrey Foreman, who were assisting with the case and whose names had been inadvertently left off of the signature block at the time of filing and corrected a few typos. Absolutely nothing of substance had been changed. Please see redline copy attached hereto as ~~Exhibit "A"~~ Exhibit "A" for the Court's review. There is no difference between filing a corrected motion and a notice of scrivener's error in this jurisdiction and it is a common practice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 16, 2007.



Catherine J. MacIvor