
From: Robert Mardian [rmardian@hcesq.com]
Sent: Wednesday, December 24, 2008 5:52 PM
To: Nield Law; Patrick Keegan; Jason Baker; Catherine J. MacIvor; Jonathan C. Schwartz; Jeffrey Maltzman
Cc: Kristen Caverly; Todd Hipper; Giel, Michael M.; York, Jeffrey S.
Subject: Meet and Confer re Plaintiffs' Discovery Responses Prior to Motion to Compel
Attachments: Order on Discovery by Magistrate Brown [DE 344].pdf

Mr. Nield:

The responses by plaintiffs Patrica Davis, Cindy Tregoe and Jo-Ann Murphy to Natura Pet Products, Inc.'s ("Natura") recent discovery requests are inadequate and require both supplementation and the withdrawal of objections. This shall constitute Natura's Meet and Confer effort under Local Rule 7.1A3 prior to Natura's filings of Motions to Compel and/or a Motion to Determine the Sufficiency of Answers and Objections. Plaintiffs must agree to modify their responses as set forth in this correspondence by 12:00 P.M. E.S.T. on Monday, December 29, 2008, or Natura will proceed with its Motions to Compel and/or a Motion to Determine the Sufficiency of Answers and Objections.

Plaintiffs' responses are generally insufficient and invalid pursuant to Magistrate Brown's Order on Discovery issued on April 7, 2008 [D.E. 344], and thus must be modified. A copy of Magistrate Brown's order is attached to this email. Specifically, Magistrate Brown ordered the parties not to make nonspecific boilerplate objections such as "Vague, Overly Broad and Unduly Burdensome" or "Irrelevant and Not Reasonably Calculated to Lead to Admissible Evidence." Plaintiffs' responses to Natura's discovery requests contain many instances of these objections nearly verbatim. Likewise, objections based on attorney/client privilege and work product also violate Magistrate Brown's order because no proper privilege log accompanied any of the plaintiffs' responses. Magistrate Brown also ordered the parties to refrain from formulaic objections followed by answers because such tactics are preserve nothing and constitute "only a waste of effort and the resources of both parties and the court." Plaintiffs must withdraw their objections and agree to provide verified supplemental responses without objection to the discovery requests identified below:

Murphy's Responses to Defendant Natura Pet Product's Second Set of Special Interrogatories.

In her responses to interrogatories #6 and #7, Murphy improperly includes formulaic objections followed by answers of the type prohibited by Magistrate Brown's Order on Discovery. Please withdraw Murphy's objections and agree to provide verified supplemental responses to interrogatories #6 and #7 without objection and in proper form.

Murphy's Responses to Defendant Natura Pet Product's Third Set of Special Interrogatories.

In her responses to interrogatories #8 and #9, Murphy improperly includes formulaic objections followed by answers of the type prohibited by Magistrate Brown's Order on Discovery. Please withdraw Murphy's objections and agree to provide verified supplemental responses to interrogatories #8 and #9 without objection and in proper form.

Tregoe's Responses to Defendant Natura Pet Product's Second Set of Special Interrogatories.

In her responses to interrogatories #6 and #7, Tregoe improperly includes formulaic objections followed by answers of the type prohibited by Magistrate Brown's Order on Discovery. Please withdraw Tregoe's objections and agree to provide verified amended responses to interrogatories #6 and #7 without objection and in proper form.

Tregoe's Responses to Defendant Natura Pet Product's Third Set of Special Interrogatories.

In her responses to interrogatories #8 and #9, Tregoe improperly includes formulaic objections followed by answers of the type prohibited by Magistrate Brown's Order on Discovery. Please withdraw Tregoe's objections and agree to provide verified supplemental responses to interrogatories #8 and #9 without objection and in proper form.

Tregoe's Responses to Defendant Natura Pet Product's First Request of for Production of Documents.

Tregoe improperly refused to produce any computers in response to request #1. Federal Rules of Civil Procedure Rule ("Rule") 34 permits a request to another party allowing for the production and inspection of documents. Tregoe contends that she was exposed to alleged misrepresentations appearing on Natura's website. At her deposition, she indicated that

Exhibit A

she viewed Natura's website from her computer. She also stated that she was unable to retrieve relevant emails and stored web pages from her computer. Accordingly, production of the computer is necessary so that Natura can attempt to recover relevant documents responsive to discovery. Therefore, Tregoe's computer or computers must be produced. Please withdraw Tregoe's objections and agree to provide verified supplemental responses to request #1 and produce the responsive computer(s).

In her response to request #2, Tregoe improperly refused to produce documents she received from Russell Keith prior to her engagement of Maltzman Foreman LLP. Please withdraw Tregoe's objections and agree to provide verified supplemental responses to request #2 and all responsive documents.

Davis' Responses to Defendant Natura Pet Product's Third Set of Special Interrogatories.

In her responses to interrogatories #8 and #9, Davis improperly includes formulaic objections followed by answers of the type prohibited by Magistrate Brown's Order on Discovery. Please withdraw Davis' objections and agree to provide verified supplemental responses to interrogatories #8 and #9 without objection and in proper form.

Interrogatory #9 must be further supplemented because Davis' answer is non-responsive. Interrogatory #9 calls for disclosure of a dollar amount by Davis for the monetary loss she contends was caused as a result of acts or omissions by Natura. If Davis has not suffered any monetary loss as a result of acts or omissions by Natura, then she must so state.

Davis' Responses to Defendant Natura Pet Product's Fourth Set of Special Interrogatories.

In her responses to interrogatories #10 and #11, Davis improperly includes formulaic objections followed by answers of the type prohibited by Magistrate Brown's Order on Discovery. Please withdraw Davis' objections and agree to provide verified supplemental responses to interrogatories #10 and #11 without objection and in proper form.

Davis' Amended Responses to Defendant Natura Pet Product's First Request of for Production of Documents.

Davis improperly refused to produce any computers in response to requests #1 and #2. Federal Rules of Civil Procedure Rule ("Rule") 34 permits a request to another party allowing for the production and inspection of documents. At her deposition, Davis indicated that non-privileged documents existed on her computer that she relied on in preparation for her deposition. Davis also indicated that documents existed on her computer responsive to discovery requests but could not be produced because her "computer" crashed. Natura is entitled to inspect those documents if they exist. Accordingly, Natura seeks to determine whether any of those documents are recoverable from Davis' "crashed" computer. Therefore, Davis' computer or computers must be produced. Please withdraw Davis' objections and agree to provide verified supplemental responses to these requests and produce the responsive computer(s).

Davis agreed to provide responsive documents to request #3, but to date, none have been provided. Please provide the nineteen receipts Davis identified as well as all other responsive documents to this request immediately. Further, please withdraw Davis' objections to request #3.

Davis' Responses to Defendant Natura Pet Product's First Set of Requests for Admission.

Davis' responses to Requests for Admission #1, #3 and #4 are inadequate because Magistrate Judge Brown previously ruled in an Order on Discovery issued April 7, 2008 that "objections which state that a discovery response is 'vague, overly broad, or unduly burdensome' are, by themselves, meaningless, and are deemed without merit by this Court." The Order requires that Plaintiff "explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome." The Order went on to state that parties shall not recite formulaic objections followed by an answer to the request because it creates uncertainty as to whether the question has actually been fully answered, or only a portion of it has been answered.

For Request #1 an objection was made on the grounds that the request is "vague, ambiguous and overly broad," and the term "brochure" is "so vague, ambiguous, and unintelligible that Plaintiff cannot, in good faith, frame an intelligent reply." Natura's Request for Admission could not be any clearer. The term "brochure" as used in this request for admission is the common English language definition of the word. Dictionary.com defines a "brochure" as "a pamphlet or leaflet" or "a small booklet or pamphlet, often containing promotional material or product information."

For Request #3 an objection was made on the grounds that this request was "vague, ambiguous, and overly broad, and because the phrase "a product manufactured or distributed by Natura Pet Products, Inc." is "so vague, ambiguous, and unintelligible that Plaintiff cannot, in good faith, frame an intelligent reply." The phrase "a product manufactured or distributed by Natura Pet Products, Inc." is not limited to the products listed in Plaintiff's qualified admission, but is

intended to reflect the plain English language interpretation of the phrase, i.e. **all** products manufactured or distributed by Natura Pet Products, Inc. A list of all products manufactured or distributed by Natura Pet Products, Inc., is available on Natura's website, which Plaintiffs are clearly familiar with and could reference at any time. Furthermore, Plaintiffs are seeking class certification for a class of people "who obtained and used any Natura pet food product in the state of Florida." "A product manufactured or distributed by Natura Pet Products, Inc." means every product that Plaintiffs include in their definition of "any Natura pet food product in the state of Florida." Clearly, if Plaintiffs are seeking to certify a class of users of "any Natura pet food product," then they should be able to admit or deny if Plaintiff Davis ever purchased any of the products encompassed by Plaintiffs' class definition.

For Request #4 an objection was made on the grounds that this request was "vague, ambiguous, and overly broad," and because the phrase "the Innova® pet food you fed to your pet(s)" is "so vague, ambiguous, and unintelligible that Plaintiff cannot, in good faith, frame an intelligent reply." The phrase "the Innova® pet food you fed to your pet(s)" means any Innova® pet food that Plaintiff Davis ever fed to any of her pets. Plaintiff Davis has previously testified that she only ever fed her pet sample packets of Innova Senior Dry Dog Food. Her qualified admission to Request for Admission #4 is limited to Innova Senior Dog Food. Plaintiff Davis' qualified admission leaves open the possibility that she could "remember" feeding her pet a different Innova product at a later time. The objections to Requests 1, 3 & 4 are purposely evasive and violate the Court's Order on Discovery. Natura requests that Plaintiff Patricia Davis please admit or deny Requests for Admission #1, 3 & 4 in their entirety.

Davis' responses to Requests for Admission 5 & 6 are inadequate because Magistrate Judge Brown previously ruled in an Order on Discovery issued April 7, 2008 [D.E. 344] that "objections which state that a discovery response is 'vague, overly broad, or unduly burdensome' are, by themselves, meaningless, and are deemed without merit by this Court." The Order requires that Plaintiff "explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome." The Order went on to state that parties shall not recite formulaic objections followed by an answer to the request because it creates uncertainty as to whether the question has actually been fully answered, or only a portion of it has been answered. Davis objected to Requests 5 & 6 on the grounds that they "seek information previously discussed during [Plaintiff's] deposition" and as being "cumulative, oppressive, burdensome and harassing." Plaintiff then went on to state that she does not have adequate information to admit or deny the request.

Federal Rule of Civil Procedure 36 explicitly authorizes Natura to serve Plaintiff with requests for admission. Nothing in Rule 36 limits Natura from seeking admissions regarding subjects discussed during depositions. Plaintiff's objections are therefore invalid.

Furthermore, Rule 36 only allows a party to assert lack of knowledge or information as the reason for failing to admit or deny a request for admission if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. Plaintiff Davis has not stated that she made a reasonable inquiry to determine the answer to Natura's request for admission. In fact, a reasonable investigation would show that Natura's historical website for the time period requested is available with a simple search of www.archive.org. Natura requests that Plaintiff Patricia Davis please admit or deny Requests for Admission #5 & 6 in their entirety.

If you do not waive your objections to Requests for Admission #1, #3, #4 #5 & #6 and give unqualified responses, we will be forced to file a Motion to Determine the Sufficiency of Answers and Objections.

Sincerely,

Robert C. Mardian III, Esq.
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 x120
Fax: (858) 756-4732

CONFIDENTIALITY NOTICE: This e-mail message contains information from the law firm of Henderson, Caverly, Pum & Charney LLP which may be confidential and privileged. The information is intended for the sole use of the individual or entity named in the address box. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.