

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 EDGAR R. NIELD FILED IN SUPPORT OF PLAINTIFFS'
MOTION FOR RECONSIDERATION REGARDING DEFENDANT'S MOTIONS
TO COMPEL PLAINTIFFS TO PROVIDE ADDITIONAL REPSOSNES TO
WRITTEN DISCOVERY**

1. I am an attorney licensed to practice in the states of California and Colorado and am admitted to practice before the Federal District Courts of Southern and Central California and the Tenth Circuit District Court in Colorado. I am co-counsel for Plaintiff's Jo-Ann Murphy, Cindy Tregoe and Patrica Davis, class action representatives in the above captioned matter. I know the following to be true based upon my own personal knowledge or belief and if called upon to do so I could and would competently testify to the following under oath in a court of law.

2. In mid-October 2008 I received written discovery, including Interrogatories, Requests for Admissions and Requests to Produce Documents from defendant Natura Pet Food Products Inc. directed to Plaintiffs Jo-Ann Murphy, Cindy Tregoe and Patrica Davis. Responses were prepared to that discovery by my office and provided to the defendant's in a timely fashion subsequent to an agreed upon extension.

3. Thereafter Defendant asserted numerous objections to the Plaintiffs'

responses and demanded that the responses be modified and supplemented to address those objections. After meet and confer efforts failed to resolve defendant's objections the Defendants filed multiple Motions to Compel to Plaintiffs to provide further responses. On behalf of the Plaintiffs' we decided that it was appropriate to file Oppositions thereto.

4. When I received those Motions via email from the Defendant I calculated and calendared the Opposition due dates to assure that I would have them prepared and filed on a timely basis. I noted that the electronic notice of the filing of the motions, sent out via the CM/ECF system (a true and correct copies of which are attached to this declaration as Exhibit "A"), set out a response due date of February 2, 2009. However, we did not rely on that unofficial indicator as to when the Oppositions would need to be filed. Based upon our calculations, I believed that the Oppositions would be due January 28 to February 2, 2009, in conformance with Federal District Court, Southern District of Florida Local Rule 7.1 (C) (1). I also conferred with local Miami co-counsel who confirmed the same dates.

5. I was in the process of preparing the Plaintiff's Oppositions to the Defendant's Motions when I was surprised to receive on January 26, 2009, two days before I believed the Oppositions to be due, the Court's ruling on the Motion to Compel concerning the responses Plaintiff Patrica Davis had previously provided Defendants to their First set of Requests for Admission, which must have been decided as unopposed because we had not yet filed plaintiffs' Oppositions to Defendant's Motions. Initially I thought that there had to be some error by the Court. The next day, January 27, 2009 and was even more surprised when I received the Court's ruling on the other Motions to Compel filed by the Defendant's, which again must have been decided by the Court as unopposed.

6. At that point I again confirmed what I believed to be the Opposition due dates January 28 to February 2, 2009 and again reconfirmed those dates with Miami co-

counsel who agreed.

7. Still believing the Court had made some error, I contacted by Judge Brown's law clerk by telephone and inquired as to why the Court was deciding the Defendant's motions before the Plaintiffs' had been able to file their Oppositions. After some research the law clerk indicated that Judge Altonaga had issued a Scheduling Order on April 25, 2008 which, among other things, had shortened the time to respond to discovery motions to five days. I was unaware of this at the time I had calculated the due dates of Plaintiffs' Oppositions. She also indicated that this was a common error where these types of orders were concerned since it changed the local rule provisions as to response dates to motions. She and recommended that we file a Motion for Reconsideration of the Judge's rulings relating to the Defendant's Motions, to allow the Plaintiff's the opportunity to file and the Court consider the plaintiffs' Oppositions to those Motions. Based thereon and need to assure that the Defendant's Motions were heard on the merits, we decided to file this Motion for Reconsideration seeking relief from the error we have made in miscalculating the Opposition due dates.

8. The error that occurred in calculating the Opposition due dates was an innocent one made in good faith. It was the result of a mistake, inadvertence and/or excusable neglect. There was no intent to delay or obstruct in any way the process of having the Defendants Motions resolved in an expedient fashion. It never occurred to me that a scheduling Order had been issued shortening the response time for discovery motions. Had I been aware of this order, I could and would have had the Oppositions filed with the Court in a timely manner. The only reason they were not was because of my mistaken belief that they were not due until alt least January 28, 2009, which lead me to schedule my work load accordingly. I believe this can probably be determined by reviewing the nature of the Oppositions. Plaintiffs have essentially acceded all of the objections the Defendant's raised in its motions with the exception of the request that Plaintiff Davis produce her personal computer inspection for inspection by the

Defendant, which has been opposed on justifiable grounds.

8. Attached to this declaration are true and correct copies of the Plaintiff's Oppositions to the plaintiffs Motions to Compel additional discovery responses. They are as follows:

Exhibit "B" – Plaintiff's Opposition to Defendant Natura Pet Food Products, Ink's Motion to Compel Responses by Jo-Ann Murphy and Cindy Tregoe to Nature's Second Set of Interrogatories: and Patrica Davis to Nature's Third Set of Interrogatories.

Exhibit "C" - Plaintiff's Opposition to Defendant Natura Pet Food Products, Inc.s Motion to Compel Responses by Jo-Ann Murphy and Cindy Tregoe to Natura's Third Set of Interrogatories: and Patrica Davis to Natura's Fourth Set of Interrogatories.

Exhibit "D" - Plaintiff's Opposition to Defendant Natura Pet Food Products, Inc.s Motion Regarding the Sufficiency of Answers and Objections to Defendant Natura Pet Products, Inc.'s First Set of Requests for Admission to Plaintiff Patricia Davis.

Exhibit "E" - Plaintiff's Opposition to Defendant Natura Pet Food Products, Inc.s Motion to Compel Responses to Defendant Natura Pet Food Products, Inc.s First Set of Requests for Production of Documents to Plaintiff Patrica Davis.

9. By vacating the Court's orders regarding the Defendant's multiple Motions to Compel to allow the filing and consideration of the Plaintiffs' Oppositions thereto will only delay the resolution of these motions few days and will not significantly impact progress on these discovery issues or this lawsuit in general. There will be no

undue prejudice or delay to the Defendant's in their prosecutions of these motions or their defenses to this action. Doing so will only assure that the Defendants Motions will be decided on their merits, not as unopposed or ignored.

10. However, to deny this request would create a significant prejudice to the Plaintiff's particularly as to issues such as Defendant's demand that Plaintiff Patrica Davis Produce her personal computer given the board nature of the request, the attorney client and privacy issues and the burdensome and oppressive nature of the request. These types of issues need to be determined on the merits, and not because of an excusable error on the part of counsel. It is based upon all of the above, and the argument set out in the accompanying Motion, that the Plaintiffs respectfully request that this Court grant Plaintiffs' motion for reconsideration and allow the filing of their Oppositions so that the issues raised by Defendant's Motions can be decided on their merits.

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 28th day of January 2009, in Carlsbad, California.

s/Edgar R. Nield

Edgar R. Nield

Nield Law

From: cmecfautosender@flsd.uscourts.gov
Sent: Tuesday, January 13, 2009 2:18 PM
To: flsd_cmecf_notice@flsd.uscourts.gov
Subject: Activity in Case 1:07-cv-21221-CMA Blaszkowski et al v. Mars Inc. et al Motion to Compel

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U.S. District Court

Southern District of Florida

Notice of Electronic Filing

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Case Name: Blaszkowski et al v. Mars Inc. et al
Case Number: 1:07-cv-21221 <<https://ecf.flsd.uscourts.gov/cgi-bin/DktRpt.pl?295436>>
Filer: Natura Pet Products, Inc.
Document Number: 584 <https://ecf.flsd.uscourts.gov/doc1/05106123545?magic_num=69261744&de_seq_num=1895&caseid=295436>

Docket Text:

MOTION to Compel Responses by Jo-Ann Murphy and Cindy Tregoe to Natura's Second Set of Interrogatories; and Patricia Davis to Natura's Third Set of

Exhibit A

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.

**PLAINTIFFS OPPOSITION TO DEFENDANT NATURA PET PRODUCTS, INC.'S
MOTION TO COMPEL RESPONSES BY JO-ANN MURPHY AND CINDY TREGOE
TO NATURA'S SECOND SET OF INTERROGATORIES; AND PATRICA DAVIS TO
NATURA'S THIRD SET OF INTERROGATORIES**

I. INTRODUCTION

In mid to late October of 2008, defendant Natura Pet Food Products Inc. (Natura) served multiple sets of written discovery on Plaintiffs Jo-Ann Murphy, Cindy Tregoe and Patrica Davis. This included written Interrogatories to each of the Plaintiffs including a Second Set of Interrogatories to Plaintiff Patricia Davis. After a mutually agreed upon extension to respond, each of the plaintiffs timely served responses to these discovery requests.

Subsequently, the Defendant indicated it was not satisfied with the responses provided to these sets of interrogatories and filed Motions to Compel further responses relating to each of these Plaintiffs. As to each of the Plaintiffs responses, Defendants objected on the basis that their responses were not in conformance with an April 7, 2008 Order issued by Judge Brown

Exhibit B

concerning the form of written discovery responses and in that objections were asserted relating thereto.

At the time meet and confer emails were exchanged relating to these responses, counsel assisting Plaintiffs in responding to the written discovery at issue was not aware of and did not have a copy of Judge Brown's order in this regard. Defense counsel did send a copy of the order attached to his meet and confer email, unfortunately due to problems counsel for plaintiffs was experiencing with his email at the time, that email and Judge Brown's Order attached thereto was lost, along with many other things. Consequently, Plaintiffs' counsel had to respond to the Defendant's meet and confer email without the benefit of that Order, based upon defense counsel's assertions as to what it included. From that it was the understanding of Plaintiff's counsel that objections should not be boiler plate in nature but specific and indicate why they applied to the questions being posed. Assertions of the Attorney Client privilege should also be accompanied by a privilege log where applicable. Plaintiffs' counsel did indicate a willingness to reconsider his position as to the Defendant's objections if the Order was subsequently provided, however a request to Defense counsel to send another copy of Judge Brown's Order went unheeded.

While the plaintiff's did assert objections to many of the interrogatories presented, Plaintiffs maintain that those objections were specific in nature in that they did identify why they applied to the questions at issue. Further in every instance, full, complete and non-evasive responses were provided by the Plaintiffs to the Defendant's questions. In the Plaintiffs view, all of the objections asserted were specific, valid and justifiable given the questions posed. This is particularly true of the many questions Defendant's presented requesting the same information

the Plaintiffs had provided during exhaustive deposition questioning which had occurred before the interrogatories at issue were propounded.

However, in light of Judge Brown's Order which this Plaintiff's counsel has now obtained a copy of, and further light of the fact that full and complete responses to the interrogatories at issue were provided regardless of the objections to which the Defendant objects, the Plaintiffs respond to the Defendant's Motions to Compel relating to the Second and third sets of interrogatories at issue in this motion as follows.

II. Natura's Second Set of Interrogatories to Plaintiff Cindy Tregoe

Natura's objections to Ms. Tregoe's responses to Interrogatories #6 and #7 of their Second Set of Interrogatories is to the effect that "formulaic objections" have been interposed which should be withdrawn. Given that Ms. Tregoe provided full and complete responses to these interrogatories regardless of the specific objections asserted, she will agree to withdraw the objections posed as requested by the Defendant. Modified responses to these interrogatories will be provided to the Defendant without any objections being asserted as requested.

III. Natura's Second Set of Interrogatories to Plaintiff Jo-Ann Murphy

Natura's objections to Ms. Murphy's responses to Interrogatories #6 and #7 of their Second Set of Interrogatories is the same as those relating to Ms. Tregoe's responses, again to the effect that "formulaic objections" have been interposed which should be withdrawn. Although her response to Interrogatory #6 was complete, it referred to her prior deposition testimony. Consequently, Ms. Murphy will agree to supplement her response to this interrogatory without reference to her deposition testimony, without objection. Given that Ms. Murphy provided a full and complete response to Interrogatory # 7, this will not be supplemented but she will agree to withdraw all of the objections she has asserted to her response to this interrogatory as requested.

IV. Natura's Third Set of Interrogatories to Plaintiff Patrica Davis

Natura's objection to Ms. Davis's responses to Interrogatories #8 and #9 of their Third Set of Interrogatories is to the effect that "formulaic objections" have been interposed and should be withdrawn. Given that Ms. Davis provided full and complete responses to these interrogatories regardless of the specific objections asserted, she will agree to withdraw the objections posed as requested by the Defendant. Modified responses to these interrogatory, without objections, will be provided to the Defendant.

V. Conclusion

Given that Plaintiffs have agreed to remove the objections to their interrogatory responses of which Defendant's object. Ms. Murphy will also agree to modify her response to interrogatory #6 to remove references to her prior deposition testimony on the same subject. Consequently, there should be no further issues to resolve as to this Motion. Again, while the Plaintiffs believe their objections to the interrogatories posed are specific and justifiable, their continued assertion in the face of the full and complete responses they provided regardless of the objections asserted would seem to make them unnecessary.

Therefore in an effort to conform to the terms of Judge Brown's Order, Plaintiffs will agree to remove the objections to which the Defendant objects.

Dated: January 28, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on January 28, 2009. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

s/ Edgar R. Nield
Edgar R. Nield

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UNITED STATES DISTRICT COURT
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1. I am an attorney licensed to practice in the states of California and Colorado and am admitted to practice before the Federal District Courts of Southern and Central California and the Tenth Circuit District Court in Colorado. I am co-counsel for Plaintiff's Jo-Ann Murphy, Cindy Tregoe and Patrica Davis, class action representatives in the above captioned matter. I know the following to be true based upon my own personal knowledge or belief and if called upon to do so I could and would competently testify to the following under oath in a court of law.

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3. Thereafter Defendant asserted numerous objections to the Plaintiffs' responses and demanded that the responses be modified and supplemented to address those objections. Prior to the time of meet and confer communications concerning those objections I was not aware that Judge Brown had previously issued an Order relating to the form of written discovery responses. Defense counsel did attach a copy of the Order to his meet and confer email, however it was lost, along with many other things, when I developed some problem with my email system.

4. In my meet and confer email to Defense Counsel of January 9, 2009, I indicated that the copy of Judge Brown's Order attached to his prior email had been lost and requested another copy. I also indicated that since it had been lost, I was responding to his email based upon my understanding as to his representations as to what that Order included. I also indicated that I would be happy to review the Order as to his objections and requested that another copy be provided. Unfortunately another copy was not sent, and I did not obtain another copy until after the Defendant had filed this and the other Motions to Compel at issue.

5. A true and correct copy of my January 9, 2009 email requesting another copy of Judge Brown's Order from defense counsel and indicating my willingness to review it is attached to this declaration as Exhibit "A".

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 28th day of January 2009, in Carlsbad, California.

_____/s/Edgar R. Nield_____
Edgar R. Nield

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MOTION TO COMPEL RESPONSES BY JO-ANN MURPHY AND CINDY TREGOE
TO NATURA'S THIRD SET OF INTERROGATORIES; AND PATRICA DAVIS TO
NATURA'S FOURTH SET OF INTERROGATORIES**

I. INTRODUCTION

In mid to late October of 2008, defendant Natura Pet Food Products Inc. (Natura) served multiple sets of written discovery on Plaintiffs Jo-Ann Murphy, Cindy Tregoe and Patrica Davis. This included written Interrogatories to each of the Plaintiffs including a Second Set of Interrogatories to Plaintiff Patricia Davis. After a mutually agreed upon extension to respond, each of the plaintiffs timely served responses to these discovery requests.

Subsequently, the Defendant indicated it was not satisfied with the responses provided to these sets of interrogatories and filed Motions to Compel further responses relating to each of these Plaintiffs. As to each of the Plaintiffs responses, Defendants objected on the basis that their responses were not in conformance with an April 7, 2008 Order issued by Judge Brown

Exhibit C

concerning the form of written discovery responses and in that objections were asserted relating thereto.

At the time meet and confer emails were exchanged relating to these responses, counsel assisting Plaintiffs in responding to the written discovery at issue was not aware of and did not have a copy of Judge Brown's order in this regard. Defense counsel did send a copy of the order attached to his meet and confer email, unfortunately due to problems counsel for plaintiffs was experiencing with his email at the time, Defendant's email and Judge Brown's Order attached thereto was lost, along with many other things. Consequently, Plaintiffs' counsel had respond to the Defendant's meet and confer email without the benefit of that Order, based upon defense counsel's assertions as to what it included. From that is was the understanding of Plaintiff's counsel that objections should not be boiler plate in nature but specific and indicate why they applied to the questions being posed. Assertions of the Attorney Client privilege should also be accompanied by a privilege log where applicable. Plaintiffs' counsel did indicate a willingness to review his position as to the Defendant's objections if the Order was subsequently provided, however a request to Defense counsel to send another copy of Judge Brown's Order went unheeded. (See Declaration of Edgar R. Nield filed in Support of this Opposition at ¶ 4 and 5).

While the plaintiff's did assert objections to many of the interrogatories presented, Plaintiffs maintain that those objections were specific in nature in that they did identify why they applied to the questions at issue. Further in every instance, full, complete and non-evasive responses were provided by the Plaintiffs to the Defendant's questions. In the Plaintiffs view, all of the objections asserted were specific, valid and justifiable given the questions posed. This is particularly true of the many questions Defendant's presented requesting the same information

the Plaintiffs had provided during exhaustive deposition questioning which had occurred before the interrogatories at issue were propounded.

However, in light of Judge Brown's Order which this Plaintiff's counsel has now obtained a copy of, and further light of the fact that full and complete responses to the interrogatories at issue were provided regardless of the objections to which the Defendant now objects, the Plaintiffs respond to the Defendant's Motions to Compel relating to the Second and third sets of interrogatories at issue in this motion as follows.

II. Natura's Third Set of Interrogatories to Plaintiff Cindy Tregoe

Natura's objections to Ms. Tregoe's responses to Interrogatories #8 and #9 of their Third Set of Interrogatories is to the effect that "formulaic objections" have been interposed which should be withdrawn. Given that Ms. Tregoe provided full and complete responses to these interrogatories regardless of the specific objections asserted, she will agree to withdraw the objections posed as requested by the Defendant. Modified responses to these interrogatories will be provided to the Defendant without any objections being asserted as requested.

III. Natura's Third Set of Interrogatories to Plaintiff Jo-Ann Murphy

Natura's objections to Ms. Murphy's responses to Interrogatories #8 and #9 of their Third Set of Interrogatories is the same as those relating to Ms. Tregoe's responses, again to the effect that "formulaic objections" have been interposed which should be withdrawn. Given that Ms. Murphy provided full and complete responses to these interrogatories regardless of the specific objections asserted, she will agree to withdraw the objections posed as requested by the Defendant. Modified responses to these interrogatories will be provided to the Defendant without any objections being asserted as requested.

IV. Natura's Fourth Set of Interrogatories to Plaintiff Patrica Davis

Natura's objection to Ms. Davis's responses to Interrogatories #10 and #11 of their Third Set of Interrogatories is to the effect that "formulaic objections" have been interposed and should be withdrawn. Given that Ms. Davis provided full and complete responses to these interrogatories regardless of the specific objections asserted, she will agree to withdraw the objections posed as requested by the Defendant. Modified responses to these interrogatory, without objections, will be provided to the Defendant.

V. Conclusion

Given that Plaintiffs have agreed to remove the objections to their interrogatory responses to which the Defendant objects, there should be no further issues to resolve as to this Motion. Again, while the Plaintiffs believe their objections to the interrogatories posed are specific and justifiable, there continued assertion in the face of the full and complete responses they provided regardless would seem to make them unnecessary. Therefore in an effort to conform to the terms of Judge Brown's Order, Plaintiffs will agree to remove the objections to which the Defendant objects.

Dated: January 28, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on January 28, 2009. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

s/ Edgar R. Nield
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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 EDGAR R. NIELD FILED IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT NATURA PET FOOD PRODUCTS, INC.'S
MOTION TO COMPEL RESPONSES BY JO-ANN MURPHY AND CINDY
TREGOE TO NATURA'S SECOND SET OF INTERROGATORIES; AND
PATRICIA DAVIS TO NATURA'S THIRD SET OF INTERROGATORIES**

1. I am an attorney licensed to practice in the states of California and Colorado and am admitted to practice before the Federal District Courts of Southern and Central California and the Tenth Circuit District Court in Colorado. I am co-counsel for Plaintiff's Jo-Ann Murphy, Cindy Tregoe and Patrica Davis, class action representatives in the above captioned matter. I know the following to be true based upon my own personal knowledge or belief and if called upon to do so I could and would competently testify to the following under oath in a court of law.

2. In mid-October 2008 I received written discovery, including Interrogatories, Requests for Admissions and Requests to Produce Documents from defendant Natura Pet Food Products Inc., directed to Plaintiffs Jo-Ann Murphy, Cindy Tregoe and Patrica Davis. Responses were prepared to that discovery by my office and provided to the Defendant in a timely fashion subsequent to an agreed upon extension.

3. Thereafter Defendant asserted numerous objections to the Plaintiffs' responses and demanded that the responses be modified and supplemented to address those objections. Prior to the time of meet and confer communications concerning those objections I was not aware that Judge Brown had previously issued an Order relating to the form of written discovery responses. Defense counsel did attach a copy of the Order to his meet and confer email, however it was lost, along with many other things, when I developed some problem with my email system.

4. In my meet and confer email to Defense Counsel of January 9, 2009, I indicated that the copy of Judge Brown's Order attached to his prior email had been lost and requested another copy. I also indicated that since it had been lost, I was responding to his email based upon my understanding as to his representations as to what that Order included. I also indicated that I would be happy to review the Order as to his objections and requested that another copy be provided. Unfortunately another copy was not sent, and I did not obtain another copy until after the Defendant had filed this and the other Motions to Compel at issue.

5. A true and correct copy of my January 9, 2009 email requesting another copy of Judge Brown's Order from defense counsel and indicating my willingness to review it is attached to this declaration as Exhibit "A".

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 28th day of January 2009, in Carlsbad, California.

_____/s/Edgar R. Nield_____
Edgar R. Nield

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.

**PLAINTIFFS OPPOSITION TO DEFENDANT NATURA PET PRODUCTS, INC.'S
MOTION REGARDING THE SUFFICIENCY OF ANSWERS AND OBJECTIONS TO
DEFENDANT NATURA PET PRODUCTS, INC.'S FIRST SET OF REQUESTS FOR
ADMISSIONS TO PLAINTIFF PATRICIA DAVIS**

I. INTRODUCTION

On October of 2008, defendant Natura Pet Food Products Inc. (Natura) served Requests for Admission on Patricia Davis. After a mutually agreed upon extension to respond, each of the Ms. Davis timely served the Defendant with responses to these discovery requests.

Subsequently, the Defendant indicated it was not satisfied with the responses to the requests provided by Ms. Davis. Defendants objected on the basis that their responses were not in conformance with an April 7, 2008 Order issued by Judge Brown concerning the form of written discovery responses and in that objections were “formulaic” and not specific as to as to how the applied the Requests posed. Defendant also objected on the grounds that although her responses were full and complete, they considered them non-responsive and evasive and objectionable because Ms. Davis referred to her prior deposition testimony on the same topic,

elicited at her extensive deposition taken by the Defendants approximately six weeks prior to the service of the requests at issue. Defendant also objected on the grounds that Plaintiff Davis's response raised an objection as to the meaning of the term "brochure" although relied in full based upon her stated understanding of what defendant was referring to by its use of that term. Finally defendants demanded that Plaintiff Davis either admit or deny its requests without objection.

Without addressing each of the Defendant's numerous criticisms of Ms. Davis responses she maintains that her objections were clear, specific and justifiable as to the grounds upon each was based and within the terms of Judge Browns Order relating written discovery. She also provided full and complete responses to the reuses posed, regardless of the specific objections raised. While they were not apparently what the Defendant wanted to here does not make them objectionable.

At the time meet and confer emails were exchanged relating to these responses, counsel assisting Plaintiffs in responding to the requests for admission at issue was not aware of and did not have a copy of Judge Brown's order in this regard. Defense counsel did send a copy of the order attached to his meet and confer email, unfortunately due to problems counsel for Plaintiffs was experiencing with his computer email at the time, Defendant's email and Judge Brown's Order attached thereto was lost, along with many other things. Consequently, Plaintiffs' counsel responded to the meet and confer email from the Defendant without the benefit of that Order, based upon defense counsel's assertions as to what it included. From those assertions it was the understanding of Plaintiff's counsel that objections should not be boiler plate in nature but specific and indicate why they applied to the questions being posed. Assertions of the Attorney Client privilege should also be accompanied by a privilege log where applicable. Plaintiffs'

counsel did indicate a willingness to reconsider the Plaintiffs position as to the Defendant's objections if the Order was subsequently provided. However a request of Defense counsel to send another copy of Judge Brown's Order went unheeded.

Since that time however, Plaintiffs' counsel has now obtained a copy of Judge Browns Order. In light of that order, and the fact that Ms. Davis has already provided full and complete responses to Defendant's Requests for Admissions regardless of the specific and justifiable objections interposed, Plaintiff Davis responds to the Defendant's Motion Regarding the Sufficiency of Ms. Davis's answers and objections Defendant's First Set of Requests for Admissions as follows.

II. Response of Plaintiff Patricia Davis to Defendant's Motion Regarding the Sufficiency of her Responses to Requests for Admissions Set One

Given that Plaintiff has already provided full and complete responses to the Defendant Requests for Admission and in light of Judge Browns prior Order regarding written discovery, her Objections to the Requests for Admissions interposed no longer appear necessary. No matter how justifiable, it does not appear that further argument would serve any additional purpose as it relates to the discovery at hand. Consequently, to allow these issues to be resolve without further expense and delay and in light of Judge Brown's Order, Plaintiff Davis will agree to withdraw her objections to Request for Admission #1, and provide a modified response deleting her everything included in her answer beyond her admission to the Request, based upon her understanding that the defendant's use of the term "brochure" is not intended to include an point of purchase displays she may have observed at the time she obtained samples of the defendants products. By necessity this will also eliminate all references to her deposition.

As to her response to request for Admission #3, Plaintiff Davis will agree to withdraw her objections to the Request and provide a modified response admitting the Request.

As to Request #4, Plaintiff Davis will agree to withdraw her objections to the Request and provide a modified response admitting the Request and again provide a modified response admitting the request.

Her response to Request #5 is more problematic in that Ms. Davis cannot recall what she may have observed on the 2006 versions of the Defendant's and that the Defendant has yet to provide all prior versions of its website as requested pursuant to the plaintiff's request for production, beyond providing a reference to another website where at least portions of the Defendants prior website can be observed. Although the documents referenced by the Defendant, to the extent that they exist, will speak for themselves, the Defendant seems to want the Plaintiff to locate their website for the time period set out in their Request and confirm for them what their own prior website states, an exercise which would appear meaningless. However, in an effort to resolve the issues relating to these Requests and in the spirit of Judge Brown's discovery Order, plaintiff will agree to attempt to locate the prior version of the Defendant's website referenced and admit or deny that the document says what the Defendant maintains it says without objection and provide a supplemental response relating thereto.

As to Defendant's Request #6, the same response as that provided s to Request #5 applies. However, again in an effort to resolve the issues relating to these Requests and in the spirit of Judge Brown's discovery Order, plaintiff will agree to attempt to locate the prior version of the Defendant's website referenced and admit or deny that the website says what the Defendant maintains it says without objection and provide a supplemental response relating thereto.

II. Conclusion

Given that Plaintiff Davis has agreed to withdraw her objections to her answers to the Requests for Admission to which the Defendant objects, and to provide supplemental responses to her answers where requested, there should be no further issues to resolve as to this Motion. Again, while the Plaintiffs believe their objections to the interrogatories posed are specific and justifiable, their continued assertion in the face of the full and complete responses plaintiff Davis provided regardless would seem to make them unnecessary. However, in an effort to resolve the issues being raised by the Defendant concerning her answers and in the spirit of Judge Brown's Order, to modify and supplement her answers as set out above.

Dated: January 28, 2009

Respectfully submitted,

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WE HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court via CM/ECF on January 28, 2009. We also certify that the foregoing was served on all counsel or parties of record on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Filing.

s/ Edgar R. Nield

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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 EDGAR R. NIELD FILED IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT NATURA PET FOOD PRODUCTS, INC.'S
MOTION TO COMPEL RESPONSES BY JO-ANN MURPHY AND CINDY
TREGOE TO NATURA'S SECOND SET OF INTERROGATORIES; AND
PATRICIA DAVIS TO NATURA'S THIRD SET OF INTERROGATORIES**

1. I am an attorney licensed to practice in the states of California and Colorado and am admitted to practice before the Federal District Courts of Southern and Central California and the Tenth Circuit District Court in Colorado. I am co-counsel for Plaintiff's Jo-Ann Murphy, Cindy Tregoe and Patrica Davis, class action representatives in the above captioned matter. I know the following to be true based upon my own personal knowledge or belief and if called upon to do so I could and would competently testify to the following under oath in a court of law.

2. In mid-October 2008 I received written discovery, including Interrogatories, Requests for Admissions and Requests to Produce Documents from defendant Natura Pet Food Products Inc., directed to Plaintiffs Jo-Ann Murphy, Cindy Tregoe and Patrica Davis. Responses were prepared to that discovery by my office and provided to the Defendant in a timely fashion subsequent to an agreed upon extension.

3. Thereafter Defendant asserted numerous objections to the Plaintiffs' responses and demanded that the responses be modified and supplemented to address those objections. Prior to the time of meet and confer communications concerning those objections I was not aware that Judge Brown had previously issued an Order relating to the form of written discovery responses. Defense counsel did attach a copy of the Order to his meet and confer email, however it was lost, along with many other things, when I developed some problem with my email system.

4. In my meet and confer email to Defense Counsel of January 9, 2009, I indicated that the copy of Judge Brown's Order attached to his prior email had been lost and requested another copy. I also indicated that since it had been lost, I was responding to his email based upon my understanding as to his representations as to what that Order included. I also indicated that I would be happy to review the Order as to his objections and requested that another copy be provided. Unfortunately another copy was not sent, and I did not obtain another copy until after the Defendant had filed this and the other Motions to Compel at issue.

5. A true and correct copy of my January 9, 2009 email requesting another copy of Judge Brown's Order from defense counsel and indicating my willingness to review it is attached to this declaration as Exhibit "A".

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 28th day of January 2009, in Carlsbad, California.

_____/s/Edgar R. Nield_____
Edgar R. Nield

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.

**OPPOSITION TO 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**

I. Introduction

On October of 2008, Defendant Natura Pet Food Products Inc. (Natura) served its First Set of Requests for Production of Documents upon Plaintiff Patricia Davis (Davis). Timely responses to these Requests were thereafter served by Natura.

Subsequently, Natura indicated that it was not satisfied with the responses to the Requests provided by Davis. As to all of the Requests, Natura generally objected on the basis that the responses were not in conformance with an April 7, 2008 Order issued by Judge Brown concerning the form of written discovery responses in that objections were “formulaic” and not specific as to as to how they applied to the Requests posed and that Davis failed to provide a privilege log for any documents requested which might be protected by the attorney-client privilege. There is also some confusing contentions to

the effect that Natura should be entitled to review documents on Davis' computer that she testified in her deposition she could not recover after her computer crashed. (See Declaration of Edgar R. Nield at ¶ 2).

As will be discussed below, in deciding whether a particular discovery request should be allowed, the burden of the request must be weighted against its benefits. The Court must look to the importance of the proposed discovery in resolving the issues at stake in the litigation in a balancing type test. Fed. R. Civ. P 26(b)(2). In this case, Natura's proposed document production requests are entirely irrelevant to the issues at stake in the litigation and seek confidential and privileged information. What Natura really seeking is to conduct a "fishing expedition" of Plaintiff Davis' computer in a bad faith effort to inconvenience and harass.

II. Legal Argument

Fed. R. Civ. P 26(b)(2) provides "The frequency or extent of use of the discovery methods otherwise permitted under these rules ... shall be limited by the court if it determines that: ... (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."

Courts have been reluctant to compel "ediscovery" on the grounds that the discovery invades confidential information, is too burdensome, or not reasonably calculated to lead to the discovery of admissible or relevant evidence. In Eugene J. Strasser, M.D., P.A. v. Bose Yalamanchi, M.D., P.A. 669 So.2d 1142, 1145 (Fla.App. 4 Dist.,1996), the Court held that the trial court erred in granting plaintiff unlimited access

to petitioner's computer system because the request was overbroad and doing so could involve disclosure of potentially confidential information. The Court cautioned that:

“the harm here is irreparable because once confidential information is disclosed, it cannot be ‘taken back,’ and once the wholesale invasion into the defendant's computer system has occurred, the damage to the system may be irreversible. During an inspection as presently ordered, plaintiff would have unrestricted access to defendant's entire computer system with all of the patients' confidential records, and all of the records of defendant's entire business, including those not involved in the instant action.” Id.(Citations Omitted) The Court determined that an order compelling computer information must “define parameters of time and scope, and must place sufficient access restrictions to prevent compromising patient confidentiality and to prevent harm to defendant's computer and data bases.” Id.

In Fennel v. First Step Designs, Ltd. 83 F.3d 526 (C.A.1 1996), an employee sued her employer, alleging that she was fired because she brought a sexual harassment claim. Defendant employer sought to prove that his decision to fire plaintiff preceded her complaint, and brought forth memorandum dated before the sexual harassment claim which stated his desire to fire the employee. Plaintiff alleged that her computer expert revealed that the memorandum was auto dated. Plaintiff therefore compelled discovery of defendant's hard drive to prove that the memorandum had been fabricated. The Court denied plaintiff's request despite the importance of the information sought because of the substantial risks and costs of such discovery. Id. at 533. It noted that when determining whether the risks and costs outweighed the potential benefit, the court looked to “the confidentiality of information on the hard drive that was proprietary or subject to attorney-client privilege or work-product privilege” as well as increased legal and expert fees involved in the discovery dispute and process. Id. The Court also determined that discovery of the hard drive would lead to a “fishing expedition” because plaintiff did not

show a particularized likelihood of discovering relevant information. Id. To meet this standard, a party must “set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist.” Id.

III. Defendant’s First Production Request

Natura’s first discovery request seeking “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” is moot because Ms. Davis never viewed Natura’s website before sampling the products. As she explained in her deposition, she first looked at the website the weekend before the deposition, and not before receiving the samples of the Natura products. [See Davis Depo 163:11-16] This was also clearly indicated in what should have been her completely dispositive response to this Request, wherein she stated, notwithstanding the specific objections asserted, that she did not look at Natura’s website prior to feeding her dog Natura product. (See Exhibit “B” attached to the Declaration of Robert Mardian filed in support of Natura’s Motion to Compel Responses to Natura’s First Request to Produce). Consequently, there is no computer which would be responsive to this request.

Even if the request was not moot as noted, attempting to obtain irrelevant information by invading the Plaintiffs personal computer would not be permissible regardless. A plaintiff asserting a cause of action under Florida Deceptive and Unfair Trade Practices Act (FDUTPA) does not need to prove actual reliance on defendant’s deceptive statements, because FDUTPA does not require an actual reliance standard. Instead the the Florida Courts have adopted the Federal standard of reasonable reliance. See Latman v. Costa Lines, N.V., 758 So. 2d 699 (Fla. 3d DCA 2000), Davis v. Powertel,

Inc. 776 So.2d 971, 974 (Fla.App. 1 Dist., 2000) and Southwest Sunsites, Inc. v. Federal Trade Comm'n, 785 F.2d 1431 (9th Cir. 1986)). Consequently, there is no need to show that either Davis or the other class action Plaintiffs actually relied on Natura's false advertising to maintain a cause of action pursuant to the FDUTPA . Since there is no need to show actual reliance, seeking the production of Davis' computer to determine whether she viewed Natura website prior to her use of Natura products is not relevant to any of the primary issues in the case. Because the information Natura seeks to obtain is irrelevant, it does not outweigh the concerns relating of privacy, confidentiality, the application of privileges and irreparable harm that a "wholesale invasion" of an Plaintiff's personal computer could cause as voiced by the courts.

However, in an effort to resolve these discovery issues and in light of the Judge Brown's recently received Order, Ms. Davis will agree to withdraw her objections to this request and provide a modified response reflecting such.

IV. Defendant's Second Production Request

The Court must deny Natura's second discovery request seeking "All computers you used to prepare your June 2008 responses to interrogatories propounded by defendant Mars, Inc." because the burden or expense of the proposed discovery outweighs any alleged benefit as discussed above. Still further the objections asserted to this request are justifiable. The Requests are 1) overbroad, vague and unduly burdensome, 2) invade Davis' privacy and seek confidential information protected under the attorney/client privilege and the attorney work product doctrine and 3) have no purpose or importance to the issues at stake in the litigation.

A. Defendant's Requests are Overbroad, Vague and Unduly Burdensome

As in Fennel and Eugene, Natura's Request seeks unlimited access to Davis' computer. As discussed by the courts in the above cases, a request for unlimited access to the hard drive must be denied because it does not limit the time and scope of the information sought and does not place access restrictions to protect Davis' privacy and confidentiality.

B. Defendant's Requests Invade Plaintiff's Privacy and Would Disclose Confidential Information

Natura's discovery requests would be an inherent invasion of Davis' privacy. Natura's requests would allow Natura complete access to Davis' at-home, private computer utilized for personal purposes. Such access would provide Natura with a plethora of personal information entirely irrelevant to the case at hand. To require the production of her computer would be to allow a severe and irreversible invasion of her privacy. This is synonymous to the situation in Eugene where the Court denied the production of a computer hard drive because doing so would provide the requesting party with a large amount of private and personal information unrelated to the action at issue.

Furthermore, the Courts in both Fennel and Eugene explained that the risks and costs of production outweigh any benefit when such discovery could lead to disclosure of potentially confidential and privileged information. Most if not all of the information which might be found on her computer relating to her preparation of interrogatory responses would be communications between Davis and her lawyers and therefore would be protected by the attorney-client privilege and/or the attorney work product doctrine. The value of any remaining information to the issues on the case would be negligible as

Davis testified to in her deposition. (See Declaration of Edgar R. Nield at ¶ 3). Given the confidentiality of the information contained on her computer and the application of the attorney-client privilege and attorney work-product doctrine, the risks and costs of the production requests clearly outweigh the potential benefit of whatever non-confidential information might remain. Consequently, in light of the rulings of the Fennel and Eugene courts relating to these types of discovery requests, Natura's request in this regard must be denied.

V. Defendants' First Production Request

Davis has already agreed to produce the document sought by this request to the extent that they have not already been produced and to the extent that she can locate them. She will again agree to do so and modify her response to withdraw the objections interposed thereto.

VI. Conclusion

Based upon the foregoing, Plaintiff respectfully requests that the Court deny Natura's first and second discovery requests.

Dated: January 28, 2009

Respectfully submitted,

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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 EDGAR R. NIELD FILED IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT NATURA PET FOOD PRODUCTS, INC.'S
MOTION TO COMPEL RESPONSES TO DEFENDANT NATURA'S FIRST SET
OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF
PATRICIA DAVIS**

1. I am an attorney licensed to practice in the states of California and Colorado and am admitted to practice before the Federal District Courts of Southern and Central California and the Tenth Circuit District Court in Colorado. I am co-counsel for Plaintiff's Jo-Ann Murphy, Cindy Tregoe and Patricia Davis, class action representatives in the above captioned matter. I know the following to be true based upon my own personal knowledge or belief and if called upon to do so I could and would competently testify to the following under oath in a court of law.

2. A true and correct the deposition testimony of Plaintiff Patricia Davis, 9:48:26 18 through 9:49:59: 4 is attached to this declaration as Exhibit "A".

3. A true and correct the deposition testimony of Plaintiff Patricia Davis, 02:21:39 20 through 02: 26:44 5 is attached to this declaration as Exhibit "B".

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 28th day of January 2009, in Carlsbad, California.

A handwritten signature in black ink, appearing to read 'E. R. Nield', is written above a horizontal line.

Edgar R. Nield

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

-----+
RENEE BLASZKOWSKI, et al.,

Plaintiffs,

vs.

MARS, INCORPORATED, et al.,

Defendants.
-----+

Case No.
07-21221-CIV
ALTONAGA/BROWN

Videotaped Deposition of PATRICIA DAVIS

Washington, D.C.

September 24, 2008

9:00 a.m.

Reported by: Michele E. Eddy

Exhibit A

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

09:49:05 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?

09:49:49 1 drives were mirrored and I thought I was backing up.

09:49:51 2 Well, when one got corrupted, then it was mirroring

09:49:54 3 the other one, so the other one got corrupted. Bad

09:49:59 4 plan.

.....

02:21:39 20 Q You provided documents in responding to

02:21:20 13 written discovery in this case, correct?

02:21:25 14 A Yes. I have trouble with the terminology,

02:21:28 15 so ...

02:21:30 16 Q As part of responding to the questions that

02:21:33 17 the defendants asked you, you understood that you were

02:21:35 18 asked for documents, correct?

02:21:39 19 A Yes.

02:21:39 20 Q And you went about collecting documents.

02:21:41 21 correct?

02:21:41 22 A Yes.

02:21:43 23 Q What documents did you collect in terms of

02:21:45 24 categories?

02:21:48 25 A Categories? What do you mean by categories?

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02:21:52 1 Q Like collected vet records, receipts,

02:21:55 2 complaints, Internet postings, as examples only. But

02:22:01 3 for you, what categories of documents do you collect

02:22:04 4 to provide to your attorneys in this case?

02:22:23 9 A Let's see. I tried to collect e-mails and
02:22:29 10 maybe where I've been out on the web, but my computer
02:22:32 11 crashed, so I couldn't do that part. So I would say
02:22:39 12 that.

02:22:39 13 Q How did you go about collecting vet records
02:22:41 14 to provide to the defendants in this case?

02:22:43 15 A I'd only been to one veterinarian, so I
02:22:46 16 walked by his office and I asked him to give me
02:22:49 17 anything from May 9th, '03 to May 9th, '07.

02:22:55 18 Q And what did you do to collect receipts for
02:22:58 19 the defendants in this case?

02:23:00 20 A I went through all of my boxes of receipts
02:23:02 21 and I looked and it took me hours and hours.

02:23:07 22 Q What type of receipts did you look for?

02:23:12 23 A Anything that would be for purchase of pet
02:23:13 24 food or any pet type item, dog collars, dog doors, any
02:23:21 25 things like that.

02:23:22 1 Q Have you provided all of the receipts that

12:24:20 12 Q What about the way you put together your
12:24:22 13 interrogatory responses allowed you to remember more
12:24:26 14 than you have remembered today?

12:24:29 15 A One thing, I was in a more relaxed
12:24:32 16 atmosphere and I took a clipboard and I went up and
12:24:37 17 down the store aisles of the places that I buy pet
12:24:39 18 food, and it helped me remember, and I made notations.
12:24:41 19 and then I got home and I tried to put it together.

12:24:45 20 Q What did you do to recall the time frames in
12:24:49 21 which you fed the foods that are identified by you in
12:24:53 22 Exhibits 3 and 4?

12:24:57 23 MR. NIELD: If anything. Go ahead.

12:24:59 24 A For Arnold, partly it was the vet records to
12:25:01 25 see what kind of shape he was in during that time.

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12:25:09 1 I'm sorry, I just forgot the question.

12:25:12 2 Q When you put together your interrogatory
12:25:13 3 responses that we've marked as Exhibit 3 and Exhibit

12:25:27 7 A Oh, I went from the time that I got the dog
12:25:30 8 or the cat to the time I don't have him anymore and
12:25:34 9 then figured out what all I was feeding him amongst
12:25:36 10 that time.

12:25:37 11 Q Based on solely on your memory, correct?

12:25:40 12 A Yes, uh-hmm.

12:25:42 13 MR. NIELD: Misstates prior testimony.

12:25:47 14 A Plus the vet records, yeah. Well, the vet
12:25:50 15 records didn't have that, but I could look and see
12:25:52 16 what kind of shape the dog was in so I would know
12:25:54 17 whether or not I was feeding him other things.

12:25:58 18 Q Other than the vet records and your memory,
12:26:01 19 did you rely on anything else in putting together the
12:26:04 20 list of foods and dates other than what you've told me
12:26:11 21 already as going down the store aisles?

12:26:15 22 A I had some records. See, we have horses, so
12:26:20 23 I have to keep some bills in order to do the tax
12:26:23 24 thing. So the bills that I had from the feed stores
12:26:26 25 where I bought the food at the feed stores, I had some

12:26:30 1 of those. I could refer to those. And that would
12:26:34 2 help a little bit. And I had a couple receipts just
12:26:38 3 sitting out loose that I could refer to. But other
12:26:41 4 than that, I don't save my grocery store receipts, so
12:26:44 5 I had to go by memory a lot.