

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 MOTION TO EXTEND THE DISCOVERY DEADLINE TO
ALLOW FOR RECONSIDERATION OF MOTION FOR RECONSIDERATION
OF COURT ORDERS REGARDING DEFENDANTS MOTIONS TO COMPEL
FURTHER DISCOVERY REPSOSNES**

I. FACTUAL SUMMARY

In October of 2008, Defendant Natura Pet Food Products Inc. (Natura) served multiple sets of written discovery on several Plaintiffs in this matter, including its First Set of Requests for Production of Documents to Plaintiff Patricia Davis. Timely responses to these requests were thereafter provided by Plaintiff Davis.

Subsequently, Defendant indicated it was not satisfied with many of the responses provided and requested further responses, including to those of Ms. Davis to the Production Requests. After meet confer efforts between the parties failed to resolve Defendant's issues, it filed Motions to Compel further responses to the all discovery it had propounded to the Plaintiffs. These motions were on January 13, 2009 and included a motion relating to the production requests to Ms. Davis. Plaintiffs thereafter decided to

file Oppositions to the Defendant's Motions to Compel. (See Declaration of Edgar R. Nield filed in support of this Motion at ¶ 3).

Unfortunately, a calendaring error made by Ms. Davis' legal representative, lead to the calculation of an incorrect due date for the filing of Oppositions to the Defendants motion . (See Declaration of Edgar R. Nield filed in support of this Motion at ¶ 4). This error was not discovered by her counsel until Court Orders relating to the Defendant's various Motions to Compel began to be received prior the mistakenly calendared due date for Oppositions. (See Declaration of Edgar R. Nield filed in support of this Motion at ¶ 5 and ¶ 6).

As soon as counsel for Ms. Davis became aware of this error, a Motion for Reconsideration of the Courts Orders Compelling further responses to the discovery, including Defendant's Motion to Compel further responses to the Document Production Requests to Plaintiff Davis, was immediately filed. (See Declaration of Edgar R. Nield filed in support of this Motion at ¶ 6). That Motion included as exhibits, Plaintiffs' Oppositions to the Defendants multiple Motions to Compel, again including an Opposition to Defendant's Motion to Compel the production of documents from Ms. Davis.

The Motion for Reconsideration, made pursuant to Fed. R. Civ. Pro. 60, sought relief from the calendaring error which had caused the Defendants motions to be considered and ruled upon before Plaintiff's Oppositions were filed. Counsel also requested that the Court vacate its Orders compelling further responses to the written discovery at issue (again including the Defendant's Production Requests to Ms. Davis), and allow the filing Plaintiffs' Oppositions to the Defendant's motions so they could be

considered prior to ruling on the Defendant's Motions to assure decisions on the motions were based upon the merits.

Of primary concern was the request that Ms. Davis produce "all computers you used to prepare your June 2008 responses to interrogatories propounded by defendant Mars, Inc." While the request did not indicate why these computers were sought, or what on the computers Defendant was looking for, the request raised the specter of Ms. Davis possibly having to produce her personal computer containing all of her and her family's personal and confidential records, files and transactions without proper justification or authority. (See Declaration of Patricia Davis filed in support of this Motion at ¶4 and ¶5 and Declaration of Edgar R. Nield filed in support of this Motion at ¶ 7).

Still further, Ms. Davis asserts that she used only one computer to respond to the interrogatories at issue and that the only information on that computer relating to those interrogatories would be email communications between herself and her attorneys and the saved interrogatories. (See Declaration of Patricia Davis filed in support of this Motion at ¶3). She has also indicated that she will not waive the privilege as it relates to her communications with her attorneys. (See Declaration of Patricia Davis filed in support of this Motion at ¶6).

Unfortunately, the Court denied the Motion for Reconsideration and among other things, ordered that a copy of Ms. Davis's computer hard drive be produced to the Defendant without restriction or limitation. In its Order directing the production, the Court indicated, among other things, that one of the reasons for denying the Motion was the fact that granting the motion would make it virtually impossible to accept the Oppositions, allow for Replies from the Defendant, rule on the Motions and allow time to

complete whatever discovery may be necessary thereafter by the discovery deadline of February 9, 2009. Apparently, based upon this consideration, the Court specially stated in concluding its Order that “[T]his ruling is without prejudice to be reconsidered in the event the discovery deadline is extended by the District Court Judge.” ((See Declaration of Edgar R. Nield filed in support of this Motion at ¶ 8).

Given the extremely sensitive personal and confidential nature of the information contained on the hard drive and the serious considerations concerning the application of the attorney client privileged and the and attorney work product doctrine to the Defendant’s request, and the significant decisional and statutory law relating to all of these issues, Plaintiff Davis respectfully requests that this Court extend of the discovery deadline, as referenced by the Magistrate Judge Brown’s ruling. This would allow for reconsideration of Plaintiffs’ Motion for Reconsideration, seeking relief from the calendaring error which caused the Defendant’s motions to be heard without opposition and thereafter allow for reconsideration of the Defendant’s Motion to Compel on the merits, taking into consideration the Oppositions of Ms. Davis. It would also allow time for the Court to render its decision and complete whatever discovery remained thereafter. Given the Court’s prior scheduling Order, Plaintiff would suggest an extension of the discovery deadline until March 20, 2009, the date the parties exchange expert reports. However, whatever the Court deems appropriate in this regard would be acceptable to the Plaintiffs. (See Declaration of Edgar R. Nield filed in support of this Motion at ¶ 9).

II. LEGAL ARGUMENT

This Motion is being made pursuant to Federal Rule of Civil Procedure 6 (b)(1) which allows the Court to extend the time that a particular activity take place:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Pursuant to these provisions the Court has the authority to extend the Discovery deadline Under circumstances it deems appropriate. The Plaintiffs maintain that those circumstances apply in this instance

III. CONCLUSION

The Plaintiffs' respectfully request that this court, based upon the above, grant an extension of the discovery deadline to allow for the reconsideration of the Plaintiffs' Motion for Reconsideration relating to the Magistrate Judges Orders concerning the Defendant's Motions to Compel further responses to allow those motions to be considered on their merits on light of the Plaintiff's Oppositions thereto.

LOCAL RULE 7.1(A)(3) CERTIFICATION

Pursuant to Rule 7.1(A)(3) of the Local Rules of the United States District Court for the Southern District of Florida, counsel Plaintiff Patricia Davis, Edgar R. Nield, on January 29, 2009, conferred in good faith with counsel for Defendant via email. On behalf of Plaintiff Davis, we requested that Defendant agree to stipulate to an extension of the discovery deadline or agree not to oppose Plaintiffs' request for an extension. We also requested that the Defendant agree to withdraw its request for the production of

Plaintiff Davis' personal computer making this motion unnecessary. We were unable to resolve the issues surrounding that request.

Dated: February 2, 2009

Respectfully submitted,

s/ Edgar R. Nield

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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 February 2, 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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