

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 TO EXTEND THE DISCOVERY DEADLINE**

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 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 we 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 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, Defendants filed multiple Motions to Compel to Plaintiffs to provide further responses. Included among the Defendant's Motions was a motion to compel further responses to the Requests for Production of Documents it had propounded upon Plaintiff Davis. On behalf of the Plaintiffs, we decided that it was appropriate to file Oppositions thereto.

4. When we received those Motions via email from the Defendant, including the Motion direct at further responses to the production requests to Ms. Davis, we inadvertently miscalculated and calendared the due dates for Oppositions to those motions to be filed. We believed that the Oppositions would be due no earlier January 28, 2009, in conformance with Federal District Court, Southern District of Florida, Local Rule 7.1 (C) (1

5. I was in the process of preparing the Plaintiff's Oppositions to the Defendant's Motions when I was surprised to receive, beginning on January 26, 2009, two days before we believed the Oppositions to be due, the Magistrate Judge's rulings on the Defendant's various Motions to Compel, including the Defendant's Motion to Compel further responses to the Requests for Production of Documents to Plaintiff Davis. This was our first notice that there may have been an error as it related to the calendaring of the due date for Oppositions.

6. Surprised and confused as to why the rulings were being issued before what we still considered the due date of Oppositions, we contacted Magistrate Judge Brown's law clerk by telephone and discovered that we had failed to take into consideration an earlier April 25, 2008 Scheduling Order which had shortened the time to respond to discovery motions. Based thereon and need to assure that the Defendant's Motions were heard on the merits, particularly as it related to the Motion seeking the production of Plaintiff Davis' personal computer, we immediately a Motion for Reconsideration, seeking relief from the error we have made in miscalculating the

Opposition due dates and reconsideration of the Defendant's Motions to Compel, taking into consideration Plaintiffs' Oppositions to those motions, which were attached to the Motion for Reconsideration, to assure they were decided upon their merits.

7. As noted, of primary concern is the is the request that Ms. Davis produce the computers she used to prepare her 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 possibility that Ms. Davis might have 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. Still further, the request raises serious issues as to whether she should be forced to produce email communications between herself and her attorneys protected by the attorney client privilege, which she has indicated she is not willing to waive and the attorney work product doctrine. While never stated by the Defendant, we believe the intent of its request is to obtain attorney-client protected information concerning the interrogatories at issue. The Defendant has never set out any justification for the release of such information.

8. In his "Order Denying the Motion for Reconsideration" Judge Brown indicated, among other things, that one of the reasons he was denying the motion was that it would be virtually impossible to grant the motion, allow filing of the responses, allow time for replies by the Defendant, rule on the motions and allow for completion of any remaining discovery by the current discovery deadline of February 9, 2009. He also indicated that his ". . .ruling is without prejudice to be reconsidered in the recent the

discovery deadline is extended by the District Judge.” A true and correct copy of that Order is attached to this Declaration as Exhibit “A”.

9. It is based upon these comments, the extremely sensitive personal and confidential nature of the information contained on Plaintiff Davis’ computer hard drive and the serious issues raised relating to the application of the attorney-client privilege and the and attorney work product doctrine that Plaintiff Davis respectfully requests that this Court extend of the discovery deadline to allow for reconsideration of Plaintiffs’ Motion for Reconsideration regarding the calendaring error. Extended the delaine would also allow for the reconsideration of the Defendant’s Motions to Compel on the merits, taking into consideration Plaintiffs’ Oppositions, including that 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.

10. Contemporaneously with this Motion, Plaintiff Davis is also filing a Motion for a Protective Order relating to the production of her computer hard drive, placing certain restrictions and limitations on that production, should the Court deny this Motion.

11. To deny this request would create a significant prejudice to the Plaintiff’s, particularly as to Plaintiff Davis Produce who could be forced to produce a copy of the hard drive from her personal computer without restriction of limitation without consideration of her objections to the request including the privacy and confidentiality

issues, its overly broad, burdensome and oppressive nature, and the application of the attorney-client privilege and the attorney work product doctrine. These types of issues need to be determined on the merits, and not on the basis of an error made counsel. The attorney client-privilege for instance is not counsel's to waive. 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 to Extend the Discovery Deadline.

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct. Executed this 2nd day of February 2009, in Carlsbad, California.

A handwritten signature in black ink, appearing to read "E. R. Nield", is written above a horizontal line. The signature is stylized with a large, circular flourish at the end.

Edgar R. Nield

07-21221.oc

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

Case Number: 07-21221-CIV-ALTONAGA-BROWN

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

Plaintiffs,

vs.

MARS INCORPORATED, et al.,

Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

This matter is before this Court on defendant's Motion for Reconsideration ...(D.E. 610), filed January 28, 2009. The Court has considered the motion and all pertinent materials in the file.

Initially, the Court would note that this Court's Law Clerk disputes parts of the conversation related in the motion. However, that matter need not be further addressed to resolve this motion. The fact is really rather simple - counsel has all kinds of arguments and excuses to attempt (unsuccessfully) to obfuscate one simple fact - counsel's apparent failure to read orders of the Court.

That failure - and that failure alone - led us to where this motion sits. It further leaves us with the fact that discovery is to be completed by February 9, 2009... a virtual impossibility if this Court were to grant this motion and accept the responses, since it would have to allow the permissible time for the reply, have some time to rule on same, and - if any further discovery were appropriate, it would take place long after the discovery cutoff.

Therefore, and the Court being otherwise fully advised in the premises it is hereby

ORDERED AND ADJUDGED that said motion be and the same is hereby **DENIED**. This ruling is without prejudice to be reconsidered in the event the discovery deadline is extended by the District Judge.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of January, 2009.



STEPHEN T. BROWN
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Cecilia M. Altonaga
parties and counsel of record