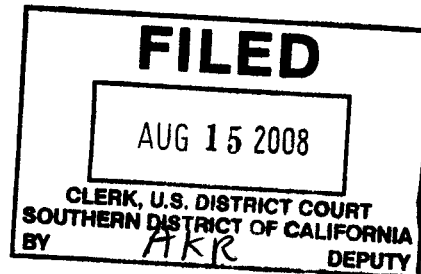


**BLUMENTHAL & NORDREHAUG**  
Norman B. Blumenthal (State Bar #068687)  
Kyle R. Nordrehaug (State Bar #205975)  
Aparajit Bhowmik (State Bar #248066)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858)551-1223  
Facsimile: (858) 551-1232

Attorneys for Plaintiffs



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT ADAM KENNEDY, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

NATURAL BALANCE PET FOODS, INC., a California corporation; WILBUR-ELLIS COMPANY, a California corporation; and DOES 1 through 100, Inclusive,

Defendants.

CASE No. 07 CV 1082 H (RBB)

PLAINTIFF'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Dist. Judge: Hon. Marilyn L. Huff  
Courtroom 13

Plaintiff Adam Kennedy, on behalf of himself and all those similarly situated, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the

1 final judgment entered in this action by the District Court for the Southern District of  
2 California on August 14, 2008 and all interlocutory orders that gave rise to that  
3 judgment, including but not limited to the Order of June 12, 2008 and the Order of  
4 August 18, 2008. A true and correct copy of the final judgment entered on August  
5 14, 2008 is attached hereto as Exhibit #1.

6 Plaintiff/Appellant Adam Kenney is not aware of any related cases that are  
7 currently pending in this Court. Attached hereto as Exhibit #2 is a Representation  
8 Statement for Plaintiff/Appellant Adam Kennedy.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: August 14, 2008

BLUMENTHAL & NORDREHAUG

By:   
Norman B. Blumenthal, Esq.  
2255 Calle Clara  
La Jolla, CA 92037  
(858) 551-1223  
Fax: (858) 551-1232  
Email: Norm@bamlawlj.com

K:\D\NBB\Kennedy v. Natural Balance\Appeal\p-notice of appeal.wpd

UNITED STATES DISTRICT COURT

Southern District of California

Robert Adam Kennedy

Plaintiff,

v.

Case No.: 3:07-cv- 01082-H-RBB

Judge Marilyn L. Huff

Natural Balance Pet Foods Inc, et al.

Defendant.

---

JUDGMENT IN A CIVIL CASE

         **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

  X   **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED ORDER Dismissing Case For Lack Of Subject Matter Jurisdiction

W. Samuel Hamrick, Jr.,  
Clerk of the Court

Date: 8/14/08

By: s/ C. Puttmann, Deputy Clerk

ENTERED ON: August 14, 2008

**BLUMENTHAL & NORDREHAUG**  
Norman B. Blumenthal (State Bar #068687)  
Kyle R. Nordrehaug (State Bar #205975)  
Aparajit Bhowmik (State Bar #248066)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858)551-1223  
Facsimile: (858) 551-1232

Attorneys for Plaintiffs

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

ROBERT ADAM KENNEDY, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

NATURAL BALANCE PET FOODS, INC., a California corporation; WILBUR-ELLIS COMPANY, a California corporation; and DOES 1 through 100, Inclusive,

Defendants.

No. \_\_\_\_\_

**REPRESENTATION STATEMENT**

D.C. # 07 CV 1082 H (RBB)

The undersigned represents Plaintiff Adam Kennedy, on behalf of himself and all those similarly situated, appellant in this matter and no other party. Listed below is a service list that shows all of them parties to the action below, and identifies their counsel by name, firm, address, and telephone number, where appropriate (F.R.A.P.

1 12(b); Circuit Rule 3-2(b).)

2 Dated: August 14, 2008

BLUMENTHAL & NORDREHAUG

3  
4 By:   
5 Norman B. Blumenthal, Esq.  
6 2255 Calle Clara  
7 La Jolla, CA 92037  
8 (858) 551-1223  
9 Fax: (858) 551-1232  
10 Email: Norm@bamlawlj.com

9 **SERVICE LIST:**

10 James Raymond Robie, Esq.  
11 Kyle Kveton, Esq.  
12 **ROBIE AND MATTHAI**  
13 500 South Grand Avenue, Suite 1500  
14 Los Angeles, CA 90071-2609  
15 Tel: (213) 706-8000  
16 Fax: (213) 624-2563  
17 E-mail: kkveton@romalaw.com  
18 *Attorney for Defendant Natural Balance*

Norman B. Blumenthal, Esq. (SB #068687)  
Kyle R. Nordrehaug, Esq. (SB #205975)  
Aparajit Bhowmik, Esq. (SB #248066)  
**BLUMENTHAL & NORDREHAUG**  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858)551-1223  
Facsimile: (858) 551-1232  
E-mail: Norm@bamlawlj.com  
*Attorneys for Plaintiff/Appellant Adam Kennedy*

17 K:\D\NBB\Kennedy v. Natural Balance\Appeal\p-represent stmt.wpd

CERTIFICATE OF SERVICE

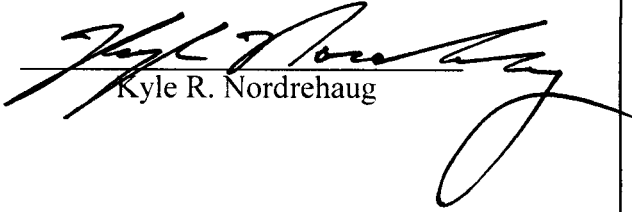
I, am, at all relevant times, a citizen of the United States and a resident of the County of San Diego and am employed by the attorney of record in this action located at 2255 Calle Clara, La Jolla, CA 92037. I hereby certify that on this date the document(s) were served electronically on the attorneys for all parties as follows:

(1) PLAINTIFF'S NOTICE OF APPEAL AND REPRESENTATION STATEMENT

XX (BY U.S. MAIL): I caused the listed documents to be served through the U.S. Mail by causing an envelope containing the afore listed documents, with postage thereon fully prepaid, to be placed in the United States Mail at San Diego, California. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5). The envelopes mailed were addressed to the following person(s):

James Raymond Robie  
Robie and Matthai  
500 South Grand Avenue, Suite 1500  
Los Angeles, CA 90071-2609  
kkveton@romalaw.com  
*Attorney for Defendant Natural Balance*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 14, 2008 at San Diego, California.

By:   
Kyle R. Nordrehaug

# UNITED STATES DISTRICT COURT

Southern District of California

Robert Adam Kennedy

Plaintiff,

v.

Case No.: 3:07-cv-01082-H-RBB

Judge Marilyn L. Huff

Natural Balance Pet Foods Inc, et al.

Defendant.

---

## JUDGMENT IN A CIVIL CASE

         **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

  X   **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED ORDER Dismissing Case For Lack Of Subject Matter Jurisdiction

W. Samuel Hamrick, Jr.,  
Clerk of the Court

Date: 8/14/08

By: s/ C. Puttmann, Deputy Clerk

ENTERED ON: August 14, 2008

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT ADAM KENNEDY, an individual, on behalf of himself, and on behalf of all persons similarly situated,  
  
Plaintiff,  
  
vs.  
  
NATURAL BALANCE PET FOODS, INC., a California corporation; and DOES 1 through 100, inclusive,  
  
Defendant.

CASE NO. 07-CV-1082 H (RBB)  
**ORDER DISMISSING CASE  
FOR LACK OF SUBJECT  
MATTER JURISDICTION**

On June 12, 2008, the Court denied Plaintiff's motion for class certification. (Doc. No. 60.) In light of that ruling, the Court issued an order to show cause why the case should not be dismissed for lack of subject matter jurisdiction. (Id.) Plaintiff filed a response to the Court's order to show cause on July 9, 2008. (Doc. No. 62.) Defendant filed a reply on July 25, 2008. (Doc. No. 63.)

Plaintiff's response acknowledges that unless the Court reconsiders its order denying Plaintiff's motion to certify a class, which the Court declines to do, there is no class and therefore no continuing federal jurisdiction under the Class Action Fairness Act. (See Doc. No. 62.) The first amended complaint asserts only violations of California law, and Plaintiff's individual allegations do not meet the amount in controversy threshold to invoke the Court's

1 diversity jurisdiction. (See First Amended Compl. ¶ 1.) Plaintiff does not argue that diversity  
2 jurisdiction exists. Accordingly, the Court dismisses this action for lack of subject matter  
3 jurisdiction. The Clerk of Court shall close the case.

4 IT IS SO ORDERED.

5 DATED: August 13, 2008

6   
7 MARILYN L. HUFF, District Judge  
8 UNITED STATES DISTRICT COURT  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals **Date:** 8/15/2008  
**From:** U.S. District Court, Southern District of California  
**Subject:** New Appeals Case Information & Docket Fee Notification

### Case Information

Case Title: Robert Adam Kennedy v. Natural Balance Pet Foods Inc, a California corporation; and  
DOES 1 through 100, Inclusive

U.S.D.C. No.: 07cv1082-H-RBB U.S.D.C. Judge: Marilyn L. Huff

Complaint/Indictment/Petition Filed: Complaint (Notice of Removal)

Appealed Order Entered: 8/14/2008

Notice of Appeal Filed: 8/15/2008

Court Reporter: n/a

COA Status:  Granted in full/part (appeal only)  Denied (send clerk's file)

### Docket Fee Notification

Docket Fee:  Paid  Not Paid  No Fee Required

USA/GOVT. APPEAL:  Yes  No

Date F/P granted (Show Date and Attach Copy of Order): \_\_\_\_\_

Was F/P Status Revoked?  Yes  No

Companion Case(s): (Please list consolidated cases, if applicable) \_\_\_\_\_

### Counsel Information

#### Appellant Counsel:

#### Appellee Counsel:

Norman B Blumenthal  
Blumenthal and Nordrehaug  
2255 Calle Clara  
La Jolla, CA 92037  
(858) 551-1223

James Raymond Robie  
Robie and Matthai  
500 South Grand Avenue  
Suite 1500  
Los Angeles, CA 90071-2609  
(213) 624-3062

Counsel Status:  Retained  Appointed  Pro Se

Appointed by: \_\_\_\_\_  
(Attach copy of order/minutes)

### Defendant Information

Prisoner ID Number: n/a

Bail: \_\_\_\_\_

Custody: \_\_\_\_\_

**SERVICE LIST**


**Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:**

x	Transmittal of U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form. (Appellant Only)
x	Notice of Appeal. (Appellant, Appellee, U.S. District Judge, USPO, and Court Reporter)
x	Docket Entries (Appellant and Appellee)
x	Designation of Reporter's Transcript and Ordering Form. (Appellant Only, mailed separately)
	Order for Time Schedule. (Criminal Only) (Appellant, Appellee, and Court Reporter)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: Judgment, entered 8/14/08; Order Dismissing Case for Lack of Subject Matter Jurisdiction, entered 8/14/08; Civil Appeals Docketing Statement (original plus copy).

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Angela Rowland

Deputy's Name



Deputy's Signature

**UNITED STATES DISTRICT COURT**  
 Southern District Of California  
 Office Of The Clerk  
 880 Front Street, Room 4290  
 San Diego, California 92101-8900  
 Phone: (619) 557-5600  
 Fax: (619) 702-9900

W. Samuel Hamrick, Jr.  
 Clerk of Court

To: Clerk, U.S. Court of Appeals  
 P.O. Box 193939  
 San Francisco, CA 94119-3939

Re: **USCA No:**  
**USDC No: 07cv1082-H-RBB**  
**Kennedy v. Natural Balance Pet Foods Inc et al**

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Copy of the Notice of Appeal	x	Docket Entries
x	Case Information/Docket Fee Payment Notification Form		
	Order for Time Schedule (Criminal)		
	Original Clerk's Record in	set(s) of	volume(s).
	Reporter's transcript's transcripts in	set(s) of	volume(s).
	Exhibits in	envelope(s)	box(es) folders(s)
x	Judgement Order		F/P Order
	CJA Form 20		Minute Order
	Certificate of Record		Mandate Return
	Magistrate Judge's Report and Recommendation		
	COA Order		
	Amended docket fee notification form		
	Order Appointing Counsel for Appeal		
x	Order Dismissing Case for Lack of Subject Matter Jurisdiction, entered 8/14/08; Civil Appeals Docketing Statement (original plus copy).		
x	Please acknowledge on the enclosed copy of this transmittal		

Sincerely yours,

W. Samuel Hamrick, Jr.  
 Clerk of Court

By: Angela Rowland  
 Angela Rowland, Deputy

Date: 8/15/2008