

**EXHIBIT C-1**



## U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

ARKANSAS WESTERN			12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing		
			2006	2005	2004	2003	2002	2001			U.S.
<b>OVERALL CASELOAD STATISTICS</b>	Filings*		1,078	1,083	1,478	1,425	1,563	1,450			
	Terminations		1,140	1,337	1,514	1,399	1,446	1,227			
	Pending		808	854	1,108	1,139	1,111	997			
	% Change in Total Filings	Over Last Year			-5					25	3
		Over Earlier Years				-27.1	-24.4	-21.0	-25.7	91	10
Number of Judgeships			3	3	3	3	3	3			
Vacant Judgeship Months**			.0	.0	.0	.0	.0				
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	359	361	493	475	521	483	67	8	
		Civil	283	281	421	403	449	438	56	6	
		Criminal Felony	65	69	60	59	56	45	53	9	
		Supervised Release Hearings**	11	11	12	13	16	-	78	10	
	Pending Cases		269	285	369	380	370	332	81	8	
	Weighted Filings**		399	348	423	411	436	411	65	8	
	Terminations		380	446	505	466	482	409	65	8	
	Trials Completed		13	14	19	17	24	14	71	8	
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition	Criminal Felony	6.3	5.8	5.1	5.6	6.5	5.7	11	2	
		Civil**	11.9	12.0	10.2	11.6	10.1	7.4	79	8	
	From Filing to Trial** (Civil Only)		13.0	13.0	15.4	14.0	13.7	12.0	3	1	
<b>OTHER</b>	Civil Cases Over 3 Years Old**	Number	10	5	4	0	0	1			
		Percentage	1.5	.7	.4	.0	.0	.1	2	1	
	Average Number of Felony Defendants Filed Per Case		1.1	1.1	1.3	1.2	1.1	1.1			
	Jurors	Avg. Present for Jury Selection	53.35	40.59	64.04	68.94	55.00	51.17			
		Percent Not Selected or Challenged	53.4	47.5	59.7	59.6	50.5	56.6			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	848	196	53	193	15	10	35	66	68	12	104	1	95
Criminal*	191	1	56	48	20	33	1	8	1	7	5	3	8

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."



# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

<b>CALIFORNIA CENTRAL</b>		12-MONTH PERIOD ENDING SEPTEMBER 30					Numerical Standing			
		2006	2005	2004	2003	2002			2001	
<b>OVERALL CASELOAD STATISTICS</b>	Filings*	12,909	14,630	16,938	14,720	15,440	15,342	U.S.	Circuit	
	Terminations	13,680	16,173	15,269	15,800	16,936	16,906			
	Pending	12,401	13,180	14,720	13,129	14,525	16,142			
	% Change in Total Filings	Over Last Year		-11.8				83	13	
		Over Two Years		-23.8	-12.3	-16.4	-15.9	81	13	
Number of Judgeships		28	28	28	28	27	27			
Vacant Judgeship Months**		53.9	24.8	2.3	23.6	63.9	57.3			
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	461	523	605	526	572	568	36	7
		Civil	397	450	515	451	490	521	18	4
		Criminal Felony	36	45	60	49	58	47	84	14
		Supervised Release Hearings**	28	28	30	26	24	-	30	11
	Pending Cases		443	471	526	469	538	598	26	7
	Weighted Filings**		518	565	651	590	584	557	24	6
	Terminations		489	578	545	564	627	626	32	7
	Trials Completed		12	13	12	14	12	14	79	11
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition	Criminal Felony	12.4	10.3	8.2	9.4	8.6	9.1	82	14
		Civil**	7.2	7.4	7.3	7.5	7.9	7.1	10	2
From Filing to Trial** (Civil Only)		21.3	20.5	17.8	21.2	20.0	21.0	29	4	
<b>OTHER</b>	Civil Cases Over 3 Years Old**	Number	1,240	809	624	609	650	541		
		Percentage	11.6	7.2	5.0	5.4	5.2	3.8	79	14
	Average Number of Felony Defendants Filed Per Case		1.6	1.5	1.4	1.4	1.4	1.5		
	Jurors	Avg. Present for Jury Selection	64.08	47.33	49.01	49.49	54.63	61.75		
Percent Not Selected or Challenged		55.7	48.3	49.4	51.6	55.5	58.8			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	11104	994	211	2833	274	58	754	1330	497	1425	1188	80	1460
Criminal*	999	3	151	234	88	228	54	46	43	43	25	35	49

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.  
 \*\* See "Explanation of Selected Terms."

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# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
CONNECTICUT		2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	2,460	2,530	2,717	2,752	2,816	2,858	U.S.	Circuit	
	Terminations	2,641	2,690	2,644	2,596	3,027	2,969			
	Pending	3,121	3,276	3,407	3,337	3,190	3,415			
	% Change in Total Filings	Over Last Year		-2.8				38	4	
Number of Judgeships		8	8	8	8	8	8			
Vacant Judgeship Months**		12.0	11.0	.0	6.5	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	308	317	340	345	353	357	75	5
		Civil	261	272	293	294	307	330	62	5
		Criminal Felony	36	32	35	37	36	27	84	5
		Supervised Release Hearings**	11	13	12	14	10	-	78	6
	Pending Cases	390	410	426	417	399	427	42	5	
	Weighted Filings**	376	379	409	396	420	415	70	5	
	Terminations	330	336	331	325	378	371	75	5	
Trials Completed		12	15	16	17	20	22	79	5	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	13.9	12.2	11.4	9.5	10.9	12.6	87	3
		Civil**	11.6	11.4	11.6	10.5	10.1	12.8	71	5
	From Filing to Trial** (Civil Only)		29.8	32.4	31.0	30.0	31.0	28.7	62	3
OTHER	Civil Cases Over 3 Years Old**	Number	339	358	325	318	231	292		
		Percentage	12.5	12.3	10.7	10.6	8.1	9.3	82	3
	Average Number of Felony Defendants Filed Per Case		1.6	1.8	1.7	1.4	1.8	1.8		
	Jurors	Avg. Present for Jury Selection	52.82	56.95	63.51	54.54	46.25	52.43		
Percent Not Selected or Challenged		32.4	38.6	32.7	31.7	34.2	27.9			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2087	40	46	278	37	23	127	301	216	130	498	1	390
Criminal*	280	1	69	14	46	70	9	21	3	4	5	8	30

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.  
 \*\* See "Explanation of Selected Terms."





# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

FLORIDA SOUTHERN		12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing		
		2006	2005	2004	2003	2002	2001			U.S.
OVERALL CASELOAD STATISTICS	Filings*	8,511	9,097	8,479	9,058	9,490	10,790			
	Terminations	8,979	9,463	8,904	9,370	9,797	10,170			
	Pending	6,538	6,948	7,302	7,788	8,203	9,099			
	% Change in Total Filings	Over Last Year		-6.5					57	8
		Over Earlier Years		4	60	-103	214	86	29	
Number of Judgeships		18	18	18	18	17	17			
Vacant Judgeship Months**		.0	.0	7.5	12.8	29.5	21.5			
ACTIONS PER JUDGESHIP	FILINGS	Total	473	505	470	503	559	635	30	5
		Civil	373	397	373	396	441	527	28	5
		Criminal Felony	76	87	79	90	103	108	40	5
		Supervised Release Hearings**	24	21	18	17	15	-	39	4
	Pending Cases		363	386	406	433	483	535	52	5
	Weighted Filings**		501	525	513	558	606	667	28	5
	Terminations		499	526	495	521	576	598	28	4
Trials Completed		19	20	20	21	23	23	47	6	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	5.8	5.8	6.1	6.2	6.5	6.3	.9	2
		Civil**	6.7	6.6	6.3	6.3	7.7	7.3	.9	1
	From Filing to Trial** (Civil Only)		16.3	16.7	18.0	18.3	15.0	19.3	.7	1
OTHER	Civil Cases Over 3 Years Old**	Number	962	902	1,047	714	223	278		
		Percentage	16.9	14.9	16.7	10.6	3.2	3.8	86	9
	Average Number of Felony Defendants Filed Per Case		1.6	1.5	1.7	1.6	1.5	1.5		
	Jurors	Avg. Present for Jury Selection	49.48	41.83	42.54	44.00	42.51	45.57		
Percent Not Selected or Challenged		26.9	21.7	19.2	23.8	22.8	28.8			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	6716	152	357	1225	107	42	1433	1045	502	334	763	16	740
Criminal*	1348	33	339	280	103	313	32	44	31	46	31	44	52

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.  
 \*\* See "Explanation of Selected Terms."

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# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

ILLINOIS NORTHERN		12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing		
		2006	2005	2004	2003	2002	2001			U.S.
OVERALL CASELOAD STATISTICS	Filings*	8,093	9,056	10,584	11,126	11,135	10,957			
	Terminations	8,255	8,805	11,461	10,888	10,709	10,319			
	Pending	7,711	7,914	7,706	8,699	8,587	8,271			
	% Change in Total Filings	Over Last Year		-10.6					78	6
			Over Earlier Years		-23.5	-27.3	-27.3	-26.1	92	7
Number of Judgeships		22	22	22	22	22	22			
Vacant Judgeship Months**		5.7	12.0	9.6	22.1	17.8	3.3			
ACTIONS PER JUDGESHIP	FILINGS	Total	367	412	481	505	506	498	66	5
		Civil	330	369	437	461	459	470	46	4
		Criminal Felony	26	34	32	38	39	28	90	7
		Supervised Release Hearings**	11	9	12	6	8	-	78	6
	Pending Cases		351	360	350	395	390	376	61	4
	Weighted Filings**		443	485	512	526	525	503	43	4
	Terminations		375	400	521	495	487	469	66	5
Trials Completed		11	13	12	12	14	15	86	6	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	13.9	12.9	10.3	9.9	10.3	9.9	87	7
		Civil**	6.5	6.9	5.9	5.5	5.5	5.6	7	2
	From Filing to Trial** (Civil Only)		26.4	27.0	28.4	26.0	26.0	26.3	51	5
OTHER	Civil Cases Over 3 Years Old**	Number	500	388	337	442	461	485		
		Percentage	7.4	5.6	5.0	5.6	6.0	6.4	61	6
	Average Number of Felony Defendants Filed Per Case		1.8	1.9	1.9	1.7	1.7	1.6		
	Jurors	Avg. Present for Jury Selection	45.07	51.46	39.36	45.57	43.63	39.43		
		Percent Not Selected or Challenged	30.9	36.9	31.0	37.3	34.8	36.7		

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	7265	112	175	631	42	110	1401	977	565	496	1490	39	1227
Criminal*	576	1	161	44	63	140	60	23	12	17	5	18	32

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.  
 \*\* See "Explanation of Selected Terms."

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# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
NEW JERSEY		2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	7,275	7,539	7,567	7,270	7,555	6,972	U.S.	Circuit	
	Terminations	7,480	7,605	7,373	6,998	7,125	7,057			
	Pending	6,855	6,987	6,986	6,765	6,538	6,101			
	% Change in Total Filings	Over Last Year		-3.5					43	3
		Over Two Years		3.9				45	4	
Number of Judgeships		17	17	17	17	17	17			
Vacant Judgeship Months**		32.3	27.8	12.0	11.0	47.8	7.5			
ACTIONS PER JUDGESHIP	FILINGS	Total	428	444	446	428	445	410	46	3
		Civil	369	387	390	370	387	369	29	3
		Criminal Felony	51	48	46	48	49	41	70	3
		Supervised Release Hearings**	8	9	10	10	9	-	85	3
	Pending Cases	403	411	411	398	385	359	38	4	
	Weighted Filings**	481	493	500	486	482	463	33	2	
	Terminations	440	447	434	412	419	415	48	3	
	Trials Completed	11	10	10	10	12	11	86	6	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	12.1	10.0	9.8	9.0	9.4	8.0	81	5
		Civil**	8.2	7.3	7.6	7.9	8.4	7.5	21	3
	From Filing to Trial** (Civil Only)		33.0	36.7	33.4	33.8	30.0	33.0	68	4
OTHER	Civil Cases Over 3 Years Old**	Number	306	346	252	236	231	179		
		Percentage	5.2	5.7	4.2	4.0	4.0	3.3	41	3
	Average Number of Felony Defendants Filed Per Case		1.2	1.3	1.2	1.2	1.2	1.2		
	Jurors	Avg. Present for Jury Selection	88.98	75.41	40.79	51.72	41.77	51.55		
Percent Not Selected or Challenged		39.2	38.3	24.1	40.3	37.7	38.9			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	L	
Civil	6274	240	343	904	82	26	845	1031	721	377	869	39	797
Criminal*	862	3	268	48	124	176	53	39	19	22	27	28	55

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.  
 \*\* See "Explanation of Selected Terms."

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# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
TENNESSEE EASTERN		2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	1,774	2,079	2,268	2,375	2,237	2,056	U.S.	Circuit	
	Terminations	1,961	2,331	2,241	2,121	2,145	2,127			
	Pending	1,908	2,067	2,292	2,270	1,976	1,872			
	% Change in Total Filings	Over Last Year		-14.7				85	8	
Number of Judgeships		5	5	5	5	5	5			
Vacant Judgeship Months**		.6	.0	.0	16.5	17.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	355	416	453	475	448	411	69	9
		Civil	251	297	337	344	335	311	66	8
		Criminal Felony	83	87	99	112	92	100	33	3
		Supervised Release Hearings**	21	32	17	19	21	-	51	5
	Pending Cases		382	413	458	454	395	374	46	7
	Weighted Filings**		402	443	496	552	481	458	62	8
	Terminations		392	466	448	424	429	425	60	8
Trials Completed		23	29	21	21	18	20	28	4	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	10.3	10.8	8.3	6.5	7.7	6.9	66	6
		Civil**	12.7	11.2	11.7	11.0	11.6	10.0	84	7
	From Filing to Trial** (Civil Only)		26.5	22.0	21.5	16.3	21.5	20.0	53	5
OTHER	Civil Cases Over 3 Years Old**	Number	97	81	78	69	39	45		
		Percentage	6.6	5.0	4.3	3.7	2.3	2.9	47	6
	Average Number of Felony Defendants Filed Per Case		1.6	1.4	1.4	1.6	1.5	1.4		
	Jurors	Avg. Present for Jury Selection	34.29	36.35	37.80	40.52	32.59	33.00		
		Percent Not Selected or Challenged	27.9	28.1	33.5	40.0	34.0	36.6		

### 2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1257	108	60	262	9	17	84	169	174	27	280	6	61
Criminal*	412	6	139	25	122	38	20	14	10	3	9	10	16

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.  
 \*\* See "Explanation of Selected Terms."

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# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

WASHINGTON WESTERN		12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing		
		2006	2005	2004	2003	2002	2001			
<b>OVERALL CASELOAD STATISTICS</b>	Filings*	3,471	4,167	4,858	5,038	4,103	3,257	U.S.	Circuit	
	Terminations	4,101	4,584	4,337	3,491	4,041	3,396			
	Pending	3,280	4,303	4,608	3,890	2,373	2,325			
	% Change in Total Filings	Over Last Year		-16.7					89	14
		Over Earlier Years		-28.6	-31.1	-15.4	-6.6		38	6
Number of Judgeships		7	7	7	7	7	7			
Vacant Judgeship Months**		14.1	6.7	14.0	2.6	12.0	11.0			
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	496	595	694	720	586	465	27	6
		Civil	396	487	582	616	498	416	19	5
		Criminal Felony	69	74	78	68	56	49	49	8
		Supervised Release Hearings**	31	34	34	36	32	-	24	8
	Pending Cases	469	615	658	556	339	332	21	6	
	Weighted Filings**	572	626	611	621	617	557	8	3	
	Terminations	586	655	620	499	577	485	14	3	
Trials Completed	19	16	13	10	12	17	47	5		
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition	Criminal Felony	7.9	7.3	6.3	6.2	5.8	6.3	33	4
		Civil**	9.1	9.6	7.2	6.4	5.8	8.1	41	6
	From Filing to Trial** (Civil Only)		19.0	19.4	16.4	16.7	18.0	15.0	16	3
<b>OTHER</b>	Civil Cases Over 3 Years Old**	Number	310	259	32	23	36	32		
		Percentage	11.2	6.9	.8	.7	1.8	1.6	78	13
	Average Number of Felony Defendants Filed Per Case		1.7	1.6	1.7	1.6	1.6	1.6		
	Jurors	Avg. Present for Jury Selection	45.30	36.80	42.94	38.85	36.51	36.96		
		Percent Not Selected or Challenged	39.9	25.5	42.2	29.1	32.8	29.9		

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2772	254	101	580	48	19	258	355	302	133	378	9	335
Criminal*	474	36	97	98	82	55	22	22	1	20	14	5	22

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."



FILED ENTERED  
LODGED RECEIVED  
MAR 19 2007 DJ

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TOM WHALEY individually and on behalf of  
all others similarly situated,

Plaintiff,

vs.

MENU FOODS, a foreign corporation, THE  
IAMS COMPANY, a foreign corporation, DOG  
FOOD PRODUCERS NUMBERS 1- 50 and  
CAT FOOD PRODUCERS 1- 40,

Defendants.

No. **CV7 0411M**  
CLASS ACTION COMPLAINT



07-CV-00411-CMP

SEA 8079 SJW

Plaintiff Tom Whaley, by and through his undersigned attorneys, Myers & Company,  
P.L.L.C., brings this civil action for damages on behalf of himself and all others similarly  
situated against the above-named Defendants and complains and alleges as follows:

I. NATURE OF ACTION

1.1 Mr. Whaley brings this action as a Class Action pursuant to Rule 23 of the  
Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food

CLASS ACTION COMPLAINT - 1

MYERS & COMPANY, P.L.L.C.  
1809 SEVENTH AVENUE, SUITE 700  
SEATTLE, WASHINGTON 98101  
TELEPHONE (206) 398-1186

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1 which was produced by any of the above-named defendants and/or has had a dog or cat become  
2 ill as a result of eating the food.

3 1.2 The defendants are producers and distributors of, *inter alia*, dog and cat food.  
4 Menu Foods produces dog and cat food under familiar brand names such as Iams, Eukanuba and  
5 Science Diet. Menu Foods distributes its dog and cat food throughout the United States to  
6 retailers such as Wal-Mart, Kroger and Safeway.

7 1.3 Dog and cat food which the defendants produced has caused an unknown number  
8 of dogs and cats to become ill and die.

9 1.4 To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
10 food which are causing dogs and cats to become ill. All recalled food to date is of the "cuts and  
11 gravy wet" style.

12 1.5 As a result of the Defendants' actions Mr. Whaley and other Class members have  
13 suffered emotional and economic damage.

14  
15 **II. PARTIES**

16 2.1 Plaintiff Tom Whaley has at all material times been a resident of Ontario, Oregon.

17 2.2 Defendant Menu Foods is, upon information and belief, a corporation organized  
18 under the laws of Canada which transacts business in Washington State and Oregon State.

19 2.3 Defendant The Iams Company, is upon information and belief, a foreign  
20 corporation which transacts business in Washington State and Oregon State.

21  
22 **III. JURISDICTION AND VENUE**

23 3.1 Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
24 Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds  
25

CLASS ACTION COMPLAINT - 2

MYERS & COMPANY, F.L.L.C.  
1809 SEVENTH AVENUE, SUITE 700  
SEATTLE, WASHINGTON 98101  
TELEPHONE (206) 398-1188

000318

1 \$75,000.00. This court has supplemental jurisdiction over the state law claims pursuant to 28  
2 U.S.C. § 1367.

3 3.2 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because  
4 the Defendants systematically and continuously sold their product within this district and  
5 Defendants transact business within this district.

6  
7 **IV. CLASS ACTION ALLEGATION**

8 4.1 Mr. Whaley brings this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2)  
9 and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and a Plaintiff Class (the  
10 "Class") composed of all persons who purchased any dog or cat food which was produced by the  
11 defendants and/or has had a dog or cat become ill as a result of eating the food. Mr. Whaley  
12 reserves the right to modify this class definition prior to moving for class certification.

13 4.2 This action has been brought and may be properly maintained as a class action  
14 pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

15 a. The Class is ascertainable and there is a well-defined community of  
16 interest among the members of the Class;

17 b. Membership in the Class is so numerous as to make it impractical to bring  
18 all Class members before the Court. The identity and exact number of Class members is  
19 unknown but is estimated to be at least in the hundreds, if not thousands considering the fact that  
20 Menu Foods has identified 50 dog foods and 40 cat foods which may be causing harm to pets.

21 c. Mr. Whaley's claims are typical of those of other Class members, all of  
22 whom have suffered harm due to Defendants' uniform course of conduct.

23 d. Mr. Whaley is a member of the Class.  
24  
25

CLASS ACTION COMPLAINT - 3

MYERS & COMPANY, P.L.L.C.  
1209 SEVENTH AVENUE, SUITE 700  
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TELEPHONE (206) 398-1188

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1 e. There are numerous and substantial questions of law and fact common to  
2 all of the members of the Class which control this litigation and predominate over any individual  
3 issues pursuant to Rule 23(b)(3). The common issues include, but are not limited to, the  
4 following:

Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 22 of 5

5 i. Did the defendants make representations regarding the safety of  
6 the dog and cat food they produced and sold?

7 ii. Were the defendants' representations regarding the safety of the  
8 dog and cat food false?

9 iii. Did the defendants' dog and cat food cause Mr. Whaley and other  
10 Class members' pets to become ill?

11 iv. Were Mr. Whaley and other Class members damaged?

12 f. These and other questions of law or fact which are common to the  
13 members of the Class predominate over any questions affecting only individual members of the  
14 Class;  
15

16 g. Mr. Whaley will fairly and adequately protect the interests of the Class in  
17 that Mr. Whaley has no interests that are antagonistic to other members of the Class and has  
18 retained counsel competent in the prosecution of class actions to represent himself and the Class;

19 h. Without a class action, the Class will continue to suffer damage,  
20 Defendants' violations of the law or laws will continue without remedy, and Defendants will  
21 continue to enjoy the fruits and proceeds of their unlawful misconduct;

22 i. Given (i) the substantive complexity of this litigation; (ii) the size of  
23 individual Class members' claims; and (iii) the limited resources of the Class members, few, if  
24  
25

1 any, Class members could afford to seek legal redress individually for the wrongs Defendants  
2 have committed against them;

3 j. This action will foster an orderly and expeditious administration of Class  
4 claims, economies of time, effort and expense, and uniformity of decision;

5 k. Inferences and presumptions of materiality and reliance are available to  
6 obtain class-wide determinations of those elements within the Class claims, as are accepted  
7 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendants'  
8 common liability, the Court can efficiently determine the claims of the individual Class  
9 members;

10 l. This action presents no difficulty that would impede the Court's  
11 management of it as a class action, and a class action is the best (if not the only) available means  
12 by which members of the Class can seek legal redress for the harm caused them by Defendants.

13 m. In the absence of a class action, Defendants would be unjustly enriched  
14 because they would be able to retain the benefits and fruits of their wrongful conduct.

15 4.3 The Claims in this case are also properly certifiable under applicable law.

16  
17 **V. STATEMENT OF FACTS**

18 5.1 Plaintiff Tom Whaley was the owner of a female cat named Samoya.

19 5.2 Mr. Whaley purchased Iams brand cuts and gravy wet-style cat food from Wal-  
20 Mart for Samoya to consume.

21 5.3 Samoya ate the Iams brand cuts and gravy wet-style cat food between December  
22 2006 and February 2007.  
23  
24  
25

1 5.4 Samoya became extremely ill and Mr. Whaley took her to a veterinarian who  
2 informed him that Samoya had suffered kidney failure, also known as acute renal failure.  
3 Samoya had to be euthanized.

4 5.5 In March 2007 Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
5 food and 40 brands of cuts and gravy wet-style cat food which had caused dogs and pets to  
6 become ill. One common symptom in the sick animals was kidney failure, also known as acute  
7 renal failure.

8 5.6 The Iams brand cuts and gravy wet-style cat food that Samoya consumed between  
9 December 2006 and February 2007 is one of the brands that Menu Foods recalled.

10 5.7 As a result of Defendants' acts and omissions Mr. Whaley and other Class  
11 members have suffered emotional and economic damage.

12 VI. CAUSES OF ACTION

13 A. Breach of Contract

14 6.1 Plaintiff realleges all prior allegations as though fully stated herein.

15 6.2 Plaintiff and Class members purchased pet food produced by the defendants based  
16 on the understanding that the food was safe for their pets to consume.

17 6.3 The pet food produced by the defendants was not safe for pets to consume and  
18 caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of  
19 contract.

20 6.4 As a result of the breach Plaintiffs and Class members suffered damages which  
21 may fairly and reasonably be considered as arising naturally from the breach or may reasonably  
22 be supposed to have been in the contemplation of the parties, at the time they made the contract,  
23 as the probable result of the breach of it.  
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B. Unjust Enrichment

6.5 Mr. Whaley realleges all prior allegations as though fully stated herein.

6.6 Defendants were and continue to be unjustly enriched at the expense of Mr. Whaley and other Class members.

6.7 Defendants should be required to disgorge this unjust enrichment.

C. Unlawful, Deceptive and Unfair Business Practices

6.8 Mr. Whaley realleges all prior allegations as though fully stated herein.

6.9 Defendants' sale of tainted pet food constitutes an unlawful, deceptive and unfair business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et seq.*, and similar statutory enactments of other states (including consumer protection and consumer sales practice acts).

6.10 Defendants' sale of hazardous pet food has the capacity to deceive a substantial portion of the public and to affect the public interest.

6.11 As a result of Defendants' unfair or deceptive acts or practices Mr. Whaley and other class members suffered injuries in an amount to be proven at trial.

D. Breach of Warranties

6.12 Mr. Whaley realleges all prior allegations as though fully stated herein.

6.13 Cat food and dog food produced by Menu Foods are "goods" within the meaning of Uniform Commercial Code Article 2.

6.14 Defendants' conduct as described herein constitutes breach of an implied or express warranty of affirmation.

6.15 Defendants' conduct as described herein constitutes breach of an implied warranty of merchantability.

1           6.16 Defendants' conduct as described herein constitutes breach of an implied  
2 warranty of fitness for a particular purpose.

3           6.17 As a proximate result of the aforementioned wrongful conduct and breach, Mr.  
4 Whaley and other class members have suffered damages in an amount to be proven at trial.  
5 Defendants had actual or constructive notice of such damages.

6           E.     Negligent Misrepresentation

7           6.18 Mr. Whaley realleges all prior allegations as though fully stated herein.

8           6.19 Defendants owed Mr. Whaley and class members a duty to exercise reasonable  
9 care in representing the safety of its dog and cat foods.

10          6.20 Defendants falsely represented that its dog and cat food was safe for consumption  
11 by dogs and cats.

12          6.21 In reality, defendants' dog and cat food caused dogs and cats to become ill and, in  
13 some cases, to die.

14          6.22 Mr. Whaley and class members reasonably relied on the information provided by  
15 Defendants regarding the safety of its dog and cat food.

16          6.23 As a proximate cause of Defendants' false representations Mr. Whaley and other  
17 Class members suffered damages in an amount to be proven at trial.

18   **VII. PRAYER FOR RELIEF**

19           WHEREFORE, Mr. Whaley and Class members request that the Court enter an order of  
20 judgment against Defendants including the following:

21           A.     Certification of the action as a class action pursuant to Rule 23(b)(3) of the  
22 Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of  
23 Plaintiffs as Class Representatives and their counsel of record as Class Counsel;

1 B. Actual damages (including all general, special, incidental, and consequential  
2 damages), statutory damages (including treble damages), punitive damages (as allowed by the  
3 law(s) of the states having a legally sufficient connection with defendants and their acts or  
4 omissions) and such other relief as provided by the statutes cited herein;

Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 27 of 5

5 C. Prejudgment and post-judgment interest on such monetary relief;

6 D. Equitable relief in the form of restitution and/or disgorgement of all unlawful or  
7 illegal profits received by Defendants as a result of the unfair, unlawful and/or deceptive conduct  
8 alleged herein;

9 E. Other appropriate injunctive relief;

10 F. The costs of bringing this suit, including reasonable attorneys' fees; and

11 G. Such other relief as this Court may deem just, equitable and proper.

12 DATED this 19<sup>th</sup> day of March, 2007.

13 MYERS & COMPANY, P.L.L.C.

14 Attorneys for Plaintiffs and Class members

15  
16  
17 By: /s/ Michael David Myers  
18 Michael David Myers  
19 WSBA No. 22486  
20 Myers & Company, P.L.L.C.  
21 1809 Seventh Avenue, Suite 700  
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23 Telephone: (206) 398-1188  
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25 E-mail: [mmyers@myers-company.com](mailto:mmyers@myers-company.com)



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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STACEY HELLER, TOINETTE ROBINSON,  
DAVID RAPP, and CECILY AND  
TERRENCE MITCHELL, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. **CV 07 - 0453** *CC*

CLASS ACTION COMPLAINT

Plaintiffs Stacey Heller, Toinette Robinson, David Rapp, and Cecily and Terrence Mitchell ("Plaintiffs"), by and through their undersigned attorneys, bring this civil action for damages on behalf of themselves and all others similarly situated against the above-named Defendant and complain and allege as follows:

I. NATURE OF ACTION

1. Plaintiffs bring this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science

CLASS ACTION COMPLAINT - 1  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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1 Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such  
2 as Wal-Mart, Kroger and Safeway.

3 3. Dog and cat food that the Defendant produced caused an unknown number of  
4 dogs and cats to become ill, and many of them to die.

5 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
6 food that have sickened and killed dogs and cats. All recalled food to date is of the "pats and  
7 gravy wet" style.

8 5. As a result of the Defendant's actions, Plaintiffs and other Class members have  
9 suffered economic damage.

## 10 II. PARTIES

11 6. Plaintiff Stacey Heller has at all material times been a resident of Pulaski,  
12 Virginia. Ms. Heller had a pet that became sick and died after eating Defendant's pet food.

13 7. Plaintiff Toinette Robinson has at all material times been a resident of Truckee,  
14 California. Ms. Robinson had a pet that became sick and died after eating Defendant's pet food.

15 8. Plaintiff David Rapp has at all material times been a resident of Hannover  
16 Township, Pennsylvania. Mr. Rapp had a pet that became sick and died after eating Defendant's  
17 pet food.

18 9. Plaintiffs Cecily and Terrence Mitchell have at all material times been a resident  
19 of Seattle, Washington. The Mitchells had a pet that became sick and died after eating  
20 Defendant's pet food.

21 10. Defendant Menu Foods is, upon information and belief, a corporation organized  
22 under the laws of Canada that transacts business in Washington State.

## 23 III. JURISDICTION AND VENUE

24 11. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
25 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
26

CLASS ACTION COMPLAINT - 2  
Case No.

001958-11 161395 V1



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000328

1 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
2 § 1367.

3 12. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
4 Defendant systematically and continuously sold its product within this district and Defendant  
5 transacts business within this district.

6 Case 3:07-CLASS ACTION FOR DAMAGES Document 6 Filed 04/23/2007 Page 31 of 5

7 13. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
8 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
9 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
10 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiffs  
11 reserve the right to modify this class definition before moving for class certification.

12 14. The Class is ascertainable and there is a well-defined community of interest  
13 among the members of the Class.

14 15. Membership in the Class is so numerous as to make it impractical to bring all  
15 Class members before the Court. The identity and exact number of Class members is unknown  
16 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
17 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

18 16. Plaintiffs' claims are typical of those of other Class members, all of whom have  
19 suffered harm due to Defendant's uniform course of conduct.

20 17. Plaintiffs are members of the Class.

21 18. There are numerous and substantial questions of law and fact common to all of  
22 the members of the Class that control this litigation and predominate over any questions affecting  
23 only individual members of the Class. The common issues include, but are not limited to, the  
24 following:

25 (a) Was the Defendant's dog and cat food materially defective, and unfit for  
26 use as dog or cat food?

CLASS ACTION COMPLAINT - 3  
Case No.

001958-11 161395 V1



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1 (b) Whether Defendant breached any contract, implied contract or warranties  
2 related to the sale of the dog and cat food?

3 (c) Did the Defendant's dog and cat food cause Plaintiffs' and other Class  
4 members' pets to become ill?

5 (d) Were Plaintiffs and other Class members damaged, and, if so, what is the  
6 proper measure thereof?

7 (e) The appropriate form of injunctive, declaratory and other relief.

8 19. The prosecution of separate actions by members of the Class would create a risk  
9 of establishing incompatible standards of conduct for the Defendant – for example, one court  
10 might decide that the Defendant is obligated under the law to pay damages to Class members,  
11 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
12 practical matter, be dispositive of the interests of the Class.

13 20. Plaintiffs will fairly and adequately protect the interests of the Class in that they  
14 have no interests that are antagonistic to other members of the Class and have retained counsel  
15 competent in the prosecution of class actions to represent themselves and the Class.

16 21. A class action is superior to other available methods for the fair and efficient  
17 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
18 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
19 few, if any, Class members could afford to seek legal redress individually for the wrongs  
20 Defendant has committed against them.

21 22. Without a class action, the Class will continue to suffer damage, Defendant's  
22 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
23 the fruits and proceeds of its unlawful misconduct.

24 23. This action will foster an orderly and expeditious administration of Class claims,  
25 economies of time, effort and expense, and uniformity of decision.

26  
CLASS ACTION COMPLAINT - 4  
Case No.

001958-11 161395 V1



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1 24. Inferences and presumptions of materiality and reliance are available to obtain  
2 class-wide determinations of those elements within the Class claims, as are accepted  
3 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
4 common liability, the Court can efficiently determine the claims of the individual Class  
5 members.

6 25. This action presents no difficulty that would impede the Court's management of it  
7 as a class action, and a class action is the best (if not the only) available means by which  
8 members of the Class can seek legal redress for the harm caused them by Defendant.

9 26. In the absence of a class action, Defendant would be unjustly enriched because it  
10 would be able to retain the benefits and fruits of its wrongful conduct.

11 27. The Claims in this case are also properly certifiable under applicable law.

#### 12 V. STATEMENT OF FACTS

13 28. Plaintiff Stacey Heller was the owner of a female cat named Callie.

14 29. Ms. Heller purchased Special Kitty wet cat food from Wal-Mart for Callie to  
15 consume.

16 30. Callie ate the Special Kitty brand wet-style cat food for several years before her  
17 death.

18 31. Callie became extremely ill during the week of March 12, 2007. On March 14,  
19 2007, Ms. Heller took Callie to a veterinarian, who informed her that Callie had suffered kidney  
20 failure, also known as acute renal failure. On March 19, 2007, Callie had to be euthanized.

21 32. Plaintiff Toinette Robinson was the owner of a female dog named Lhotse.

22 33. Ms. Robinson purchased Priority U.S. brand wet dog food from Safeway for  
23 Lhotse to consume.

24 34. Lhotse ate the Priority U.S. brand wet dog food before her death.

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CLASS ACTION COMPLAINT - 5  
Case No.

001958-11 161395 V1



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000331

1 35. Lhotse became extremely ill during the end of January 2007. On February 1,  
2 2007, Ms. Robinson took Lhotse to a veterinarian, who informed her that Lhotse had suffered  
3 kidney failure. On February 15, 2007, Lhotse had to be euthanized.

4 36. Plaintiff David Rapp was the owner of a male dog named Buck.

5 37. Mr. Rapp purchased Weiss Total Pet wet-style dog food for Buck to consume.

6 38. Buck became extremely ill in early February 2007. On February 10, 2007, Mr.  
7 Rapp took Buck to a veterinarian, who informed him that Buck had suffered kidney failure.  
8 Buck died soon afterwards.

9 39. Plaintiffs Cecily and Terrence Mitchell were the owners of a male cat named  
10 Yoda.

11 40. The Mitchells purchased Iams wet cat food from QFC for Yoda to consume.

12 41. Yoda became extremely ill and died after eating Iams wet pouches.

13 42. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
14 food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become  
15 ill. One common symptom in the sick animals was kidney failure.

16 43. The Special Kitty wet cat food from Wal-Mart that Callie consumed for several  
17 years before her death is one of the brands that Menu Foods recalled.

18 44. The Priority U.S. brand wet dog food from Safeway that Lhotse consumed before  
19 her death is also one of the brands that Menu Foods recalled.

20 45. The Weiss Total Pet wet-style dog food that Buck consumed before his death is  
21 another of the brands that Menu Foods recalled.

22 46. The Iams wet cat food from QFC that Yoda consumed years before his death is  
23 also one of the brands that Menu Foods recalled.

24 47. As a result of Defendant's acts and omissions Plaintiffs and other Class members  
25 have suffered economic damage.

26  
CLASS ACTION COMPLAINT - 6  
Case No.

001958-11 161395 V1



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000332

1 **VI. BREACH OF CONTRACT**

2 48. Plaintiffs reallege all prior allegations as though fully stated herein.

3 49. Plaintiffs and Class members purchased pet food produced by the Defendant  
4 based on the understanding that the food was safe for their pets to consume.

5 50. The pet food produced by the Defendant was not safe for pets to consume and  
6 caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of  
7 contract.

8 51. As a result of the breach Plaintiffs and Class members suffered damages that may  
9 fairly and reasonably be considered as arising naturally from the breach or may reasonably be  
10 supposed to have been in the contemplation of the parties, at the time they made the contract, as  
11 the probable result of the breach of it.

12 **VII. UNJUST ENRICHMENT**

13 52. Plaintiffs reallege all prior allegations as though fully stated herein.

14 53. Defendant was and continues to be unjustly enriched at the expense of Plaintiffs  
15 and other Class members.

16 54. Defendant should be required to disgorge this unjust enrichment.

17 **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

18 55. Plaintiffs reallege all prior allegations as though fully stated herein.

19 56. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair  
20 business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et*  
21 *seq.*, and similar statutory enactments of other states (including consumer protection and  
22 consumer sales practice acts).

23 57. Defendant's sale of hazardous pet food has the capacity to deceive a substantial  
24 portion of the public and to affect the public interest.

25 58. As a result of Defendant's unfair or deceptive acts or practices, Plaintiffs and  
26 other Class members suffered injuries in an amount to be proven at trial.

CLASS ACTION COMPLAINT - 7  
Case No.

001958-11 161395 V1



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000333

1 IX. BREACH OF WARRANTIES

2 59. Plaintiffs reallege all prior allegations as though fully stated herein.

3 60. Cat food and dog food produced by Menu Foods are "goods" within the meaning  
4 of Uniform Commercial Code Article 2.

5 61. Defendant's conduct as described herein constitutes breach of an implied or  
6 express warranty of affirmation.

7 62. Defendant's conduct as described herein constitutes breach of an implied  
8 warranty of merchantability.

9 63. Defendant's conduct as described herein constitutes breach of an implied  
10 warranty of fitness for a particular purpose.

11 64. As a proximate result of the aforementioned wrongful conduct and breach,  
12 Plaintiffs and other Class members have suffered damages in an amount to be proven at trial.  
13 Defendant had actual or constructive notice of such damages.

14 X. PRAYER FOR RELIEF

15 WHEREFORE, Plaintiffs and Class members request that the Court enter an order of  
16 judgment against Defendant including the following:

17 Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules  
18 of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class  
19 Representative and their counsel of record as Class Counsel;

20 Actual damages (including all general, special, incidental, and consequential damages),  
21 statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the  
22 states having a legally sufficient connection with Defendant and its acts or omissions) and such  
23 other relief as provided by the statutes cited herein;

24 Prejudgment and post-judgment interest on such monetary relief;

25  
26  
CLASS ACTION COMPLAINT - 8  
Case No.

001958-11 161395 V1



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1 Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal  
2 profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged  
3 herein;

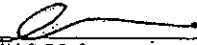
4 Other appropriate injunctive relief;

5 The costs of bringing this suit, including reasonable attorneys' fees; and

6 Such other relief as this Court may deem just, equitable and proper.

7 DATED this 27th day of March, 2007.

8 Hagens Berman Sobol Shapiro LLP

9  
10 By: /s/ Steve W. Berman   
11 Steve W. Berman, WSBA #12536  
12 1301 Fifth Avenue, Suite 2900  
13 Seattle, Washington 98101  
14 Telephone: (206) 623-7292  
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25 CLASS ACTION COMPLAINT - 9  
26 Case No.

001958-11 161395 V1



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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUZANNE E. JOHNSON and CRAIG R.  
KLEMANN, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. **CV 07 - 0455 JCC**

CLASS ACTION COMPLAINT

Plaintiffs Suzanne E. Johnson and Craig R. Klemann ("Plaintiffs"), by and through their undersigned attorneys, bring this civil action for damages on behalf of themselves and all others similarly situated against the above-named Defendant and complain and allege as follows:

I. NATURE OF ACTION

1. Plaintiffs bring this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science

CLASS ACTION COMPLAINT - 1  
Case No.



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001958-11 161455 V1

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1 Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such  
2 as Wal-Mart, Kroger and Safeway.

3 3. Dog and cat food that the Defendant produced caused an unknown number of  
4 dogs and cats to become ill, and many of them to die.

5 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
6 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
7 gravy wet" style.

8 5. As a result of the Defendant's actions, Plaintiffs and other Class members have  
9 suffered economic damage.

## 10 II. PARTIES

11 6. Plaintiffs Suzanne E. Johnson and Craig R. Klemann have at all material times  
12 been residents of Meridian, Idaho. Ms. Johnson and Mr. Klemann have a pet that became sick  
13 after eating Defendant's pet food.

14 7. Defendant Menu Foods is, upon information and belief, a corporation organized  
15 under the laws of Canada that transacts business in Washington State.

## 16 III. JURISDICTION AND VENUE

17 8. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
18 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
19 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
20 § 1367.

21 9. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
22 Defendant systematically and continuously sold its product within this district and Defendant  
23 transacts business within this district.

## 24 IV. CLASS ACTION ALLEGATION

25 10. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
26 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the

CLASS ACTION COMPLAINT - 2  
Case No.



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1 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
2 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiffs  
3 reserve the right to modify this class definition before moving for class certification.

4 11. The Class is ascertainable and there is a well-defined community of interest  
5 among the members of the Class.

6 12. Membership in the Class is so numerous as to make it impractical to bring all  
7 Class members before the Court. The identity and exact number of Class members is unknown  
8 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
9 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

10 13. Plaintiffs' claims are typical of those of other Class members, all of whom have  
11 suffered harm due to Defendant's uniform course of conduct.

12 14. Plaintiffs are members of the Class.

13 15. There are numerous and substantial questions of law and fact common to all of  
14 the members of the Class that control this litigation and predominate over any questions affecting  
15 only individual members of the Class. The common issues include, but are not limited to, the  
16 following:

17 (a) Was the Defendant's dog and cat food materially defective, and unfit for  
18 use as dog or cat food?

19 (b) Whether Defendant breached any contract, implied contract or warranties  
20 related to the sale of the dog and cat food?

21 (c) Did the Defendant's dog and cat food cause Plaintiffs' and other Class  
22 members' pets to become ill?

23 (d) Were Plaintiffs and other Class members damaged, and, if so, what is the  
24 proper measure thereof?

25 (e) The appropriate form of injunctive, declaratory and other relief.  
26

CLASS ACTION COMPLAINT - 3  
Case No.

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1           16.    The prosecution of separate actions by members of the Class would create a risk  
2 of establishing incompatible standards of conduct for the Defendant – for example, one court  
3 might decide that the Defendant is obligated under the law to pay damages to Class members,  
4 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
5 practical matter, be dispositive of the interests of the Class.

6           17.    Plaintiffs will fairly and adequately protect the interests of the Class in that they  
7 have no interests that are antagonistic to other members of the Class and have retained counsel  
8 competent in the prosecution of class actions to represent themselves and the Class.

9           18.    A class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
11 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
12 few, if any, Class members could afford to seek legal redress individually for the wrongs  
13 Defendant has committed against them.

14           19.    Without a class action, the Class will continue to suffer damage, Defendant's  
15 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
16 the fruits and proceeds of its unlawful misconduct.

17           20.    This action will foster an orderly and expeditious administration of Class claims,  
18 economies of time, effort and expense, and uniformity of decision.

19           21.    Inferences and presumptions of materiality and reliance are available to obtain  
20 class-wide determinations of those elements within the Class claims, as are accepted  
21 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
22 common liability, the Court can efficiently determine the claims of the individual Class  
23 members.

24           22.    This action presents no difficulty that would impede the Court's management of it  
25 as a class action, and a class action is the best (if not the only) available means by which  
26 members of the Class can seek legal redress for the harm caused them by Defendant.

CLASS ACTION COMPLAINT - 4  
Case No.

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1 23. In the absence of a class action, Defendant would be unjustly enriched because it  
2 would be able to retain the benefits and fruits of its wrongful conduct.

3 24. The Claims in this case are also properly certifiable under applicable law.

4 **V. STATEMENT OF FACTS**

5 25. Plaintiffs Suzanne E. Johnson and Craig R. Klemann are owners of a male cat  
6 named Ollie. Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 43 of 5

7 26. Ms. Johnson and Mr. Klemann purchased Special Kitty wet cat food from Wal-  
8 Mart and Pet Pride wet cat food from Fred Meyer for Ollie to consume.

9 27. Ollie ate the Special Kitty and Pet Pride brand wet-style cat food for several years  
10 before becoming ill.

11 28. Ollie became extremely ill after consuming Defendant's cat food and now suffers  
12 from kidney problems.

13 29. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
14 food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become  
15 ill. One common symptom in the sick animals was kidney failure.

16 30. The Special Kitty wet cat food from Wal-Mart and the Pet Pride wet cat food  
17 from Fred Meyer that Ollie consumed for several years before becoming ill are brands that Menu  
18 Foods recalled.

19 31. As a result of Defendant's acts and omissions Plaintiffs and other Class members  
20 have suffered economic damage.

21 **VI. BREACH OF CONTRACT**

22 32. Plaintiffs reallege all prior allegations as though fully stated herein.

23 33. Plaintiffs and Class members purchased pet food produced by the Defendant  
24 based on the understanding that the food was safe for their pets to consume.

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CLASS ACTION COMPLAINT - 5  
Case No.

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1 34. The pet food produced by the Defendant was not safe for pets to consume and  
2 caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of  
3 contract.

4 35. As a result of the breach Plaintiffs and Class members suffered damages that may  
5 fairly and reasonably be considered as arising naturally from the breach or may reasonably be  
6 supposed to have been in the contemplation of the parties, at the time they made the contract, as  
7 the probable result of the breach of it.

8 **VII. UNJUST ENRICHMENT**

9 36. Plaintiffs reallege all prior allegations as though fully stated herein.

10 37. Defendant was and continues to be unjustly enriched at the expense of Plaintiffs  
11 and other Class members.

12 38. Defendant should be required to disgorge this unjust enrichment.

13 **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

14 39. Plaintiffs reallege all prior allegations as though fully stated herein.

15 40. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair  
16 business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et*  
17 *seq.*, and similar statutory enactments of other states (including consumer protection and  
18 consumer sales practice acts).

19 41. Defendant's sale of hazardous pet food has the capacity to deceive a substantial  
20 portion of the public and to affect the public interest.

21 42. As a result of Defendant's unfair or deceptive acts or practices, Plaintiffs and  
22 other Class members suffered injuries in an amount to be proven at trial.

23 **IX. BREACH OF WARRANTIES**

24 43. Plaintiffs reallege all prior allegations as though fully stated herein.

25 44. Cat food and dog food produced by Menu Foods are "goods" within the meaning  
26 of Uniform Commercial Code Article 2.

CLASS ACTION COMPLAINT - 6  
Case No.

001958-11 161455 V1



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1 45. Defendant's conduct as described herein constitutes breach of an implied or  
2 express warranty of affirmation.

3 46. Defendant's conduct as described herein constitutes breach of an implied  
4 warranty of merchantability.

5 47. Defendant's conduct as described herein constitutes breach of an implied  
6 warranty of fitness for a particular purpose.

7 48. As a proximate result of the aforementioned wrongful conduct and breach,  
8 Plaintiffs and other Class members have suffered damages in an amount to be proven at trial.  
9 Defendant had actual or constructive notice of such damages.

10 X. PRAYER FOR RELIEF

11 WHEREFORE, Plaintiffs and Class members request that the Court enter an order of  
12 judgment against Defendant including the following:

13 Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules  
14 of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class  
15 Representative and their counsel of record as Class Counsel;

16 Actual damages (including all general, special, incidental, and consequential damages),  
17 statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the  
18 states having a legally sufficient connection with Defendant and its acts or omissions) and such  
19 other relief as provided by the statutes cited herein;

20 Prejudgment and post-judgment interest on such monetary relief;

21 Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal  
22 profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged  
23 herein;

24 Other appropriate injunctive relief;

25 The costs of bringing this suit, including reasonable attorneys' fees; and

26 Such other relief as this Court may deem just, equitable and proper.

CLASS ACTION COMPLAINT - 7  
Case No.

001958-11 161455 V1



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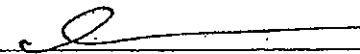
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DATED this 27th day of March, 2007.

HAGENS BERMAN SOBOL SHAPIRO LLP

By:   
Steve W. Berman, WSBA #12536  
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*Attorneys for Plaintiffs*

CLASS ACTION COMPLAINT - 8  
Case No.

001958-11 161455 V1



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AT SEATTLE  
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WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 48 of 5

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AUDREY KORNELIUS and BARBARA SMITH, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No.

C07-0454 msp

CLASS ACTION COMPLAINT

Plaintiffs Audrey Kornelius and Barbara Smith ("Plaintiffs"), by and through their undersigned attorneys, bring this civil action for damages on behalf of themselves and all others similarly situated against the above-named Defendant and complain and allege as follows:

I. NATURE OF ACTION

1. Plaintiffs bring this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science

CLASS ACTION COMPLAINT - 1  
Case No.



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001958-11 161466 V1

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1 Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such  
2 as Wal-Mart, Kroger and Safeway.

3 3. Dog and cat food that the Defendant produced caused an unknown number of  
4 dogs and cats to become ill, and many of them to die.

5 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
6 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
7 gravy wet" style.

8 5. As a result of the Defendant's actions, Plaintiffs and other Class members have  
9 suffered economic damage.

## 10 II. PARTIES

11 6. Plaintiff Audrey Kornelius has at all material times been a resident of Ferndale,  
12 Washington. Ms. Kornelius has a pet that became sick after eating Defendant's pet food.

13 7. Plaintiff Barbara Smith has at all material times been a resident of Bremerton,  
14 Washington. Ms. Smith has a pet that became sick after eating Defendant's pet food.

15 8. Defendant Menu Foods is, upon information and belief, a corporation organized  
16 under the laws of Canada that transacts business in Washington State.

## 17 III. JURISDICTION AND VENUE

18 9. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
19 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
20 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
21 § 1367.

22 10. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
23 Defendant systematically and continuously sold its product within this district and Defendant  
24 transacts business within this district.

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CLASS ACTION COMPLAINT - 2  
Case No.

001958-11 161466 V1



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1 IV. CLASS ACTION ALLEGATION

2 11. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
3 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
4 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
5 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiffs  
6 reserve the right to modify this class definition before moving for class certification.

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7 12. The Class is ascertainable and there is a well-defined community of interest  
8 among the members of the Class.

9 13. Membership in the Class is so numerous as to make it impractical to bring all  
10 Class members before the Court. The identity and exact number of Class members is unknown  
11 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
12 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

13 14. Plaintiffs' claims are typical of those of other Class members, all of whom have  
14 suffered harm due to Defendant's uniform course of conduct.

15 15. Plaintiffs are members of the Class.

16 16. There are numerous and substantial questions of law and fact common to all of  
17 the members of the Class that control this litigation and predominate over any questions affecting  
18 only individual members of the Class. The common issues include, but are not limited to, the  
19 following:

20 (a) Was the Defendant's dog and cat food materially defective, and unfit for  
21 use as dog or cat food?

22 (b) Whether Defendant breached any contract, implied contract or warranties  
23 related to the sale of the dog and cat food?

24 (c) Did the Defendant's dog and cat food cause Plaintiffs' and other Class  
25 members' pets to become ill?  
26

CLASS ACTION COMPLAINT - 3  
Case No.



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1 (d) Were Plaintiffs and other Class members damaged, and, if so, what is the  
2 proper measure thereof?

3 (e) The appropriate form of injunctive, declaratory and other relief.

4 17. The prosecution of separate actions by members of the Class would create a risk  
5 of establishing incompatible standards of conduct for the Defendant – for example, one court  
6 might decide that the Defendant is obligated under the law to pay damages to Class members  
7 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
8 practical matter, be dispositive of the interests of the Class.

9 18. Plaintiffs will fairly and adequately protect the interests of the Class in that they  
10 have no interests that are antagonistic to other members of the Class and have retained counsel  
11 competent in the prosecution of class actions to represent themselves and the Class.

12 19. A class action is superior to other available methods for the fair and efficient  
13 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
14 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
15 few, if any, Class members could afford to seek legal redress individually for the wrongs  
16 Defendant has committed against them.

17 20. Without a class action, the Class will continue to suffer damage, Defendant's  
18 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
19 the fruits and proceeds of its unlawful misconduct.

20 21. This action will foster an orderly and expeditious administration of Class claims,  
21 economies of time, effort and expense, and uniformity of decision.

22 22. Inferences and presumptions of materiality and reliance are available to obtain  
23 class-wide determinations of those elements within the Class claims, as are accepted  
24 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
25 common liability, the Court can efficiently determine the claims of the individual Class  
26 members.

CLASS ACTION COMPLAINT - 4  
Case No.

001958-11 161466 V1



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1 23. This action presents no difficulty that would impede the Court's management of it  
2 as a class action, and a class action is the best (if not the only) available means by which  
3 members of the Class can seek legal redress for the harm caused them by Defendant.

4 24. In the absence of a class action, Defendant would be unjustly enriched because it  
5 would be able to retain the benefits and fruits of its wrongful conduct.

6 25. The Claims in this case are also properly justifiable under applicable law.

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7 **V. STATEMENT OF FACTS**

8 26. Plaintiff Audrey Kornelius is the owner of a puppy named Shiwa.

9 27. Ms. Kornelius purchased Nutro Natural Choice Puppy for Shiwa to consume.

10 28. Shewa became extremely ill after consuming Defendant's dog food.

11 29. Plaintiff Barbara Smith is the owner of a cat named Neko.

12 30. Ms. Smith purchased Priority U.S. brand cat food from Safeway for Neko to  
13 consume.

14 31. Neko became extremely ill after consuming Defendant's cat food. Ms. Smith's  
15 veterinarian has informed her that Neko will need monitoring for life.

16 32. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
17 food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become  
18 ill. One common symptom in the sick animals was kidney failure.

19 33. The Nutro Natural Choice Puppy food that Shiwa consumed is one of the brands  
20 that Menu Foods recalled.

21 34. The Priority U.S. brand cat food from Safeway that Neko consumed is also one of  
22 the brands that Menu Foods recalled.

23 35. As a result of Defendant's acts and omissions Plaintiffs and other Class members  
24 have suffered economic damage.

25 **VI. BREACH OF CONTRACT**

26 36. Plaintiffs reallege all prior allegations as though fully stated herein.

CLASS ACTION COMPLAINT - 5  
Case No.



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