

EXHIBIT B-1

District	Judge	Litigation	Actions Pending	Total Number of Actions
MN	D.J. Michael J. Davis	MDL-1431 In re Baycol Products Liability Litigation	1,392	9,044
	D.J. Donovan W. Frank	MDL-1708 In re Guidant Corp. Implantable Defibrillators Products Liability Litigation	1,200	1,212
	Sr.J. Paul A. Magnuson	MDL-1328 In re Monosodium Glutamate Antitrust Litigation	1	14
	Sr.J. Paul A. Magnuson	MDL-1724 In re Viagra Products Liability Litigation	65	70
	C.J. James M. Rosenbaum	MDL-1726 In re Medtronic, Inc., Implantable Defibrillators Products Liability Litigation	966	966
	D.J. John R. Tunheim	MDL-1396 In re St. Jude Medical, Inc., Silzone Heart Valves Products Liability Litigation	30	57
MOE	D.J. Jean C. Hamilton	MDL-1702 In re Air Crash Near Kirkville, Missouri, on October 19, 2004	6	11
	Sr.J. Stephen N. Limbaugh	MDL-1672 In re Express Scripts, Inc., Pharmacy Benefits Management Litigation	9	12
	D.J. Catherine D. Perry	MDL-1811 In re LLRice 601 Contamination Litigation	59	59
	D.J. Rodney W. Sippel	MDL-1736 In re Celera and Lexapro Products Liability Litigation	32	32
MOW	D.J. Richard E. Dorr	MDL-1786 In re H&R Block, Inc., Express IRA Marketing Litigation	21	21
NCE	Sr.J. W. Earl Britt	MDL-1132 In re Exterior Insulation.Finish System (EIFS) Products Liability Litigation	1	109
NCM	C.J. James A. Beatty, Jr.	MDL-1622 In re Cotton Yarn Antitrust Litigation	9	9
NCW	C.J. Richard L. Voorhees	MDL-1516 In re Polyester Staple Antitrust Litigation	17	36
NH	D.J. Paul J. Barbadoro	MDL-1335 In re Tyco International, Ltd., Securities, Derivative and "ERISA" Litigation	13	101
NJ	Sr.J. Harold A. Ackerman	MDL-1687 In re Ford Motor Co. E-350 Van Products Liability Litigation (No. 1)	5	5
	C.J. Garrett E. Brown, Jr.	MDL-1471 In re Compensation of Managerial, Professional and Technical Employees Antitrust Litigation	4	4
	C.J. Garrett E. Brown, Jr.	MDL-1663 In re Insurance Brokerage Antitrust Litigation	41	42
	D.J. Stanley R. Chesler	MDL-1658 In re Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation	2	35
	D.J. Stanley R. Chesler	MDL-1777 In re SFBC International, Inc., Securities & Derivative Litigation	1	14
	Sr.J. Dickinson R. Debevoise	MDL-1337 In re Holocaust Era German Industry, Bank & Insurance Litigation	2	59
	D.J. Joseph A. Greenaway, Jr.	MDL-1419 In re K-Dur Antitrust Litigation	1	44
	Sr.J. John C. Lifland	MDL-1384 In re Gapabentin Patent Litigation	15	17
	Sr.J. John C. Lifland	MDL-1479 In re Neuronin Antitrust Litigation	22	22
	D.J. Jose L. Linares	MDL-1730 In re Hypodermic Products Antitrust Litigation	7	8
	D.J. William J. Martini	MDL-1763 In re Human Tissue Products Liability Litigation	136	136
	D.J. Jerome B. Simandle	MDL-1514 In re Electrical Carbon Products Antitrust Litigation	1	25
	Sr.J. William H. Walls	MDL-1292 In re Candant Corporation Securities Litigation	3	18
	D.J. Susan D. Wigenton	MDL-1550 In re IDT Corp. Calling Card Terms Litigation	4	5
	D.J. Freda L. Wolfson	MDL-1799 In re Vonage Initial Public Offering (IPO) Securities Litigation	15	15

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Disposer	Judge	LITIGATION	Actions Pending	Total Number of Actions
NV	D.J. Kent J. Dawson Sr.J. Lloyd D. George C.J. Philip M. Pro C.J. Philip M. Pro	MDL-1619 In re Musha Cay Litigation	3	3
		MDL-1357 In re NOS Communications, Inc., Billing Practices Litigation	7	8
		MDL-1566 In re Western States Wholesale Natural Gas Antitrust Litigation	3	30
		MDL-1735 In re Wal-Mart Wage and Hour Employment Practices Litigation	23	25
NYE	D.J. Carol Bagley Amon D.J. Raymond J. Dearie D.J. John Gleeson D.J. John Gleeson Sr.J. Thomas C. Platt, Jr. Sr.J. Charles P. Sifton Sr.J. David G. Trager Sr.J. Jack B. Weinstein Sr.J. Jack B. Weinstein	MDL-1775 In re Air Cargo Shipping Services Antitrust Litigation	82	82
		MDL-1613 In re Nigeria Charter Flights Contract Litigation	13	14
		MDL-1575 In re Visa/MasterCard Antitrust Litigation	6	8
		MDL-1720 In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation	51	51
		MDL-799 In re Air Disaster at Lockerbie, Scotland, on December 21, 1988	37	297
		MDL-1689 In re Air Crash Near Woodbury, Connecticut, on December 20, 2002	8	8
		MDL-1738 In re Vitamin C Antitrust Litigation	10	10
		MDL-381 In re "Agent Orange" Products Liability Litigation	4	627
		MDL-1596 In re Zyprexa Products Liability Litigation	1,720	1,722

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Plaintiff	Defendant	Case Name	Case Number	Total Number of Actions
NYS	Sr.J. Harold Baer, Jr.	MDL-1661 In re Rivastigmine Patent Litigation	4	5
	D.J. Deborah A. Batts	MDL-1714 In re Rhodia S.A. Securities Litigation	4	4
	D.J. Richard A. Berman	MDL-1628 In re Pineapple Antitrust Litigation	6	10
	D.J. Charles L. Brieant	MDL-1368 In re High Pressure Laminate Antitrust Litigation	12	37
	D.J. Charles L. Brieant	MDL-1508 In re Medco Health Solutions, Inc., Pharmacy Benefits Management Litigation	6	18
	D.J. Richard C. Casey	MDL-1570 In re Terrorist Attacks on September 11, 2001	22	23
	D.J. Denise Cote	MDL-1487 In re WorldCom, Inc., Securities & "ERISA" Litigation	28	177
	D.J. Paul A. Crotty	MDL-1794 In re Novartis Wage and Hour Litigation	2	2
	D.J. George B. Daniels	MDL-1379 In re Literary Works in Electronic Databases Copyright Litigation	3	5
	Sr.J. Kevin Thomas Duffy	MDL-1443 In re America Online, Inc., Community Leaders Litigation	3	3
	Sr.J. Thomas P. Griesa	MDL-1336 In re Abercrombie & Fitch Co. Securities Litigation	20	20
	Sr.J. Thomas P. Griesa	MDL-1644 In re Elevator and Escalator Antitrust Litigation	4	25
	D.J. Alvin K. Hellerstein	MDL-1230 In re Philip Services Corporation Securities Litigation	1	24
	D.J. Richard J. Holwell	MDL-1771 In re "A Million Little Pieces" Litigation	11	11
	D.J. Barbara S. Jones	MDL-1291 In re Omeprazole Patent Litigation	6	22
	D.J. Lewis A. Kaplan	MDL-1348 In re Rezulin Products Liability Litigation	991	1,865
	D.J. Lewis A. Kaplan	MDL-1653 In re Parmalat Securities Litigation	16	16
	Sr.J. John F. Keenan	MDL-1484 In re Merrill Lynch & Co., Inc., Research Reports Securities Litigation	22	176
	Sr.J. John F. Keenan	MDL-1789 In re Fosamax Products Liability Litigation	108	108
	Sr.J. Shirley Wohl Kram	MDL-1495 In re Enterprise Mortgage Acceptance Co., LLC, Securities Litigation	2	13
	Sr.J. Shirley Wohl Kram	MDL-1500 In re AOL Time Warner Inc. Securities & "ERISA" Litigation	57	72
	Sr.J. Shirley Wohl Kram	MDL-1739 In re Grand Theft Auto Video Game Consumer Litigation (No. II)	7	7
	Sr.J. Shirley Wohl Kram	MDL-1744 In re Marsh & McLennan Companies, Inc., Securities Litigation	10	10
	D.J. Gerard E. Lynch	MDL-1472 In re Global Crossing Ltd. Securities and "ERISA" Litigation	5	89
	D.J. Gerard E. Lynch	MDL-1630 In re Global Crossing Limited Securities Litigation	1	9
	Sr.J. Lawrence M. McKenna	MDL-1529 In re Adelphia Communications Corp. Securities & Derivative Litigation (No. II)	71	71
	D.J. Colleen McMahon	MDL-1695 In re Veeco Instruments Inc. Securities Litigation	13	13
	D.J. Colleen McMahon	MDL-1755 In re Bayou Hedge Funds Investment Litigation	7	7
	Sr.J. Richard Owen	MDL-1688 In re Pfizer Inc. Securities, Derivative & "ERISA" Litigation	30	30
	Sr.J. Richard Owen	MDL-1706 In re Doral Financial Corp. Securities Litigation	24	24
	D.J. William H. Pauley III	MDL-1409 In re Currency Conversion Fee Antitrust Litigation	5	34
	D.J. Loreta A. Preska	MDL-1659 In re Nortel Networks Corp. Securities Litigation	28	29
	D.J. Loreta A. Preska	MDL-1780 In re Digital Music Antitrust Litigation	30	30
	D.J. Jed S. Rakoff	MDL-1598 In re Ephedra Products Liability Litigation	625	840

District	Judge	LITIGATION	Actions Pending	Total Number of Actions
NYS (cont.)	D.J. Ted S. Rakoff D.J. Shira Ann Scheindlin D.J. Shira Ann Scheindlin D.J. Shira Ann Scheindlin Sr.J. John E. Sprizzo Sr.J. John E. Sprizzo Sr.J. John E. Sprizzo D.J. Sidney H. Stein D.J. Sidney H. Stein Sr.J. Robert W. Sweet and Sr.J. John F. Keenan*	MDL-1740 In re Canon U.S.A., Inc., Digital Cameras Products Liability Litigation MDL-1358 In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation MDL-1428 In re Ski Train Fire in Kaprun, Austria, on November 11, 2000 MDL-1554 In re Initial Public Offering (IPO) Securities Litigation MDL-1153 In re Bennett Funding Group, Inc., Securities Litigation (No. II) MDL-1499 In re South African Apartheid Litigation MDL-1584 In re Federal Home Loan Mortgage Corp. Securities & Derivative Litigation (No. II) MDL-1603 In re OxyContin Antitrust Litigation MDL-1696 In re Sierra Wireless, Inc., Securities Litigation MDL-1448 In re Air Crash at Belle Harbor, New York, on November 12, 2001 * Judge Keenan is assigned to actions in which Judge Sweet is recused.	3 147 14 393 29 13 6 58 9 344	4 159 27 511 66 14 8 58 9 365
OHN	D.J. Peter C. Economus D.J. James S. Gwin Sr.J. David A. Katz D.J. Donald C. Nugent D.J. Kathleen McDonald O'Malley D.J. Kathleen McDonald O'Malley D.J. Kathleen McDonald O'Malley	MDL-1561 In re Travel Agent Commission Antitrust Litigation MDL-1481 In re Meridia Products Liability Litigation MDL-1742 In re Ortho Evra Products Liability Litigation MDL-1488 In re Ford Motor Co. Panther Platform/Fuel Tank Design Products Liability Litigation MDL-1401 In re Sulzer Orthopedics Inc. Hip Prosthesis and Knee Prosthesis Products Liability Litigation MDL-1490 In re Commercial Money Center, Inc., Equipment Lease Litigation MDL-1535 In re Welding Fume Products Liability Litigation	2 2 507 4 4 34 4,186	3 125 515 31 434 38 11,436
OHS	D.J. Gregory L. Frost Sr.J. James L. Graham D.J. Edmund A. Sargus, Jr.	MDL-1638 In re Foundry Resins Antitrust Litigation MDL-1565 In re National Century Financial Enterprises, Inc., Investment Litigation MDL-1315 In re SmartTalk TeleServices, Inc., Securities Litigation	14 21 21	19 22 21
OKW	D.J. Stephen P. Friot	MDL-1564 In re Farmers Insurance Co., Inc., FCRA Litigation	9	12
OR	Sr.J. Robert E. Jones	MDL-1439 In re Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation	3	12

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DRUDGE	DEFENDERS	LITIGATION	Settlement Practices	Final Number of Actions
PAE	C.J. Harvey Bartle III D.J. Ronald L. Buckwalter D.J. Ronald L. Buckwalter D.J. Stewart Dalzell D.J. Legrome D. Davis Sr.J. Jan E. DuBois Sr.J. John P. Fullam D.J. James T. Giles D.J. Bruce W. Kauffman D.J. Mary A. McLaughlin Sr.J. Louis H. Pollak D.J. Timothy J. Savage D.J. Timothy J. Savage D.J. Richard Barclay Surrick	MDL-1203 In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation MDL-1014 In re Orthopedic Bone Screw Products Liability Litigation MDL-1741 In re Isolagen, Inc., Securities & Derivative Litigation MDL-1682 In re Hydrogen Peroxide Antitrust Litigation MDL-1684 In re Plastics Additives Antitrust Litigation (No. II) MDL-1261 In re Linerboard Antitrust Litigation MDL-1782 In re Pharmacy Benefit Managers Antitrust Litigation MDL-875 In re Asbestos Products Liability Litigation (No. VI) MDL-969 In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation MDL-1712 In re American Investors Life Insurance Co. Annuity Marketing and Sales Practices Litigation MDL-1817 In re CertainFeed Corp. Roofing Shingle Products Liability Litigation MDL-1675 In re ACE Limited Securities Litigation MDL-1768 In re Methyl Methacrylate (MMA) Antitrust Litigation MDL-1426 In re Automotive Refinishing Paint Antitrust Litigation	2,626 1 5 1 9 10 6 35,378 8 15 9 4 18 62	20,006 3,085 5 33 9 20 6 111,259 14 15 9 4 18 63
PAM	D.J. Thomas I. Vanaskie	MDL-1556 In re Pressure Sensitive Labelstock Antitrust Litigation	11	11
PAW	C.J. Donetta W. Ambrose D.J. Gary L. Lancaster	MDL-1091 In re Metropolitan Life Insurance Co. Sales Practices Litigation MDL-1674 In re Community Bank of Northern Virginia Mortgage Lending Practices Litigation	6 6	148 6
SC	Sr.J. Solomon Blatt, Jr. D.J. Cameron McGowan Currie D.J. David C. Norton Sr.J. Matthew J. Perry, Jr.	MDL-1595 In re Electrical Receptacle Products Liability Litigation MDL-1429 In re American General Life & Accident Insurance Co. Industrial Life Insurance Litigation MDL-1785 In re Bausch & Lomb Inc. Contact Lens Solution Products Liability Litigation MDL-865 In re Showa Denko K.K. L-Tryptophan Products Liability Litigation (No. II)	1 69 113 1	9 135 114 973
TNE	C.J. Curtis L. Collier	MDL-1552 In re UnumProvident Corp. Securities, Derivative & "ERISA" Litigation	23	28
TNM	C.J. Todd J. Campbell Sr.J. John T. Nixon	MDL-1760 In re Aredia and Zometa Products Liability Litigation MDL-1537 In re Nortel Networks Corp. "ERISA" Litigation	209 6	210 6
TNW	D.J. J. Daniel Breen	MDL-1551 In re Reciprocal of America (ROA) Sales Practices Litigation	13	13

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Division	Judge	Litigation	Actions Pending	Total Number of Actions
TXE	D.J. Leonard E. Davis	MDL-1512 In re Electronic Data Systems Corp. Securities & "ERISA" Litigation	4	29
	D.J. T. John Ward	MDL-1530 In re Fleming Companies Inc. Securities & Derivative Litigation	10	22
TXN	C.J. A. Joe Fish	MDL-1578 In re UICI "Association-Group" Insurance Litigation	15	28
	D.J. Sidney A. Fitzwater	MDL-1214 In re Great Southern Life Insurance Company Sales Practices Litigation	1	25
TXS	D.J. Vanessa D. Gilmore	MDL-1646 In re Testmasters Trademark Litigation	1	6
	D.J. Melinda Harmon	MDL-1422 In re Waste Management, Inc., Securities Litigation	1	7
	D.J. Melinda Harmon	MDL-1446 In re Enron Corp. Securities, Derivative & "ERISA" Litigation	129	196
	D.J. Lynn N. Hughes	MDL-1609 In re Service Corporation International Securities Litigation	1	4
	D.J. Janis Graham Jack	MDL-1810 In re MERSCORP Inc., et al., Real Estate Settlement Procedures Act (RESPA) Litigation	19	19
UT	D.J. Dale A. Kimball	MDL-1546 In re Medical Waste Services Antitrust Litigation	1	8
VAE	D.J. Leonie M. Brinkema	MDL-1705 In re Xybernaut Corp. Securities Litigation	10	10
WAW	D.J. Barbara Jacobs Rothstein	MDL-1407 In re Phenylpropanolamine (PPA) Products Liability Litigation	402	3,365
WVS	D.J. Joseph R. Goodwin	MDL-1477 In re Serzone Products Liability Litigation	16	177
WY	C.J. William F. Downes	MDL-1293 In re Natural Gas Royalties Qui Tam Litigation	75	83

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**U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:07-cv-60428-JIC**

Troiano v. Menu Foods, Inc. et al
Assigned to: Judge James I. Cohn
Demand: \$5,000,000
Cause: 28:1332 Diversity-Property Damage

Date Filed: 03/26/2007
Jury Demand: Plaintiff
Nature of Suit: 385 Prop. Damage Prod.
Liability
Jurisdiction: Diversity

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Plaintiff

Christina Troiano

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V.

Defendant

Menu Foods, Inc.

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Defendant

Menu Foods Income Fund

Date Filed	#	Docket Text
03/26/2007	<u>1</u>	COMPLAINT against Menu Foods, Inc., Menu Foods Income Fund Filing fee \$ 350. Receipt#: 539659, filed by Christina Troiano.(ls) (Entered: 03/26/2007)
03/26/2007	<u>2</u>	Summons Issued as to Menu Foods, Inc.. (ls) (Entered: 03/26/2007)
03/26/2007	<u>3</u>	Summons Issued as to Menu Foods Income Fund. (ls) (Entered: 03/26/2007)

PACER Service Center			
Transaction Receipt			
03/28/2007 13:46:34			
PACER Login:	mw0078	Client Code:	060228-00001/91103
Description:	Docket Report	Search Criteria:	0:07-cv-60428-JIC
Billable Pages:	1	Cost:	0.08

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MAGISTRATE JUDGE
SNOW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **07-60428**

CIV-COHN

CHRISTINA TROIANO, Individually and On
Behalf of All Others Similarly Situated,

JURY TRIAL DEMAND

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vs.

MENU FOODS, INC. and MENU FOODS
INCOME FUND,

Defendants.

FILED BY
2007 MAR 26 PM 1:11
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA.-FT. L.

CLASS ACTION COMPLAINT

Plaintiff Christina Troiano ("Plaintiff"), individually and on behalf of all others similarly situated, files this Class Action Complaint against Defendants Menu Foods, Inc., a New Jersey Corporation and Menu Foods Income Fund, a foreign corporation (collectively "Defendants") and alleges as follows:

I. INTRODUCTION

1. This is a class action lawsuit brought on behalf of Plaintiff and others similarly situated who purchased pet food and pet food products produced, manufactured and/or distributed by Defendants that caused injury, illness, and/or death to Plaintiff's household pets.

2. Defendants are the leading North American private label/contract manufacturer of wet pet food products sold by supermarket retailers, mass merchandisers, pet specialty retailers, and other wholesale and retail outlets, including Wal-Mart, Safeway, Kroger, PetSmart, Inc., Giant Food, and other large retail chains, and has provided pet food products to or for Proctor & Gamble, Inc. Defendants produce hundreds of millions of containers of pet food annually.

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3. Defendants designed, manufactured, marketed, advertised and warranted their pet food products. In conjunction with each sale, Defendants marketed, advertised and warranted that the Products were fit for the ordinary purpose for which such goods were used – consumption by household pets – and were free from defects. Defendants produce the pet food products intending that consumers will purchase the pet food products, regardless of brand or label name, place of purchase, or the location where pets actually consume them. The pet food products were intended to be placed in the stream of commerce and distributed and offered for sale and sold to Plaintiff and purchasers in Florida and the United States and fed to their pets.

4. Plaintiff brings this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on her own behalf and as a representative of a class of persons consisting of all persons in the United States who purchased, or incurred damages by using pet food produced manufactured and/or distributed by Defendants that was or will be recalled by the Defendants, including that produced from December 3, 2006 up to and including March 6, 2007. The pet food products referenced in this paragraph will hereinafter be referred to as the "Products."

5. As a result of the defective Products, Plaintiff and members of the Class have suffered damages in that they have incurred substantial veterinary bills, death of pets, and purchased and/or own pet food and pet food products that they would not otherwise have bought had they known such products were defective.

6. Defendants know and have admitted that certain of the Products produced by the Defendants between December 3, 2006 and March 6, 2007 are defective and causing injury and death to household pets, and on March 16, 2007, initiated a recall of some of the Products. Further, the Food and Drug Administration has reported that as many as one in six animals died in tests of the Products by Defendants last month after the Defendants received complaints the products were

poisoning pets around the country. A spokeswoman for the New York State Department of Agriculture and Markets has said that rodent poison was determined to have been mixed into the Products by Defendants.

II. PARTIES

7. Plaintiff is a resident of Broward County, Florida, who, in early March of 2007, purchased Iams Select Bytes Cat Food from a Publix grocery store in Deerfield Beach, Florida. The Iams Select Bytes Cat Food purchased by Plaintiff is a part of the group of Products that were produced, manufactured and/or distributed by Defendants.

8. Defendant Menu Foods, Inc. is a New Jersey corporation with its principal place of business in the State of New Jersey, specifically located at 9130 Griffith Morgan Lane, Pennsauken NJ 08110.

9. Defendant Menu Foods, Inc. is ultimately owned or controlled by Defendant Menu Foods Income Fund, an unincorporated company with its principal place of business in the Province of Ontario, Canada. Some of Defendant Menu Foods, Inc.'s high managerial officers or agents with substantial authority are also high managerial officers or agents of Defendant Menu Foods Income Fund.

10. Plaintiff, individually and as representative of a Class of similarly situated persons more defined below, brings suit against the named Defendants for offering for sale and selling to Plaintiff and members of the Class the Products in a defective condition and thereby causing damages to Plaintiff and members of the Class.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 and subsection (d), and the Class Action Fairness Act of 2005, Pub. L. 109-2 (Feb. 18, 2005); and over supplemental state law claims pursuant to 28 U.S.C. §1367.

12. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. §1392 and/or Pub. L. 109-2 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. In this judicial district, Plaintiff purchased the recalled pet food products made by Defendants, and her household pets ate and consumed the Products. Thousands of other consumers – including other members of the Class – purchased the Products in this judicial district from retailers that Defendants, their agents, affiliates, or others controlled or were in privity with. In turn, retailers or others sold the Products to the general public, including Plaintiff, and members of the Class. The Products were purchased for consumption by the pets of Plaintiff and the other members of the Class. Defendants made or caused these products to be offered for sale and sold to the public, including Plaintiff.

IV. SUBSTANTIVE ALLEGATIONS

Defendants and their Defective Pet Food

13. Defendants are in the business of manufacturing, producing, distributing, and/or selling pet food under various brands or labels, and/or for third party firms, including: America's Choice, Preferred Pets, Authority, Best Choice, Companion, Compliments, Demoulus Market Basket, Eukanuba, Fine Feline Cat, Food Lion, Food Town, Giant Companion, Hannaford, Hill Country Fare, Hy-Vee, Iams, Laura Lynn, Li'l Red, Loving Meals, Meijer's Main Choice, Nutriplan, Nutro Max Gourmet Classics, Nutro Natural Choice, Paws, Pet Pride, President's Choice, Priority, Sav-a-Lot, Schnucks, Science Diet

Feline Savory Cuts Cans, Sophsitacat, Special Kitty US, Springfield Prize, Sprout, Total Pet, Wegmans, Western Family, White Rose, and Winn Dixie. Defendants has manufactured or produced pet food for private labels for approximately 17 of the 20 leading retailers in the United States.

14. Defendants' business includes manufacturing, producing, distributing, or selling dog food under various brands or labels, and/or for third party firms, including: America's Choice, Preferred Pets, Authority, Award, Best Choice, Big Bet, Big Red, Bloom, Bruiser, Cadillac, Companion, Demoulus Market Basket, Eukanuba, Food Lion, Giant Companion, Great Choice, Hannaford, Hill Country Fare, Hy-vee, Iams, Laura Lynn, Li'l Red, Loving Meals, Meijer's Main Choice, Mixables, Nutriplan, Nutro Max, Nutro Ultra, Nutro, Ol' Roy US, Paws, Pet Essentials, Pet Pride - Good & Meaty, President's Choice, Price Chopper, Priority, Publix, Roche Brothers, Sav-a-Lot, Schnucks, Shep Dog, Sprout, Statler Bros, Total Pet, Western Family, White Rose, Winn Dixie, and Your Pet.

15. Defendants produce millions of pouches or containers of pet food products each year, a substantial portion of which are sold or offered for sale in Florida. Upon information and belief, Defendants have sold, either directly or indirectly, thousands of units of defective pet food and pet food products nationwide and in the State of Florida.

16. Defendants manufactured, marketed, advertised, warranted and sold, either directly or through their authorized distribution channels, the Products that caused Plaintiff's damages. Plaintiff and members of the Class have been or will be forced to pay for damages caused by the defect in Defendants' Products.

Factual Allegations Related to Plaintiff

17. In early March, 2007, Plaintiff purchased Iams Select Bytes Cat Food pet food from a national chain grocery store, Publix, operating in Deerfield Beach, Florida.

18. Over the course of the next few weeks, Plaintiff fed the cat food to her two cats, Angel and Piescat. Towards the end of that period, Plaintiff began noticing that her cats were not eating much of the Defendants' product, and that the cats were leaving large pools of urine in their litter box with little or no bowel movements.

19. On or about March 16, 2007, Defendants announced a recall of approximately 42 brands of "cuts and gravy style dog food, all produced by the Defendants between December 3, 2006 and March 6, 2007." Defendants had initially received complaints from consumers as far back as February 20, 2007 indicating that certain of Defendants' pet food was causing kidney failure and death in dogs and cats. Unfortunately, Plaintiff and the Class were not made aware of this recall for several more days.

20. On March 20, 2007, following another few days of unusual behavior from her cats, Plaintiff took her cats to the veterinarian. The veterinarian advised Plaintiff that both of her cats were suffering from kidney failure directly and proximately caused by the cat food. One of the Plaintiff's cats, Angel, died shortly thereafter, while the other cat, Piescat, remains at a veterinary hospital receiving treatment.

21. Thereafter, Plaintiff learned about the recall and the potential problems that could occur from feeding the Products to her pets. Prior to the recall, Defendants never warned Plaintiff or any other member of the Class that the Products would cause their pets to have health problems. As referenced above, Defendants knew about the risks of injury or death at least one month prior to the time that Plaintiff fed the Products to her cat.

22. As a result of their purchases of the Products, as set forth above, Plaintiff and other members of the Class have suffered and will suffer damages, including consequential and incidental damages, such as the loss and disability of their household pets, costs of purchasing the Products and replacing it with a safe product, including sales tax or a similar tax, costs of making an additional trip to a retail store to purchase safe, non-contaminated pet food, the cost of postage to secure a refund offered by Defendants, the cost of veterinarians, treatment, medicines and the trip(s) to make such visits for diagnosis and treatment, and otherwise.

V. CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on her own behalf and as a Class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the following proposed class:

All persons in the United States who purchased, or incurred damages by using, pet food produced or manufactured by Defendants that was or will be recalled by the Defendants, including that produced from December 3, 2006 up to and including March 6, 2007.

Upon completion of discovery with respect to the scope of the Class, Plaintiff reserves the right to amend the class definition. Excluded from the Class are Defendants, their parents, subsidiaries and affiliates, directors and officers, and members of their immediate families. Also excluded from the Class are the court, the Court's spouse, all persons within the third degree of relationship to the Court and its spouse, and the spouses of all such persons.¹

24. Numerosity: The members of the Class are so numerous and geographically diverse that joinder of all of them is impracticable. While the exact number and identities of members of the Class are unknown to Plaintiff at this time and can only be ascertained through appropriate

¹ See Canon 3.C(3)(a) of the Code of Conduct for United States Judges.

discovery, Plaintiffs believe and therefore aver that there are thousands of Class members throughout the United States.

25. Commonality: There are questions of fact and law common to members of the Class that predominate over any questions affecting any individual members including, *inter alia*, the following:

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(a) Whether Defendants sold pet food and pet food products that were recalled or subject to a recall.

(b) Whether Defendants advertised, represented, or held itself out as producing or manufacturing a pet food product that was safe for pets of the class members.

(c) Whether Defendants expressly warranted these products.

(d) Whether Defendants purported to disclaim any express warranty.

(e) Whether Defendants purported to disclaim any implied warranty.

(f) Whether any limitation on warranty fails to meet its essential purpose.

(g) Whether Defendants intended that the Products be purchased by Plaintiff, Class members, or others.

(h) Whether Defendants intended or foresaw that Plaintiff, class members, or others would feed the Products to their pets.

(i) Whether Defendants recalled the pet food products.

(j) Whether Defendants was negligent in manufacturing or processing the Products.

(k) Whether using the Products as intended - to feed their pets - resulted in loss, injury, damage, or damages to the Class.

(l) Whether Defendants' negligence proximately caused loss or injury to damages.

- (m) Whether Class members suffered direct losses or damages,
- (n) Whether Class members suffered indirect losses or damages.
- (o) Whether Defendants' acts or practices violated the Florida Deceptive and Unfair Trade Practices Acts.

26. Typicality: Plaintiff's claims are typical of the claims of the other members of the Class in that all such claims arise out of Defendants' conduct in manufacturing, producing and entering into the stream of commerce defective pet food and pet food products, Defendants' conduct surrounding the recall of its product, and Plaintiff's and Class Members' purchase and use of Defendants' products. Plaintiff and the other members of the Class seek identical remedies under identical legal theories, and there is no antagonism or material factual variation between Plaintiff's claims and those of the Class.

27. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's claims are coextensive with, and not antagonistic to, the claims of the other members of the Class. Plaintiff is willing and able to vigorously prosecute this action on behalf of the Class, and Plaintiff has retained competent counsel experienced in litigation of this nature.

28. Plaintiff brings this action under Rule 23(b)(3) because common questions of law and fact (identified in paragraph 25 above) predominate over questions of law and fact affecting individual members of the Class. Indeed, the predominant issue in this action is whether Defendants' pet food and pet food products are defective and have caused damages to Plaintiff and the members of the Class. In addition, the expense of litigating each Class member's claim individually would be so cost prohibitive as to deny Class members a viable remedy. Certification under Rule 23(b)(3) is appropriate because a class action is superior to the other available methods

for the fair and efficient adjudication of this action, and Plaintiff envisions no unusual difficulty in the management of this action as a class action.

29. The undersigned counsel for Plaintiff and the Class request that the Court appoint them to serve as class counsel first on an interim basis and then on a permanent basis. Undersigned Counsel will fairly and adequately represent the interests of the class, have identified or investigated the Class's potential claims, are experienced in handling class actions, other complex litigation, and consumer claims of the type asserted in the action, know the applicable law, will commit sufficient resources to represent the class, and are best able to represent the Class.

30. Plaintiff requests this Court to certify this Class in accordance with Rule 23 and the Class Action Fairness Act of 2005.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Breach of Implied Warranty

31. Plaintiff hereby adopts and incorporates by reference paragraphs 1-30 as if more fully set forth herein.

32. Defendants manufactured, marketed, sold and distributed the Products.

33. At the time that Defendants marketed, sold, and distributed the Products, Defendants knew of the purpose for which the Products were intended and impliedly warranted that the Products were of merchantable quality and safe and fit for such use.

34. Plaintiff reasonably relied upon the skill, superior knowledge and judgment of the Defendants as to whether the Products were of merchantable quality and safe and fit for its intended use.

35. Due to Defendants' wrongful conduct as alleged herein, Plaintiff could not have known about the risks and side effects associated with the Products until after ingestion by Plaintiff's cats.

36. Contrary to such implied warranty, the Products were not of merchantable quality and were not safe or fit for their intended use.

37. As a direct and proximate result of Defendants' breach of implied warranty, Plaintiff suffered damages as alleged herein.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

(a) For an order certifying the Class under the appropriate provisions of Rule 23, as well as any appropriate subclasses, and appointing Plaintiff and their legal counsel to represent the Class;

(b) Awarding actual and consequential damages;

(c) Granting injunctive relief;

(d) For pre- and post-judgment interest to the Class, as allowed by law;

(e) For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and

(f) Granting such other and further relief as is just and proper.

SECOND CAUSE OF ACTION

Breach of Express Warranty

38. Plaintiff hereby adopts and incorporates by reference paragraphs 1-30 as if more fully set forth herein.

39. Defendants expressly warranted that the Products were safe for consumption by pets.

40. The Products did not conform to these express representations because the Products are not safe and cause serious side effects in pets, including death.

41. As a direct and proximate result of the breach of said warranties, and as the direct and legal result of the defective condition of the Products as manufactured and/or supplied by Defendants, and other wrongdoing of Defendants described herein, Plaintiff was caused to suffer damages.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- (a) For an order certifying the Class under the appropriate provisions of Rule 23, as well as any appropriate subclasses, and appointing Plaintiff and their legal counsel to represent the Class;
- (b) Awarding actual and consequential damages;
- (c) Granting injunctive relief;
- (d) For pre- and post-judgment interest to the Class, as allowed by law;
- (e) For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and
- (f) Granting such other and further relief as is just and proper.

THIRD CAUSE OF ACTION

Negligence

42. Plaintiff hereby adopts and incorporates by reference paragraphs 1-30 as if more fully set forth herein.

43. Defendants owed Plaintiff a duty to only offer safe, non-contaminated products for consumption by household pets.

44. Through its failure to exercise the due care, Defendants breached this duty by producing, processing, manufacturing, and offering for sale the Products in a defective condition that was unhealthy to the Plaintiff's pets.

45. Additionally, Defendants breached their duty of care to Plaintiff by failing to use sufficient quality control, perform adequate testing, proper manufacturing, production, or processing, and failing to take sufficient measures to prevent the Products from being offered for sale, sold, or fed to pets.

46. Defendants knew or, in the exercise of reasonable care should have known, that the Products presented an unacceptable risk to the pets of the Plaintiff, and would result in damage that was foreseeable and reasonably avoidable.

47. As a direct and proximate result of Defendants' above-referenced negligence, Plaintiff and has suffered loss and damages.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

(a) For an order certifying the Class under the appropriate provisions of Rule 23, as well as any appropriate subclasses, and appointing Plaintiff and their legal counsel to represent the Class;

(b) Awarding actual and consequential damages;

(c) Granting injunctive relief;

(d) For pre- and post-judgment interest to the Class, as allowed by law;

(e) For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and

(f) Granting such other and further relief as is just and proper.

FOURTH CAUSE OF ACTION

Strict Product Liability

48. Plaintiff hereby adopts and incorporates by reference paragraphs 1-30 as if more fully set forth herein.

49. Defendants are producers, manufacturers and/or distributors of the Products.

50. The Products produced, manufactured and/or distributed by Defendants were defective in design or formulation in that, when the Products left the hands of the Defendants, the foreseeable risks exceeded the benefits associated with the design or formulation.

51. Defendants' Products were expected to and did reach the Plaintiff without substantial change in condition.

52. Alternatively, the Products manufactured and/or supplied by Defendants were defective in design or formulation, in that, when they left the hands of the Defendants, they were unreasonably dangerous, more dangerous than an ordinary consumer would expect, and more dangerous than other pet food products without concomitant accurate information and warnings accompanying the product for the Plaintiff to rely upon.

53. The Products produced, manufactured and/or distributed by Defendants were defective due to inadequate warning and/or inadequate testing and study, and inadequate reporting regarding the results of same.

54. The Products produced, manufactured and/or distributed by Defendants were defective due to inadequate post-marketing warning or instruction because, after Defendants knew or should have known of the risk of injury from the Products, Defendants failed to immediately provide adequate warnings to the Plaintiff and the public.

55. As the direct and legal result of the defective condition of the Products as produced, manufactured and/or distributed by Defendants, and of the negligence, carelessness, other wrongdoing and actions of Defendants described herein, Plaintiff suffered damages.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows.

(a) For an order certifying the Class under the appropriate provisions of Rule 23, as well as any appropriate subclasses, and appointing Plaintiff and their legal counsel to represent the Class;

(b) Awarding actual and consequential damages;

(c) Granting injunctive relief;

(d) For pre- and post-judgment interest to the Class, as allowed by law;

(e) For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and

(f) Granting such other and further relief as is just and proper.

FIFTH CAUSE OF ACTION

Unjust Enrichment

56. Plaintiff hereby adopts and incorporates by reference paragraphs 1-30 as if more fully set forth herein.

57. As a direct, proximate, and foreseeable result of Defendants' acts and otherwise wrongful conduct, Plaintiff suffered damages. Defendants profited and benefited from the sale of the Products, even as the Products caused Plaintiff to incur damages.

58. Defendants have voluntarily accepted and retained these profits and benefits, derived from consumers, including Plaintiff, with full knowledge and awareness that, as a result of

Defendants' unconscionable wrongdoing, consumers, including Plaintiff, were not receiving products of the quality, nature, fitness, or value that had been represented by Defendants or that reasonable consumers expected. Plaintiff purchased pet food that she expected would be safe and healthy for her cats and instead has had to now endure the death of one of her beloved pets and the hospitalization of the other.

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59. By virtue of the conscious wrongdoing alleged in this Complaint, Defendants have been unjustly enriched at the expense of the Plaintiff who is entitled to, and hereby seeks, the disgorgement and restitution of Defendants' wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed appropriate by the Court; and such other relief as the Court deems just and proper to remedy Defendants' unjust enrichment.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- (a) For an order certifying the Class under the appropriate provisions of Rule 23, as well as any appropriate subclasses, and appointing Plaintiff and her legal counsel to represent the Class;
- (b) Awarding reimbursement, restitution and disgorgement from Defendants of the benefits conferred by Plaintiff and the Class;
- (c) For pre- and post-judgment interest to the Class, as allowed by law;
- (d) For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary benefits are obtained on behalf of the Class; and
- (e) Granting such other and further relief as is just and proper.

JURY DEMAND

Plaintiff and the Class demands a jury trial on all issues triable by a jury.

DATED: March 26, 2007

LERACH COUGHLIN STOIA GELLER

RUDMAN & ROBBINS LLP

PAUL J. GELLER

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Telephone: 954/462-6855

954/462-6899 (fax)

Attorneys for Plaintiff and the Class

I:\Pot Lit 2007\Menu Foods\Complaint FINAL.doc

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

CHRISTINA TROIANO, Individually and on Behalf of all Others
Similarly Situated

DEFENDANTS

MENU FOODS, INC. and MENU FOODS INCOME FUND

(b) County of Residence of First Listed Plaintiff Broward
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Camden
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
120 E. Palmetto Park Road, Suite 500
Boca Raton, FL 33432-4809 (Phone: 561-750-3000)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

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

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☒ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ CLAY ☐ ALACHUA ☐ FLORIDA RIVER ☐ OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State ☒ 1 ☐ 2 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 5
Citizen of Another State ☐ 2 ☐ 3 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 6
Citizen or Subject of a Foreign Country ☐ 3 ☐ 4 Foreign Nation ☐ 6 ☐ 7

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page)

a) Re-filed Case ☐ YES ☒ NO b) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

28 USC §1332 and subsection (d); Class Action Fairness Act of 2005; 28 USC §1367 and 1391

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ > 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #

000176

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:07-cv-00411-RSM

Whaley v. Menu Foods et al
Assigned to: Hon. Ricardo S Martinez
Cause: 28:1332 Diversity-Product Liability

Date Filed: 03/19/2007
Jury Demand: None
Nature of Suit: 195 Contract Product
Liability
Jurisdiction: Diversity

Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 28 of 5

Plaintiff

Tom Whaley
*individually and on behalf of all others
similarly situated*

represented by **Michael David Myers**
MYERS & COMPANY
1809 7TH AVE
STE 700
SEATTLE, WA 98101
206-398-1188
Fax: FAX 398-1189
Email: mmyers@myers-company.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Menu Foods
a foreign corporation

Defendant

The Iams Company
a foreign corporation

Defendant

Dog Food Producers Numbers 1-50

Defendant

Cat Food Producers 1-40

Date Filed	#	Docket Text
03/19/2007	<u>1</u>	CLASS ACTION COMPLAINT against defendant(s) Menu Foods, The Iams Company, Dog Food Producers Numbers 1-50, Cat Food Producers 1-40 (Summons(es) issued)(Receipt #: SEA8079), filed by Tom Whaley. (Attachments: # <u>1</u> Civil Cover Sheet)(DJ) Modified on 3/21/2007 (DJ). (Entered: 03/21/2007)

PACER Service Center

000177

Transaction Receipt			
03/27/2007 13:22:39			
PACER Login:	mw0078	Client Code:	060228- 00001/91103
Description:	Docket Report	Search Criteria:	2:07-cv-00411-RSM
Billable Pages:	1	Cost:	0.08

Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 29 of 5

000178

FILED ENTERED
LODGED RECEIVED
MAR 19 2007 DJ

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

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

Page 30 of 5

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

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) 398-1188

000179

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 II. PARTIES

15 2.1 Plaintiff Tom Whaley has at all material times been a resident of Ontario, Oregon.

16 2.2 Defendant Menu Foods is, upon information and belief, a corporation organized
17 under the laws of Canada which transacts business in Washington State and Oregon State.

18 2.3 Defendant The Iams Company, is upon information and belief, a foreign
19 corporation which transacts business in Washington State and Oregon State.

20 III. JURISDICTION AND VENUE

21 3.1 Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the
22 Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds
23

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. Case 3:07-cv-00706-BTM-POR Document 6 Filed 04/23/2007 Page 32 of 5

6 IV. CLASS ACTION ALLEGATION

7 4.1 Mr. Whaley brings this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2)
8 and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and a Plaintiff Class (the
9 "Class") composed of all persons who purchased any dog or cat food which was produced by the
10 defendants and/or has had a dog or cat become ill as a result of eating the food. Mr. Whaley
11 reserves the right to modify this class definition prior to moving for class certification.
12

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

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

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

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:

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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

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

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

17 5.1 Plaintiff Tom Whaley was the owner of a female cat named Samoya.

18 5.2 Mr. Whaley purchased Iams brand cuts and gravy wet-style cat food from Wal-
19 Mart for Samoya to consume.

20 5.3 Samoya ate the Iams brand cuts and gravy wet-style cat food between December
21 2006 and February 2007.

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.

1 B. Unjust Enrichment

2 6.5 Mr. Whaley realleges all prior allegations as though fully stated herein.

3 6.6 Defendants were and continue to be unjustly enriched at the expense of Mr.

4 Whaley and other Class members.

5 6.7 Defendants should be required to disgorge this unjust enrichment.

6 C. Unlawful, Deceptive and Unfair Business Practices

7 6.8 Mr. Whaley realleges all prior allegations as though fully stated herein.

8 6.9 Defendants' sale of tainted pet food constitutes an unlawful, deceptive and unfair
9 business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et*
10 *seq.*, and similar statutory enactments of other states (including consumer protection and
11 consumer sales practice acts).

12 6.10 Defendants' sale of hazardous pet food has the capacity to deceive a substantial
13 portion of the public and to affect the public interest.

14 6.11 As a result of Defendants' unfair or deceptive acts or practices Mr. Whaley and
15 other class members suffered injuries in an amount to be proven at trial.

16 D. Breach of Warranties

17 6.12 Mr. Whaley realleges all prior allegations as though fully stated herein.

18 6.13 Cat food and dog food produced by Menu Foods are "goods" within the meaning
19 of Uniform Commercial Code Article 2.

20 6.14 Defendants' conduct as described herein constitutes breach of an implied or
21 express warranty of affirmation.

22 6.15 Defendants' conduct as described herein constitutes breach of an implied
23 warranty of merchantability.

24 CLASS ACTION COMPLAINT - 7

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

000185

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;
24
25

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;

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 19th 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
22 Seattle, Washington 98101
23 Telephone: (206) 398-1188
24 Facsimile: (206) 400-1112
25 E-mail: mmyers@myers-company.com

U.S. District Court (Live Database)
U.S. District Court - Eastern District of Tennessee (Knoxville)
CIVIL DOCKET FOR CASE #: 3:07-cv-00094

Holt v. Menu Foods Inc.

Assigned to: Honorable Thomas W Phillips

Referred to: Magistrate C Clifford Shirley

Cause: 28:1391 Personal Injury

Date Filed: 03/19/2007

Jury Demand: Plaintiff

Nature of Suit: 890 Other Statutory

Actions

Jurisdiction: Federal Question

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Plaintiff**Lizajean Holt**represented by **A James Andrews**

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LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Perry A Craft**

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LEAD ATTORNEY**ATTORNEY TO BE NOTICED**

V.

Defendant**Menu Foods Inc.**

Date Filed	#	Docket Text
03/19/2007	<u>1</u>	COMPLAINT against Menu Foods Inc. (Filing fee \$ 350), filed by Lizajean Holt. (Phillips/Shirley)(RLK) (Entered: 03/20/2007)

03/19/2007	Filing fee: \$ 350, receipt number K3004752 (RLK) (Entered: 03/20/2007)
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PACER Service Center			
Transaction Receipt			
03/27/2007 16:24:16			
PACER Login:	mw0078	Client Code:	060228-00001/91103
Description:	Docket Report	Search Criteria:	3:07-cv-00094
Billable Pages:	1	Cost:	0.08

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**JURY DEMAND
CLASS ACTION**

I. Class Action

000190

and sold to Plaintiff and purchasers in Tennessee and the United States and fed to their pets, cats and dogs.

II. Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 and subsection (d), and the Class Action Fairness Act of 2005, Pub. L. 109-2 (Feb. 18, 2005), and over supplemental state law claims pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. §1391 and/or Pub. L. 109-2 because a part or substantial part of the events or omissions giving rise to the claim occurred in this judicial district, or a substantial part of property that is the subject of the action is situated in this judicial district.

4. In this judicial district, Plaintiff purchased the recalled pet food product made by or for Defendant, and her pet ate or consumed it. Thousands of other consumers/customers – including Plaintiff and other Class Members – purchased the recalled or contaminated products in this judicial district from retailers that Defendant, its agents, affiliates, or others it or they controlled sold or made available to them. In turn, retailers or others sold these recalled products to the general public, including Plaintiff, Class members and other purchasers. These products were purchased for consumption by the pets of Plaintiff and the Class members. Defendant made or caused these products to be offered for sale and sold to the public, including Plaintiff.

5. Rule 23 of the Federal Rules of Civil Procedure applies to class actions as well.

III. Plaintiff

6. At all times material hereto, Plaintiff Lizajean Holt was and is a citizen of the State of Tennessee and the United States and resides in Knox County, Tennessee.

IV. Plaintiff's Purchase(s)/Defendant's Recall

7. Plaintiff purchased recalled brands of Pet Pride and Iams pet food from a national chain grocery store, Kroger, operating in Knox County, Tennessee. Kroger, like other retailers, did not alter the product produced by the Defendant in any way prior to selling it to Tennessee consumers and other consumers throughout the United States.

8. Without knowing that Defendants would recall the product after it was offered for sale and sold to her, Plaintiff purchased and fed the product(s) to her cat, her pet. Her pet became lethargic and began drinking large amounts of water and Plaintiff discontinued feeding the Defendant's products to her cat prior to the recall notice. Plaintiff and thousands of other consumers will now face veterinary bills to have their pets evaluated for kidney damage.

9. Before her purchase, Defendant never warned Plaintiff that the pet food product that she purchased for feeding her pet may or would cause it have health problems or concerns or that she would have to take her pet to a veterinarian due to a health concern relating to or resulting from the tainted pet food.

10. On or on about March 16, 2007, Defendant issued a recall for certain pet food for cats and dogs that it manufactured in plants that it controlled, owned, operated, or managed in the United States.

11. Defendant's business consists substantially of providing private label pet foods at its plants or pet foods under other brands, not its own. In turn, Defendant's

products are sold under a variety of labels or brands listed on its website as of March 17, 2007 and set forth below.

12. The product that Plaintiff purchased at a Kroger in Knoxville was a product recalled by Defendant.

13. After Plaintiff purchased the pet food and fed it to her cat, she learned about the recall and the actual or potential problems and concerns from purchasing and feeding the product to her pet.

14. Plaintiff bought the product(s) for their intended purposes: to feed her pet.

15. Defendant placed these pet products in the stream of commerce in Tennessee and elsewhere expecting that consumers such as Plaintiffs, the Class members, and the general public would feed these products to their pets.

V. Defendant, Its Business, and the Recall

16. At all times material hereto, Defendant Menu Foods, Inc. was and is a New Jersey corporation with its principal place of business in the State of New Jersey, specifically located at 9130 Griffith Morgan Lane, Pennsauken NJ 08110. Defendant is ultimately owned or controlled by Menu Foods Income Group, an Ontario based legal entity. Some of Defendant's high managerial or officers or agents with substantial authority are also high managerial officers or agents of Menu Foods Income Group. Defendant may be served through the Secretary of State for Tennessee or as provided by law.

17. Defendant Menu Foods, Inc. owns, controls, is related to or an affiliate of a firm with plants where the pet food is manufactured or processed that are located in the United States. These plants are located in Emporia, Kansas and, Pennsauken, New

Jersey, the place of manufacture where the pet products were recalled, and/or at other locations in the United States.

18. Defendant is the leading North American private label/contract manufacturer of wet pet food products sold by supermarket retailers, mass merchandisers, pet specialty retailers, and other wholesale and retail outlets, including Wal-Mart, Safeway, Kroger, PetSmart, Inc., Giant Food, and other large retail chains, and has provided pet food products to or for Proctor & Gamble, Inc. It produces hundreds of millions of containers of pet food annually.

19. Defendant has manufactured or produced pet food for private labels for about 17 of the 20 leading retailers in the United States.

20. Defendant's business includes manufacturing, producing, distributing, or selling cat food under various brands or labels, and/or for third party firms, including: America's Choice, Preferred Pets, Authority, Best Choice, Companion, Compliments, Demoulus Market Basket, Eukanuba, Fine Feline Cat, Food Lion, Food Town, Giant Companion, Hannaford, Hill Country Fare, Hy-Vee, Iams, Laura Lynn, Li'l Red, Loving Meals, Meijer's Main Choice, Nutriplan, Nutro Max Gourmet Classics, Nutro Natural Choice, Paws, Pet Pride, President's Choice, Priority, Sav-a-Lot, Schnucks, Science Diet Feline Savory Cuts Cans, Sophsitacat, Special Kitty US, Springfield Prize, Sprout, Total Pet, Wegmans, Western Family, White Rose, and Wynn Dixie.

21. Defendant's business includes manufacturing, producing, distributing, or selling dog food under various brands or labels, and/or for third party firms, including: America's Choice, Preferred Pets, Authority, Award, Best Choice, Big Bet, Big Red, Bloom, Bruiser, Cadillac, Companion, Demoulus Market Basket, Eukanuba, Food Lion,

Giant Companion, Great Choice, Hannaford, Hill Country Fare, Hy-vee, Iams, Laura Lynn, Li'l Red, Loving Meals, Meijer's Main Choice, Mixables, Nutriplan, Nutro Max, Nutro Ultra, Nutro, Ol'Roy US, Paws, Pet Essentials, Pet Pride – Good & Meaty, President's Choice, Price Chopper, Priority, Publix, Roche Brothers, Sav-a-Lot, Schnucks, Shep Dog, Sprout, Statler Bros, Total Pet, Western Family, White Rose, Wynn Dixie, and Your Pet.

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22. On Defendant's website as of March 17, 2007, it listed by brands, the size of the container or pouch, the dates of manufacture, and the products subject to recall. Thus, each container or pouch and size of each brand or label listed – subject to the recall above – was noted specifically on its web site. Thus, a 3 ounce can or pouch of Pet Pride Pouch Mixed Grill 24 X 3 with sale by date of March 8, 2009, with a specified "UPC" number was one of about 150 separate Pet Pride labeled cat food that Defendant recalled. The other brands also generally listed numerous separate pouches or containers bearing the major private label or brand with a further sub-description similar to the manner described above, by brand or label.

23. After reports or complaints from pet owners about symptoms – such as vomiting or lethargy – suggesting kidney failure in their dogs and cats and/or after reports of deaths of certain pets, from or through its Canadian office or affiliation, Defendant caused or issued a recall of certain specified pet products, reportedly totaling between 40 and 60 million cans.

24. Defendant also advised a governmental agency of the United States about the recall and certain events leading to the recall, namely the Food and Drug Administration (FDA).

25. Defendant produces over 1,000,000,000 pouches or containers of pet food products each year, a substantial portion of which is sold or offered for sale in Tennessee or for Tennesseans who purchase the products for their pets. Many consumers who fear for the health of their pets will no longer have the product because it has been fed to the pets.

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26. Defendant knows or should know that national, regional, and/or local distributors will distribute these finished pet food products that it manufactures or processes to retailers to offer them for sale in Tennessee to Tennesseans who purchase and buy them for their pets for consumption by their pets in the State of Tennessee and in this judicial district.

27. Defendant knows or understands that millions or tens of millions of cans or pouches of the pet food products that it manufactures or produces will be advertised, promoted, and sold in Tennessee and this judicial district, including a significant or substantial part of the recalled pet food.

28. Defendant knows or understands that the promotion and advertising of pet food produced at its plants in part targets consumers and customers in Knox County, in this judicial district, in the State of Tennessee, regionally, or nationally.

29. Defendant makes or produces the pet food products in its plants with a purpose or design that consumers and customers will purchase them, regardless of brand or label name, place of purchase, or place where pets actually consume them.

30. Defendant makes or produces for third parties well-known, lesser known, and/or premium or discount brands or labels of pet foods and knows that customers and consumers will ultimately purchase them to feed to their pets.

31. Defendant desires that consumers and others who purchase or consider purchasing a pet food product made or produced in one of its plants, by whatever label or brand, believe that the pet food product is safe for their pets to eat.

32. In the last few days, Defendant has recalled specified pet food products that consumers and customers purchased from a time beginning about December 3, 2006 and concluding about March 6, 2007.

33. Class members and others have purchased the pet products that were recalled across the United States, in Tennessee, and in this judicial district.

34. Class members and others who purchased or fed Defendant's products to their pets did so in this judicial district, in Tennessee, and in the United States.

35. Some class members or others have already taken their pets to a veterinarian for treatment or diagnosis related to their pets eating the recalled pet food and more will do so as word of the recall spreads. For instance, the Knoxville NewsSentinel carried a prominent story about the recall and the potential dangers to the pets of East Tennessee citizens in its Sunday, March 18, 2007 edition.

36. Class members have suffered and will suffer injuries, losses, or damage as a result of the recall and/or feeding their animals the food that was recalled.

37. There have been other reported incidents of pet food being recalled as a result of possible or actual concerns or problems with the pet food and its or their effects on pets. Defendant knew or should have known about the risks and possible injury.

VI. Plaintiff, Class Members, and Others' Losses, Damages, and Injuries

38. As a result of their purchases of the pet food recalled or subject to recall, set forth above, Plaintiff, Class members, and others have suffered and will suffer a loss,

damage, injury, and sustained damages, including consequential and incidental damages, such as costs of purchasing the contaminated food product and replacing it with a safe food product, including sale tax or a similar tax, costs of making an additional trip to a retail store to purchase safe, non-contaminated pet food, the price of postage to secure a refund offered by Defendant, the cost of veterinarians, treatment, medicines and the trip(s) to make such visits for diagnosis and treatment, and otherwise.

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VII. Breach of Warranties & Remedies

39. Defendant breached express warranties to Plaintiff, the Class, and others, and violated the Uniform Commercial Code.

38. Defendant breached implied warranties to Plaintiff, the Class, and others, and violated the Uniform Commercial Code.

40. Defendant breached the implied warranty of fitness for a particular purpose by claiming certain of the pet food that it manufactured or produced and was recalled were fit and safe for consumption by pets and thereby violated the Uniform Commercial Code.

41. Defendant breached the implied warranty of merchantability. In fact, the pet food subject to recall and purchased or used by Plaintiff, the Class, and others was not merchantable. This breach violated the Uniform Commercial Code.

42. Plaintiffs are entitled to the remedies for breach authorized by the Uniform Commercial Code and other law.

VIII. Negligence

43. Defendants owed Plaintiff and the Class a duty to only offer safe, non-contaminated products for consumption by pets and offered for sale and sold in the stream of commerce.

44. Though its failure to exercise due care Defendant owed Plaintiff, the class, and others, Defendant was negligent in producing, processing, manufacturing, and offering for sale the recalled pet food and pet food products it offered for sale and sold to Plaintiff, the class, and others.

45. Defendant failed to use sufficient quality control, to do adequate testing, to perform proper manufacturing, production, or processing, or failed to take sufficient measures to prevent the pet food products that were recalled from being offered for sale, sold, or fed to pets.

46. Defendant knew or should have known that the pet food that was recalled presented an unacceptable risk to the pets of the Plaintiff, the Class, and others and would result in damage that was foreseeable and reasonably avoidable.

47. The loss, damage, and injuries were foreseeable.

48. Defendant's negligence proximately caused the loss, damage, injury, and damages to Plaintiff, the Class, and others.

IX. Statutory Unfair or Deceptive Trade Practices Act

49. Plaintiff, the Class, purchasers, others, and Defendant are each a "person" within the meaning of Tenn. Code Ann. §47-18-103.

50. Defendant's offer for sale or sale of their recalled pet food products is in or affects trade or commerce in Tennessee.

51. Defendant impliedly represented to the public, Plaintiff, the Class and others that its pet food products were safe for consumption by their pets and could be safely purchased.

52. In fact, Defendant recalled or caused to be recalled millions of containers or pouches of pet food because it risked the health and well-being of consumers, customers, Plaintiff, purchasers, the Class, and others.

53. Defendant violated Tenn. Code Ann. §47-18-104 (a) and sub-parts of (b) by placing these unsafe pet food products in the stream of commerce in Tennessee.

54. Each Plaintiff, Class member, and other person adversely affected in Tennessee has suffered an ascertainable loss of money or property due to a violation of the Consumer Protection Act.

55. Plaintiffs brings a claim for a violation of the Tennessee Consumer Protection Act under Tenn. Code Ann. §47-18-109, including the ascertainable loss of money or property by each such person.

X. Rule 23

56. Plaintiffs ask this Court to certify the following Class:

All persons in the United States who purchased or fed his, her, or their cat(s) or dog(s) pet food produced or manufactured by Defendant that was or will be recalled by the Defendant, including that produced from December 3, 2006 up to and including March 6, 2007.

57. Plaintiff is a member of the Class, sues as a representative party on behalf of all, and avers that the class is so numerous that joinder of all members is impracticable.

58. There are questions of law or fact common to the Class. These common questions include but are not limited to the following: