

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Lauri A. Osborne, Individually and On Behalf)	No. 3:07 CV 00469 (RNC)
of All Others Similarly Situated,)	
Plaintiff,)	<u>CLASS ACTION</u>
vs.)	
Menu Foods, Inc.)	
Defendant.)	
_____)	

MOTION FOR PRESERVATION OF EVIDENCE

_____The plaintiff Lauri A. Osborne on behalf of herself and all similarly situated hereby moves for an Order of Preservation of Evidence on the following grounds:

1. On March 27, 2007 the plaintiff filed her causes of action for breach of warranty and negligence seeking various relief for herself as well as class certification for persons that purchased contaminated food products produced by the defendant Menu Foods, Inc. manufactured on or about December 3, 2006 and thereafter which were recalled.

2. Plaintiff is also requesting certification of a subclass of all persons and entities that have purchased pet food products that Menu Foods Inc. manufactured on or about December 3, 2006 and thereafter that were recalled in the State of Connecticut.

3. Excluded from such subclass and from the class would be officers employees of each of the defendants, plaintiff’s counsel and any judges or justices presiding over this action.

4. Defendant’s conduct in this matter includes the fact that they may have permanently affected the owners and families of thousands of pets. Specifically, it has been alleged and disclosed to the FDA that the defendant tested its contaminated product on approximately fifty pets, seven died following ingestion of the food yet unreasonably waited

weeks before issuing a recall.

5. Over sixty million cans and/or package of contaminated food have been recalled.

6. Defendant's conduct in this matter raises serious questions regarding future conduct that they may take regarding the preservation of evidence critical to the prosecution of this cause. The New York Times within the past two months has published an article reflecting that pet food production was "an extremely secretive industry." (The New York Times, *Weekend Review*, March 25, 2007, "for cats and dogs, life is a bowl of ..." in which a statement was made by Marian Nestle, a New York University professor and co-author on a book regarding the pet food industry to be published next year.)

7. Mr. Robert W. Luba is the chairman of the Board of Trustees for Menu Foods Income Fund, closely related entity to the defendant, and he previously served as a director of Safety-Kleen Corp., a large hazardous waste operator when that company filed for bankruptcy in June of 2000. Mr. Luba was named as the defendant in a Class Action regarding false representations of the financial condition of Safety-Kleen, and he resigned in 2002 amid allegations that investors had been misled and Safety-Kleen Corp. agreed to pay \$148,000,000 to monitor a hazardous waste landfill and clean up site in the state of California.

8. The defendant should preserve documents, physical evidence, contaminated food product, and other evidence under its control including but not limited to, computer generated evaluations, e-mails, internal electrically filed memorandum, and corporate notes so that this matter may proceed and fairly adjudicated as the resolution will depend on the preservation of all pertinent evidence.

9. In order for the preservation of evidence and documents would also prevent destruction of relevant documents which may be impacted by any corporate policies of the

defendant, for example, to shred certain documents after a given time period.

Wherefore, since it would work no great hardship on the defendant to maintain documents and other material physical evidence which is relevant to the subject matter of this litigation that is in the custody care and control of the defendant, the plaintiffs Lauri Osborne, on behalf of herself and all other similarly situated moves the Court for an Order of Preservation of Documents and Evidence. A proposed Order is attached hereto.

PLAINTIFF, LAURI A. OSBORNE and All Others
Similarly Situated

By: _____

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ORDER

See attachment.

CERTIFICATION

I hereby certify that on the May 9, 2007, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Bruce E. Newman

Bruce E. Newman