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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

CASE NO.:

GEORGE BIRNEY and  
AUDREY BIRNEY,

6:07-cv-803-ORL-18 KRS

Plaintiffs,

vs.

MENU FOODS, INC., et al,

Defendants.

**NOTICE OF REMOVAL SIGNED PURSUANT TO RULE 11 OF THE FEDERAL  
RULES OF CIVIL PROCEDURE**

COMES NOW the Defendant, MENU FOODS, INC., (hereinafter referred to as "MENU FOODS") by and through its undersigned counsel, and files this its Notice of Removal ("Notice") pursuant to 28 USC §1446(a) and states:

**I. INTRODUCTION:**

1. The Plaintiffs, GEORGE BIRNEY and AUDREY BIRNEY, are citizens and residents of the State of Florida.

2. On the 23rd of April, 2007, Plaintiffs, GEORGE BIRNEY and AUDREY BIRNEY (hereinafter collectively referred to as "Plaintiffs") filed this products liability action against Defendant MENU FOODS. Plaintiffs allege that their respective pets (cats) became ill upon consuming pet food manufactured and distributed by MENU FOODS. Plaintiffs further claim that they sustained compensatory damages, including

veterinarian bills from related expenses, as a result of their pets' illnesses. *See Generally* Complaint (Exhibit "A").

3. On April 23, 2007, MENU FOODS was served with a copy of the Summons and Complaint. Pursuant to 28 U.S.C. §1441, this Notice for Removal is timely filed, as it was filed within thirty (30) days of the Defendant being served with a copy of the Summons and the Complaint.

4. As more fully set forth below, this Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)(2), and this action is removable under 28 U.S.C. § 1441, because it is a civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action between citizens of different states.

## **II. THIS COURT HAS SUBJECT MATTER JURISDICTION**

### **A. The Amount in Controversy Requirement Exceeds \$5,000,000.**

5. It is apparent from the face of the Complaint that the Plaintiffs seek recovery of an amount in excess of \$5,000,000, exclusive of costs and interest. Plaintiffs filed this class action on behalf of themselves and similarly situated individuals whose pets became ill and/or died after consuming various brands of allegedly tainted wet, or "cuts and gravy" style, dog and cat food manufactured by Defendant and distributed and sold throughout the State of Florida and the United States. Plaintiffs allege that they have sustained compensatory damages in the form of veterinarian bills and related expenses as a result of their respective pets' illnesses. In addition, Plaintiffs allege that untold number of pets have died and have been injured as the result of consuming the affected pet food. Plaintiffs allege that the class is so numerous that individual joinder of all members is

impractical. Plaintiffs' prayer for release seeks special damages, including medical monitoring damages, attorneys' fees and costs, injunctive relief and actual damages on behalf of themselves and all the members of the class. Further, nowhere in the Complaint do the Plaintiffs limit the amount in controversy to less than \$5,000,000. See Exhibit "A."

6. "Where the class action complaint does not specify the amount of damages sought, the removing defendant must prove by a preponderance of the evidence that the amount in controversy requirement has been met." Davis v. Chase Bank USA, 453 F.Supp.2d 1205, 1208 (C.D. California 2006). Under this standard, "the defendant must provide evidence that is 'more likely than not' that the amount in controversy satisfies the federal diversity jurisdictional amount requirement." Davis, 453 F.Supp.2d at 1208, citing Abrego Abrego v. The Dow Chemical Co., 443 F.3d 67 676, 683 ( 9th Cir. 2006); Lowery v. Ala. Power Co., 2007 U.S. App. LEXIS 8289, (11<sup>th</sup> Cir. 2007).

7. Based on Plaintiffs' own allegations that MENU FOODS has issued and recalled more than 90 brands of their pet food, the types of damages claimed in the Complaint, it is apparent that the amount in controversy exceeds \$5,000,000, exclusive of costs and interests. The Defendant has therefore met its burden of showing a reasonable probability that the amount in controversy satisfies the Federal jurisdictional amount.

8. Moreover, there are numerous pending class actions against MENU FOODS, INC. in various federal judicial districts in which the named Plaintiffs allege that jurisdiction exists under 28 U.S.C. §1332(d)(2) including *Troiano v. Menu Foods, et al*, Case No: 07-60428 (Judge Cohn); *Donnelly v. Menu Foods, et al*, Case No: 07-

20955 (Judge Lenard); *Renee Blaszkowski, Amy Hollub and Patricia Davis v. Menu Foods, et al*, Case No: 07-21221 CIV (Judge Altonaga), all pending in the United States District Court in and for the Southern District of Florida and *Ferrarese v. Menu Foods, et al*, Case No: 07-CIV-235-FTM-29 DNF (Judge Steele) pending in the United States District Court in and for the Middle District of Florida.

**B. Complete Diversity of Citizenship Exists.**

9. There is complete diversity of citizenship between the Plaintiffs and the Defendant in this action. Diversity in a class action is established when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

10. According to the Complaint, the named Plaintiffs are citizens of the State of Florida.

11. Defendant MENU FOODS, INC. is New Jersey Corporation with its principal executive offices located at 9130 Griffith Morgan Lane, Pennsauken, New Jersey 08110. MENU FOODS is deemed to be a citizen of New Jersey and the Plaintiffs are citizens of the State of Florida.

12. This case should be removed to the United States District Court for the Middle District of Florida, pursuant to 28 U.S.C. §§ 1332 and 1441, because (I) the Plaintiffs are citizens of the State of Florida; (II) MENU FOODS is not a citizen of the State of Florida; (III) the amount in controversy exceeds \$5,000,000.00, exclusive of costs and interests.

**III. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

13. This Notice of Removal is timely according to 28 U.S.C. § 1446(b).

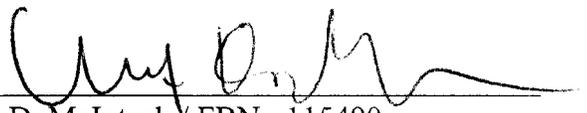
14. Defendant, in good faith, believe that the amount in controversy exceeds \$5,000,000, exclusive of costs and complete diversity of citizenship exists.

15. The United States District Court for the Middle District of Florida embraces the county in which the state court action is now pending. Therefore, this action is properly removed to the Middle District of Florida pursuant to 28 U.S.C. § 93(a)(1).

16. Pursuant to 28 U.S.C. § 1446(d), the Defendant is providing written notice of this removal to all adverse parties and will file a copy of the notice with the Clerk of the State Court in which this action is currently pending.

**WHEREFORE**, the Defendant, MENU FOODS, INC., respectfully removes this action from Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, to the United States District Court for the Middle District of Florida, Orlando Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

**ADORNO & YOSS LLP**

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Attorneys for Menu Foods, Inc.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY FLORIDA

GEORGE BIRNEY and  
AUDREY BIRNEY,

CASE NO: 07-CA-4066  
35

Plaintiff,

vs.

MENU FOOD, INC., et al.

Defendant.

Served n/A  
Date 4/23/07 Time 2:00  
X RAM

SUMMONS

Signature & Print Name ID #  
SPECIAL / CERTIFIED PROCESS SERVER  
in The \_\_\_\_ Judicial Circuit Court  
Investigative Process Service, Inc.,  
100 E. Pine Street, Suite 205  
Orlando, FL 32801 ★ 407-426-7433

THE STATE OF FLORIDA

To each Sheriff of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the  
Complaint, in this action on Defendant:

Menu Foods, Inc.  
9130 Griffith Morgan Lane  
Pennsauken, NJ 08110

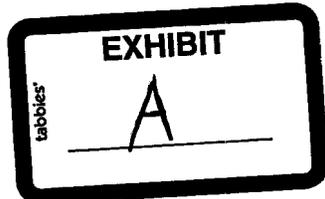
Each Defendant is hereby required to serve written defenses to the Complaint on Luis G. Figueroa, Attorneys Trial Group, 540 N. Semoran Blvd., Orlando, FL 32807, (407)381-4123, within twenty (20) days after service of this Summons on that Defendant, exclusive of the day of service and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's counsel or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint.

In accordance with the Americans With Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact Court Administration at 425 N. Orange Avenue, Suite 2130, Orlando, FL 32801, telephone (407) 836-2050, not later than seven (7) days prior to the proceeding. If hearing impaired, (TDD) 1-800-955-8771, or Voice (V) 1-800-955-8770 via Florida Relay Service.

DATED this \_\_\_\_ day of APR 12 2007, \_\_\_\_.

LYDIA GARDNER  
CLERK OF THE COURT COUNTY COURT SEAL  
COLLENETTE HALL

by: \_\_\_\_\_  
Deputy Clerk  
(COURT SEAL)



**IMPORTANTE**

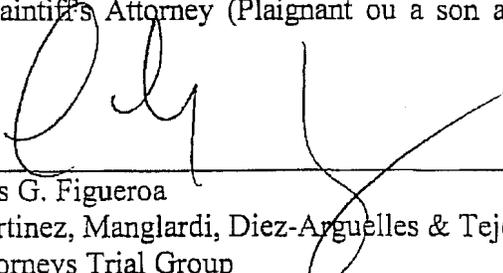
Usted ha sido demandado legalmente. Tiene veinte (20) dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera; si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas en dicho caso. Si usted no contesta la demanda a tiempo, podiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de us respuesta a la persona denominada abajo como Plaintiff/Plaintiff's Attorney. (Demandante o Abogado del Demandante).

**IMPORTANT**

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cet'te citation pur deposer une reponse ecrite a la plainte ci-jointe aupres de ce Tribunal. Un simple coup de telephone est insuffisant pur vous proteger; vous etes oblige de deposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le Tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le relai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucon preavis ulterieur du Tribunal. Il y a d'autres obligations juridiques et vous pouvez rquerir les services immeidats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telphoner a un service de reference d'avocats ou a un bureau d'assitance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une response ecrite, il vous audra egalemt, en meme temps que cette formalite, faire parvenir ou expedier une copie au carbone ou une photocopie de votre reponse ecrite au Plaintiff/Plaintiff's Attorney (Plaignant ou a son avocat) nomme ci-essous.



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Attorney for the Plaintiff

**I HEREBY CERTIFY** that a copy of the foregoing was furnished by mail to all counsel on the attached Service List on May <sup>14</sup>, 2007.

**ADORNO & YOSS LLP**

By:  \_\_\_\_\_

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