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Robert B. Gerard, Esq.
Nevada State Bar #005323
Lawrence T. Osuch, Esq.
Nevada State Bar #006771
Gerard & Osuch, LLP
2840 South Jones Boulevard
Building D, Suite #4
Las Vegas, Nevada 89146
Telephone: (702) 251-0093
Facsimile: (702) 251-0094

Norman Blumenthal, Esq.
California State Bar #068687
Blumenthal & Nordrehaug
2255 Calle Clara
La Jolla, California 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232

Attorneys for Plaintiffs

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

MARGARET PICUS, an individual; on behalf
of herself, and on behalf of all others similarly
situated,
Plaintiffs,
vs.
WAL-MART STORES, INC; MENU FOODS
INC.; DEL MONTE FOODS COMPANY;
SUNSHINE MILLS, INC.; CHEMNUTRA
INC.; and DOES 1 through 100, Inclusive,
Defendants.

CASE NO.: A 540375
COMPLAINT XXIII
(JURY DEMAND)
ARBITRATION EXEMPTION
(CLASS ACTION)

FILED
APR 30 11 21 AM '07
[Signature]
CLERK OF THE COURT



1 **CLASS ACTION COMPLAINT**

2 COMES NOW, Plaintiff MARGARET PICUS ("Plaintiff"), individually and on behalf of
3 all others similarly situated, brings this action as a class action against Defendants WAL-MART
4 STORES, INC.; MENU FOODS INC.; DEL MONTE FOODS COMPANY; SUNSHINE
5 MILLS, INC.; CHEMNUTRA INC., and DOES 1 through 100, inclusive (hereinafter collectively
6 referred to as "Defendants"), for violations of applicable consumer fraud statutes, for unjust
7 enrichment, and for fraud by omission and concealment. Plaintiff alleges, based upon
8 information and belief, except where otherwise stated, as follows:

9
10 **NATURE OF THE ACTION**

11 1. The instant Class Action Complaint involves a scheme among the Defendants
12 through which Ol' Roy brand pet food products were expressly sold to consumers as "Made in
13 USA," when in fact components of the Ol' Roy brand pet food products were made and/or
14 manufactured in China. Plaintiffs seek restitution and/or damages for all consumers throughout
15 the United States who purchased "Ol' Roy" brand pet food products which represent on the
16 product label to have been "Made in USA" during the applicable Class Period. The Ol' Roy
17 brand pet food products which are the subject of this suit are the following specific products:

- 18 a. Pouch with Beef
19 b. Pouch with Chicken
20 c. Pouch with Filet Mignon
21 d. Pouch with Chicken Teriyaki
22 e. Pouch with Beef/Noodle/Vegetable
23 f. Pouch with Lamb/Rice/Gravy
24 g. Pouch with Stew
25 h. Pouch with Turkey
26 i. Can SI Beef
27 j. Can SI Chicken
28 k. Ol' Roy Beef Flavor Jerky Strips Dog Treats
l. Ol' Roy County Stew Hearty Cuts in Gravy Dog Food
m. Ol' Roy with Beef Hearty Cuts in Gravy Dog Food
n. Ol' Roy with Beef Hearty Strips in Gravy Dog Food
o. 4-Flavor Large Biscuits
p. Peanut Butter Biscuits

27 In addition, there may be other Ol' Roy brand pet food products that were similarly labeled as
28 "Made in USA" but contained components that were imported from outside of the United States.

1 Plaintiff will therefore amend to list any additional Ol' Roy brand pet food products which were
2 sold as "Made in USA" but contained components that were imported from outside the United
3 States as such additional Ol' Roy brand pet food products are identified through discovery.

4 2. Central to the Defendants' marketing of certain of their products is the
5 representation and designation that such products were and are "Made in USA." Defendants
6 package these products with the designation on the label or packaging, in capital and bold
7 lettering, that the products were "MADE IN USA." Studies show that the "MADE IN USA" is a
8 substantial factor in consumer purchasing decisions. Moreover, in the context of food products,
9 the designation that the products were "Made in USA" becomes a central and primary concern
10 because of concerns about the health and safety of the pet and the differences in health and safety
11 procedures in foreign countries.

12 3. At all relevant times, Defendant Wal-Mart Stores, Inc. operated a nationwide
13 chain of retail stores selling a wide variety of consumer goods including pet food products under
14 the brand name "Ol' Roy" after the famous Wal-Mart founder Sam Walton's bird dog, Ol' Roy.
15 Defendant Wal-Mart Stores, Inc. operated these retail stores in Nevada and sold pet food
16 products under the brand name "Ol' Roy" to consumers in Nevada and throughout the United
17 States

18 4. All of the pet food products under the brand name "Ol' Roy" sold to consumers in
19 Nevada and nationwide have substantially the same product label. On each package of Ol' Roy
20 pet food, the label uniformly represents that the product was "MADE IN USA" in capital letters.
21 A true and correct exemplar copy of an Ol' Roy pet food label attached hereto as Exhibit #1,
22 evidencing the uniform representations regarding geographic origin of the product. All of the Ol'
23 Roy pet food sold by Wal-Mart Stores, Inc. contains identical or substantively similar
24 representations as to the geographic origin of the product being "Made in USA."

25 5. At all relevant times, Ol' Roy brand pet foods were not "Made in USA" as falsely
26 advertised, but instead, were manufactured either in whole or in part, in China. On or after
27 March 16, 2007, as a result of the FDA investigation into these products, Defendants disclosed
28 for the first time that the Ol' Roy brand pet food products contained ingredients manufactured in

1 China.

2 6. At all relevant times, Defendants WAL-MART STORES, INC. ("Wal-Mart")
3 MENU FOODS INC. ("Menu"), DEL MONTE FOODS COMPANY ("Del Monte"), and
4 SUNSHINE MILLS, INC. ("Sunshine") were companies that each participated in the
5 manufacture and/or distribution of an Ol' Roy brand pet food product and were responsible in
6 some part, for the misrepresentation that the Ol' Roy product was "Made in USA." Wal-Mart,
7 Menu, Del Monte and Sunshine each participated in the packaging or labeling of different Ol'
8 Roy brand pet food products, each with the fraudulent representation of geographic origin. Wal-
9 Mart, Menu, Del Monte and Sunshine each knew or exercised conscious disregard for the truth
10 that Ol' Roy brand pet food products were not "Made in USA," but instead, were manufactured
11 either in whole or in part, in China. Despite this knowledge, they nevertheless participated with
12 Wal-Mart in the fraudulent labeling of Ol' Roy pet food products as "Made in USA." Wal-Mart,
13 Menu, Del Monte and Sunshine each knew that the fraudulent labeling of Ol' Roy brand pet food
14 products as "Made in USA" would be reasonably relied upon by end consumers. Despite this
15 knowledge, they nevertheless participated in fraudulent labeling of Ol' Roy brand pet food
16 products, distributing Ol' Roy products to Wal-Mart for the intended purpose of sales to the
17 consumers in Nevada and nationwide, without any reasonable grounds to believe that the
18 products were "Made in USA."

19 7. At all relevant times, Defendant CHEMNUTRA INC. ("Chemnutra") is the
20 company responsible, whole or in part, for importing the manufactured wheat gluten ingredient
21 in Ol' Roy brand pet food products from China and supplying the same for use in the Ol' Roy
22 brand pet food products. The Chinese product imported by CHEMNUTRA was actually used in
23 the Ol' Roy brand pet food products. Although importing the manufactured wheat gluten
24 ingredient from China, CHEMNUTRA nevertheless participated in the scheme and practice of
25 labeling the Ol' Roy brand pet food products as "Made in USA" and/or were responsible for the
26 mislabeling of the Ol' Roy brand pet food products as "Made in USA."

27 8. Under the federal regulations established by the Federal Trade Commission, for a
28 product to be called "Made in USA," the product must be "all or virtually all" made in the U.S.

1 The term "United States," includes the 50 states, the District of Columbia, and the U.S. territories
2 and possessions. Under this standard, "All or virtually all" means that "all significant parts and
3 processing that go into the product must be of U.S. origin. That is, the product should contain no
4 — or negligible — foreign content." See Federal Trade Commission Statement "Complying with
5 the Made In the USA Standard."

6 9. The Ol' Roy brand pet food products that were imported, manufactured and sold
7 by Defendants were comprised of components that were manufactured outside of the United
8 States, including but not limited to China. At all relevant times prior to March 16, 2007,
9 Defendants failed to disclose and concealed the fact that Ol' Roy brand pet food products
10 contained ingredients or components that were manufactured and/or made in China and failed to
11 exercise the necessary skill and care required to determine the accuracy of this statement.

12 10. Contrary to Defendants' packaging of Ol' Roy brand pet food products, (a) the Ol'
13 Roy products contain certain components that have been entirely or substantially made,
14 manufactured or produced outside of the United States, and (b) not all, or virtually all, of each
15 Ol' Roy product is "Made in USA." Defendants have fraudulently concealed the material facts at
16 issue herein by failing to disclose to the general public the true facts regarding the country of
17 origin designation appearing on the Ol' Roy brand pet food products. The disclosure of this
18 information was necessary in order to make the Defendants' representations regarding product
19 origin not misleading. Defendants possess superior knowledge of the true facts, including
20 knowledge that certain components were imported under a "Made in China" designation, which
21 was not disclosed and which was necessary to discover the wrongful conduct, thereby tolling the
22 running of any applicable statute of limitation.

23 11. Consumers and users of these products are particularly vulnerable to these
24 deceptive and fraudulent practices. Defendants were in the exclusive possession of information
25 regarding the country of origin for Ol' Roy brand pet food products. Most consumers possess
26 very limited knowledge of the likelihood that products claimed to be "Made in USA" are in fact
27 made, in whole or in part, in foreign countries. This is a material factor in many people's
28 purchasing decisions, as they believe they are buying truly American products and supporting

1 American companies and American jobs. Consumers generally believe that "Made in USA"
2 products are higher quality products than those of other countries. Unaware of the falsity of the
3 Defendants' country-of-origin claims, Plaintiff and the other members of the Class were
4 fraudulently induced to purchase Ol' Roy brand pet food products under false pretenses and at
5 premium prices. State and federal laws are uniformly designed to protect consumers from this
6 type of false advertising and predatory conduct. Defendants' deception of consumers is ongoing
7 and will victimize consumers every day until it is altered by judicial intervention.

8 12. The country-of-origin designation is especially important and material in the
9 context of food products because of the protections afforded by the Food and Drug
10 Administration, and local health agencies, over food products made in the United States. For
11 example, food products made in foreign countries can be grown or made using banned pesticides
12 and/or chemicals, which one would not expect to find in Made in USA food products.
13 Consumers who purchase food products designated with the "Made in USA" reasonably believe
14 that they are purchasing product which has been grown and made in accordance with state and
15 federal regulations. These same regulations are not present in foreign countries where unsafe and
16 deleterious chemicals may be used without regulatory oversight. This concern is evidenced by
17 the 2007 recall of many Ol' Roy brand pet food products, which was ordered because of the
18 presence of chemicals which were illegal for use in food in the United States. This would not
19 have occurred if the products were in fact "Made in USA" as represented.

20
21 **THE PARTIES**

22 13. The Plaintiff MARGARET PICUS is, and at all time mentioned herein was, a
23 resident of Nevada, who purchased Ol' Roy brand pet food products at a Wal-Mart retail store
24 located in Henderson, Nevada during the Class Period. The Plaintiff purchased Ol' Roy brand
25 pet food products as a consumer for the household purpose of feeding the product to her beloved
26 pet.

27 14. Defendant WAL-MART STORES, INC. is and at all times mentioned herein was,
28

1 a corporation organized under the laws of Delaware, authorized to conduct business in Nevada,
2 and has a principal place of business in Arkansas. At all relevant times, Wal-Mart conducted and
3 conducts substantial business in the State of Nevada and substantially availed and avails itself of
4 the consumer pet food market in Nevada and the United States.

5 15. Defendant MENU FOODS INC. is and at all times mentioned herein was, a
6 corporation organized under the laws of New Jersey with a principal place of business in Ontario,
7 Canada. At all relevant times, Menu conducted and conducts substantial business in the State of
8 Nevada and substantially availed and avails itself of the consumer pet food market in Nevada and
9 the United States.

10 16. DEL MONTE FOODS COMPANY is and at all times mentioned herein was, a
11 corporation organized under the laws of Delaware with a principal place of business in San
12 Francisco, California. At all relevant times, Del Monte conducted and conducts substantial
13 business in the State of Nevada and substantially availed and avails itself of the consumer pet
14 food market in Nevada and the United States.

15 17. SUNSHINE MILLS, INC. is and at all times mentioned herein was, a corporation
16 organized under the laws of Delaware with a principal place of business in Alabama. At all
17 relevant times, Sunshine conducted and conducts substantial business in the State of Nevada and
18 substantially availed and avails itself of the consumer pet food market in Nevada and the United
19 States.

20 18. CHEMNUTRA INC. is and at all times mentioned herein was, a corporation
21 residing in and with a principal place of business in Nevada. At all relevant times, Chemnutra
22 conducted and conducts substantial business in the State of Nevada and substantially availed and
23 avails itself of the consumer pet food market in Nevada and the United States.

24 19. Plaintiffs are ignorant of the true names and capacities of the Defendants sued
25 herein as DOES 1 through 100, inclusive, and therefore sued these Defendants by fictitious
26 names. Plaintiffs will amend further this Class Action Complaint to allege the true names and
27 capacities of these Defendants if and when they are ascertained. Each of these Defendants, sued
28 by the fictitious DOE designation, was in some manner responsible for the acts, omissions,

1 misrepresentations, non-disclosures, breach of warranties, fraud, unjust enrichment, deceptive
2 business practices, violation of statutes, aiding and abetting the scheme, and other wrongdoing as
3 alleged herein, all of which directly and proximately caused damage to Plaintiffs. Plaintiffs are
4 further informed and believe that said Defendants, some of them, each of them and/or all or them
5 were the knowing and willful participants in a scheme to promote, market, sell, advertise, or
6 otherwise benefit from the sale of mislabeled Ol' Roy brand pet food products.

7
8 **JURISDICTION AND VENUE**

9 20. This Court has jurisdiction over this action, and venue is proper in Clark County,
10 Nevada, because (1) the Plaintiff's purchases of Ol' Roy brand pet food products occurred in
11 Clark County, (2) the Plaintiff resides in Clark County, (3) sale of Ol' Roy brand pet food
12 products to members of the Class occurred in Clark County, (4) Chemnutra is located in Las
13 Vegas, Nevada, and (5) the deceptive trade practices that give rise to this claim emanated from
14 and occurred, in whole or in part, in Nevada.

15 **CLASS ALLEGATIONS**

16 21. Plaintiff brings this action pursuant to Rule 23 of the Nevada Rules of Civil
17 Procedure as a nationwide class action on her own and on behalf of a class defined as:

18 **ALL INDIVIDUALS IN THE UNITED STATES WHO PURCHASED ONE OR**
19 **MORE OL' ROY BRAND PET FOOD PRODUCTS PRIOR TO MARCH 16,**
20 **2007**

21 The OL' ROY BRAND PET FOOD PRODUCTS which are the subject of this suit are the
22 following specific products:

- 23 a. Pouch with Beef
24 b. Pouch with Chicken
25 c. Pouch with Filet Mignon
26 d. Pouch with Chicken Teriyaki
27 e. Pouch with Beef/Noodle/Vegetable
28 f. Pouch with Lamb/Rice/Gravy
g. Pouch with Stew
h. Pouch with Turkey
i. Can SI Beef
j. Can SI Chicken
k. Ol' Roy Beef Flavor Jerky Strips Dog Treats
l. Ol' Roy County Stew Hearty Cuts in Gravy Dog Food
m. Ol' Roy with Beef Hearty Cuts in Gravy Dog Food

- n. Ol' Roy with Beef Hearty Strips in Gravy Dog Food
- o. 4-Flavor Large Biscuits
- p. Peanut Butter Biscuits

In addition, other Ol' Roy brand pet food products may also have been similarly labeled as "Made in USA" but contained components that were imported from outside of the United States. Plaintiff will therefore amend to list any additional Ol' Roy brand pet food products which were sold as "Made in USA" but contained components that were imported from outside the United States as such additional Ol' Roy brand pet food products are identified through discovery. Excluded from the Class are Defendants, any parent, subsidiary or affiliate of Defendants, and their officers, directors, and employees of Defendants, and any judicial officer who may preside over this cause of action.

22. The requirements for maintaining this action as a class action are satisfied in that:

- a. It is impracticable to bring all members of the Class before the Court.

Plaintiff estimates that there are thousands of Class Members geographically spread throughout Nevada and that there are millions of Class Members, geographically spread throughout the United States. Attempting to join and name each Class member as a Co-Plaintiff would be unreasonable and impracticable.

- b. There are questions of law and fact common to the Class, which are identical for each member of the Class and which predominate over the questions affecting the individual Class members, if any. Among these common questions of law and fact are:

- (i) Whether Defendants made deceptive representations or designations of geographic origin in connection with Ol' Roy brand pet food products;
- (i) Whether the representations or designations of geographic origin in connection with Ol' Roy brand pet food products violated 15 U.S.C. §45a;
- (ii) Whether Ol' Roy brand pet food products were represented on the package labeling to have been "MADE IN USA";

1 (iii) Whether all, or virtually all, of the Ol' Roy brand pet food products
2 were "Made in USA"; ;

3 (iv) Whether Defendants were unjustly enriched through the
4 distribution and/or sale of Ol' Roy brand pet food products as
5 "Made in USA";

6 (v) Whether Defendants concealed the true origin of Ol' Roy brand pet
7 food products and omitted the fact that Ol' Roy brand pet food
8 products contained components that were manufactured and made,
9 in whole or in part, outside the United States;

10 (vi) Whether Defendants participated in the alleged mislabeling of Ol'
11 Roy brand pet food products as "Made in USA";

12 (vii) Whether Defendants knew or should have known that Ol' Roy
13 brand pet food products contained components that were
14 manufactured and made, in whole or in part, outside the United
15 States;

16 (viii) Whether the members of the Class sustained damage as a result of
17 the Defendants' conduct;

18 (ix) Whether the Defendants unfairly or unlawfully received and/or
19 retained revenue acquired through the scheme alleged herein;

20 (x) Whether the Defendants engaged in a uniform corporate policy of
21 marketing Ol' Roy brand pet food products as "Made in USA";

22 (xi) Whether the applicable statute of limitations was tolled by virtue of
23 Defendant's concealment and fraud;

24 (xii) Whether the Defendants committed fraud in the marketing,
25 distribution and/or sale of Ol' Roy brand pet food products and
26 whether Defendants participated in such fraud.

27 c. The claims of the representative Plaintiff are typical of the claims of the
28

1 Class in that the Plaintiff purchased Ol' Roy brand pet food products prior to March 16, 2007.
2 The claims of both the named Plaintiff and the claims of all other Class members result from
3 Defendants' actions in marketing and/or labeling Ol' Roy brand pet food products as "Made in
4 USA" which were in fact made, manufactured or produced with certain components made
5 outside of the United States.

6 d. The claims of the representative Plaintiff will fairly and adequately protect
7 the interests of the Class. The Class interests are coincident with, and not antagonistic to, those
8 of the Plaintiff. Furthermore, Plaintiff has retained and is represented by experienced class action
9 counsel.

10 23. In this action, Plaintiff and the Class seek all relief authorized under Nevada law
11 for which class-wide relief is available, disgorgement, restitution and reasonable attorneys' fees
12 and costs incurred in the prosecution of this action. There are no manageability problems due to
13 variations in state laws or choice of law provisions, because the representations of "Made in
14 USA" were uniform and systematic and the laws of the United States and of all 50 states prohibit
15 and make unlawful the designation of "Made in USA" on a product that is not made in the
16 U.S.A. Further, the deceptive or false designation of geographic origin is actionable in all 50
17 states, and there are no relevant variations in the law of the states which impact the claims
18 asserted herein. The performance of applicable choice of law or conflict of law analysis does not
19 render the class unmanageable, moreover, any manageability issue which may arise can be
20 handled through the use of a subclass.

21 24. A class action is superior to any other available methods for the fair and efficient
22 adjudication of this controversy. The amount of each individual claim is too small to warrant
23 individual litigation. Even if any group of class members itself could afford individual litigation,
24 such a multitude of individual litigation would be unduly burdensome to the courts in which the
25 individual litigation would proceed. The class action device is preferable to individual litigation
26 because it provides the benefits of unitary adjudication, economies of scale, and comprehensive
27 adjudication by a single court. Finally, class wide litigation will insure that wrong doers do not
28 retain the ill-gotten gains acquired through their wrongful conduct.

1 25. A certified Class for injunctive relief is appropriate because Defendants have
2 uniformly acted or refused to act on grounds generally applicable to the class, thereby making
3 appropriate final injunctive relief with respect to the Class as a whole. Conjunctively, or
4 alternatively, a class certified for restitution and/or damages is also appropriate. The common
5 questions of law and fact predominate over individual questions because all injuries sustained by
6 any member of the Class arise out of the singular conduct of the defendant in uniformly
7 providing deceptive representations regarding the Ol' Roy brand pet food products and selling
8 such products to the Class through deceptive and unlawful representations regarding the
9 geographic origin of the products.

10
11 **COUNT I**

12 **VIOLATION OF THE NEVADA DECEPTIVE TRADE**
13 **PRACTICES ACT AND SIMILAR STATUTES IN OTHER STATES**
14 **(Against All Defendants)**

15 26. Plaintiff repeats, incorporates by reference and realleges the allegations contained
16 in Paragraphs 1-25 above as if fully set forth herein.

17 27. Plaintiff brings this claim under Nevada consumer fraud laws, particularly NRS
18 Sections 41.600 and 598.0915, on behalf of herself and the Class who purchased Ol' Roy brand
19 pet food products and who were thus uniformly subject to Defendants' above-described
20 deceptive, unlawful and fraudulent conduct. The laws of every other state are identical to and/or
21 substantively similar to Nevada consumer fraud laws in that federal law and the laws of every
22 state prohibit the use of deceptive representations regarding the geographic origin of products,
23 and every state similarly authorizes an action by consumers for such conduct. In addition, the
24 laws of the state of Delaware, and in particular 6 Del. C. § 2532(a)(4) is identical to that of
25 Nevada N.R.S. §598.0915.

26 28. The Ol' Roy brand pet food products, as described above, were purchased by the
27 Plaintiff and by other consumers similarly situated primarily for personal, family, or household
28 purposes. Millions of units of Ol' Roy brand pet food products were sold in the United States
prior to March 16, 2007.

1 29. The Defendants violated their statutory duty by working in concert and each
2 participating in an elaborate scheme wherein Defendants deliberately mislabeled products or
3 caused products to be mislabeled as to their geographic origin for the purpose of deceiving
4 consumers, increasing sales and reducing costs. Defendants also acted deceptively and unfairly
5 because all of the Ol' Roy brand pet food products had the deceptive appearance of a product that
6 was made in the USA.

7 30. The Defendants violated their duty under the aforementioned statutes, including
8 but not limited to, N.R.S § 598.0915 (4), by, among other things, making false representations
9 and/or designations as to the geographic origin of the Ol' Roy brand pet food products. This
10 conduct violates Nevada law, and the law of every other state, including but not limited to
11 California (Cal. Civil Code §1770(a)(4)), Arkansas (Ark. Stat. Ann. §4-88-107(a)(1)), Alabama
12 (Code of Ala. §8-19-5(4)), and Delaware (6 Del. C. §2532), all of which laws are identical in
13 prohibiting deceptive representations or designations of geographic origin in the marketing and
14 sales of goods.

15 31. The Defendants' actions as alleged herein were unfair and deceptive and
16 constituted fraud, misrepresentation and the concealment, suppression and omission of material
17 facts with the intent that Plaintiff and the Class would rely upon the fraudulent misrepresentation,
18 concealment, suppression and omission of such material facts, all in violation of the applicable
19 Consumer Fraud and Deceptive Business Practices Acts.

20 32. Each Ol' Roy brand pet food product represented to the Plaintiff and every other
21 member of the Class, at the time of purchase, that the Ol' Roy brand pet food product was
22 "MADE IN USA" without qualification. Contrary to such representation, each Ol' Roy brand
23 pet food product purchased by the Plaintiff and by every other member of the Class uniformly
24 contained component(s) that were made and/or manufactured outside of the United States.

25 33. These representations were made by Defendants to Plaintiff and the Class in
26 writing on the label of each Ol' Roy brand pet food product purchased by the Plaintiff and by
27 every other member of the Class, at the time of their respective purchases. Because the true facts
28 concerning the use component(s) that were made and/or manufactured outside of the United

1 States were concealed by Defendants and never disclosed until after March 16, 2007, the true
2 facts concerning the geographic origin of the products were not and could not have been known
3 to Plaintiff or any other member of the Class.

4 34. When making the representations on the label that the products were "Made in
5 USA", the Defendants intended that the representations be relied upon by all consumers in
6 making their purchase.

7 35. All other states have consumer fraud statutes which are substantially similar to the
8 Nevada Consumer Fraud Act. To the extent that the Nevada Consumer Fraud Act may be found
9 not to protect the residents of other states, the consumer fraud acts of the Defendants' forum state
10 could be applied to all members of the Class.

11 36. Plaintiff was injured by the many violations of the Nevada Consumer Fraud Act,
12 and parallel sister state statutes, and Plaintiff has thereby been damaged in an amount to be
13 proven at trial. As a direct and proximate result of the acts and practices alleged above, members
14 of the general public who purchased the subject Ol' Roy brand pet food products from
15 Defendants, including the Plaintiff, lost monies in a sum currently unknown but subject to proof
16 at the time of trial. This Court is empowered to, and should, order restitution to all persons from
17 whom Defendants deceptively, unfairly and/or unlawfully took money in order to accomplish
18 complete justice.

19
20 **COUNT II**

21 **FRAUD-INTENTIONAL NON-DISCLOSURE OF MATERIAL FACTS**

22 **(Against All Defendants)**

23 37. Plaintiff repeats, incorporates by reference and realleges the allegations contained in
24 Paragraphs 1-36, above as if fully set forth herein.

25 38. The Defendants, working in concert under the above-described elaborate, fraudulent
26 scheme, intentionally concealed and failed to disclose material facts about Ol' Roy brand pet food
27 products and the true facts that should have been made known to the public and the Plaintiff Class
28 prior to their purchase of Ol' Roy brand pet food product. In particular, the Defendants failed to

1 disclose the material facts alleged herein above with regard to the true geographic origin of important
2 and substantial component(s) of Ol' Roy brand pet food products. By way of further information,
3 Plaintiff further allege as follows:

4 **Defendants:**

5 39. The Defendants participation in the fraudulent scheme is set forth as follows:

6 a. Who: The Defendants each participated in the labeling of Ol' Roy brand pet
7 food products as "Made in the USA" when they each knew that the Ol' Roy brand pet food products
8 were not made in USA and contained important and substantial component(s) that were made and/or
9 manufactured outside of the United States.

10 b. When: The Ol' Roy brand pet food products deceptively represented their
11 geographic origin as herein alleged at all times prior to March 16, 2007, when the true origin of these
12 products were disclosed for the first time as a result of an investigation by the Food and Drug
13 Administration.

14 c. Where: On the label and/or packaging of the Ol' Roy brand pet food products
15 sold in Nevada and throughout the United States.

16 d. Nature of Fraud: This was a fraud as to the geographic origin where "Made
17 in USA" designation was used on each package to give the appearance that the product was made
18 in the USA, by United States workers and farmers, and under the protection of United States laws,
19 when in fact, the Defendants knew or should have known the Ol' Roy brand pet food products were
20 comprised of component(s) that were made and/or manufactured outside of the United States. In
21 fact, Chemnutra admitted in its recall notices that the component(s) of Ol' Roy brand pet food
22 products were originally labeled as "Made in China", which designation apparently was changed
23 and/or altered by Defendants before sale to consumers.

24 e. How and When Were Material Facts Concealed From The Plaintiffs:
25 Defendants failed to disclose and concealed the true geographic origin of component(s) of the Ol'
26 Roy brand pet food products.

27 40. These non-disclosures of material fact were made intentionally in order to deceive
28 the Plaintiff and the other Class members, to induce their reliance, and in order to enrich the

1 Defendants by using sub-standard foreign components and passing such components off to the public
2 as "MADE IN USA." Said non-disclosures were made for the purpose of facilitating and/or aiding
3 and abetting the scheme to market and sell these products to the public using deceptive
4 representations of geographic origin.

5 41. If Plaintiff and the other members of the Class had known of the facts which
6 Defendants and each of them failed to disclose, they would never have purchased the Ol' Roy brand
7 pet food products as they did.

8 42. Defendants' non-disclosures of material facts have caused damage to Plaintiff and
9 the other members of the Class.

10
11 **COUNT III**

12 **Unjust Enrichment**

13 **(Against All Defendants)**

14 43. Plaintiff repeats, incorporates by reference and realleges the allegations contained in
15 Paragraphs 1-42 above as if fully set forth herein.

16 44. By labeling products as "Made in USA", Defendants represented that the subject
17 "Made in USA" products have the characteristic of being made in America and the benefits of
18 American-made products, which they do not have. Defendants have represented that the subject
19 "Made in USA" products have the status of American-made products and the affiliation and
20 connection with America, which they do not have. Moreover, Defendants have represented that the
21 subject "Made in USA" products have the standard, quality, and grade of American-made products,
22 which is not true. This "Made in USA" designation is a material and substantial factor in
23 consumers' purchasing decisions, because consumers believe they are buying truly American
24 products and supporting American companies and American jobs. Consumers generally believe that
25 "Made in USA" products are higher quality products than those of other countries. Further, this
26 "Made in USA" designation is especially important with respect to food products, because only
27 through the Made in the USA designation can consumers insure that the products were not produced
28 using illegal or banned chemicals or pesticides. This concern is evidenced by the recall of Ol' Roy

1 brand pet food products which was ordered because the products were found to contain substances
2 which are not approved for use in food products in the United States, and the reason they contained
3 such deleterious chemicals is because component(s) of the subject products were not made and/or
4 manufactured in the United States, but instead were imported from countries with no such health
5 protections.

6 45. In reality, the Ol' Roy brand pet food products were not made of all or substantially
7 all American-made products. In particular, component(s) of the products were imported from outside
8 the United States, including but not limited to wheat gluten imported from China. In the example
9 of the wheat gluten from China, such components were imported as "Made in China" however, the
10 Defendants changed and/or altered such designation to falsely state "Made in USA."

11 46. Defendants have benefitted and been enriched by the above-alleged conduct.
12 Defendants sold the Ol' Roy brand pet food products with the false designation that the Ol' Roy
13 brand pet food products were "Made in USA" and thereby unjustly reaped benefits and profits from
14 consumers and the Class as a result of these representations. Defendants received and continues to
15 receive sale benefits and profits at the expense of Plaintiff and the Class using such deceptive
16 representation and designations.

17 47. Defendants used the aforementioned representations to induce Plaintiff and the other
18 members of the Class to purchase the Ol' Roy brand pet food products. Accordingly, Defendants
19 received benefits which they have unjustly retained at the expense of Plaintiff and the Class
20 members. Defendants have knowledge of this benefit, voluntarily accepted such benefit, and
21 retained the benefit. Plaintiff, and other consumers similarly situated, did not receive the benefits
22 of American-made products and the added health protection flowing from such products, for which
23 they bargained and paid a premium price. As a direct and proximate result of this conduct, Plaintiff
24 and the other members of the Class were deprived of the benefits and money they expended which
25 were improperly retained by Defendants, and are therefore entitled to restitution in an amount
26 equivalent to the value of the benefit.

27 48. As a direct and proximate result of the Defendants conduct and unjust enrichment,
28

1 Plaintiff and the Class Members have suffered injury and seek relief in an amount necessary to
2 restore them to the positions they would be in had Defendants not been unjustly enriched.

3
4 **REQUEST AND PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment in their favor
6 and against Defendants as follows:

7 1. Certify this action as a class action;

8 2. Award damages and/or restitution in an amount to be proven at trial;

9 3. Order declaratory relief finding that Defendants have engaged in deceptive trade practices
10 or practices in violation of federal and state law.

11 4. Order injunctive relief enjoining Defendants and their officers, directors, agents,
12 distributors, servants, employees, attorneys, and all others in active concert or participation with
13 Defendants, or any of them, jointly and severally, during the pendency of this action and permanently
14 thereafter from falsely representing the origin of the products;

15 5. Award pre-judgment and post-judgment interest at the maximum rate allowed by law and
16 costs of suit;

17 6. Award Plaintiff attorneys' fees and all litigation expenses as allowable by law.
18 Alternatively, for all attorneys' fees and all litigation expenses to be awarded pursuant to the
19 substantial benefit doctrine or other authority requiring Defendants to pay Plaintiff's attorneys' fees
20 and litigation expenses. Alternatively, for attorneys' fees and other litigation expenses to be paid
21 under the common fund doctrine or any other provision of law; and

22 7. Order such other and further relief as the Court may deem just and proper.

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1 DATED this the 5th day of April, 2007.

2 GERARD & OSUCH, LLP

3 By: 

4 Robert B. Gerard, Esq.
5 Nevada State Bar #005323
6 Lawrence T. Osuch, Esq.
7 Nevada State Bar #006771
8 2840 South Jones Blvd. D-4
9 Las Vegas, NV 89146
10 Telephone: (702) 251-0093
11 Facsimile: (702) 251-0094

12 Norman Blumenthal, Esq.
13 California State Bar #068687
14 Blumenthal & Nordrehaug
15 2255 Calle Clara
16 La Jolla, California 92037
17 Telephone: (858) 551-1223
18 Facsimile: (858) 551-1232

19 *Attorneys For The Plaintiffs*

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DEMAND FOR JURY TRIAL

PLAINTIFFS demand jury trial on issues triable to a jury.

Dated: April 30, 2007
49.

GERARD & OSUCH, LLP

By: 

Robert B. Gerard, Esq.
Nevada State Bar #005323
Lawrence T. Osuch, Esq.
Nevada State Bar #006771
530 Las Vegas Blvd. South, Fourth Floor
Las Vegas, Nevada 89101

Norman Blumenthal, Esq.
California State Bar #068687
Blumenthal & Nordrehaug
2255 Calle Clara
La Jolla, California 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232

Attorneys For The Plaintiffs