

by insurance. In addition, Plaintiff Workman spend almost \$300 to have his other two cats tested, and will incur additional costs to have them continually monitored. In addition to these costs, Plaintiff Workman has not received any refunds for the cost of the contaminated pet food that he initially purchased. Finally, he estimates that it will cost him approximately \$1,000 to purchase a new cat.

26. Plaintiffs Mark and Mona Cohen own an 11 month old dog named Cookie that is a Yorkie-Bijain mix. Beginning January 2007, the Cohens' dog Cookie became violently ill with severe vomiting. The Cohens had been feeding Cookie Iams dog food.

27. In January and February 2007, Cookie's condition worsened and Cookie developed symptoms of kidney disease, including vomiting, lethargy, excessive thirst, loss of appetite and dehydration. The Cohens took Cookie to the veterinarian on four separate occasions, including a midnight visit on February 9, 2007 to a veterinarian emergency room which required an x-ray at an additional cost of \$300.

28. Although the Cohens' suspected that the Iams food might be involved in Cookie's condition, they were assured by their salesperson at PetSmart that this was unequivocally not the case and that Cookie should not be switched to a different dog food. The Cohens, however, insisted a switch be made, and purchased, at the recommendation of their PetSmart salesperson, a dog food under the brand name Nutro. Both Iams and Nutro were manufactured and recalled by Defendants.

29. Cookie is currently on an anti-nausea medication called Reglin and requires additional vetrinarian visits and monitoring of her kidney functions.

30. In addition to suffering emotional distress, the Cohens have incurred the costs of

medical bills not covered by their pet insurance, prescription medication bills, damage to their personal property including rugs and carpets caused by their's pet's illness, and the costs of future medical monitoring of their dog.

31. As a result of Defendants' wrongful actions, Plaintiffs and Class members have sick or deceased pets, and have suffered economic damages, including, but not limited to, the costs of the recalled pet food, the costs of medical treatment for their pets, burial costs, the costs to replace their pets, and the costs to replace or clean personal property damaged as a result of their pets' illnesses.

32. In addition, their pets will require continuous medical monitoring to gauge the long-term effects of the contaminated pet food on their kidney functions and overall health. Therefore, because the precise impact on the health of class members' pets is not currently known, Plaintiffs and the Class seek the cost of medical monitoring for their pets.

#### CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated.

34. The class which Plaintiffs seek to represent are composed of all persons in the United States who purchased any of the pet food brands manufactured by Defendants during the period commencing December 3, 2006, and ending March 6, 2007 (the "Class Period") that were recalled by Defendants.

35. The class is composed of thousands, and possibly millions, of persons, the joinder of whom is not practicable. The disposition of their claims in a class action will benefit both the parties and the Court. Defendants have recalled 60 million cans of pet food that it sold

throughout the United States during the Class Period, and thus the Class is sufficiently numerous to make joinder impracticable, if not impossible.

36. There are questions of fact and law which are common to all members of the class, including, inter alia, the following:

1. Whether Defendants breached any express or implied warranties when they manufactured and sold the recalled pet food;
2. Whether Defendants' negligently manufactured and sold the recalled pet food; and
3. Whether the Class has been damaged, and if so, the appropriate measure of damages including the nature of the equitable relief to which the class is entitled.

37. The above common issues of fact and law predominate over any arguable individualized issues.

38. Plaintiffs' claims are typical of the claims of the other members of the class because Plaintiffs' and all of the Class members' damages arise from and were caused by having purchased and fed the recalled pet food to their pets. As a result, the evidence and the legal theories regarding Defendants' alleged wrongful conduct are identical for Plaintiffs and all of the Class members.

39. Plaintiffs will fairly and adequately protect the interests of the members of the Class, and Plaintiffs have no interests which are contrary to or in conflict with those of the Class they seek to represent. Plaintiffs have retained competent counsel experienced in class action litigation to further ensure such protection and to prosecute this action vigorously.

40. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the

class, which would establish incompatible standards of conduct for the party opposing the class and would lead to repetitious trials of the numerous common questions of facts and law.

Plaintiffs do not believe that any difficulty will be encountered in the management of this litigation that would preclude its maintenance as a class action. Plaintiffs believe and therefore aver that claims are small in relation to the costs of an individual suit, and a class action is the only proceeding pursuant to which Class members can, as a practical matter, recover. As a result a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

41. Proper and sufficient notice of this action may be provided to the Class members through notice published in appropriate publications.

42. Plaintiffs and the members of the Class have suffered irreparable harm and damages as a result of the Defendants' wrongful conduct as alleged herein. Absent representative action, Plaintiffs and the members of the Class will continue to suffer losses, thereby allowing these violations of law to proceed without remedy.

#### **COUNT I - BREACH OF EXPRESS WARRANTY**

43. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

44. Defendants expressly warranted that the recalled brands of pet food were, in fact, ingestible food that was safe for consumption by dogs and cats.

45. In addition, Defendants made numerous express warranties about the quality of its food and its manufacturing facilities. For example, Menu Foods touts the claim that it "manufacture[s] the private-label wet pet-food industry's most comprehensive product program

with the highest standards of quality” and it operates “state-of-the-art” manufacturing facilities in the United States and Canada.

46. Members of the Class were induced by Defendants’ labeling, advertising and marketing the recalled brands of pet food as “food” to rely upon said express warranty, and did so rely in purchasing the recalled brands of pet food and feeding them to their pets.

47. In reliance on Defendants’ untrue warranties, Plaintiffs and the Class purchased the recalled pet food and fed that food to their pets.

48. Plaintiffs and members of the Class sustained damages as a proximate result of said breach of warranty.

**COUNT II - BREACH OF IMPLIED WARRANTY  
OF MERCHANTABILITY**

49. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

50. Defendants are merchants pursuant to sections 2-104 and 2-314 of the Uniform Commercial Code with respect to pet foods.

51. Through Defendants’ marketing, labeling, and sales, Defendants impliedly warranted that the recalled pet food, which was sold to Plaintiffs and Class members and fed to their pets, was fit for the ordinary purpose for which it was intended, namely, to safely feed and nourish pets without any resulting negative health effects, pursuant to section 2-314 of the Uniform Commercial Code.

52. Through Defendants' marketing, labeling, and sales, Defendants knew that Plaintiffs and Class members would purchase the recalled pet food at issue for the ordinary purpose of feeding their pets.

53. Defendants manufactured, labeled, advertised, sold, and distributed the recalled pet foods at issue for the ordinary purpose for which it was purchased by Plaintiffs.

54. Plaintiffs and Class members purchased and used the recalled pet foods for the ordinary purposes for which such goods are sold, namely feeding them to their pets.

55. Plaintiffs and Class members relied upon Defendants' representations and claims in purchasing the recalled pet foods.

56. The recalled pet foods purchased by Plaintiffs and Class members were unfit for their ordinary purpose when sold. In fact, such pet foods were contaminated and caused severe illness and/or death of the pets that consumed them. Therefore, Defendants breached the implied warranty of merchantability in the sale of the recalled pet foods at issue.

57. Plaintiffs and members of the Class sustained damages as a proximate result of said breach of warranty.

### COUNT III - NEGLIGENCE

58. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

59. Defendants owed a duty to pet owners who purchased its products to ensure that their pet food was safe for pets to consume and free from contamination, such that no pets consuming these products would be injured or die as a result of such consumption.

60. Defendants breached said duty as described herein above when they failed to

adhere to proper safety standards and failed to properly ensure the safety of their products when they sold contaminated pet food, proximately causing damage to Plaintiffs and members of the Class.

61. As a proximate result of the Defendants' conduct described herein, Plaintiffs and members of the Class have suffered damages as a result and continue to suffer damages as a result.

#### **JURY DEMAND**

Plaintiffs hereby request a trial by jury on all issues triable by right before a jury.

#### **PRAYER FOR RELIEF**

THEREFORE, Plaintiffs pray for judgment as follows:

1. That this Court certify this action as a Class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), and appoint Plaintiffs and their counsel to represent the Class;
2. That this Court enter judgment and award damages in favor of Plaintiffs and the Class, and against Defendants under the theories alleged herein;
3. That this Court establish a fund for the medical monitoring of Plaintiffs' pets to discover and treat the extent of kidney damage these pets have suffered as a result of consuming Defendants' recalled pet food;
4. That this Court award Plaintiffs all attorneys' fees, expenses and costs of this suit;
5. That this Court award Plaintiffs pre-judgment and post-judgment interest at the maximum rate allowable by law, compounded daily; and

6. That this Court grant such other, further, and different relief that the Court deems necessary, just, and proper.

Dated: March 22, 2007

Respectfully submitted,

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Attorneys for Plaintiffs and the Class



Schedule A

Recalled Menu Foods' Pet Food Brands<sup>1</sup>

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<sup>1</sup> [http://www.menufoods.com/recall/product\\_cat.html](http://www.menufoods.com/recall/product_cat.html), accessed March 21, 2007;  
[http://www.menufoods.com/recall/product\\_dog.html](http://www.menufoods.com/recall/product_dog.html), accessed March 21, 2007.

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- [Home](#)
- [Recall Information](#)
- [Press Release](#)
- [Cat Product Information](#)
- [Dog Product Information](#)

## Recalled Dog Product Information Recall Information 1-866-895-2708

1. [Americas Choice, Preferred Pets](#)
2. [Authority](#)
3. [Award](#)
4. [Best Choice](#)
5. [Big Bet](#)
6. [Big Red](#)
7. [Bloom](#)
8. [Cadillac](#)
9. [Companion](#)
10. [Demoulas Market Basket](#)
11. [Eukanuba](#)
12. [Food Lion](#)
13. [Giant Companion](#)
14. [Great Choice](#)
15. [Hannaford](#)
16. [Hill Country Fare](#)
17. [Hy-Vee](#)
18. [Iams](#)
19. [Laura Lynn](#)
20. [Loving Meals](#)
21. [Meijers Main Choice](#)
22. [Mighty Dog Pouch](#)
23. [Mixables](#)
24. [Nutriplan](#)
25. [Nutro Max](#)
26. [Nutro Natural Choice](#)
27. [Nutro Ultra](#)
28. [Nutro](#)
29. [O'Roy Canada](#)
30. [O'Roy US](#)
31. [Paws](#)
32. [Pet Essentials](#)
33. [Pet Pride - Good n Meaty](#)
34. [Presidents Choice](#)
35. [Price Chopper](#)
36. [Priority Canada](#)
37. [Priority US](#)

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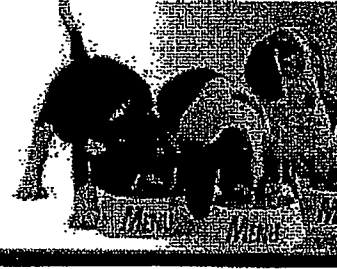
Menu Foods Income Fund - Annual General Meeting

Page 2 of 2

38. [Publix](#)
39. [Roche Brothers](#)
40. [Save-A-Lot](#)
41. [Schnucks](#)
42. [Shep Dog](#)
43. [Springfield Prize](#)
44. [Sprout](#)
45. [Stater Brothers](#)
46. [Stop & Shop Companion](#)
47. [Tops Companion](#)
48. [Wegmans Bruiser](#)
49. [Wells Total Pet](#)
50. [Western Family US](#)
51. [White Rose](#)
52. [Winn Dixie](#)
53. [Your Pet](#)

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- Home
- Recall Information**
- Press Release
- Cat Product Information
- Dog Product Information

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8. [Fine Feline Cat](#)
9. [Food Lion](#)
10. [Foodtown](#)
11. [Giant Companion](#)
12. [Hannaford](#)
13. [Hill Country Fare](#)
14. [Hy-Vee](#)
15. [Jams](#)
16. [Laura Lynn](#)
17. [Li'l Red](#)
18. [Loving Meals](#)
19. [Meijer's Main Choice](#)
20. [Nutriplan](#)
21. [Nutro Max Gourmet Classics](#)
22. [Nutro Natural Choice](#)
23. [Paws](#)
24. [Pet Pride](#)
25. [Presidents Choice](#)
26. [Price Chopper](#)
27. [Priority US](#)
28. [Save-A-Lot](#)
29. [Schnucks](#)
30. [Science Diet Feline Savory Cuts Cans](#)
31. [Sophistacat](#)
32. [Special Kitty Canada](#)
33. [Special Kitty US](#)
34. [Springfield Prize](#)
35. [Sprout](#)
36. [Stop & Shop Companion](#)
37. [Tops Companion](#)

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Menu Foods Income Fund - Annual General Meeting

Page 2 of 2

- 38. Wegmans
- 39. Wels Total Pet
- 40. Western Family US
- 41. White Rose
- 42. Winn Dixie

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