

**MDL 1850**

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

**MAR 30 2007**

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BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

IN RE MENU FOODS POISONED PET  
FOOD LITIGATION

No. MDL DOCKET NO.

**PLEADING NO. 23**

**PLAINTIFFS' MOTION FOR TRANSFER AND CONSOLIDATION OF  
RELATED ACTIONS TO THE WESTERN DISTRICT OF WASHINGTON  
UNDER 28 U.S.C. § 1407**

Plaintiffs Tom Whaley, Stacey Heller, Toinette Robinson, David Rapp, Cecily and Terrence Mitchell, Suzanne E. Johnson, Craig R. Klemann, Audrey Kornelius, Barbara Smith, Michele Suggett and Don James ("Plaintiffs"), respectfully move the Judicial Panel on Multidistrict Litigation for an Order, under 28 U.S.C. § 1407, that (i) transfers eight putative class actions, currently pending in the Western District of Arkansas, Southern District of Florida, Northern District of Illinois, Eastern District of Tennessee, District of New Jersey, District of Connecticut, Central District of California, as well as any cases that may subsequently be filed asserting similar or related claims, to the United States District Court for the Western District of Washington; and (ii) consolidates these proceedings with the five other similar actions that are currently pending in the Western District of Washington, *Tom Whaley v. Menu Foods, et al.*, No. C07-0411M; *Stacey Heller, et al. v. Menu Foods*, No. C07-0453JJC; *Suzanne E. Johnson, et al. v. Menu Foods*, No. C07-0455JCC; *Audrey Kornelius, et al. v. Menu Foods*, No. C07-0454M;

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and *Michele Suggett, et al. v. Menu Foods, et al.*, No. C07-0457RSM, before the Honorable Ricardo Martinez. In support of their Motion for Transfer and Consolidation, Plaintiffs state as follows:

1. The class actions for which transfer and consolidation are proposed arise out of the same conduct and allege virtually identical claims. Each action is brought on behalf of a class of purchasers of dog or cat food produced by Menu Foods and sold under various labels, and alleges that Menu Foods produced tainted pet food that sickened their dogs or cats and caused the death of many of them.

2. The eight actions proposed for transfer, *Sims, et al. v. Menu Foods Income Fund, et al.*, No. 07-5053 (W.D. Ark.); *Scott, et al. v. Menu Foods, et al.*, No. 07-5055 (W.D. Ark.); *Troiano v. Menu Foods, Inc., et al.*, No. 07-60428 CIV-COHN (S.D. Fla.); *Majerczyk v. Menu Foods, Inc.*, No. 07CV1543 (N.D. Ill.); *Holt v. Menu Foods, Inc.*, No. 07-cv-00094 (E.D. Tenn.); *Workman, et al. v. Menu Foods Limited, et al.*, No. 07-cv-1338-NLH-AMD (D.N.J.); *Osborne v. Menu Foods, Inc.*, No. 07CV00469RNC (D. Conn.); and *Sexton v. Menu Foods, Inc., et al.*, No. CV07-01958 GHK (AJWx) (C.D. Cal.), are the only actions on file outside the Western District of Washington of which Plaintiffs are aware.

3. Plaintiffs propose that the *Sims, Scott, Troiano, Majerczyk, Holt, Workman, Osborne* actions and the action pending in the Central District of California be consolidated with the five actions currently pending in the Western District of Washington before Judge Martinez, the lowest numbered of which is *Tom Whaley v. Menu Foods, et al.*, C07-0411M.

4. The centralization of these actions in a single judicial district for consolidated pretrial proceedings will promote the just and efficient conduct of these actions, will serve the convenience of all parties and witnesses and will promote the interest of justice because all actions involve common factual and legal issues, including:

a. whether the Defendant's dog and cat food was materially defective, and unfit for use as dog or cat food;

b. whether Defendant breached any contract, implied contract or warranties relating to the sale of the dog and cat food;

c. whether Defendant's dog and cat food caused Plaintiffs' and other Class members' pets to become ill;

d. whether Plaintiffs and other Class members have been damaged, and, if so, what is the proper measure thereof;

e. what is the appropriate form of injunctive, declaratory and other relief.

5. Consolidation of the actions before a single court will conserve judicial resources, reduce litigation costs, prevent potentially inconsistent pretrial rulings, eliminate duplicative discovery and permit the cases to proceed to trial more efficiently.

6. All 13 actions are in the very early stages of litigation; no responsive pleadings have been filed nor has any discovery been conducted.

7. The proposed transfer and consolidation in the Western District of Washington will be for the convenience of parties and witnesses and will promote the just and efficient conduct of these actions because it is expected that plaintiffs' counsel in all actions will take discovery of the same witnesses and documents.


8. The Western District of Washington has the resources and judicial expertise to properly conduct this case.

9. Plaintiffs' motion is based on the accompanying memorandum of law, the filed pleadings and papers, and other materials that may presented to the Panel before or at the time of any hearing in this matter.

WHEREFORE, Plaintiffs respectfully request that the Panel order that the *Sims, Scott, Troiano, Majerczyk, Holt, Workman, Osborne* and *Sexton* actions, as well as any cases that may be subsequently filed asserting related or similar claims, be transferred to the Western District of Washington for consolidated and coordinated pretrial proceedings.

Dated: March 28, 2007

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IN RE MENU FOODS POISONED PET  
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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR  
TRANSFER AND CONSOLIDATION OF RELATED ACTIONS TO THE  
WESTERN DISTRICT OF WASHINGTON UNDER 28 U.S.C. § 1407**

Plaintiffs Tom Whaley, Stacey Heller, Toinette Robinson, David Rapp, Cecily and Terrence Mitchell, Suzanne E. Johnson, Craig R. Klemann, Audrey Kornelius, Barbara Smith, Michele Suggett and Don James ("Plaintiffs") submit this memorandum of law in support of their motion for transfer and consolidation of related actions to the Western District of Washington under 28 U.S.C. § 1407.

**I. FACTS**

**A. Background**

Defendant Menu Foods, a Canadian corporation doing business in the United States, makes cat and dog food. Menu Foods' cat and dog food is sold under many brands, including such familiar brand names as Iams, Eukanuba and Science Diet. Menu Foods distributes its cat and dog food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway. These and other retailers also sell Menu Food pet food under their own respective private labels.

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Plaintiffs assert their claims against Menu Foods as class actions under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any cat or dog food that was produced by Menu Foods and whose cat or dog became ill or died as a result of eating the food. Cat and dog food that Menu Foods produced caused an unknown number of cats and dogs to become ill, and many of them to die (the current reported known tally is over 100 deaths).

A tragically typical example is the cat belonging to plaintiff Stacy Heller (Case No. C07-0453JJC, W.D. Wash.). Ms. Heller purchased a Menu Foods wet cat food from Wal-Mart under the brand, Special Kitty, for Callie, her cat. Callie ate the Special Kitty cat food for several years before her death. She became extremely ill during the week of March 12, 2007. On March 14, 2007, Ms. Heller took Callie to a veterinarian, who told her that Callie had suffered kidney failure, also known as acute renal failure. Callie's condition quickly worsened, and on March 19, 2007, she had to be euthanized.

To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and gravy wet" style and was produced during a three-month period between December 3, 2006 and March 6, 2007. While the contaminant in the recalled Menu Foods pet food has not yet been conclusively identified, preliminary testing at the New York State Food Laboratory indicates a rodent poison, aminopterin, which is banned in the United States, as the likely culprit.

Menu Foods' actions have injured Plaintiffs and other Class members, who seek to recover damages that include veterinary expenses, burial and cremation expenses, work disruptions and other such losses.

**B. The Menu Foods Poisoned Pet Food Class Actions**

Following these events, several class-action complaints were filed against Menu Foods. These lawsuits assert claims for injuries arising from the sickening and deaths of pets that had consumed Menu Foods' pet food sold under various labels:

- *Tom Whaley v. Menu Foods, et al.*, No. C07-0411M (W.D. Wash.);
- *Stacey Heller, et al. v. Menu Foods*, No. C07-0453JJC (W.D. Wash.);
- *Suzanne E. Johnson, et al. v. Menu Foods*, No. C07-0455JCC (W. D. Wash.);
- *Audrey Kornelius, et al. v. Menu Foods*, No. C07-0454MJP (W.D. Wash.);
- *Michele Suggett, et al. v. Menu Foods, et al.*, No. C07-0457RSM (W.D. Wash.);
- *Sims, et al. v. Menu Foods Income Fund, et al.*, No. 07-5053 (W.D. Ark.);
- *Scott, et al. v. Menu Foods, et al.*, No. 07-5055 (W.D. Ark.);
- *Troiano v. Menu Foods, Inc., et al.*, No. 07-60428 CIV-COHN (S.D. Fla.);
- *Majerczyk v. Menu Foods, Inc.*, No. 07CV1543 (N.D. Ill.);
- *Holt v. Menu Foods, Inc.*, No. 07-cv-00094 (E.D. Tenn.);
- *Workman, et al. v. Menu Foods Limited, et al.*, No. 07-cv-1338-NLH-AMD (D.N.J.);
- *Osborne v. Menu Foods, Inc.*, No. 07CV00469RNC (D. Conn.); and
- *Sexton v. Menu Foods, Inc., et al.*, No. CV07-01958 GHK (AJWx) (C.D. Cal.).

These cases seek to recover damages on behalf of all persons whose cats and/or dogs became sick or died as a result of consuming pet food produced by Menu Foods. Submitted herewith is a Schedule of Actions Involved under 28 U.S.C. § 1407 that lists the actions to be transferred and consolidated.

Plaintiffs seek to have the latter eight class actions listed above transferred to the Western District of Washington for centralization with the five class actions already pending in that jurisdiction. Transfer and consolidation is appropriate because these cases involve common factual questions, transfer will further the convenience of the parties and the witnesses, and transfer will promote the just and efficient conduct of these actions. The Western District of Washington is the appropriate place for transfer and consolidation because the district has the

resources and judicial expertise to properly conduct this case; defendant Menu Foods transacts business in the district; five class actions are already filed there, and the Western District of Washington is easily accessed by all parties.

## II. ARGUMENT

### A. **Transfer and Consolidation of All Menu Foods Poisoned Pet Food Actions for Coordinated Pretrial Proceedings Is Appropriate**

28 U.S.C. § 1407 authorizes this Panel to transfer and consolidate two or more civil cases for coordinated pretrial proceedings upon a determination that (i) they “involv[e] one or more common questions of fact,” (ii) transfer will further “the convenience of the parties and witnesses,” and (iii) transfer “will promote the just and efficient conduct of the actions.” The requirements for transfer under Section 1407 are clearly satisfied here. The 13 related Menu Foods poisoned pet food class actions are characterized almost entirely by common questions of fact. In addition, transfer and consolidation will promote convenience for the parties and efficiency in the pretrial proceedings by eliminating duplicative discovery and the potential for inconsistent rulings, including determinations on class certification.

#### 1. **The related actions involve common questions of fact**

The first requirement of § 1407 – that the actions to be transferred involve common questions of fact – is satisfied. The factual issues to be determined in each of the actions proposed for transfer and coordination arise from the same course of conduct and, hence, are identical. *See In re Neurontin Mktg. & Sales Practices Litig.*, 342 F. Supp. 2d 1350, 1351 (J.P.M.L. 2004); *In re Publ’n Paper Antitrust Litig.*, 346 F. Supp. 2d 1370, 1371 (J.P.M.L. 2004).

Among the many common questions of law and fact at issue in the related actions are:

a. whether the Defendant’s dog and cat food was materially defective, and unfit for use as dog or cat food;



- b. whether Defendant breached any contract, implied contract or warranties relating to the sale of the dog and cat food;
- c. whether Defendant's dog and cat food caused Plaintiffs' and other Class members' pets to become ill;
- d. whether Plaintiffs and other Class members have been damaged, and, if so, what is the proper measure thereof;
- e. what is the appropriate form of injunctive, declaratory and other relief.

The factual issues to be determined in all of the class actions are nearly identical, making transfer to a single forum highly appropriate. *See, e.g., Neurontin*, 342 F. Supp. 2d at 1351. In *Neurontin*, for example, the Panel ruled that there were common issues warranting transfer and consolidation where “[a]ll actions [we]re purported class actions involving allegations that common defendants have engaged in the illegal promotion and sale of the drug Neurontin for ‘off-label’ use.” *Id.*; *see also In re Ephedra Prods. Liab. Litig.*, 314 F. Supp. 2d 1373, 1375 (J.P.M.L. 2004) (“[c]ommon factual questions arise because these actions focus on alleged side effects of ephedra-containing products, and whether defendants knew of these side effects and either concealed, misrepresented or failed to warn of them”); *In re Columbia Univ. Patent Litig.*, 313 F. Supp. 2d 1383, 1385 (J.P.M.L. 2004) (common questions existed where “[a]ll actions can thus be expected to share factual and legal questions with respect to the ‘275 patent concerning patent validity and related questions such as double patenting, prosecution laches, and inequitable conduct”).

**2. Consolidating the class actions will further the convenience of the parties and the witnesses**

Consolidating the class actions will meet the second requirement for consolidation under § 1407 because it will serve the convenience of the parties and witnesses. It is expected that counsel for plaintiffs in all actions will seek documents from the same defendants on such issues as, *inter alia*: (a) where the recalled Menu Foods pet food was processed, (b) the manufacturing

processes for the recalled Menu Foods pet food, (c) the intended ingredients of the recalled Menu Foods pet food, (d) the name, composition and character of the contaminant(s) of the recalled Menu Foods pet food that poisoned the Class members' cats and dogs, (e) the contaminant(s)' pathway into the recalled Menu Foods pet food, and (f) when Defendants learned or should have learned that the recalled Menu Foods pet food was contaminated. Issues such as these will be central in all of the class actions.

Because the actions arise from a common core of factual allegations, there is a strong likelihood of duplicative discovery demands and redundant depositions. Consolidation will enable a single judge to establish a pretrial program that will minimize the inconvenience to the witnesses and expenses to the parties. These savings are precisely the types of savings that this Panel has traditionally used to justify the consolidation of actions in different jurisdictions. *See, e.g., Neurontin*, 342 F. Supp. 2d at 1351; *Columbia Univ. Patent Litig.*, 313 F. Supp. 2d 1385.

**3. Transfer and consolidation will promote the just and efficient conduct of the related actions**

Finally, transferring and consolidating these class actions is appropriate because coordinating the pretrial proceedings will promote the just and efficient conduct of the actions. In light of the nearly identical factual allegations, and especially given that discovery has not yet begun in any action, transfer under § 1407 will avoid duplicative discovery and save judicial time and resources. *See Neurontin*, 342 F. Supp. 2d at 1351; *In re Oxycontin Antitrust Litig.*, 314 F. Supp. 2d 1388, 1390 (J.P.M.L. 2004); *Ephedra Prods. Liab. Litig.*, 314 F. Supp. 2d at 1375; *In re Japanese Elec. Prods. Antitrust Litig.*, 388 F. Supp. 565, 567 (J.P.M.L. 1975); *see also In re European Rail Pass Antitrust Litig.*, 2001 U.S. Dist. Lexis 1417, at \*3 (J.P.M.L. Feb. 7, 2001) (ordering cases transferred to a single district to “eliminate duplicative discovery”).

The plaintiffs in each action will seek to depose many of the same individuals from Menu Foods and its various affiliates and request production of a substantially similar set of documents. Failing to consolidate these actions will therefore result in duplicative discovery

efforts, requiring witnesses to appear for multiple depositions and defendants to produce several sets of the same documents. The consolidation and coordination of these actions would avoid this inconvenience and needless waste of resources. *See In re Univ. Serv. Fund Tel. Billing Practices Litig.*, 209 F. Supp. 2d 1385, 1386 (J.P.M.L. 2002). Moreover, the corresponding savings in time and expense would confer benefits upon both the plaintiffs and defendants. *See In re Cygnus Telcoms. Tech., LLC Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (J.P.M.L. 2001); *see also In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 698 (J.P.M.L. 1995) (consolidation and coordination is appropriate to “conserve the resources of the parties, their counsel and the judiciary”); *In re Uranium Indus. Antitrust Litig.*, 458 F. Supp. 1223, 1230 (J.P.M.L. 1978).

Where, as here, consolidation and coordination will avoid duplicative discovery and potentially conflicting pretrial rulings, transfer for pretrial purposes is warranted to promote the interests of judicial economy and efficiency.

**B. The Western District of Washington Is The Proper Forum for Coordinated Pretrial Proceedings**

**1. The Western District of Washington has the resources and judicial expertise to properly conduct this case**

In selecting the most appropriate transferee forum for multidistrict litigation, the Panel considers the speed and efficiency with which alternative districts manage their respective caseloads. *See In re Preferential Drug Prods. Pricing Antitrust*, 429 F. Supp. 1027, 1029 (J.P.M.L. 1977) (transferring cases based in part upon transferee court’s low median time between filing and disposition in civil actions); *In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 932 (J.P.M.L. 1980) (faster docket cited as reason for selecting transferee court). Here, this factor favors transferring the actions to the Western District of Washington.

If transferred to the Western District of Washington and consolidated with the five actions already pending there, all 13 actions could proceed expeditiously to trial. The Western

District of Washington has a well-managed docket that is relatively undertaxed by multidistrict litigation and capable of ensuring expeditious resolution of this multi-party litigation. When the Panel has concluded that any of several forums would be appropriate for M.D.L. transfer, it has examined the relative caseloads in each district court to tip the balance in favor of the less burdened district. *See, e.g., In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 932 (J.P.M.L. 1980); *In re Falstaff Brewing Corp. Antitrust Litig.*, 434 F. Supp. 1225, 1231 (J.P.M.L. 1977); *In re Air Crash Disaster at Taipei Intl. Airport on July 31, 1975*, 433 F. Supp. 1120, 1122 (J.P.M.L. 1977); *In re Eastern Airlines, Inc. Flight Attendant Weight Program Litig.*, 391 F. Supp. 763, 764 (J.P.M.L. 1975); *In re Peruvian Road Litig.*, 380 F. Supp. 796, 798 (J.P.M.L. 1974).

The rationale for these decisions goes to the very heart of a decision to transfer a great number of cases before a single district-court judge. The worthwhile purposes of consolidating multidistrict litigation would be frustrated if the transferee court is already too overburdened to give these complex cases the close study and attention they will require. As this Panel stated in the *Eastern Airlines* decision:

On balance, however, we favor the Eastern District of Virginia because that district has a significantly lighter civil action docket than the District of Massachusetts and, therefore, is in the best position to expeditiously process this particular litigation. [391 F. Supp. at 764-65.]

This rationale would be well served by transferring the other eight cases to the Western District of Washington for consolidation with the five class actions there. The Western District of Washington enjoys a swift civil action docket. The median time for civil cases from filing to “disposition” in the Western District of Washington is only 9.1 months, and only 19.0 months to trial.<sup>1</sup> This indicates an ability on the part of the Western District to move civil cases along

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<sup>1</sup> The district has experienced a two-year bump in its case disposition median times occasioned by several judges’ transitioning to senior status. But those vacancies have been or are now being filled, so we expect a return to the district’s long-standing record of highly expeditious resolutions.

The Movants cite to Federal Court Management statistics for 2006 available on this Panel’s website, at <http://www.uscourts.gov/cgi-bin/cmsd2006.pl>. For the Panel’s convenience, we attach copies of the relevant

quickly during the pretrial phase of litigation, precisely the task that will be before the transferee court here. The comparable figures for the District of New Jersey, for example, is 33.0 months to trial; Northern District of Illinois, 26.4 months; and Central District of California, 21.3 months.

While these differences in the overall civil action docket are significant, the disparity between some of the districts in regard to complex M.D.L. cases is enormous. The Western District of Washington, while possessing the resources necessary to oversee a complex multi-party action such as this, is under-utilized as a transferee court for centralized proceedings. As of September 30, 2006, the Western District of Washington has only two M.D.L. cases still pending, while the District of New Jersey has 15 pending litigations; Northern District of Illinois – 16 litigations; and Central District of California – 9 litigations. As this Panel has recognized, this alone can be reason to transfer multidistrict actions to such districts for centralization:

centralization in this district permits the Panel to effect the Section 1407 assignment to a major metropolitan court that (i) is not currently overtaxed with other multidistrict dockets, and (ii) possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters that this complex docket is likely to require.

*In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d at 1380. See also *In re Air Crash near Palembang Indon.*, 1999 U.S. Dist. Lexis 4910, at \*3-4 (J.P.M.L. Apr. 13, 1999). This Panel's rationale for transferring the *Phenylpropanolamine* and *Air Crash near Palembang* multidistrict litigations to the Western District of Washington applies to the present litigations as well.

Of course, these figures do not suggest that the next ten matters on the M.D.L. docket be assigned to the Western District of Washington. Certainly there will continue to be a relatively greater number of M.D.L. transfers to busy jurisdictions such as the Northern District of Illinois and the District of New Jersey on the basis of convenience of the particular parties. But where

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district courts' 2006 caseload profile available from that site, at Ex. A-H hereto.

the advantages in the expeditious processing of these cases are apparent in a transfer to the Western District of Washington, this Panel should welcome the opportunity to spare its overburdened colleagues in other jurisdictions.

We also note that while currently un-taxed with M.D.L. litigations, the Western District of Washington has extensive experience in managing consolidated multi-district litigation. *See, e.g., In re Mailblocks, Inc.*, 279 F. Supp. 2d 1379, 1381 (J.P.M.L. 2003) (transferring action to Western District of Washington); *In re Burlington Northern & Santa Fe Ry. Empl. Settlement Agreements Litig.*, 162 F. Supp. 2d 699, 700 (J.P.M.L. 2001) (same); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d at 1380 (same); *In re Amazon.com/Alexa Internet Privacy Litig.*, 2000 U.S. Dist. Lexis 8201, at \*3-4 (J.P.M.L. June 7, 2000) (same); *In re Air Crash near Palembang Indon.*, 1999 U.S. Dist. Lexis 4910, at \*3-4 (same); *In re Ford Motor Co. /Citibank N.A. Cardholder Rebate Program Litig.*, 1998 U.S. Dist. Lexis 205, at \*3 (J.P.M.L. Jan. 8, 1998) (same). Indeed, the Panel has specifically recognized that the Western District of Washington is equipped with the resources necessary to manage substantial consolidated multi-district litigation. *See, e.g., In re Phenylpropanolamine*, 173 F. Supp. 2d at 1380. The Panel has also previously transferred to the Western District of Washington multi-district litigation that, like the present cases, challenges the safety of products ingested into the body. *See, for example, id.* The District thus has an established track record of managing this type of complex litigation.

The Honorable Judge Ricardo Martinez, to whom the *Whaley* litigation, the first filed of the five Washington cases, is assigned, has ample experience with class action and complex commercial litigation. A judge since 1989, Judge Martinez has been on the federal bench since 1998, first as a federal magistrate, and since 2004 as a district court judge. Judge Martinez is not currently handling any other MDL matters.

**2. The Western District of Washington is an equally convenient forum for the parties and witnesses**

The convenience of the parties and witnesses is a factor in determining to which district related actions should be transferred. 28 U.S.C. § 1407(a) (related actions may be transferred to a district for coordinated proceedings upon a determination that the transfer “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions”). In deciding whether a particular forum is convenient, the Panel may consider the location of the parties, documents and potential witnesses relative to that district. *See In re Cigarette Antitrust Litig.*, 2000 U.S. Dist. Lexis 8209, at \*4 (J.P.M.L. June 7, 2000).

This factor is neutral in this litigation. Plaintiffs and class members reside across the country, likely in all 50 states. Defendant Menu Foods is a Canadian corporation with its principle office in Ontario, Canada. Five of the actions (with 12 plaintiffs) were filed in the Western District of Washington. These 12 plaintiffs all concur that the Western District of Washington would be the most appropriate jurisdiction.

No particular district court is more conveniently located for the parties and witnesses than another. We note that Seattle has a major international airport that serves as a transportation hub for the region, so parties traveling by air will have easy access to the district court there.

**III. CONCLUSION**

Consolidation is necessary to avoid duplication and wasted efforts. Transfer to the Western District of Washington is appropriate because five of the 13 related actions were filed there; the Western District of Washington has the resources and judicial expertise to promptly and efficiently conduct this case; and the Western District of Washington is easily accessed and as conveniently located as any district for all the parties. Accordingly, Plaintiffs respectfully request that the Panel order that the *Sims, Scott, Troiano, Majerczyk, Holt, Sexton* and *Workman* actions (as well as any tag-along cases that may be subsequently filed asserting related or similar

claims) be transferred to the Western District of Washington for consolidated and coordinated pretrial proceedings.

DATED: March 28, 2007

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**SCHEDULE OF ACTIONS RELATED TO PLAINTIFFS MOTION FOR  
CENTRALIZATION AND COORDINATION OF PRETRIAL PROCEEDINGS  
PURSUANT TO 28 U.S.C. § 1407**

1. *Tom Whaley, individually and on behalf of all others similarly situated v. Menu Foods, a foreign corporation, The Iams Company, a foreign corporation, Dog Food Producers Numbers 1-50 and Cat Food Producers 1-40*, No. C07-0411M, pending in the Western District of Washington at Seattle (Hon. Judge Ricardo S. Martinez);

2. *Stacey Heller, Toinette Robinson, David Rapp, and Cecily and Terrence Mitchell, individually and on behalf of all others similarly situated, v. Menu Foods, a foreign corporation*, No. C07-0453JJC, pending in the Western District of Washington at Seattle (Hon. Judge John C. Coughenour);

3. *Suzanne E. Johnson and Craig R. Klemann, individually and on behalf of all others similarly situated, v. Menu Foods, a foreign corporation*, No. C07-0455JCC, pending in the Western District of Washington at Seattle (Hon. Judge John C. Coughenour);

4. *Audrey Kornelius and Barbara Smith, individually and on behalf of all others similarly situated, v. Menu Foods, a foreign corporation*, No. C07-0454MJP, pending in the Western District of Washington at Seattle (Hon. Judge Marsha J. Pechman);

5. *Michele Suggett and Don James, individually and on behalf of all similarly situated v. Menu Foods, a foreign corporation; The Iams Company, a foreign corporation; Eukanuba, a foreign corporation; Dog Food Producers Numbers 1-100 and Cat Food Producers 1-100; and DOES1-100*, No. C07-0457RSM, pending in the Western District of Washington at Seattle (Hon. Judge Ricardo S. Martinez);

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ON MULTIDISTRICT  
LITIGATION  
ORIGINAL

6. *Charles Ray Sims and Pamela Sims, individually and on behalf of all others similarly situated v. Menu Foods Income Fund, Menu Foods Midwest Corporation, Menu Foods South Dakota, Inc., Menu Foods, Inc., Menu Foods Holdings, Inc.*, No. 07-5053, pending in the Western District of Arkansas, Fayetteville Division (Hon. Judge Jimm Larry Hendren);

7. *Richard Scott and Barbara Widen, individually and all others persons similarly situated v. Menu Foods, Menu Foods Income Fund, Menu Foods Gen Par Limited, Menu Foods Limited Partnership, Menu Foods Operating Partnership, Menu Foods Midwest Corp, Menu Foods South Dakota, Menu Foods, Inc., Menu Foods Holdings, Inc., Wal-Mart Stores, Inc.*, No. 07-5055, pending in the Western District of Arkansas, Fayetteville Division (Hon. Judge Robert T. Dawson);

8. *Christina Troiano, individually and on behalf of all others similarly situated v. Menu Foods, Inc. and Menu Foods Income Fund*, No. 07-60428 CIV-COHN, pending in the Southern District of Florida (Hon. Judge James I. Cohn);

9. *Dawn Majerczyk, individually and on behalf of a class of similarly situated individuals v. Menu Foods, Inc., a New Jersey Corporation*, No. 07CV1543, pending in the Northern District of Illinois, Eastern Division (Hon. Judge Wayne R. Anderson);

10. *Lizajeon Holt, individually and on behalf of similarly situated persons v. Menu Foods, Inc.*, No. 07-cv-00094, pending in the Eastern District of Tennessee, Knoxville Division (Hon. Judge Thomas W. Phillips);

11. *Jared Workman, and Mark and Mona Cohen, on behalf of themselves and all others similarly situated v. Menu Foods Limited, Menu Foods Inc., and Menu Foods Midwest Corporation*, No. 07-cv-1338-NLH-AMD, pending in the District of New Jersey (Hon. Judge Noel L. Hillman);


12. *Lauri A. Osborne, individually and on behalf of all others similarly situated v. Menu Foods, Inc.*, No. 07CV00469RNC, pending in the District of Connecticut (Hon. Judge Robert N. Chatigny); and

13. *Shirley Sexton v. Menu Foods Income Fund, Menu Foods, Inc., a New Jersey Corporation, and Menu Foods Midwest Corp., a Delaware aorporation*, No. CV07-01958 GHK (AJWx), pending in the Central District of California (Hon. Judge George H. King).

Copies of the Complaints are attached as Exhibits A - M hereto.

Dated: March 28, 2007

HAGENS BERMAN SOBOL SHAPIRO LLP

By 

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MAR 30 2007

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BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

IN RE MENU FOODS POISONED PET  
FOOD LITIGATION

No. MDL DOCKET NO.


**PROOF OF SERVICE**

Pursuant to Rule 5.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, and the Federal Rules of Civil Procedure, I hereby certify that on March 27, 2007, I caused a copy of **Plaintiffs' Motion For Transfer and Consolidation of Related Actions To The Western District of Washington Under 28 U.S.C. § 1407, Plaintiffs' Memorandum of Law In Support of Their Motion For Transfer and Consolidation of Related Actions To The Western District of Washington Under 28 U.S.C. § 1407, Schedule of Actions Related To Plaintiffs Motion For Centralization and Coordination of Pretrial Proceedings Pursuant To 28 U.S.C. § 1407 and Proof of Service** to be served via U.S. Mail on all parties on the accompanying Service List including the Clerk of each district court where an affected actions is pending.

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I further certify that on March 27, 2007, I caused the original and four copies of the above documents, along with a computer generated disk, to be sent via UPS Overnight Mail for filing with the clerk of the Judicial Panel On Multidistrict Litigation.

Dated: March 28, 2007.

  
\_\_\_\_\_  
Steve W. Berman

**SERVICE LIST**

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Corporation Trust Center  
1209 Orange Street  
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Menu Foods Operating Partnership  
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Fayetteville, AR 72701-5354

Clerk of Court  
U.S. District Court, District of New Jersey  
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Camden, NJ 08101

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Fort Lauderdale, FL 33301

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Eastern District of Tennessee  
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Clerk of Court  
District of Connecticut  
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Hartford, CT 06103

Clerk of Court  
Central District of California  
312 N. Spring St., Rm G-8  
Los Angeles, CA 90012

A

# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
ARKANSAS WESTERN		2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	1,078	1,083	1,478	1,425	1,563	1,450	U.S.	Circuit	
	Terminations	1,140	1,337	1,514	1,399	1,446	1,227			
	Pending	808	854	1,108	1,139	1,111	997			
	% Change in Total Filings	Over Last Year		-5					25	3
		Over Earlier Years			-27.1	-24.4	-31.0	-25.7	91	10
Number of Judgeships		3	3	3	3	3	3			
Vacant Judgeship Months**		.0	.0	.0	.0	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	359	361	493	475	521	483	67	8
		Civil	283	281	421	403	449	438	56	6
		Criminal Felony	65	69	60	59	56	45	53	9
		Supervised Release Hearings**	11	11	12	13	16	-	78	10
	Pending Cases		269	285	369	380	370	332	81	8
	Weighted Filings**		399	348	423	411	436	411	65	8
	Terminations		380	446	505	466	482	409	65	8
	Trials Completed		13	14	19	17	24	14	71	8
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	6.3	5.8	5.1	5.6	6.5	5.7	11	2
		Civil**	11.9	12.0	10.2	11.6	10.1	7.4	79	8
	From Filing to Trial** (Civil Only)		13.0	13.0	15.4	14.0	13.7	12.0	3	1
OTHER	Civil Cases Over 3 Years Old**	Number	10	5	4	0	0	1		
		Percentage	1.5	.7	.4	.0	.0	.1	2	1
	Average Number of Felony Defendants Filed Per Case		1.1	1.1	1.3	1.2	1.1	1.1		
	Jurors	Avg. Present for Jury Selection	53.35	40.59	64.04	68.94	55.00	51.17		
		Percent Not Selected or Challenged	53.4	47.5	59.7	59.6	50.5	56.6		

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	L	
Civil	848	196	53	193	15	10	35	66	68	12	104	1	95
Criminal*	191	1	56	48	20	33	1	8	1	7	5	3	8

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

**B**

## U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

<b>CALIFORNIA CENTRAL</b>		12-MONTH PERIOD ENDING SEPTEMBER 30						Numerical Standing		
		2006	2005	2004	2003	2002	2001			
<b>OVERALL CASELOAD STATISTICS</b>	Filings*	12,909	14,630	16,938	14,720	15,440	15,342	U.S.	Circuit	
	Terminations	13,680	16,173	15,269	15,800	16,936	16,906			
	Pending	12,401	13,180	14,720	13,129	14,525	16,142			
	% Change in Total Filings	Over Last Year		-11.8					83	13
		Over Earlier Years		-23.8	-12.3	-16.4	-15.9	81	13	
Number of Judgeships		28	28	28	28	27	27			
Vacant Judgeship Months**		53.9	24.8	2.3	23.6	63.9	57.3			
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	461	523	605	526	572	568	36	7
		Civil	397	450	515	451	490	521	18	4
		Criminal Felony	36	45	60	49	58	47	84	14
		Supervised Release Hearings**	28	28	30	26	24	-	30	11
	Pending Cases	443	471	526	469	538	598	26	7	
	Weighted Filings**	518	565	651	590	584	557	24	6	
	Terminations	489	578	545	564	627	626	32	7	
	Trials Completed	12	13	12	14	12	14	79	11	
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition	Criminal Felony	12.4	10.3	8.2	9.4	8.6	9.1	82	14
		Civil**	7.2	7.4	7.3	7.5	7.9	7.1	10	2
	From Filing to Trial** (Civil Only)	21.3	20.5	17.8	21.2	20.0	21.0	29	4	
<b>OTHER</b>	Civil Cases Over 3 Years Old**	Number	1,240	809	624	609	650	541		
		Percentage	11.6	7.2	5.0	5.4	5.2	3.8	79	14
	Average Number of Felony Defendants Filed Per Case		1.6	1.5	1.4	1.4	1.4	1.5		
	Jurors	Avg. Present for Jury Selection	64.08	47.33	49.01	49.49	54.63	61.75		
		Percent Not Selected or Challenged	55.7	48.3	49.4	51.6	55.5	58.8		

<b>2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE</b>													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	11104	994	211	2833	274	58	754	1330	497	1425	1188	80	1460
Criminal*	999	3	151	234	88	228	54	46	43	43	25	35	49

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

C



# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
CONNECTICUT		2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	2,460	2,530	2,717	2,752	2,816	2,858	U.S.	Circuit	
	Terminations	2,641	2,690	2,644	2,596	3,027	2,969			
	Pending	3,121	3,276	3,407	3,337	3,190	3,415			
	% Change in Total Filings	Over Last Year		-2.8				38	4	
	Over Earlier Years			-9.5	-10.6	-12.7	-13.9	73	4	
Number of Judgeships		8	8	8	8	8	8			
Vacant Judgeship Months**		12.0	11.0	.0	6.5	.0	.0			
ACTIONS PER JUDGESHIP	FILINGS	Total	308	317	340	345	353	357	75	5
		Civil	261	272	293	294	307	330	62	5
		Criminal Felony	36	32	35	37	36	27	84	5
		Supervised Release Hearings**	11	13	12	14	10	-	78	6
	Pending Cases	390	410	426	417	399	427	42	5	
	Weighted Filings**	376	379	409	396	420	415	70	5	
	Terminations	330	336	331	325	378	371	75	5	
Trials Completed		12	15	16	17	20	22	79	5	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	13.9	12.2	11.4	9.5	10.9	12.6	87	3
		Civil**	11.6	11.4	11.6	10.5	10.1	12.8	71	5
	From Filing to Trial** (Civil Only)		29.8	32.4	31.0	30.0	31.0	28.7	62	3
OTHER	Civil Cases Over 3 Years Old**	Number	339	358	325	318	231	292		
		Percentage	12.5	12.3	10.7	10.6	8.1	9.3	82	3
	Average Number of Felony Defendants Filed Per Case		1.6	1.8	1.7	1.4	1.8	1.8		
	Jurors	Avg. Present for Jury Selection	52.82	56.95	63.51	54.54	46.25	52.43		
		Percent Not Selected or Challenged	32.4	38.6	32.7	31.7	34.2	27.9		

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2087	40	46	278	37	23	127	301	216	130	498	1	390
Criminal*	280	1	69	14	46	70	9	21	3	4	5	8	30

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

D

# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30								
FLORIDA SOUTHERN				2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*			8,511	9,097	8,479	9,058	9,490	10,790	U.S.	Circuit	
	Terminations			8,979	9,463	8,904	9,370	9,797	10,170			
	Pending			6,538	6,948	7,302	7,788	8,203	9,099			
	% Change in Total Filings	Over Last Year				-6.5					57	8
		Over Earlier Years					.4	-6.0	-10.3	-21.1	86	9
Number of Judgeships				18	18	18	18	17	17			
Vacant Judgeship Months**				.0	.0	7.5	12.8	29.5	21.5			
ACTIONS PER JUDGESHIP	FILINGS	Total		473	505	470	503	559	635	30	5	
		Civil		373	397	373	396	441	527	28	5	
		Criminal Felony		76	87	79	90	103	108	40	5	
		Supervised Release Hearings**		24	21	18	17	15	-	39	4	
	Pending Cases			363	386	406	433	483	535	52	5	
	Weighted Filings**			501	525	513	558	606	667	28	5	
	Terminations			499	526	495	521	576	598	28	4	
	Trials Completed			19	20	20	21	23	23	47	6	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony		5.8	5.8	6.1	6.2	6.5	6.3	9	2	
		Civil**		6.7	6.6	6.3	6.3	7.7	7.3	9	1	
	From Filing to Trial** (Civil Only)			16.3	16.7	18.0	18.3	15.0	19.3	7	1	
OTHER	Civil Cases Over 3 Years Old**	Number		962	902	1,047	714	223	278			
		Percentage		16.9	14.9	16.7	10.6	3.2	3.8	86	9	
	Average Number of Felony Defendants Filed Per Case			1.6	1.5	1.7	1.6	1.5	1.5			
	Jurors	Avg. Present for Jury Selection		49.48	41.83	42.54	44.00	42.51	45.57			
Percent Not Selected or Challenged		26.9	21.7	19.2	23.8	22.8	28.8					

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	6716	152	357	1225	107	42	1433	1045	502	334	763	16	740
Criminal*	1348	33	339	280	103	313	32	44	31	46	31	44	52

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

E

## U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

<b>ILLINOIS NORTHERN</b>			12-MONTH PERIOD ENDING SEPTEMBER 30					Numerical Standing		
			2006	2005	2004	2003	2002			2001
<b>OVERALL CASELOAD STATISTICS</b>	Filings*		8,093	9,056	10,584	11,126	11,135	10,957	U.S.	Circuit
	Terminations		8,255	8,805	11,461	10,888	10,709	10,319		
	Pending		7,711	7,914	7,706	8,699	8,587	8,271		
	% Change in Total Filings	Over Last Year			-10.6				78	6
		Over Earlier Years				-23.5	-27.3	-27.3	-26.1	92
Number of Judgeships			22	22	22	22	22	22		
Vacant Judgeship Months**			5.7	12.0	9.6	22.1	17.8	3.3		
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	367	412	481	505	506	498	66	5
		Civil	330	369	437	461	459	470	46	4
		Criminal Felony	26	34	32	38	39	28	90	7
		Supervised Release Hearings**	11	9	12	6	8	-	78	6
	Pending Cases		351	360	350	395	390	376	61	4
	Weighted Filings**		443	485	512	526	525	503	43	4
	Terminations		375	400	521	495	487	469	66	5
	Trials Completed		11	13	12	12	14	15	86	6
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition	Criminal Felony	13.9	12.9	10.3	9.9	10.3	9.9	87	7
		Civil**	6.5	6.9	5.9	5.5	5.5	5.6	7	2
	From Filing to Trial** (Civil Only)		26.4	27.0	28.4	26.0	26.0	26.3	51	5
<b>OTHER</b>	Civil Cases Over 3 Years Old**	Number	500	388	337	442	461	485		
		Percentage	7.4	5.6	5.0	5.6	6.0	6.4	61	6
	Average Number of Felony Defendants Filed Per Case		1.8	1.9	1.9	1.7	1.7	1.6		
	Jurors	Avg. Present for Jury Selection	45.07	51.46	39.36	45.57	43.63	39.43		
		Percent Not Selected or Challenged	30.9	36.9	31.0	37.3	34.8	36.7		

<b>2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE</b>													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	7265	112	175	631	42	110	1401	977	565	496	1490	39	1227
Criminal*	576	1	161	44	63	140	60	23	12	17	5	18	32

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."



# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
NEW JERSEY		2006	2005	2004	2003	2002	2001	Numerical Standing		
OVERALL CASELOAD STATISTICS	Filings*	7,275	7,539	7,567	7,270	7,555	6,972	U.S.	Circuit	
	Terminations	7,480	7,605	7,373	6,998	7,125	7,057			
	Pending	6,855	6,987	6,986	6,765	6,538	6,101			
	% Change in Total Filings	Over Last Year	-3.5						43	3
		Over Earlier Years			-3.9	.1	-3.7	4.3	45	4
Number of Judgeships		17	17	17	17	17	17			
Vacant Judgeship Months**		32.3	27.8	12.0	11.0	47.8	7.5			
ACTIONS PER JUDGESHIP	FILINGS	Total	428	444	446	428	445	410	46	3
		Civil	369	387	390	370	387	369	29	3
		Criminal Felony	51	48	46	48	49	41	70	3
		Supervised Release Hearings**	8	9	10	10	9	-	85	3
	Pending Cases	403	411	411	398	385	359	38	4	
	Weighted Filings**	481	493	500	486	482	463	33	2	
	Terminations	440	447	434	412	419	415	48	3	
	Trials Completed	11	10	10	10	12	11	86	6	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	12.1	10.0	9.8	9.0	9.4	8.0	81	5
		Civil**	8.2	7.3	7.6	7.9	8.4	7.5	21	3
	From Filing to Trial** (Civil Only)	33.0	36.7	33.4	33.8	30.0	33.0	68	4	
OTHER	Civil Cases Over 3 Years Old**	Number	306	346	252	236	231	179		
		Percentage	5.2	5.7	4.2	4.0	4.0	3.3	41	3
	Average Number of Felony Defendants Filed Per Case		1.2	1.3	1.2	1.2	1.2	1.2		
	Jurors	Avg. Present for Jury Selection	88.98	75.41	40.79	51.72	41.77	51.55		
		Percent Not Selected or Challenged	39.2	38.3	24.1	40.3	37.7	38.9		

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	6274	240	343	904	82	26	845	1031	721	377	869	39	797
Criminal*	862	3	268	48	124	176	53	39	19	22	27	28	55

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

G



# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30								
<b>TENNESSEE EASTERN</b>		2006	2005	2004	2003	2002	2001	Numerical Standing		
<b>OVERALL CASELOAD STATISTICS</b>	Filings*	1,774	2,079	2,268	2,375	2,237	2,056	U.S.	Circuit	
	Terminations	1,961	2,331	2,241	2,121	2,145	2,127			
	Pending	1,908	2,067	2,292	2,270	1,976	1,872			
	% Change in Total Filings	Over Last Year		-14.7					85	8
		Over Earlier Years		-21.8	-25.3	-20.7	-13.7	71	8	
Number of Judgeships		5	5	5	5	5	5			
Vacant Judgeship Months**		.6	.0	.0	16.5	17.0	.0			
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>	Total	355	416	453	475	448	411	69	9
		Civil	251	297	337	344	335	311	66	8
		Criminal Felony	83	87	99	112	92	100	33	3
		Supervised Release Hearings**	21	32	17	19	21	-	51	5
	Pending Cases		382	413	458	454	395	374	46	7
	Weighted Filings**		402	443	496	552	481	458	62	8
	Terminations		392	466	448	424	429	425	60	8
	Trials Completed		23	29	21	21	18	20	28	4
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition	Criminal Felony	10.3	10.8	8.3	6.5	7.7	6.9	66	6
		Civil**	12.7	11.2	11.7	11.0	11.6	10.0	84	7
	From Filing to Trial** (Civil Only)		26.5	22.0	21.5	16.3	21.5	20.0	53	5
<b>OTHER</b>	Civil Cases Over 3 Years Old**	Number	97	81	78	69	39	45		
		Percentage	6.6	5.0	4.3	3.7	2.3	2.9	47	6
	Average Number of Felony Defendants Filed Per Case		1.6	1.4	1.4	1.6	1.5	1.4		
	Jurors	Avg. Present for Jury Selection	34.29	36.35	37.80	40.52	32.59	33.00		
		Percent Not Selected or Challenged	27.9	28.1	33.5	40.0	34.0	36.6		

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1257	108	60	262	9	17	84	169	174	27	280	6	61
Criminal*	412	6	139	25	122	38	20	14	10	3	9	10	16

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

H

## U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

<b>WASHINGTON WESTERN</b>					12-MONTH PERIOD ENDING SEPTEMBER 30			Numerical Standing					
					2006	2005	2004			2003	2002	2001	
<b>OVERALL CASELOAD STATISTICS</b>	Filings*				3,471	4,167	4,858	5,038	4,103	3,257	U.S.	Circuit	
	Terminations				4,101	4,584	4,337	3,491	4,041	3,396			
	Pending				3,280	4,303	4,608	3,890	2,373	2,325			
	% Change in Total Filings				Over Last Year		-16.7					89	14
				Over Earlier Years		-28.6	-31.1	-15.4	6.6		38	6	
Number of Judgeships				7	7	7	7	7	7				
Vacant Judgeship Months**				14.1	6.7	14.0	2.6	12.0	11.0				
<b>ACTIONS PER JUDGESHIP</b>	<b>FILINGS</b>			Total		496	595	694	720	586	465	27	6
				Civil		396	487	582	616	498	416	19	5
				Criminal Felony		69	74	78	68	56	49	49	8
				Supervised Release Hearings**		31	34	34	36	32	-	24	8
	Pending Cases				469	615	658	556	339	332	21	6	
	Weighted Filings**				572	626	611	621	617	557	8	3	
	Terminations				586	655	620	499	577	485	14	3	
Trials Completed				19	16	13	10	12	17	47	5		
<b>MEDIAN TIMES (months)</b>	From Filing to Disposition			Criminal Felony		7.9	7.3	6.3	6.2	5.8	6.3	33	4
				Civil**		9.1	9.6	7.2	6.4	5.8	8.1	41	6
	From Filing to Trial** (Civil Only)				19.0	19.4	16.4	16.7	18.0	15.0	16	3	
<b>OTHER</b>	Civil Cases Over 3 Years Old**			Number		310	259	32	23	36	32		
				Percentage		11.2	6.9	.8	.7	1.8	1.6	78	13
	Average Number of Felony Defendants Filed Per Case				1.7	1.6	1.7	1.6	1.6	1.6			
	Jurors			Avg. Present for Jury Selection		45.30	36.80	42.94	38.85	36.51	36.96		
Percent Not Selected or Challenged				39.9	25.5	42.2	29.1	32.8	29.9				

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2772	254	101	580	48	19	258	355	302	133	378	9	335
Criminal*	474	36	97	98	82	55	22	22	1	20	14	5	22

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."



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MAR 19 2007 DJ  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY \_\_\_\_\_ DEPUTY

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

SEA 8079 S GWS

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

24  
25

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.

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 4.2 This action has been brought and may be properly maintained as a class action  
13 pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

14 a. The Class is ascertainable and there is a well-defined community of  
15 interest among the members of the Class;

16 b. Membership in the Class is so numerous as to make it impractical to bring  
17 all Class members before the Court. The identity and exact number of Class members is  
18 unknown but is estimated to be at least in the hundreds, if not thousands considering the fact that  
19 Menu Foods has identified 50 dog foods and 40 cat foods which may be causing harm to pets.  
20

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

23 d. Mr. Whaley is a member of the Class.  
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e. There are numerous and substantial questions of law and fact common to all of the members of the Class which control this litigation and predominate over any individual issues pursuant to Rule 23(b)(3). The common issues include, but are not limited to, the following:

i. Did the defendants make representations regarding the safety of the dog and cat food they produced and sold?

ii. Were the defendants' representations regarding the safety of the dog and cat food false?

iii. Did the defendants' dog and cat food cause Mr. Whaley and other Class members' pets to become ill?

iv. Were Mr. Whaley and other Class members damaged?

f. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;

g. Mr. Whaley will fairly and adequately protect the interests of the Class in that Mr. Whaley has no interests that are antagonistic to other members of the Class and has retained counsel competent in the prosecution of class actions to represent himself and the Class;

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

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



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  
17 **V. STATEMENT OF FACTS**

18 5.1 Plaintiff Tom Whaley was the owner of a female cat named Samoya.

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

21 5.3 Samoya ate the Iams brand cuts and gravy wet-style cat food between December  
22 2006 and February 2007.  
23  
24  
25

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  
13                                   **VI. CAUSES OF ACTION**

14           A.     Breach of Contract

15          6.1     Plaintiff realleges all prior allegations as though fully stated herein.

16          6.2     Plaintiff and Class members purchased pet food produced by the defendants based  
17 on the understanding that the food was safe for their pets to consume.

18          6.3     The pet food produced by the defendants was not safe for pets to consume and  
19 caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of  
20 contract.

21          6.4     As a result of the breach Plaintiffs and Class members suffered damages which  
22 may fairly and reasonably be considered as arising naturally from the breach or may reasonably  
23 be supposed to have been in the contemplation of the parties, at the time they made the contract,  
24 as the probable result of the breach of it.  
25

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

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

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

17 D. Breach of Warranties

18 6.12 Mr. Whaley realleges all prior allegations as though fully stated herein.

19 6.13 Cat food and dog food produced by Menu Foods are "goods" within the meaning  
20 of Uniform Commercial Code Article 2.  
21

22 6.14 Defendants' conduct as described herein constitutes breach of an implied or  
23 express warranty of affirmation.

24 6.15 Defendants' conduct as described herein constitutes breach of an implied  
25 warranty of merchantability.

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

19                                   **VII. PRAYER FOR RELIEF**

20           WHEREFORE, Mr. Whaley and Class members request that the Court enter an order of  
21 judgment against Defendants including the following:

22           A.     Certification of the action as a class action pursuant to Rule 23(b)(3) of the  
23 Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of  
24 Plaintiffs as Class Representatives and their counsel of record as Class Counsel;  
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B. Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the states having a legally sufficient connection with defendants and their acts or omissions) and such other relief as provided by the statutes cited herein;

C. Prejudgment and post-judgment interest on such monetary relief;

D. Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendants as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

E. Other appropriate injunctive relief;

F. The costs of bringing this suit, including reasonable attorneys' fees; and

G. Such other relief as this Court may deem just, equitable and proper.

DATED this 19<sup>th</sup> day of March, 2007.

MYERS & COMPANY, P.L.L.C.

Attorneys for Plaintiffs and Class members

By: /s/ Michael David Myers  
Michael David Myers  
WSBA No. 22486  
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**B**

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

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STACEY HELLER, TOINETTE ROBINSON,  
DAVID RAPP, and CECILY AND  
TERRENCE MITCHELL, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. **CV 07 - 0453** *CC*

CLASS ACTION COMPLAINT

Plaintiffs Stacey Heller, Toinette Robinson, David Rapp, and Cecily and Terrence Mitchell ("Plaintiffs"), by and through their undersigned attorneys, bring this civil action for damages on behalf of themselves and all others similarly situated against the above-named Defendant and complain and allege as follows:

**I. NATURE OF ACTION**

1. Plaintiffs bring this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science

CLASS ACTION COMPLAINT - 1  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP  
1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
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1 Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such  
2 as Wal-Mart, Kroger and Safeway.

3 3. Dog and cat food that the Defendant produced caused an unknown number of  
4 dogs and cats to become ill, and many of them to die.

5 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
6 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
7 gravy wet" style.

8 5. As a result of the Defendant's actions, Plaintiffs and other Class members have  
9 suffered economic damage.

10 **II. PARTIES**

11 6. Plaintiff Stacey Heller has at all material times been a resident of Pulaski,  
12 Virginia. Ms. Heller had a pet that became sick and died after eating Defendant's pet food.

13 7. Plaintiff Toinette Robinson has at all material times been a resident of Truckee,  
14 California. Ms. Robinson had a pet that became sick and died after eating Defendant's pet food.

15 8. Plaintiff David Rapp has at all material times been a resident of Hannover  
16 Township, Pennsylvania. Mr. Rapp had a pet that became sick and died after eating Defendant's  
17 pet food.

18 9. Plaintiffs Cecily and Terrence Mitchell have at all material times been a resident  
19 of Seattle, Washington. The Mitchells had a pet that became sick and died after eating  
20 Defendant's pet food.

21 10. Defendant Menu Foods is, upon information and belief, a corporation organized  
22 under the laws of Canada that transacts business in Washington State.

23 **III. JURISDICTION AND VENUE**

24 11. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
25 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
26

CLASS ACTION COMPLAINT - 2  
Case No.



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1 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
2 § 1367.

3 12. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
4 Defendant systematically and continuously sold its product within this district and Defendant  
5 transacts business within this district.

6 **IV. CLASS ACTION ALLEGATION**

7 13. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
8 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
9 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
10 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiffs  
11 reserve the right to modify this class definition before moving for class certification.

12 14. The Class is ascertainable and there is a well-defined community of interest  
13 among the members of the Class.

14 15. Membership in the Class is so numerous as to make it impractical to bring all  
15 Class members before the Court. The identity and exact number of Class members is unknown  
16 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
17 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

18 16. Plaintiffs' claims are typical of those of other Class members, all of whom have  
19 suffered harm due to Defendant's uniform course of conduct.

20 17. Plaintiffs are members of the Class.

21 18. There are numerous and substantial questions of law and fact common to all of  
22 the members of the Class that control this litigation and predominate over any questions affecting  
23 only individual members of the Class. The common issues include, but are not limited to, the  
24 following:

25 (a) Was the Defendant's dog and cat food materially defective, and unfit for  
26 use as dog or cat food?

CLASS ACTION COMPLAINT - 3  
Case No.



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1 (b) Whether Defendant breached any contract, implied contract or warranties  
2 related to the sale of the dog and cat food?

3 (c) Did the Defendant's dog and cat food cause Plaintiffs' and other Class  
4 members' pets to become ill?

5 (d) Were Plaintiffs and other Class members damaged, and, if so, what is the  
6 proper measure thereof?

7 (e) The appropriate form of injunctive, declaratory and other relief.

8 19. The prosecution of separate actions by members of the Class would create a risk  
9 of establishing incompatible standards of conduct for the Defendant – for example, one court  
10 might decide that the Defendant is obligated under the law to pay damages to Class members,  
11 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
12 practical matter, be dispositive of the interests of the Class.

13 20. Plaintiffs will fairly and adequately protect the interests of the Class in that they  
14 have no interests that are antagonistic to other members of the Class and have retained counsel  
15 competent in the prosecution of class actions to represent themselves and the Class.

16 21. A class action is superior to other available methods for the fair and efficient  
17 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
18 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
19 few, if any, Class members could afford to seek legal redress individually for the wrongs  
20 Defendant has committed against them.

21 22. Without a class action, the Class will continue to suffer damage, Defendant's  
22 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
23 the fruits and proceeds of its unlawful misconduct.

24 23. This action will foster an orderly and expeditious administration of Class claims,  
25 economies of time, effort and expense, and uniformity of decision.  
26

CLASS ACTION COMPLAINT - 4  
Case No.



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1 24. Inferences and presumptions of materiality and reliance are available to obtain  
2 class-wide determinations of those elements within the Class claims, as are accepted  
3 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
4 common liability, the Court can efficiently determine the claims of the individual Class  
5 members.

6 25. This action presents no difficulty that would impede the Court's management of it  
7 as a class action, and a class action is the best (if not the only) available means by which  
8 members of the Class can seek legal redress for the harm caused them by Defendant.

9 26. In the absence of a class action, Defendant would be unjustly enriched because it  
10 would be able to retain the benefits and fruits of its wrongful conduct.

11 27. The Claims in this case are also properly certifiable under applicable law.

12 **V. STATEMENT OF FACTS**

13 28. Plaintiff Stacey Heller was the owner of a female cat named Callie.

14 29. Ms. Heller purchased Special Kitty wet cat food from Wal-Mart for Callie to  
15 consume.

16 30. Callie ate the Special Kitty brand wet-style cat food for several years before her  
17 death.

18 31. Callie became extremely ill during the week of March 12, 2007. On March 14,  
19 2007, Ms. Heller took Callie to a veterinarian, who informed her that Callie had suffered kidney  
20 failure, also known as acute renal failure. On March 19, 2007, Callie had to be euthanized.

21 32. Plaintiff Toinette Robinson was the owner of a female dog named Lhotse.

22 33. Ms. Robinson purchased Priority U.S. brand wet dog food from Safeway for  
23 Lhotse to consume.

24 34. Lhotse ate the Priority U.S. brand wet dog food before her death.  
25  
26



1 35. Lhotse became extremely ill during the end of January 2007. On February 1,  
2 2007, Ms. Robinson took Lhotse to a veterinarian, who informed her that Lhotse had suffered  
3 kidney failure. On February 15, 2007, Lhotse had to be euthanized.

4 36. Plaintiff David Rapp was the owner of a male dog named Buck.

5 37. Mr. Rapp purchased Weiss Total Pet wet-style dog food for Buck to consume.

6 38. Buck became extremely ill in early February 2007. On February 10, 2007, Mr.  
7 Rapp took Buck to a veterinarian, who informed him that Buck had suffered kidney failure.  
8 Buck died soon afterwards.

9 39. Plaintiffs Cecily and Terrence Mitchell were the owners of a male cat named  
10 Yoda.

11 40. The Mitchells purchased Iams wet cat food from QFC for Yoda to consume.

12 41. Yoda became extremely ill and died after eating Iams wet pouches.

13 42. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
14 food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become  
15 ill. One common symptom in the sick animals was kidney failure.

16 43. The Special Kitty wet cat food from Wal-Mart that Callie consumed for several  
17 years before her death is one of the brands that Menu Foods recalled.

18 44. The Priority U.S. brand wet dog food from Safeway that Lhotse consumed before  
19 her death is also one of the brands that Menu Foods recalled.

20 45. The Weiss Total Pet wet-style dog food that Buck consumed before his death is  
21 another of the brands that Menu Foods recalled.

22 46. The Iams wet cat food from QFC that Yoda consumed years before his death is  
23 also one of the brands that Menu Foods recalled.

24 47. As a result of Defendant's acts and omissions Plaintiffs and other Class members  
25 have suffered economic damage.  
26

CLASS ACTION COMPLAINT - 6  
Case No.



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**VI. BREACH OF CONTRACT**

48. Plaintiffs reallege all prior allegations as though fully stated herein.

49. Plaintiffs and Class members purchased pet food produced by the Defendant based on the understanding that the food was safe for their pets to consume.

50. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of contract.

51. As a result of the breach Plaintiffs and Class members suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

**VII. UNJUST ENRICHMENT**

52. Plaintiffs reallege all prior allegations as though fully stated herein.

53. Defendant was and continues to be unjustly enriched at the expense of Plaintiffs and other Class members.

54. Defendant should be required to disgorge this unjust enrichment.

**VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

55. Plaintiffs reallege all prior allegations as though fully stated herein.

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

57. Defendant's sale of hazardous pet food has the capacity to deceive a substantial portion of the public and to affect the public interest.

58. As a result of Defendant's unfair or deceptive acts or practices, Plaintiffs and other Class members suffered injuries in an amount to be proven at trial.

CLASS ACTION COMPLAINT - 7  
Case No.



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**IX. BREACH OF WARRANTIES**

59. Plaintiffs reallege all prior allegations as though fully stated herein.

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

61. Defendant's conduct as described herein constitutes breach of an implied or express warranty of affirmation.

62. Defendant's conduct as described herein constitutes breach of an implied warranty of merchantability.

63. Defendant's conduct as described herein constitutes breach of an implied warranty of fitness for a particular purpose.

64. As a proximate result of the aforementioned wrongful conduct and breach, Plaintiffs and other Class members have suffered damages in an amount to be proven at trial. Defendant had actual or constructive notice of such damages.

**X. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and Class members request that the Court enter an order of judgment against Defendant including the following:

Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class Representative and their counsel of record as Class Counsel;

Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the states having a legally sufficient connection with Defendant and its acts or omissions) and such other relief as provided by the statutes cited herein;

Prejudgment and post-judgment interest on such monetary relief;



1 Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal  
2 profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged  
3 herein;

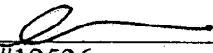
4 Other appropriate injunctive relief;

5 The costs of bringing this suit, including reasonable attorneys' fees; and

6 Such other relief as this Court may deem just, equitable and proper.

7 DATED this 27th day of March, 2007.

8 HAGENS BERMAN SOBOL SHAPIRO LLP

9  
10 By: /s/ Steve W. Berman   
11 Steve W. Berman, WSBA #12536  
12 1301 Fifth Avenue, Suite 2900  
13 Seattle, Washington 98101  
14 Telephone: (206) 623-7292  
15 Facsimile: (206) 623-0594  
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24 *Attorneys for Plaintiffs*

25 CLASS ACTION COMPLAINT - 9  
26 Case No.



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★ MAR 21 2007 ★

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

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUZANNE E. JOHNSON and CRAIG R.  
KLEMANN, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. **CV 07 - 0455** JCC

CLASS ACTION COMPLAINT

Plaintiffs Suzanne E. Johnson and Craig R. Klemann ("Plaintiffs"), by and through their undersigned attorneys, bring this civil action for damages on behalf of themselves and all others similarly situated against the above-named Defendant and complain and allege as follows:

**I. NATURE OF ACTION**

1. Plaintiffs bring this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science

CLASS ACTION COMPLAINT - 1  
Case No.



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1 Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such  
2 as Wal-Mart, Kroger and Safeway.

3 3. Dog and cat food that the Defendant produced caused an unknown number of  
4 dogs and cats to become ill, and many of them to die.

5 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
6 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
7 gravy wet" style.

8 5. As a result of the Defendant's actions, Plaintiffs and other Class members have  
9 suffered economic damage.

10 **II. PARTIES**

11 6. Plaintiffs Suzanne E. Johnson and Craig R. Klemann have at all material times  
12 been residents of Meridian, Idaho. Ms. Johnson and Mr. Klemann have a pet that became sick  
13 after eating Defendant's pet food.

14 7. Defendant Menu Foods is, upon information and belief, a corporation organized  
15 under the laws of Canada that transacts business in Washington State.

16 **III. JURISDICTION AND VENUE**

17 8. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
18 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
19 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
20 § 1367.

21 9. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
22 Defendant systematically and continuously sold its product within this district and Defendant  
23 transacts business within this district.

24 **IV. CLASS ACTION ALLEGATION**

25 10. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
26 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the

CLASS ACTION COMPLAINT - 2  
Case No.



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1 “Class”) composed of all persons who purchased any dog or cat food that was produced by the  
2 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiffs  
3 reserve the right to modify this class definition before moving for class certification.

4 11. The Class is ascertainable and there is a well-defined community of interest  
5 among the members of the Class.

6 12. Membership in the Class is so numerous as to make it impractical to bring all  
7 Class members before the Court. The identity and exact number of Class members is unknown  
8 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
9 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

10 13. Plaintiffs’ claims are typical of those of other Class members, all of whom have  
11 suffered harm due to Defendant’s uniform course of conduct.

12 14. Plaintiffs are members of the Class.

13 15. There are numerous and substantial questions of law and fact common to all of  
14 the members of the Class that control this litigation and predominate over any questions affecting  
15 only individual members of the Class. The common issues include, but are not limited to, the  
16 following:

17 (a) Was the Defendant’s dog and cat food materially defective, and unfit for  
18 use as dog or cat food?

19 (b) Whether Defendant breached any contract, implied contract or warranties  
20 related to the sale of the dog and cat food?

21 (c) Did the Defendant’s dog and cat food cause Plaintiffs’ and other Class  
22 members’ pets to become ill?

23 (d) Were Plaintiffs and other Class members damaged, and, if so, what is the  
24 proper measure thereof?

25 (e) The appropriate form of injunctive, declaratory and other relief.  
26

CLASS ACTION COMPLAINT - 3  
Case No.



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1 16. The prosecution of separate actions by members of the Class would create a risk  
2 of establishing incompatible standards of conduct for the Defendant – for example, one court  
3 might decide that the Defendant is obligated under the law to pay damages to Class members,  
4 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
5 practical matter, be dispositive of the interests of the Class.

6 17. Plaintiffs will fairly and adequately protect the interests of the Class in that they  
7 have no interests that are antagonistic to other members of the Class and have retained counsel  
8 competent in the prosecution of class actions to represent themselves and the Class.

9 18. A class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
11 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
12 few, if any, Class members could afford to seek legal redress individually for the wrongs  
13 Defendant has committed against them.

14 19. Without a class action, the Class will continue to suffer damage, Defendant's  
15 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
16 the fruits and proceeds of its unlawful misconduct.

17 20. This action will foster an orderly and expeditious administration of Class claims,  
18 economies of time, effort and expense, and uniformity of decision.

19 21. Inferences and presumptions of materiality and reliance are available to obtain  
20 class-wide determinations of those elements within the Class claims, as are accepted  
21 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
22 common liability, the Court can efficiently determine the claims of the individual Class  
23 members.

24 22. This action presents no difficulty that would impede the Court's management of it  
25 as a class action, and a class action is the best (if not the only) available means by which  
26 members of the Class can seek legal redress for the harm caused them by Defendant.

CLASS ACTION COMPLAINT - 4  
Case No.



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1 23. In the absence of a class action, Defendant would be unjustly enriched because it  
2 would be able to retain the benefits and fruits of its wrongful conduct.

3 24. The Claims in this case are also properly certifiable under applicable law.

4 **V. STATEMENT OF FACTS**

5 25. Plaintiffs Suzanne E. Johnson and Craig R. Klemann are owners of a male cat  
6 named Ollie.

7 26. Ms. Johnson and Mr. Klemann purchased Special Kitty wet cat food from Wal-  
8 Mart and Pet Pride wet cat food from Fred Meyer for Ollie to consume.

9 27. Ollie ate the Special Kitty and Pet Pride brand wet-style cat food for several years  
10 before becoming ill.

11 28. Ollie became extremely ill after consuming Defendant's cat food and now suffers  
12 from kidney problems.

13 29. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
14 food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become  
15 ill. One common symptom in the sick animals was kidney failure.

16 30. The Special Kitty wet cat food from Wal-Mart and the Pet Pride wet cat food  
17 from Fred Meyer that Ollie consumed for several years before becoming ill are brands that Menu  
18 Foods recalled.

19 31. As a result of Defendant's acts and omissions Plaintiffs and other Class members  
20 have suffered economic damage.

21 **VI. BREACH OF CONTRACT**

22 32. Plaintiffs reallege all prior allegations as though fully stated herein.

23 33. Plaintiffs and Class members purchased pet food produced by the Defendant  
24 based on the understanding that the food was safe for their pets to consume.



1 34. The pet food produced by the Defendant was not safe for pets to consume and  
2 caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of  
3 contract.

4 35. As a result of the breach Plaintiffs and Class members suffered damages that may  
5 fairly and reasonably be considered as arising naturally from the breach or may reasonably be  
6 supposed to have been in the contemplation of the parties, at the time they made the contract, as  
7 the probable result of the breach of it.

8 **VII. UNJUST ENRICHMENT**

9 36. Plaintiffs reallege all prior allegations as though fully stated herein.

10 37. Defendant was and continues to be unjustly enriched at the expense of Plaintiffs  
11 and other Class members.

12 38. Defendant should be required to disgorge this unjust enrichment.

13 **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

14 39. Plaintiffs reallege all prior allegations as though fully stated herein.

15 40. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair  
16 business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et*  
17 *seq.*, and similar statutory enactments of other states (including consumer protection and  
18 consumer sales practice acts).

19 41. Defendant's sale of hazardous pet food has the capacity to deceive a substantial  
20 portion of the public and to affect the public interest.

21 42. As a result of Defendant's unfair or deceptive acts or practices, Plaintiffs and  
22 other Class members suffered injuries in an amount to be proven at trial.

23 **IX. BREACH OF WARRANTIES**

24 43. Plaintiffs reallege all prior allegations as though fully stated herein.

25 44. Cat food and dog food produced by Menu Foods are "goods" within the meaning  
26 of Uniform Commercial Code Article 2.

CLASS ACTION COMPLAINT - 6  
Case No.



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1 45. Defendant's conduct as described herein constitutes breach of an implied or  
2 express warranty of affirmation.

3 46. Defendant's conduct as described herein constitutes breach of an implied  
4 warranty of merchantability.

5 47. Defendant's conduct as described herein constitutes breach of an implied  
6 warranty of fitness for a particular purpose.

7 48. As a proximate result of the aforementioned wrongful conduct and breach,  
8 Plaintiffs and other Class members have suffered damages in an amount to be proven at trial.  
9 Defendant had actual or constructive notice of such damages.

10 **X. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs and Class members request that the Court enter an order of  
12 judgment against Defendant including the following:

13 Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules  
14 of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class  
15 Representative and their counsel of record as Class Counsel;

16 Actual damages (including all general, special, incidental, and consequential damages),  
17 statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the  
18 states having a legally sufficient connection with Defendant and its acts or omissions) and such  
19 other relief as provided by the statutes cited herein;

20 Prejudgment and post-judgment interest on such monetary relief;

21 Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal  
22 profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged  
23 herein;

24 Other appropriate injunctive relief;

25 The costs of bringing this suit, including reasonable attorneys' fees; and

26 Such other relief as this Court may deem just, equitable and proper.

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Case No.



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1 DATED this 27th day of March, 2007.

2 HAGENS BERMAN SOBOL SHAPIRO LLP

3  
4 By: 

5 Steve W. Berman, WSBA #12536  
6 1301 Fifth Avenue, Suite 2900  
7 Seattle, Washington 98101  
8 Telephone: (206) 623-7292  
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17 E-mail: [pgordon@gordonlawoffices.com](mailto:pgordon@gordonlawoffices.com)

18 *Attorneys for Plaintiffs*

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CLASS ACTION COMPLAINT - 8  
Case No.



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

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AUDREY KORNELIUS and BARBARA SMITH, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No.

C07-0454 msp

CLASS ACTION COMPLAINT

Plaintiffs Audrey Kornelius and Barbara Smith ("Plaintiffs"), by and through their undersigned attorneys, bring this civil action for damages on behalf of themselves and all others similarly situated against the above-named Defendant and complain and allege as follows:

I. NATURE OF ACTION

1. Plaintiffs bring this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science

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1 Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such  
2 as Wal-Mart, Kroger and Safeway.

3 3. Dog and cat food that the Defendant produced caused an unknown number of  
4 dogs and cats to become ill, and many of them to die.

5 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
6 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
7 gravy wet" style.

8 5. As a result of the Defendant's actions, Plaintiffs and other Class members have  
9 suffered economic damage.

10 **II. PARTIES**

11 6. Plaintiff Audrey Kornelius has at all material times been a resident of Ferndale,  
12 Washington. Ms. Kornelius has a pet that became sick after eating Defendant's pet food.

13 7. Plaintiff Barbara Smith has at all material times been a resident of Bremerton,  
14 Washington. Ms. Smith has a pet that became sick after eating Defendant's pet food.

15 8. Defendant Menu Foods is, upon information and belief, a corporation organized  
16 under the laws of Canada that transacts business in Washington State.

17 **III. JURISDICTION AND VENUE**

18 9. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
19 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
20 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
21 § 1367.

22 10. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
23 Defendant systematically and continuously sold its product within this district and Defendant  
24 transacts business within this district.

25  
26

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1 IV. CLASS ACTION ALLEGATION

2 11. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
3 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
4 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
5 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiffs  
6 reserve the right to modify this class definition before moving for class certification.

7 12. The Class is ascertainable and there is a well-defined community of interest  
8 among the members of the Class.

9 13. Membership in the Class is so numerous as to make it impractical to bring all  
10 Class members before the Court. The identity and exact number of Class members is unknown  
11 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
12 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

13 14. Plaintiffs' claims are typical of those of other Class members, all of whom have  
14 suffered harm due to Defendant's uniform course of conduct.

15 15. Plaintiffs are members of the Class.

16 16. There are numerous and substantial questions of law and fact common to all of  
17 the members of the Class that control this litigation and predominate over any questions affecting  
18 only individual members of the Class. The common issues include, but are not limited to, the  
19 following:

20 (a) Was the Defendant's dog and cat food materially defective, and unfit for  
21 use as dog or cat food?

22 (b) Whether Defendant breached any contract, implied contract or warranties  
23 related to the sale of the dog and cat food?

24 (c) Did the Defendant's dog and cat food cause Plaintiffs' and other Class  
25 members' pets to become ill?  
26



1 (d) Were Plaintiffs and other Class members damaged, and, if so, what is the  
2 proper measure thereof?

3 (e) The appropriate form of injunctive, declaratory and other relief.

4 17. The prosecution of separate actions by members of the Class would create a risk  
5 of establishing incompatible standards of conduct for the Defendant – for example, one court  
6 might decide that the Defendant is obligated under the law to pay damages to Class members,  
7 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
8 practical matter, be dispositive of the interests of the Class.

9 18. Plaintiffs will fairly and adequately protect the interests of the Class in that they  
10 have no interests that are antagonistic to other members of the Class and have retained counsel  
11 competent in the prosecution of class actions to represent themselves and the Class.

12 19. A class action is superior to other available methods for the fair and efficient  
13 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
14 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
15 few, if any, Class members could afford to seek legal redress individually for the wrongs  
16 Defendant has committed against them.

17 20. Without a class action, the Class will continue to suffer damage, Defendant's  
18 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
19 the fruits and proceeds of its unlawful misconduct.

20 \* 21. This action will foster an orderly and expeditious administration of Class claims,  
21 economies of time, effort and expense, and uniformity of decision.

22 22. Inferences and presumptions of materiality and reliance are available to obtain  
23 class-wide determinations of those elements within the Class claims, as are accepted  
24 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
25 common liability, the Court can efficiently determine the claims of the individual Class  
26 members.

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1 23. This action presents no difficulty that would impede the Court's management of it  
2 as a class action, and a class action is the best (if not the only) available means by which  
3 members of the Class can seek legal redress for the harm caused them by Defendant.

4 24. In the absence of a class action, Defendant would be unjustly enriched because it  
5 would be able to retain the benefits and fruits of its wrongful conduct.

6 25. The Claims in this case are also properly certifiable under applicable law.

7 **V. STATEMENT OF FACTS**

8 26. Plaintiff Audrey Kornelius is the owner of a puppy named Shiwa.

9 27. Ms. Kornelius purchased Nutro Natural Choice Puppy for Shiwa to consume.

10 28. Shewa became extremely ill after consuming Defendant's dog food.

11 29. Plaintiff Barbara Smith is the owner of a cat named Neko.

12 30. Ms. Smith purchased Priority U.S. brand cat food from Safeway for Neko to  
13 consume.

14 31. Neko became extremely ill after consuming Defendant's cat food. Ms. Smith's  
15 veterinarian has informed her that Neko will need monitoring for life.

16 32. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog  
17 food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become  
18 ill. One common symptom in the sick animals was kidney failure.

19 33. The Nutro Natural Choice Puppy food that Shiwa consumed is one of the brands  
20 that Menu Foods recalled.

21 34. The Priority U.S. brand cat food from Safeway that Neko consumed is also one of  
22 the brands that Menu Foods recalled.

23 35. As a result of Defendant's acts and omissions Plaintiffs and other Class members  
24 have suffered economic damage.

25 **VI. BREACH OF CONTRACT**

26 36. Plaintiffs reallege all prior allegations as though fully stated herein.

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