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 State Bar No. 006170
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 5 Attorney for Defendant
 CHEMNUTRA INC.

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 7
 8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 MARGARET PICUS, an individual; on
 behalf of herself, and on behalf of all others
 11 similarly situated,

12 Plaintiffs,

13 vs.

14 WAL-MART STORES, INC.; MENU
 FOODS INC.; DEL MONTE FOODS
 15 COMPANY; SUNSHINE MILLS, INC.;
 CHEMNUTRA INC.; and DOES 1 through
 16 100, inclusive,

17 Defendants.

CASE NO.:

**NOTICE OF REMOVAL OF ACTION
 PURSUANT TO 28 U.S.C. §1441**

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 19
 20 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

21 Defendant ChemNutra Inc. ("ChemNutra") hereby gives notice of removal of the above-
 22 entitled action from the Eighth Judicial District Court of Nevada, Case No. A540315, to the United
 23 States District Court for the District of Nevada, and further states:

24 1. On April 30, 2007, plaintiff Margaret Picus ("Plaintiff") commenced suit against
 25 ChemNutra, Inc. in the Eighth Judicial District Court for the state of Nevada, by filing an action
 26 entitled Picus v. Wal-Mart Stores, et al. Case No. A540315.

27 2. On May 7, 2007, copies of the Summons and Complaint in the above-entitled action
 28 were served upon this removing defendant.

1 3. True and correct copies of the Summons and Complaint constituting all of the papers
2 and pleadings served upon ChemNutra and which are included in the court file are attached to the
3 Affidavit of Nicholas M. Wieczorek (“Wieczorek Aff.”) and marked collectively as “Exhibit A”.

4
5 **JURISDICTIONAL BASIS FOR REMOVAL**

6 4. This Court has original jurisdiction over this action pursuant to the provisions of the
7 Class Action Fairness Act (CAFA) 28 U.S.C. § 1332(d)(2), and the general removal statute, 28
8 U.S.C. § 1441(b). The complaint is styled as a nationwide class action to recover monies that were
9 paid by consumers for multiple brands of pet food products that plaintiff alleges were improperly
10 labeled “made in USA” when plaintiff alleges they were not. These pet food brands are alleged to
11 have been sold at Wal-Mart stores throughout the nation. Wieczorek Aff., Exhibit “A”.

12 5. This case is one of over 60 cases pending nationally arising out of the recent scandal
13 concerning pet food that was allegedly contaminated with adulterated wheat gluten imported from the
14 Peoples Republic of China. There is a hearing currently pending before the Judicial Panel on
15 Multidistrict Litigation (“JPML”) scheduled for May 31, 2007 in Las Vegas, Nevada. It is
16 anticipated that at that time, all of the “pet food” cases will be consolidated and transferred to a single
17 jurisdiction for all pre-trial proceedings. Attached to the Wieczorek Aff. as Exhibit “B” is a true and
18 correct copy of the notice of hearing by the JPML.

19 6. All of the requirements for removal under CAFA exist in this case. Minimal diversity
20 exists from the face of the complaint because it is alleged on pages 6-7 that Plaintiff is a resident of
21 Nevada and that defendant Wal-Mart Stores, is incorporated in Delaware and maintains its principal
22 place of business in Arkansas.

23 7. The allegations of the complaint reveal that there are at least 100 members of the
24 plaintiff class because the complaint alleges that the multiple brands of dog food at issue were each
25 sold by Wal-Mart in all 50 states.

26 8. That the combined claims of the plaintiff class exceed \$5,000,000 is also determinable
27 from the face of the complaint. More specifically, paragraph 22 alleges that “it is impracticable to
28 bring all members of the class before the Court. Plaintiff estimates that there are thousands of class

1 members geographically spread throughout Nevada and *millions* of class members, geographically
2 spread throughout the United States.” Wieczorek Aff., Exhibit “A”. Even assuming that each class
3 member only purchased one container of the allegedly mislabeled pet food, CAFA’s amount in
4 controversy would be met.

5 9. These same allegations of paragraph 22 of plaintiff’s complaint also establish that this
6 case does not fall within the “home state” exception to CAFA which requires that more than two
7 thirds of the class members reside in the home state (in this case Nevada) or the “discretionary
8 abstention” provision, which allows the federal court to abstain if at least one third of the class
9 members reside in the state and the primary defendants are citizens of the state in which the action
10 was filed. See 28 U.S.C. 1332(d)(3) and (4). As stated, the plaintiff’s complaint itself states that
11 whereas there are millions of class members across the country, only several thousands of these
12 persons reside in Nevada.

13 10. On all of these bases, the action is removable under CAFA and 28 U.S.C. §1441(a).

14 11. This notice of removal is timely under the provisions of 28 U.S.C. §1446(b). The
15 complaint in this case was served on ChemNutra on May 7, 2007 (Affidavit of Stephen S. Miller at
16 para. 2.) and thus the 30-day time limit in which to remove this case has not run.

17 12. The United States District Court for the District of Nevada embraces the county in
18 which the state court action is now pending, and thus, this Court is a proper venue for this action
19 pursuant to 28 U.S.C. § 84(c)(2).

20 13. Written notice of this removal is being served this date on counsel for Plaintiff
21 pursuant to 28 U.S.C. § 1446(d).

22 14. A true and correct copy of this Notice of Removal is being filed this date with the
23 Clerk of the Eighth Judicial District Court for the State of Nevada pursuant to 28 U.S.C. § 1446(d).

24 ...
25 ...
26 ...
27 ...
28 ...

1 WHEREFORE, Defendant ChemNutra Inc. prays that the above-entitled action now pending
2 be removed to the United States District Court for the District of Nevada, and prays that said action
3 stand so removed.

4 DATED this 25 day of May, 2007.

5 MORRIS POLICH & PURDY LLP

6
7 By: 

8 NICHOLAS M. WIECZOREK

9 State Bar No. 006170

3980 Howard Hughes Parkway, Suite 400

Las Vegas, Nevada 89169

10 Attorney for Defendant

11 CHEMNUTRA INC.

CERTIFICATE OF SERVICE

Pursuant to NRC 5(b), I certify that I am an employee of Morris Polich & Purdy LLP, and that on this 25 day of May, 2007, I served a true and correct copy of the foregoing **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §1441** as follows:

- (X) by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- () to be hand-delivered to the attorneys listed below at the address indicated below:

Robert B. Gerard, Esq.
 Nevada Bar No. 005323
 Lawrence T. Osuch, Esq.
 Nevada Bar No. 006771
 GERARD & OSUCH, LLP
 2840 South Jones Boulevard
 Building D, Suite 4
 Las Vegas, Nevada 89146
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 BLUMENTHAL & NORDREHAUG
 2255 Calle Clara
 La Jolla, California 92037
 Telephone: (858) 551-1223
 Facsimile: (858) 551-1232

Attorneys for Plaintiffs


 An Employee of Morris Polich & Purdy LLP

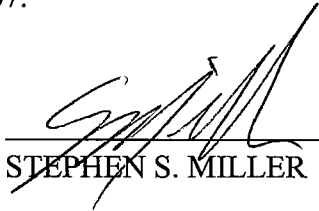
AFFIDAVIT OF STEPHEN S. MILLER

I, Stephen S. Miller, declare and say as follows:

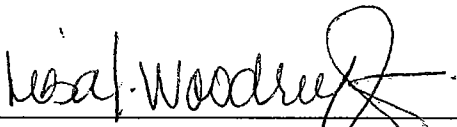
1. I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently testify to the same.

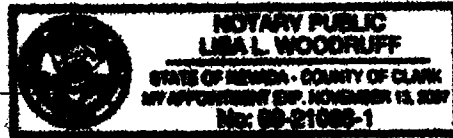
2. I am Chief Executive Officer of ChemNutra Inc. The Complaint entitled *Margaret Picus, et al. v. Wal-Mart Stores, Inc., et al.*, Clark County Nevada Case No. A 540315, was personally served upon ChemNutra Inc. on May 7, 2007.

I declare under penalty of perjury that the foregoing is true and correct and that this affidavit was executed in Las Vegas, Nevada on May 22 2007.


STEPHEN S. MILLER

Subscribed and Sworn to before me on this 22 day of May, 2007.


NOTARY PUBLIC in and for the County of Clark, State of Nevada



My Commission Expires: 11-13-2007

AFFIDAVIT OF NICHOLAS WIECZOREK

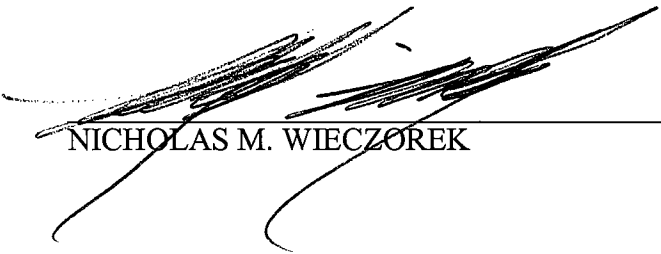
I, Nicholas M. Wieczorek, declare and say as follows:

1. I am a partner in the law firm of Morris Pollich & Purdy LLP, attorneys for defendant ChemNutra Inc. I have personal knowledge of the following facts and if called to testify thereto, I could and would do so competently.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Summons and Complaint that was served on ChemNutra Inc. These documents represent all of the documents filed to date in the state court file.

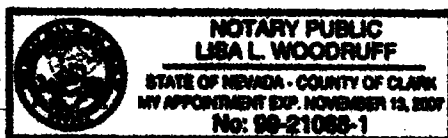
3. Attached hereto as Exhibit "B" is a true and correct copy of the notice of hearing by the JPML.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Vegas, Nevada on May 25, 2007.


NICHOLAS M. WIECZOREK

Subscribed and Sworn to before me on this 25 day of May, 2007.


NOTARY PUBLIC in and for the County of Clark, State of Nevada



My Commission Expires: 11.13.07