

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

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

Plaintiffs,

vs.

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

Defendants.

CASE NO:
DEPT NO:

A 540315
XXIII

RECEIVED
MAY 07 2007
BY: DIVERX SERVICE

SUMMONS

TO: CHEMNUTRA, INC.
810 South Durango Dr. Ste. 102
Las Vegas, NV 89145

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.**

TO THE DEFENDANTS: A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
 - a. File with the Clerk of the Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
 - b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this

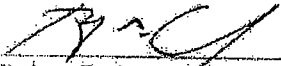
Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an answer or other responsive pleading to the Complaint.

Issued at the direction of:

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT


Robert B. Gerard, Esq.
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Attorney for Plaintiffs

JULIE RICHMOND APR 30 2007
DEPUTY CLERK Date
Regional Justice Center
200 Lewis Street
Las Vegas, Nevada 89103



STATE OF NEVADA
COUNTY OF CLARK

)
)
ss.

AFFIDAVIT OF SERVICE

I, _____, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received _____ copy(ies) of the Summons and First Consolidated Complaint on the _____ day of _____, 2007 and served the same on the _____ day of _____, 2007 by:

(affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant _____ at (state address) _____

2. serving the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at: _____

(use paragraph 3 for service upon agent, completing A or B)

3. serving the defendant _____ by personally delivering and leaving a copy at the defendant's last known address which is:

a. with _____ as _____, as agent lawfully designated by statute to accept service of process;

b. with _____ pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

- _____ ordinary mail
- _____ certified mail, return receipt requested
- _____ registered mail, return receipt requested

addressed to the defendant.

Signature of person making service

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2007.

NOTARY PUBLIC in and for said County and State

My commission expires: _____
(SEAL)

1 **COM**
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20 **EIGHTH JUDICIAL DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 MARGARET PICUS, an individual; on behalf
23 of herself, and on behalf of all others similarly
24 situated,

25 Plaintiffs,

26 vs.

27 WAL-MART STORES, INC.; MENU FOODS
28 INC.; DEL MONTE FOODS COMPANY;
INC.; SUNSHINE MILLS, INC.; CHEMNUTRA
INC.; and DOES 1 through 100, Inclusive,
Defendants.

FILED

APR 30 11 21 AM '07

CP
CLERK OF THE COURT

CASE NO.:

A 540315

COMPLAINT

XXIII

(JURY DEMAND)

ARBITRATION EXEMPTION
(CLASS ACTION)

1 CLASS ACTION COMPLAINT

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

9
 10 NATURE OF THE ACTION

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

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

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

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

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

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

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

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

1 China.

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

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

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

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

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

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

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

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

8 12. The country-of-origin designation is especially important and material in the
9 context of food products because of the protections afforded by the Food and Drug
10 Administration, and local health agencies, over food products made in the United States. For
11 example, food products made in foreign countries can be grown or made using banned pesticides
12 and/or chemicals, which one would not expect to find in Made in USA food products.
13 Consumers who purchase food products designated with the "Made in USA" reasonably believe
14 that they are purchasing product which has been grown and made in accordance with state and
15 federal regulations. These same regulations are not present in foreign countries where unsafe and
16 deleterious chemicals may be used without regulatory oversight. This concern is evidenced by
17 the 2007 recall of many Ol' Roy brand pet food products, which was ordered because of the
18 presence of chemicals which were illegal for use in food in the United States. This would not
19 have occurred if the products were in fact "Made in USA" as represented.
20

21 THE PARTIES

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

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

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

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

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

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

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

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

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

7
8 **JURISDICTION AND VENUE**

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

15 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

- 1 (iii) Whether all, or virtually all, of the Ol' Roy brand pet food products
2 were "Made in USA"; ;
- 3 (iv) Whether Defendants were unjustly enriched through the
4 distribution and/or sale of Ol' Roy brand pet food products as
5 "Made in USA";
- 6 (v) Whether Defendants concealed the true origin of Ol' Roy brand pet
7 food products and omitted the fact that Ol' Roy brand pet food
8 products contained components that were manufactured and made,
9 in whole or in part, outside the United States;
- 10 (vi) Whether Defendants participated in the alleged mislabeling of Ol'
11 Roy brand pet food products as "Made in USA";
- 12 (vii) Whether Defendants knew or should have known that Ol' Roy
13 brand pet food products contained components that were
14 manufactured and made, in whole or in part, outside the United
15 States;
- 16 (viii) Whether the members of the Class sustained damage as a result of
17 the Defendants' conduct;
- 18 (ix) Whether the Defendants unfairly or unlawfully received and/or
19 retained revenue acquired through the scheme alleged herein;
- 20 (x) Whether the Defendants engaged in a uniform corporate policy of
21 marketing Ol' Roy brand pet food products as "Made in USA";
- 22 (xi) Whether the applicable statute of limitations was tolled by virtue of
23 Defendant's concealment and fraud;
- 24 (xii) Whether the Defendants committed fraud in the marketing,
25 distribution and/or sale of Ol' Roy brand pet food products and
26 whether Defendants participated in such fraud.

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

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

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

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

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