

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED

MAR 23 2007

CHRIS R. JOHNSON, CLERK
DEPUTY CLERK

RICHARD SCOTT AND BARBARA)
WIDEN, individually and)
All others Persons Similarly Situated,)

Case No. 07-5055

Plaintiffs)

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)

Defendants

CLASS ACTION COMPLAINT

Plaintiffs Scott and Barbara Widen through their undersigned counsel, on behalf of themselves and all others similarly situated, upon both personal knowledge and information and belief, alleges as follows:

1. This class action is brought against Defendants for negligently contaminating the pet food supply making the food unfit for animal consumption and harmful and for purposefully failing to warn consumers of the contaminated pet food. As a result of Defendant's actions, Plaintiff and other similarly situated pet owners have been damaged.

PARTIES

2. Plaintiffs Richard and Barbara Widen are a married couple and residents

of Benton County, Arkansas. Plaintiffs lost two cats due to the contaminated food produced, distributed, marketed, and sold by the Defendants.

3. Defendant, Menu Foods Income Fund (Menu Foods) is an unincorporated company with its principal place of business in Ontario, Canada. It is doing business in the State of Arkansas and has availed themselves of the protections of the State of Arkansas. Jurisdiction is appropriate pursuant to the Arkansas Long Arm Statute, Ark. Code Ann. 16-4-101 and service may be effected through the Hague convention on service abroad of judicial and extrajudicial documents and civil or commercial matters at 8 Falconer Drive, Streetsville, ON, Canada L5N 1B1.

Menu Foods Midwest Corp. is a Delaware corporation and may be served through its registered agent for service, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE. Defendant, Menu Foods Holding, Inc., is a Delaware corporation and may be served through its registered agent for service, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington Delaware. Menu Foods operates two manufacturing plants in the United States and distributes their pet food products throughout the entire United States including Arkansas.

Defendant, Menu Foods, Inc. is a New Jersey corporation and may be served through its registered agent for service, Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey. Upon information and belief, Defendants Menu Food Midwest Corp., Menu Foods South Dakota Inc., Menu Foods, Inc., and Menu Foods Holdings, Inc., are wholly owned subsidiaries of Menu Foods Income Fund, a business registered in and headquartered in Ontario, Canada. The above listed Defendants are hereinafter referred to collectively as "Defendants" or "Menu Foods"

4. Defendant Wal-Mart Stores, Inc, (Wal-Mart) is a Delaware corporation headquartered in Bentonville, Arkansas that sells Menu Food products throughout their retail stores in Arkansas and throughout the United States. Wal-Mart is the single largest distributor of Menu Foods products. Plaintiffs purchased the contaminated pet food at the Wal-Mart store in Bentonville, AR. Menu Foods produced some brands of pet food exclusively for Wal-Mart under a private label agreement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1332(d)(2). The matter in controversy exceeds \$5,000,000, is a class action and there are members of the proposed Class that are citizens of States different than at least one of the Defendants.

6. Venue is proper in this district under 28 U.S.C. § 1391 (b) and (d). Defendant Wal-Mart is headquartered in the District. Defendant Menu Foods Income Fund is a foreign corporation headquartered outside the United States and distributes, through retailers such as Wal-Mart, the pet food products in issue in the District. Additionally, Plaintiffs purchased the tainted pet food in the District.

FACTS

7. Defendant, Menu Foods told the U. S. Food and Drug Administration, that they had become aware of the contamination on February 20, 2007. Menu Foods believed that the contamination came from their supplier of Wheat Gluten. Defendant, Menu Foods conducted test to determine if the contamination was harmful to pets on February 27, 2007. The results of the test resulted in death to one out of every six pets who consumed the contaminated pet food.

8. Defendants Menu Foods and Wal-Mart did nothing to prevent the distribution of the contaminated pet food until weeks after the discovery occurred. This action, or lack thereof, permitted and caused additional harm to thousands of pet owners in Arkansas and throughout the country.

9. Plaintiffs owned two cats that were very healthy middle aged cats. The two cats were named "Fred" and "Grinch." Plaintiffs fed the two cats "Special Kitty" cat food which was made by Menu Foods exclusively for Wal-Mart under a private label agreement.

10. Beginning around February, 2007, Plaintiffs noticed that both cats were acting differently and had begun to lose weight. In a tragic irony, Plaintiff forced the cats to eat more of the contaminated pet food, unaware that the pet food was contaminated and the cause of the poor health.

11. On March 18, 2007, Plaintiff was finally made aware through the media that a recall had been issued for the pet food by the Defendant, Menu Foods and that the pet food could cause kidney failure and other symptoms that were being experienced by the Plaintiffs' cats. On March 19, 2007, Plaintiffs took their cats to their veterinarian for examination. That same day, the veterinarian ran some tests and informed the Plaintiffs that both cats were suffering from kidney failure due to the consumption of the contaminated pet food. The veterinarian suggested that the only chance of survival for the cats was a very expensive procedure in which the likelihood of success was very small.

12. The veterinarian diagnosed the kidney failure to be the result of the cats consumption of contaminated pet food. The veterinarian recommended that the Plaintiffs call a Menu Foods hotline number which she provided to the Plaintiffs. The hotline had been set up on or around March 17, 2007, nearly three weeks after Menu Foods had become aware of the problem. The veterinarian suggested that Menu Foods should pay for the expensive procedure.

13. The Plaintiffs called the hotline number around a hundred times to determine if Menu Foods would pay for the procedure and never reached an operator or answering machine. Finally, out of desperation the Plaintiffs called another number for Menu Foods and left a message for somebody from Menu Foods to call them. The message was never returned.

14. Around 3:30 p.m. on the afternoon of March 19, 2007, Plaintiffs made the decision that their cats could not suffer any further and euthanized the cats.

CLASS ACTION ALLEGATIONS

15. Plaintiffs brings all claims as class claims pursuant to Rule 23 of the Federal Rules of Civil Procedure. The requirements of Rule 23 are met with respect to the Class defined below.

16. Plaintiffs bring their claims on their own behalf, and on behalf of the following Class:

All persons in the United States who purchased contaminated pet food from Wal-Mart that was produced by Menu Foods.

17. The Class is so numerous that joinder of the individual members of the proposed Class is impracticable. The Class, upon information and belief, includes millions of members.

18. Questions of law or fact common to the Class exist as to Plaintiff and all Class Members, and these common questions predominate over any questions affecting only individual members of the Class. Among the common questions of law or fact are the following:

- a. Whether Defendants were negligent in allowing pet food products in the United States to be contaminated with a dangerous ingredient that was not safe for consumption.
- b. Whether Defendants owed a duty to pet owners by ensuring that the pet food was not contaminated with dangerous ingredients;
- c. Whether Defendants' conduct amounted to breach of such a duty;
- d. Whether Defendants' conduct was a proximate cause of Plaintiff's and the Class Members' damages;
- e. Whether Defendants are responsible for the contamination of the pet food;
- f. Whether Defendants were negligent per se;
- g. Whether Defendants are strictly liable;
- h. Whether Defendants breached their warranty of merchantability.
- i. Whether Defendants produced, marketed, distributed, and sold a defective product
- j. Whether Defendants failed to adequately warn consumers of contaminated pet food.
- k. Whether Defendants purposefully failed to adequately warn consumers of contaminated food supply for economic benefit.
- l. Whether Plaintiff and the Class Members are entitled to damages, and, if so, the proper amount of such damages; and
- m. Whether Defendants purposefully failed to adequately warn consumers of contaminated food supply for economic benefit.

COUNT I

Negligence

19. Plaintiff incorporates by reference all of the allegations contained above.
20. Defendants owed a duty to Plaintiff to ensure that the pet food was not contaminated with dangerous and harmful ingredients.

21. Defendants breached that duty by allowing the contamination of the pet food supply with a dangerous and harmful ingredient during the approximate time of time January 2007 to March, 2007.

22. Defendants' actions proximately caused damage to Plaintiff and the Class.

23. Plaintiff and the Class have suffered damages by a loss of property, cost of medical bills, and cost of purchasing new, uncontaminated pet food.

COUNT II

Negligence Per Se

24. Plaintiff incorporates by reference all of the allegations contained above.

25. Defendants' acts and/or omissions as described herein constitute negligence per se.

26. Defendants had a duty to ensure that their pet food was produced, transported, marketed, distributed, and sold in a manner consistent with governmental regulations.

27. Defendants breached this duty in violation of regulatory standards.

28. Such breaches directly and proximately caused damages to the Plaintiff and the Class.

29. Plaintiff and the Class have suffered damages due to Defendants failure to conform to the United States Food and Drug Administration regulations.

COUNT III

Strict Liability- Defective in Design or Manufacture

30. Plaintiff incorporates by reference all of the allegations contained above.

31. Defendants placed into the stream of commerce an unreasonably dangerous product that is not fit for consumption and in violation of the Defendants Warranty of Merchantability owed to Plaintiff.

32. As a result of Defendants' actions, Plaintiff and the Class Members have suffered significant damages.

33. Exercise of reasonable care by the Plaintiffs and the Class members could not have eliminated the dangerous product or prevented the related injuries.

34. Plaintiff and the Class Members have been damaged enormously, and they seek injunctive relief from further contamination, compensatory damages, punitive damages for reckless and willful conduct, attorney fees and costs, and all other proper and just relief.

COUNT IV

Strict Product Liability - Failure to Warn

35. Plaintiff incorporates by reference all of the allegations contained above.

36. Defendants placed into the stream of commerce an unreasonably dangerous product that is not fit for consumption.

37. Defendant failed to warn Plaintiff or Class Members of the dangers on the Defendants' labels or through other means of advertising until after enormous damage had been suffered by the Plaintiffs and the Class Members.

38. Even after Defendant became aware of the dangerous contamination of its pet food, they still refused to warn the consumers and allowed countless other consumers to purchase the contaminated pet food and suffer great harm.

39 As a result of Defendants' actions, Plaintiff and the Class Members have suffered significant damages.

40. Exercise of reasonable care by the Plaintiffs and the Class members could not have eliminated the dangerous product or prevented the related injuries.

41. Plaintiff and the Class Members have been damaged enormously, and they seek injunctive relief from further contamination, compensatory damages, punitive damages for reckless and willful conduct, attorney fees and costs, and all other proper and just relief.

JURY TRIAL DEMANDED

42. Plaintiff demands a jury of twelve.

PRAYER

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, request that he and the other Class Members have judgment entered in their favor and against Defendants, as follows:

A. An order certifying that this action, involving Plaintiff's and the Class Members' separate and distinct claims, be maintained as a nationwide class action under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and their undersigned counsel to represent the Class;

B. An award, for Plaintiff's and each Class Members' separate and distinct claims, of compensatory damages and pre- and post-judgment interest thereon;

C. An award for Plaintiff's and the Class Members of punitive damages for reckless and wanton conduct;

D. Injunctive relief to prevent further contamination of the American pet food supply; and

E. All other appropriate and just relief.

DATED: March 23, 2007

**PATTON, ROBERTS, MCWILLIAMS
& CAPSHAW, L.L.P.**



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ATTORNEYS FOR PLAINTIFF

EXHIBIT D

FILED . . . ENTERED
LODGED . . . RECEIVED
MAR 27 2007 DJ
AT SEATTLE:
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY



07-CV-00455-CMP

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. **CV7 455 C**
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.



HAGENS BERMAN
SOBOT SHAPIRO LLP

1301 5TH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

SEA 8259 N/ISS

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.



HAGENS BERMAN
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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.
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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.



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

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

V. STATEMENT OF FACTS

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

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

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

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

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

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

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

VI. BREACH OF CONTRACT

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

33. 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.



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 Pre-judgment 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.


CLASS ACTION COMPLAINT - 7
Case No.



HAGENS BERMAN
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DATED this 27th day of March, 2007.

HAGENS BERMAN SOBOL SHAPIRO L.L.P.

By: 
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Attorneys for Plaintiffs

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CLASS ACTION COMPLAINT - 8
Case No.



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EXHIBIT E

SFA 8252 no summons

FILED ENTERED
LODGED RECEIVED



MAR 27 2007 DB

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

07-CV-00453-CMP

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.

CV 07-0453 JCC

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 - I
Case No.



HAGENS BERMAN
SOBOL SHAPIRO LLP
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1 Dict. 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.



HAGEN BERMAN
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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.

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
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14 Telephone: (206) 623-7292
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23 E-mail: mmyers@myers-company.com

24 *Attorneys for Plaintiffs*

25 CLASS ACTION COMPLAINT - 9
26 Case No.



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EXHIBIT F

FILED ENTERED
LODGED RECEIVED

MAR 27 2007 LK

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



07-CV-00454-CMP

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.

C 07 - 0454 MJP

No.

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

CLASS ACTION COMPLAINT - 1
Case No.



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SFA 053 No FSSU

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
CLASS ACTION COMPLAINT - 2
Case No.



IV. CLASS ACTION ALLEGATION

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

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

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

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

15. Plaintiffs are members of the Class.

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

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

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

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

CLASS ACTION COMPLAINT - 3
Case No.



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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 economics 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.

CLASS ACTION COMPLAINT - 4
Case No.



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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. Shiwa 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.

CLASS ACTION COMPLAINT - 5
Case No.



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

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

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

10 **VII. UNJUST ENRICHMENT**

11 40. Plaintiffs reallege all prior allegations as though fully stated herein.

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

14 42. Defendant should be required to disgorge this unjust enrichment.

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

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

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

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

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

25 **IX. BREACH OF WARRANTIES**

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

CLASS ACTION COMPLAINT - 6
Case No.



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

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

5 50. Defendant's conduct as described herein constitutes breach of an implied
6 warranty of merchantability.

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

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

12 **X. PRAYER FOR RELIEF**

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

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

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

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

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

26 Other appropriate injunctive relief;

CLASS ACTION COMPLAINT - 7
Case No.



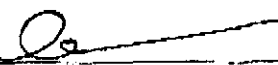
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The costs of bringing this suit, including reasonable attorneys' fees; and
Such other relief as this Court may deem just, equitable and proper.

DATED this 27th day of March, 2007.

HAGENS BERMAN SOBOL SHAPIRO LLP

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CLASS ACTION COMPLAINT - 8
Case No.



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EXHIBIT G