

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  
SOBOL SHAPIRO LLP  
1301 Fifth Avenue, Suite 2900 • Seattle, WA 98101  
TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0594

001958-11 161455 V1

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

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

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

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

12 14. Plaintiffs are members of the Class.

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

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

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

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

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

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

CLASS ACTION COMPLAINT - 3  
Case No.

001958-11 161453 V1



HAGENS BERMAN  
SOBOL SHAPIRO LLP  
1301 5TH AVENUE, SUITE 2700 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

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 economics 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  
SOBOL SHAPIRO LLP

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

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

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

4 **V. STATEMENT OF FACTS**

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

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

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

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

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

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

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

21 **VI. BREACH OF CONTRACT**

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

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

25  
26  
CLASS ACTION COMPLAINT - 5  
Case No.



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.



HAGENS BERMAN  
SOBEL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0594

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

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

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

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

10 **X. PRAYER FOR RELIEF**

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

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

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

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

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

24 Other appropriate injunctive relief;

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

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

CLASS ACTION COMPLAINT - 7  
Case No.

001938-11 161455 V1

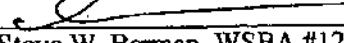


HAGENS BERMAN  
SOBEL SHAPIRO LLP  
1301 5TH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0294

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this 27th day of March, 2007.

HAGENS BERMAN SOBOL SHAPIRO LLP

By:   
Steve W. Berman, WSBA #12536  
1301 Fifth Avenue, Suite 2900  
Seattle, Washington 98101  
Telephone: (206) 623-7292  
E-mail: [steve@hbsslw.com](mailto:steve@hbsslw.com)

Philip H. Gordon  
Bruce S. Bistline  
Gordon Law Offices  
623 West Hays St.  
Boise, ID 83702  
Telephone: (208) 345-7100  
Facsimile: (206) 623-0594  
E-mail: [pgordon@gordonlawoffices.com](mailto:pgordon@gordonlawoffices.com)

*Attorneys for Plaintiffs*

CLASS ACTION COMPLAINT - 8  
Case No.

001958-31 161455 V1



HAGENS BERMAN  
SOBOL SHAPIRO LLP  
1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594



**D**





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

FILED ENTERED  
LOGGED RECEIVED

★ MAR 21 2007 ★

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

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. **C07-0454 MJP**

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.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0599

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.



HAGENS BERMAN  
SOBOT SHAPIRO LLP  
1301 FIFTH AVENUE, SUITE 2900 - SEATTLE, WA 98101  
TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0394

1 IV. CLASS ACTION ALLEGATION

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

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

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

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

15 15. Plaintiffs are members of the Class.

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

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

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

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

CLASS ACTION COMPLAINT - 3  
Case No.

001958-11 163466 V1



HAGENS BERMAN  
SOBOL SHAPIRO LLP  
1301 PINE AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 423-7292 • FACSIMILE (206) 423-0594