

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

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

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

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

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

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

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

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

CLASS ACTION COMPLAINT - 4
Case No.

001958-11 161466 V1



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

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

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

7 **V. STATEMENT OF FACTS**

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

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

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

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

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

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

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

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

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

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

25 **VI. BREACH OF CONTRACT**

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

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

By: /s/ Steve W. Berman 
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Attorneys for Plaintiffs

CLASS ACTION COMPLAINT - 8
Case No.

001938-11 161466 Y1



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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MICHELE SUGGETT and DON JAMES,
individually and on behalf of all similarly
situated;

Case No.:

Plaintiffs,

CLASS ACTION COMPLAINT

vs.

MENU FOODS, a foreign corporation; THE
IAMS COMPANY, a foreign corporation;
EUKANUBA, a foreign corporation; DOG
FOOD PRODUCERS NUMBERS 1-100 and
CAT FOOD PRODUCERS 1-100; and DOES
1-100;

Defendants.

I. NATURE OF ACTION

1. Plaintiffs bring this action as a Class Action pursuant to FRCP 23 on behalf of all persons who purchased any dog or cat food produced by any of the above-named defendants and/or had a dog or cat become ill or die as a result of eating same.
2. The defendants are producers and distributors of, inter alia, dog and cat food. Menu Foods produces dog and cat food under familiar brand names such as Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United

CLASS ACTION COMPLAINT - 1

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States to retailers such as Wal-Mart, Kroger and Safeway.

- 1
- 2 3. Dog and cat food which the defendants produced has caused an unknown number of
- 3 dogs and cats to become ill and die.
- 4 4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat food
- 5 which are causing dogs and cats to become ill. All recalled food to date is of the "cuts
- 6 and gravy wet" style.
- 7 5. As a result of the Defendants' actions, Plaintiffs and other Class members have suffered
- 8 noneconomic and economic damage.

7 **II. JURISDICTION, PARTIES, AND VENUE**

- 8 6. This court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332(a)(1)
- 9 based on diversity and an amount of controversy in excess of \$75,000. This court has
- 10 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
- 11 7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because the
- 12 Defendants systematically and continuously sold their product within this district, and
- 13 Defendants transact business within this district.
- 14 8. Eleven-year-old, female canine named Shasta ("Shasta") was regarded by Plaintiffs as
- 15 their ward, sentient personalty, and member of their family.
- 16 9. Plaintiffs MICHELE SUGGETT and DON JAMES ("Plaintiffs") are, and at all times
- 17 herein were, residents of this judicial district and the owners/guardians of Shasta.
- 18 10. Defendant Menu Foods is, upon information and belief, a corporation organized under
- 19 the laws of Canada that transacts business in Washington State and Oregon State.
- 20 11. Defendant The Iams Company, is upon information and belief, a foreign corporation that
- 21 transacts business in Washington State and Oregon State.
- 22 12. Defendant Eukanuba, is upon information and belief, a foreign corporation that transacts
- 23 business in Washington State and Oregon State.
- 24 13. There are numerous other persons or entities, DOG FOOD PRODUCERS, CAT FOOD
- 25 PRODUCERS, AND DOES 1-100, identities presently unknown to Plaintiffs who are,
- and were at all times mentioned herein, acting in concert or are jointly and severally
- liable with the above named Defendants. Each of the DOE Defendants sued herein under
- a fictitious name is responsible in some manner for the events and occurrences referred to
- herein. When the true names, capacities and involvement of said Defendants are
- ascertained, Plaintiffs will seek leave to amend the complaint accordingly.

CLASS ACTION COMPLAINT - 2

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III. CLASS ACTION ALLEGATION

1
2 14. Plaintiffs bring this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3)
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 which was
5 produced by the defendants and/or has had a dog or cat become ill or die as a result of
6 eating the food. Plaintiffs reserve the right to modify this class definition prior to moving
7 for class certification.

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

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

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

17 c. Plaintiffs' claims are typical of those of other Class members, all of whom have
18 suffered harm due to Defendants' uniform course of conduct.

19 d. Plaintiffs are members of the Class.

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

- 24 i. Did the defendants make representations regarding the safety of the dog
25 and cat food they produced and sold?
- ii. Were the defendants' representations regarding the safety of the dog and
cat food false?
- iii. Did the defendants' dog and cat food cause or allow Plaintiffs and other
Class members' companion animals to become ill or die?
- iv. Did the defendants produce a hazardous product for nonhuman animal
consumption? If so, did this occur as a result of negligent, grossly
negligent, reckless, or intentional conduct?

CLASS ACTION COMPLAINT - 3

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1 v. Were Plaintiffs and other Class members damaged?

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

4 g. Plaintiffs will fairly and adequately protect the interests of the Class in that
5 Plaintiffs have no interests that are antagonistic to other members of the Class and has
6 retained counsel competent in the prosecution of class actions to represent themselves and
7 the Class;

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

11 i. Given (i) the substantive complexity of this litigation; (ii) the size of individual
12 Class members' claims; and (iii) the limited resources of the Class members, few, if any,
13 Class members could afford to seek legal redress individually for the wrongs Defendants
14 have committed against them;

15 j. This action will foster an orderly and expeditious administration of Class claims,
16 economies of time, effort and expense, and uniformity of decision;

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

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

25 m. In the absence of a class action, Defendants would be unjustly enriched because
they would be able to retain the benefits and fruits of their wrongful conduct.

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

IV. GENERAL ALLEGATIONS

17. Plaintiffs were the owners and guardians of Shasta, a female Pomeranian.

18. Plaintiffs purchased contaminated Eukanuba Adult Bites in Gravy (lamb & rice, beef &
gravy, savory chicken) ("contaminated food") on or about February 16, 2007 from
Petsmart.

CLASS ACTION COMPLAINT - 4

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1 19. Plaintiffs started feeding the contaminated food to Shasta on or about March 15, 2007.

2 20. After eating the contaminated food, Shasta became extremely ill, causing the Plaintiffs to
3 take her to a veterinarian on or about March 19, 2007. The veterinarian informed them
4 that Shasta suffered devastatingly acute renal failure. On or about March 20, 2007, Shasta
5 arrested and died.

6 21. Plaintiffs witnessed Shasta's deceased body shortly after she died and before a substantial
7 change in her condition and location.

8 22. In March 2007 Menu Foods recalled 50 brands of cuts and gravy wet-style dog food and
9 40 brands of cuts and gravy wet-style cat food which had caused dogs and cats to become
10 ill. One common symptom in the sick animals was kidney failure, also known as acute
11 renal failure.

12 23. The contaminated food that Shasta consumed is one of the brands that Menu Foods
13 recalled.

14 24. The Plaintiffs lost Shasta's intrinsic value, as based on her unique qualities,
15 characteristics, training, and bond, as well as the loss of her utility, companionship, love,
16 affection, and solace. At the time of her death, Shasta had no fair market value and could
17 not be replaced or reproduced. Rather, she had an intrinsic value.

18 25. The Plaintiffs owned and formed a relationship with Shasta for 11 years. She was a close
19 family companion throughout that period and had special value, aiding Plaintiffs in their
20 enjoyment of life, well-being, growth, development, and daily activities.

21 26. As a result of Defendants' actions causing Shasta's death, the Plaintiffs have suffered
22 loss of enjoyment of life, interference with use and quiet enjoyment of their realty and
23 personality, and general damages pertaining to loss of use.

24 27. As a result of Defendants' acts and omissions the Plaintiffs and other Class members
25 have suffered emotional and economic damage, including but not limited to mental
anguish, loss or reduction of enjoyment of life, interference with use and quiet enjoyment
of realty and/or personalty, wage loss, current and future veterinary and health-related
bills, depreciation in or extinguishment of intrinsic, special, unique, or peculiar value,
loss of use and/or companionship, actual, incidental, and consequential damages.

FIRST CLAIM FOR RELIEF - UNJUST ENRICHMENT

28. Defendants were and continue to be unjustly enriched at the expense of the Plaintiffs and
other Class members.

24 CLASS ACTION COMPLAINT - 5

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