

**EXHIBIT F**

1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY

3 -----

4 JARED WORKMAN AND MARKAND  
5 MONA COHEN, ON BEHALF OF  
6 THEMSELVES AND ALL OTHERS CIVIL ACTION NUMBER:  
7 SIMILARLY SITUATED, 07-1338 (NLH)

8 PLAINTIFFS,  
9 -vs-  
10 MENU FOODS LIMITED, MENU  
11 FOODS, INC., AND MENU  
12 FOODS MIDWEST CORPORATION,  
13 DEFENDANTS.

14 -----

15 MOTION TO SHOW CAUSE  
16 DATE: MAY 18, 2007

17 MITCHELL H. COHEN UNITED STATES COURTHOUSE  
18 ONE JOHN F. GERRY PLAZA,  
19 CAMDEN, NEW JERSEY, 08608

20 B E F O R E:

21 THE HONORABLE NOEL L. HILLMAN, UNITED STATES  
22 DISTRICT JUDGE, DISTRICT OF NEW JERSEY, SITTING  
23 AT CAMDEN, NEW JERSEY.

24 (APPEARANCES ON PAGE 2)

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1 (The following takes place in open court before the  
2 Honorable Noel L. Hillman, United States District  
3 Court Judge, District of New Jersey, sitting at  
4 Camden, New Jersey, on Friday, May 18, 2007)

5 THE COURT: It's morning, right?  
6 Good morning, everyone.  
7 Please be seated.  
8 Give me a minute to get settled in and then  
9 we'll have appearances.

10 MS. RODRIGUEZ: Lisa Rodriguez, from the  
11 firm of Trujillo, Rodriguez and Richards.  
12 With me, today is Russell Paul from the  
13 firm of Berger and Montague.  
14 His motion, pro hac vice motion, has been  
15 filed, not ruled on, however, and he will be  
16 speaking this morning.

17 THE COURT: All right.  
18 MS. RODRIGUEZ: If it please Your Honor --  
19 THE COURT: Welcome to both of you.  
20 MR. PAUL: Good morning, Your Honor.  
21 THE COURT: Who else do we have?  
22 MR. HANSON: Sir, Gerard Hanson on behalf of  
23 Hill Wallack, counsel for the defendants, Menu Foods  
24 Limited, Menu Foods, Inc., and Menu Foods Midwest  
25 Corporation.

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2 A P P E A R A N C E S:

3 TRUJILLO, RODRIGUEZ AND RICHARDS, LLC,  
4 BY: LISA J. RODRIGUEZ, ESQUIRE,  
5 AND  
6 BERGER & MONTAGUE, P.C.,  
7 BY: RUSSELL D. PAUL, ESQUIRE,  
8 ATTORNEYS FOR THE PLAINTIFFS

9 HILL, WALLACK, LLP  
10 BY: GERARD H. HANSON, ESQUIRE,  
11 AND  
12 PRETZEL & STOFFER, CHARTERED,  
13 BY: EDWARD B. RUFF, III, ESQUIRE,  
14 AND  
15 MICHAEL P. TURIELLO, ESQUIRE,  
16 ATTORNEY FOR THE DEFENDANTS

17 ALSO IN ATTENDANCE:

18 KERSHAW, CUTTER & RAINOFF, LLP,  
19 BY: STUART C. TALLEY, ESQUIRE

20 KAPLAN, FOX & KILSHEIMER, LLP,  
21 BY: CHRISTINE FOX, ESQUIRE

22 WEXLER, TORISEVA, WALLACE,  
23 BY: MARK J. TAMBLYN, ESQUIRE

24

25 STEPHEN J. DANER,  
CERTIFIED COURT REPORTER OF NEW JERSEY  
REGISTERED PROFESSIONAL REPORTER  
OFFICIAL COURT REPORTER, U.S. DISTRICT COURT

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1 Present at counsel table with me is Edward  
2 Ruff, III, of the Chicago firm of Pretzel and  
3 Stouffer, as well as Michael Turiello.  
4 Mr. Ruff would like to address the Court.  
5 Consistent with Mr. Paul, my office has filed a  
6 Pro hac vice application which is returnable  
7 June 1st. Certainly we would consent to Mr. Paul  
8 addressing the Court as pro hac vice.

9 THE COURT: That's very kind of you.  
10 We'll move up those applications and why  
11 don't I look at those and consider them now.  
12 MR. RUFF: Good morning, Your Honor.  
13 THE COURT: Welcome to you all.  
14 MR. RUFF: Thank you.  
15 THE COURT: Mr. Paul is here to, from  
16 across the river.  
17 MR. PAUL: Yes.  
18 THE COURT: You are in good standing and  
19 admitted in various places. No disciplinary  
20 matters, you've associated yourself with a local  
21 firm.  
22 Do you agree to comply with all the local  
23 rules including the all important fee.  
24 MR. PAUL: Yes, Your Honor.  
25 THE COURT: And I take it there's no

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1 which sets out those sentences we feel must be  
 2 added.

3 I would also say, Your Honor, that the list  
 4 of attorneys that they are including with their  
 5 communication is incomplete, and we would be happy  
 6 to supply the Court or the defendants with a very  
 7 complete list of all the lawyers involved.

8 I would also say, Your Honor, we have  
 9 attached a red line to our reply brief that attempts  
 10 to rectify other aspects of the letter that we feel  
 11 are also misleading. And I would like to just point  
 12 out a couple of those, Your Honor, if I might.

13 The letter sets a tone, Your Honor, that we  
 14 feel casts plaintiff's attorneys and plaintiff's  
 15 cases in a negative light. And that can have the  
 16 effect of motivating people to settle directly with  
 17 defendants. It says things like more than 50 class  
 18 actions have been filed, a number of attorneys, each  
 19 seek to represent the interests of pet owners, when  
 20 in fact consumers are the ones bringing the cases  
 21 and attorneys are doing so on behalf of the  
 22 consumers.

23 It's minor, not the main thrust of the  
 24 brief, but we wanted to point at out to you.

25 We also added language about the case being  
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1 consolidated.

2 As a letter currently stands, it appears  
 3 there's numerous class actions all around the  
 4 country.

5 THE COURT: He needs you to slow down.  
 6 MR. PAUL: Which can be befuddling to pet  
 7 owners who may not be experienced in these type  
 8 matters.

9 It is very informative to know that there  
 10 will in the end one class action that will be a  
 11 consolidation of all the current class actions out  
 12 there.

13 Those are the main thrusts of our argument  
 14 with respect to the letter, Your Honor.

15 We also feel that the revised communication  
 16 has to be sent, once Your Honor determines what is  
 17 the appropriate communication to be sent, it has to  
 18 be sent to everyone who has previously received that  
 19 communication from the defendants because that  
 20 communication was in fact in our view misleading,  
 21 and that would mean sending the letter to everyone  
 22 who has contacted Menu Foods.

23 We stated in our brief that about -- we  
 24 don't know exactly how many people contacted Menu  
 25 Foods, and not actually sent the claim form. We do  
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1 know about 12.1 million people have gone to their  
 2 website, and that website specifically refers them  
 3 to an 800 number to call a hotline. The hotline was  
 4 manned by Crawford and Company, a settlement claims  
 5 company hired by defendants, and Crawford and  
 6 Company then either sent them the claim form which  
 7 they say is, has been to under 50 people, but also  
 8 directs ever other caller to a different website, a  
 9 claim alert website, to download the form. So we  
 10 don't know how many people downloaded the form and  
 11 sent it back in. But for every person. A pet owner  
 12 that defendants can know their address, or calls in  
 13 the future, we feel they have to resend the  
 14 appropriate communication.

15 Your Honor, in the new proposed  
 16 communication there's a declaration proposed at the  
 17 bottom for any claimant who signs the claim form to  
 18 sign. The declaration we feel is highly misleading.

19 I'm just going to turn to the declaration.  
 20 Which first has them certify under penalty  
 21 of perjury that the information is correct that  
 22 they're providing in the claim form. But then says,  
 23 that, acknowledge receipt and review the letter from  
 24 Menu Foods which explains the effects of settling,  
 25 and lists other available avenues to pursue my  
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1 claim, including the pending class actions. Despite  
 2 these other avenues, I would like to proceed with  
 3 settling my claim with Menu Foods.

4 Your Honor, that likely effect of this  
 5 language is to mislead pet owners into believing  
 6 once they sign and send back this claim form they  
 7 have officially opted out, and that they are now  
 8 stuck with proceeding in the settlement claims  
 9 process.

10 And in addition, defendants might argue in  
 11 the future that these pet owners who signed the  
 12 declaration have in fact opted out, when it is not  
 13 been clear all they are doing so.

14 Lastly, Your Honor, we don't know the  
 15 extent of information or materials that defendants  
 16 have received as a result of the prior misleading  
 17 communication. The prior claim form asks them to  
 18 send in all their Vet bills, their receipts, their  
 19 veterinary records, even food that they still have  
 20 that was manufactured by defendants.

21 We don't know what they received. But in  
 22 essence we don't feel that they should have the  
 23 benefit of, so to speak, the fruit of the poisonous  
 24 tree. They had a misleading communication in our  
 25 view and received information back. We believe that  
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1 at the very least the information must be  
 2 disregarded by defendants and not used for any  
 3 litigation purposes. We also believe it should be  
 shared with plaintiffs at this time.

THE COURT: Can I ask you just one question  
 6 about that, because I read that in your initial  
 7 papers, but I read the Data Collection Form to,  
 8 direct only to send clean cans and to merely  
 9 preserve actual food, so I'm curious as to why you  
 10 take the position that they requested and received  
 11 actual samples.

Do you believe they actually asked for, and  
 12 received samples of food?

MR. PAUL: It says, please send all relevant  
 14 documents and material, including the following:  
 15 cans and/or pouches of the pet food in question --

THE COURT: Then read on.

MR. PAUL: Please insure that they are fully  
 19 cleaned prior to sending to avoid delays in the post  
 20 office.

THE COURT: Doesn't that mean -- you mean  
 22 -- you're saying complete cans, unopened cans.

MR. PAUL: Yes.

THE COURT: They could -- okay.

MR. PAUL: Yes.

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1 THE COURT: It goes on to say, doesn't it,  
 2 keep any of the actual food in your freezer, double  
 3 bag it and put it in the freezer?

MR. PAUL: Right. That's true. It would be  
 5 unopened cans that may have been sent and may have  
 6 been subject to testing by defendants, and we don't  
 7 have access to that food or the results of those  
 8 tests.

THE COURT: All right.

MR. PAUL: Thank you, Your Honor.

THE COURT: I didn't mean to cut you off.  
 12 Are you done?

MR. PAUL: That's our argument, and I would  
 14 like to reserve some time.

Thank you.

THE COURT: All right.

Well, the, it's interesting to see how the  
 18 positions change as the briefing occurs and  
 19 encouraging for someone in my position to see what  
 20 appears to be some voluntary progress made for  
 21 narrowing the issues, or working with one another to  
 resolve some of these difficult issues.

So I'm curious how the defendants reacts to  
 24 the proposals made by the plaintiffs to modify the  
 25 letter that you want to send out as a matter of

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1 future communications and the related question of  
 2 your reaction to the notion that this proposed  
 3 letter, or some version of it be sent to those where  
 4 previously communications have been established  
 5 through the putative class members.

MR. RUFF: May I respond, Your Honor?

THE COURT: Sure.

In other words, are we entering near to  
 9 reaching an agreement on this, or will I have to  
 10 start from scratch on the legal issues?

MR. RUFF: Your Honor, again Ed Ruff, and  
 12 thank you for admitting me pro hac vice, and a  
 13 pleasure to be before Your Honor and counsel.

I have met with Mr. Paul before, and I have  
 15 met with some of the other counsel. They were  
 16 actually in my office, and we have been attempting  
 17 to work out, you know, various things going forward.

I should point out that the recent letter  
 19 and the package that went out was not necessarily  
 20 prompted -- was not prompted by anything that the  
 21 plaintiffs had filed. It was actually, if they were  
 22 going to do this, my client was going to do this,  
 23 and there's a large pressure that's placed upon him.

This is a company that's never been faced  
 25 with this type of situation before. They aren't a

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1 big company. Their Board of Directors and their  
 2 Chief Officers, and all that probably could fit at  
 3 this table (indicating). We're not dealing with a  
 4 Nestle, Purina or anything like that. So they have  
 5 never been under a situation like this before, and  
 6 never had a bad product or anything like that  
 7 before. So when this happened, they were inundated,  
 8 with calls not knowing how to handle this.

The first package, just so Your Honor has a  
 10 clear view in your mind from a date stamp point,  
 11 they sent this out, the initial claims that the  
 12 initial Data Collection Forms, I should say,  
 13 March 22nd. They hadn't been served in the case  
 14 yet, and I just want to put that in. They were  
 15 served the next day.

THE COURT: All right. I mean, they got  
 17 the FDA breathing down their neck and press reports,  
 18 and they hired Crawford. They have to know the  
 19 suits are coming.

MR. RUFF: Absolutely. Absolutely.

I just wanted to address your question  
 22 there is then no settlement until we hear what Your  
 23 Honor has to say. There's no settlements, and I  
 24 represented that to counsel when we met with them on  
 25 April 11th, and we did discuss some of the issues

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1 detail was known.  
2 What I understand is that there's a  
3 voicecom message that will accompany this that  
4 they're going to receive so they have a number from  
5 that, I have told you from Menu. What I understand,

6 Crawford will do is send a computerized statement.

7 THE COURT: By phone?

8 MR. RUFF: By phone. That will go to --

9 THE COURT: Some of the people.

10 Some of these people have lost their pets.

11 You wouldn't terrorize them with telemarketing

12 calls -- it's a joke. You will follow up with a

13 call.

14 MR. RUFF: They will send a voice message  
15 that says, if you are -- we are calling on behalf of  
16 Menu Foods. Thank you for your continued patience.

17 A claim package is being printed and will be mailed

18 to you in the near future. This package will

19 include a help desk phone number and forms for you

20 to complete and submit, if you chose to do so, and

21 instructions will be included in the package. These

22 refer to the web, to the Menu Foods website, and

23 that gives the website. For further information,

24 including a copy of the claim package.

25 THE COURT: Okay.

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1 and get information. I think to make it clear, in  
2 order to identify who you are going to settle with,  
3 these are pretty basic information to in order to  
4 make that decision.

5 I don't think we can take their word for it

6 that in fact this was our product. In fact, there

7 was a consumption of the product or there wasn't,

8 and one of the key questions I think is different

9 from the first claim form to this one is that the,

10 we don't know, and Menu didn't know at the time the

11 wheat gluten potentially affected other

12 manufacturers. So I think one of the questions here

13 from a causation standpoint, was there consumption

14 of another product that was affecting, because there

15 are now a number of manufacturers who have the same

16 problem.

17 THE COURT: Right. Well, don't

18 misunderstand my attempt at levity that I understand

19 and read the cases, and of course will follow those

20 that make clear you have a right to communicate with

21 those who desire to settle. And I think, I think

22 plaintiffs were right in commending your client for

23 doing a better job of communicating with the full

24 scope and breath of this particular recall and the

25 legal ramifications that flow and communicated to

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1 MR. RUFF: That will be -- I understand has  
2 started on Tuesday.

3 THE COURT: The phone calls?

4 MR. RUFF: The phone calls. When the  
5 mailing went out this call was computerized and sent  
6 out.

7 THE COURT: Have you hired the Goodyear  
8 blimp yet? All right.

9 What else do you intend to do for the  
10 future?

11 MR. RUFF: That's what I understand is the  
12 procedure.

13 THE COURT: Okay.

14 MR. RUFF: I'm not aware of any potential  
15 claims of abuse or someone has been contacted that  
16 was a named class individual. I don't think that  
17 was anybody's intent. There are a number of things  
18 the plaintiffs must show that are real or obstructed  
19 abuse. This could have been done on day one.

20 There's no showing at all by the plaintiffs that  
21 this letter affects the rights of the putative class  
22 members, and I don't think they're claiming that,  
23 now. They just want to change the language.

24 If the pet owners wish to settle and  
25 received money, we have the right to seek and claim

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1 them what their rights and/or might be. Up to  
2 including exercising their right to, fully informed  
3 to settle independently.

4 But the posture here is different than what  
5 I believe it was when I first read the papers. Now  
6 that there has been more communication, as helpful  
7 as that is, it raises a, continues to raise some of  
8 the issues whether or not there is a complete  
9 picture and whether an attempt to say one thing  
10 intentionally or otherwise created an additional or  
11 a new misapprehension.

12 Would your client object to supplying  
13 plaintiffs with the list of people who received the  
14 letter?

15 MR. RUFF: Yes. Just like I'm sure they  
16 would object -- what we're doing, and I would think  
17 in that regard would be conducting discovery in this  
18 particular case in advance of all the others. Just  
19 like, you know, what, who comprises the class. If  
20 we look at 26 New Jersey cases, 23 of them, the  
21 named plaintiff is not from New Jersey.

22 THE COURT: Right.

23 Let me ask you this, would you object to  
24 the plaintiffs preparing a supplemental  
25 communication to be delivered blindly to Crawford,

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