

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE PET FOODS PRODUCTS
LIABILITY LITIGATION

MDL DOCKET NO. 1850
Case No. 07-2867 (NLH)
Judge Noel L. Hillman

DECLARATION OF STEPHEN S.
MILLER OF CHEMNUTRA, INC.
IN SUPPORT OF CHEMNUTRA’S
MOTION TO DESTROY ITS
REMAINING RECALLED WHEAT
GLUTEN

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Stephen S. Miller, being first sworn upon oath, says:

1. I am the Chief Executive Officer of Defendant ChemNutra Inc. (“ChemNutra”). The following facts are within my personal knowledge and if called upon to do so, I could and would competently testify thereto.

2. ChemNutra sold raw wheat gluten purchased from XuZhou Anying Biologic Technology Development Co. Ltd. (“XuZhou Anying”) in China to

several manufacturers of pet food including Menu Foods. Wheat gluten is used as an ingredient in the manufacture of certain pet foods.

3. On April 2, 2007 ChemNutra recalled all of its wheat gluten that had been supplied to it by XuZhou Anying. Since this recall, ChemNutra has retained its remaining inventory of XuZhou Anying wheat gluten at 3 warehouses.

4. The majority of the XuZhou Anying wheat gluten in ChemNutra's possession is being stored at MoKan Container Service, Inc. in Kansas City, Missouri. There are over 277 metric tons metric tons of XuZhou Anying wheat gluten in that warehouse.

5. Commencing in March of 2007, the Food and Drug Administration ("FDA") conducted a detailed inspection of that warehouse. The inspection resulted in the FDA obtaining samples and testing various bags of XuZhou wheat gluten stored at the warehouse.

6. Approximately an additional 80 metric tons of XuZhou Anying wheat gluten are being stored by ChemNutra at the Standard Warehouse and Distribution Co., Ltd. in Pennsauken, New Jersey. The wheat gluten at that warehouse consists of gluten from XuZhou Anying Batch numbers 20070116 and 20070111. Bags of XuZhou Anying wheat gluten from those same Batch numbers

are also located at the Kansas City, Missouri warehouse which was the subject of the FDA inspection and sampling referenced in paragraph 5 above.

7. There is also XuZhou Anying wheat gluten being stored in totes by ChemNutra at the Steven Shannon Warehouse in Bloomsburg, Pennsylvania. All of the wheat gluten at that location is from XuZhou Anying Batch number 20070106. ChemNutra did not sell, distribute or supply any portion of the wheat gluten from Batch number 20070106 to anyone. Therefore, no pets would have been exposed to food containing ChemNutra supplied wheat gluten from this Batch number.

8. ChemNutra's raw wheat gluten is perishable. On June 29, 2007, the FDA sent a letter to ChemNutra expressing its concerns regarding the "public health risks" associated with ChemNutra's storing their approximately 430 metric tons of wheat gluten. The FDA expressly stated that "until the product is destroyed, there is a risk of reintroduction into interstate commerce, whether intention or not, and/or risk of export." The FDA urged ChemNutra to "seek whatever relief is appropriate from the Court." A true and correct copy of the June 29, 2007 letter from David Elder of the FDA to ChemNutra is attached hereto as Exhibit "A."


9. Since receipt of the letter from FDA, ChemNutra has received numerous follow up requests seeking the status of destruction. At my request, since receipt of this letter, my attorneys have been working with codefendants, plaintiffs counsel and the FDA to try to respond to the FDA's request.

10. ChemNutra is unnecessarily incurring great expense to store its raw wheat gluten in the three storage facilities in Kansas City, Pennsauken and Bloomsburg. In addition to the storage facility costs, if ChemNutra is required to continue its retention of its Wheat Gluten, ChemNutra would be compelled to incur additional costs and great expenses.

11. For over 6 months the New Jersey warehouse in which the wheat gluten has been stored has demanded that ChemNutra immediately remove the wheat gluten from the facility. As of July 1, 2008 that warehouse has substantially increased the storage costs. These increased storage costs as well as the ongoing storage costs incurred at the other facilities has been a severe economic burden on ChemNutra. The storage costs are imposing a substantial economic burden on ChemNutra.

12. ChemNutra is ready and willing to dispose of the XuZhou Anying wheat gluten as requested by the FDA. If the Court allows the destruction requested in this motion, ChemNutra will dispose of the wheat gluten in accordance with the FDA's recommendations and under the FDA's supervision.

I declare under penalty of perjury that the foregoing is true and correct.



Stephen Miller

EXHIBIT A



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

June 29, 2007

Marc S. Ullman, Esq.
Ullman, Shapiro & Ullman, LLP
299 Broadway, Suite 1700
New York, New York 10007

Dear Mr. Ullman:

I am writing in regard to the disposition of certain quantities of wheat gluten, owned by your client, ChemNutra, Inc. (ChemNutra) and held at multiple facilities throughout the country.¹

FDA's inspections, analysis, and records show that ChemNutra's wheat gluten contains melamine and/or melamine analogs, causing the product to be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. §§ 301 et seq.

As you may know, representatives from several FDA District Offices, including Kansas City, Philadelphia, and New Jersey, have been involved in continued discussions with ChemNutra regarding its adulterated wheat gluten. FDA acknowledges that ChemNutra has cooperated in the recall of the product, and that presently there is a large quantity on voluntary hold at multiple facilities throughout the United States. ChemNutra previously agreed to voluntarily destroy this recalled product, however, you have stated that ChemNutra is now unable to destroy the product due to a May 22, 2007 Order from United States District Judge George H. King in the Central District of California in Townsend v. Menu Foods, et al.

FDA continues to be concerned about the potential public health risk, especially to animals, associated with the retention of approximately 430 metric tons of adulterated wheat gluten in storage in various parts of the country. Until the product is destroyed, there is a risk of reintroduction into interstate commerce, whether intentional or not, and/or a risk of export.

FDA understands that your client has assured you that it will not move the product, nor have anyone move the product on its behalf. However, in light of the large quantity of product in storage, the potentially lengthy storage time, and a lack of uniform control over access to the wheat gluten and relevant security issues, FDA continues to be concerned that some of the product may find its way back to the market and be used commercially.

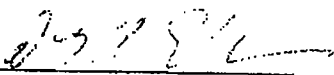
¹ Information provided to FDA by ChemNutra indicates that, as of June 5, 2007, ChemNutra had approximately 430 metric tons (MT) of wheat gluten at three locations in the United States: approximately 278 MT at MoKan Container Service, Inc. in Kansas City, Missouri; 72 MT at Steven Shannon Warehouse in Bloomsburg, Pennsylvania; and 80 MT at Standard Warehouse and Distribution Co., Ltd. in Pennsauken, New Jersey.

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FDA understands that a certain amount of the adulterated product may need to be retained for use in ongoing or potential litigation. However, the volume of product currently on hand at the multiple domestic facilities would appear to be in excess of that typically necessary for evidentiary purposes. FDA requests that your client consider the option of retaining a representative sample of ChemNutra's adulterated wheat gluten, and destroying the remainder under FDA supervision. Of course, the Agency urges you to seek whatever relief is appropriate from the Court in your underlying litigation to accomplish this.

If you have any questions or concerns relating to the contents of this letter, please feel free to contact me at 240-632-6800.

Sincerely,



David K. Elder
Director, Office of Enforcement
Office of Regulatory Affairs
U.S. Food and Drug Administration