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THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE: Pet Food Products ) Civil Action No. 07-2867 (NLH)  
Liability Litigations ) MDL DOCKET NO. 1850  
)  
) The Honorable Noel L. Hillman  
)  
\_\_\_\_\_ ) STATEMENT OF THE ISSUES

STATEMENT OF THE ISSUES

The Appellant, Donald R. Earl, filed a product liability action in Washington State Superior Court against Menu Foods Income Fund and The Kroger Company for damages related to unrecalled pet food. Menu Foods Income Fund held two bodies of evidence which it designated 'unorganized inventory' and 'organized inventory'. The 'organized inventory' was made up of recalled pet food relevant to the instant case. The 'unorganized inventory' contained unrecalled pet food evidence material to the action pending in Washington State. Defendant manufacturers in the instant case filed a motion, which in part asked the court for permission to destroy all evidence material to Earl's Washington State action (unorganized inventory), which the court granted. Washington courts subsequently denied Earl's right to conduct discovery of the 'unorganized inventory'

1 based on the principal of comity. Earl moved the court to  
2 intervene and vacate the order permitting destruction of  
3 evidence, which the trial court denied.  
4

5 ISSUE 1: Does an attorney, in filing a motion to  
6 destroy evidence, violate 3.4(a) of the Rules of  
7 Professional Conduct?

8 ISSUE 2: Did the trial court have subject matter  
9 jurisdiction to consider a motion to destroy evidence?

10 ISSUE 3: Did the trial court, contrary to criminal  
11 statutes designed to preserve evidence, have legal authority  
12 to grant defendant manufacturers permission to destroy  
13 evidence?

14 ISSUE 4: Did the trial court err in denying the motions  
15 to intervene and to vacate the order permitting destruction  
16 of evidence, which was material to cases over which the  
17 court does not have jurisdiction?  
18

19 Dated: March 4, 2009  
20 Respectfully submitted by:

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23 Donald R. Earl (pro se)  
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25 Port Townsend, WA 98368  
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**CERTIFICATE OF SERVICE**

I certify that on the 4<sup>th</sup> day of March, 2009, I placed in the US mail, a court copy of the 'Statement of the Issues' and a CD with PDF files of the same for upload and distribution through the Court's electronic filing system to parties of record.

Dated: March 4, 2009  
Respectfully submitted by:



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