

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

IN RE: PET FOOD PRODUCTS LIABILITY LITIGATION	Hon. Noel L. Hillman <b>Civil No. 07-2867 (NLH/AMD)</b> MDL Docket No. 1850 <u>ALL CASES</u>
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**JOINT STATUS REPORT REGARDING EVIDENCE PRESERVATION**

Following the pet food recall at issue in this litigation, a number of Defendants, including Menu Foods, Del Monte Foods Co., Nestle Purina PetCare Company, Iams Co., and Nutro Products, Inc., retained and are currently storing large quantities of recalled pet food. Menu Foods, Del Monte and ChemNutra also retained and are currently storing varying quantities of raw wheat gluten.

Defendants claim that the preservation of the retained pet food may pose significant health and safety risks and may impose a significant expense on Defendants. At the same time, Defendants and Plaintiffs want to maintain samples of the recalled pet food and wheat gluten for use in this litigation. The recalled pet food inventories retained by Defendants exist both in a disorganized manner (referred to as "banana box material") and an organized manner.

Pursuant to the Court's September 26, 2007 Order, Plaintiffs and Defendants submit this joint status report related to their good faith efforts to agree to a sampling plan for recalled pet food and raw wheat gluten retained by Defendants, to agree to the preservation of recalled pet food and raw wheat gluten required for any sampling plan and to agree to the destruction of such retained pet food and raw wheat gluten not needed for any sampling plan. Since September 26, 2007, the parties have continued to work diligently toward reaching a joint agreement related to

the sampling plan and product destruction. The parties have made significant progress, including completion of the following:

- The parties negotiated a Confidentiality and Non-Disclosure Agreement Regarding Sampling Plan (“Confidentiality and Non-Disclosure Agreement”), which was executed on October 8, 2007. The Agreement, *inter alia*, permits the parties to exchange information regarding the retained recalled pet food and raw wheat gluten in order to facilitate an agreement to a sampling plan and to keep such information confidential.
- Pursuant to the Confidentiality and Non-Disclosure Agreement, on October 9-10, 2007, representatives of the Plaintiffs visited the warehouses of Menu Foods in Emporia and Topeka, Kansas where recalled pet food is stored. Representatives of the Plaintiffs also visited warehouse facilities of Del Monte in Kansas and Missouri. Finally, Plaintiffs visited the warehouse facilities of ChemNutra, Menu Foods and Del Monte where ChemNutra raw wheat gluten is stored. On October 25, 2007, representatives of the Plaintiffs visited the warehouse facilities of Menu Foods in New Jersey. Representatives of the Plaintiffs took photographs of the retained recalled pet food and raw wheat gluten. Representatives of Plaintiffs expect to visit the facilities of Menu Foods, Del Monte and other Defendants in the Northeastern United States in the next ten (10) days.
- Defendants have provided Plaintiffs with certain requested information on the ChemNutra raw wheat gluten retained by Defendants and the parties will attempt in good faith effort to reach an agreement related to retention of samples and destruction of the remaining raw wheat gluten independent of the sampling plan for the recalled pet food within twenty (20) days of this report.

- As a condition precedent to agreeing to the destruction of banana box material, Plaintiffs have and will request certain information. The Defendants are assessing what information is available, as well as gathering certain information to confirm that they can retain sufficient product to satisfy the sampling plan. Plaintiffs must evaluate this information in order to determine if an agreement may be reached.
- With respect to the organized recalled pet food retained by Defendants, Defendants' statistical expert, Dr. George McCabe, provided Plaintiffs with a letter explaining the assumptions on which his proposed sampling plan is based. Plaintiffs submitted the assumptions to Plaintiffs' statistical expert, Nicholas Jewell, PhD, who raised several questions regarding Dr. McCabe's assumptions as stated. Dr. McCabe responded and Plaintiffs are evaluating the responses with Dr. Jewell. The parties will attempt in good faith to reach an agreement on such a sampling plan in the next thirty (30) days.

In summary, the parties have made progress toward: (1) agreeing to a sampling plan for the organized recalled pet food that will permit the destruction of any excess pet food; (2) agreeing to a sampling plan for the ChemNutra raw wheat gluten retained by Defendants that will permit the destruction of any excess raw ChemNutra wheat gluten; and (3) agreeing to the destruction of disorganized recalled pet food retained by Defendants.

The parties intend to continue to work together diligently and in good faith to reach the agreements described in this report. If such agreements are reached, they will be submitted to this Court for approval.

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