

BEFORE THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE PET FOOD PRODUCTS
LIABILITY LITIGATION

: Civil Action No. 07-2867

:
: MDL Docket No. 1850 (ALL CASES)

:
: **DECLARATION OF MICHAEL**
: **HAYES OF DEL MONTE FOODS**
: **COMPANY IN SUPPORT OF DEL**
: **MONTE'S MOTION TO LIMIT**
: **THE RETENTION OF**
: **RECALLED PET TREATS AND**
: **FOOD, RAW WHEAT GLUTEN**
: **AND INGREDIENTS INCLUDING**
: **RECALLED WHEAT GLUTEN**

STATE OF Pennsylvania)
) ss:
COUNTY OF Allegheny)

Michael Hayes, being first sworn upon oath, says:

1) I am the Director of Quality Assurance of Defendant, Del Monte Foods Company (Del Monte). I am making this Declaration based upon personal knowledge and am competent to testify to the matters stated below.

2) In my position as Director of Quality Assurance for Del Monte, my duties and responsibilities include accounting for and managing the recalled pet treats, food and ingredients currently being stored by Del Monte, and overseeing Del Monte's efforts to combat infestation of same.

3) On April 1, 2007 and April 6, 2007, Del Monte recalled certain pet treats and food that may have been tainted with contaminated wheat gluten purchased from ChemNutra, Inc. As a result of the recalls, Del Monte is holding a tremendous amount of recalled product, raw recalled wheat gluten and ingredients containing recalled wheat gluten. Del Monte is storing 115,927 cases of organized recalled product, amounting to approximately 1,028,306 units of organized pet treats and food, and 83,526 containers of unorganized materials at three locations: Watsontown, Pennsylvania; Independence, Missouri; and, Mira Loma, California. In addition, Del Monte is storing raw, unprocessed wheat gluten purchased from ChemNutra, Inc. in warehouses located in Topeka, Kansas and Watsontown, Pennsylvania, and "work-in-progress" at the Topeka, Kansas location. Work-in-progress is a dry mix of ingredients that was pulled off the production line by Del Monte at the time of its recall. This dry mix may contain, in part, recalled wheat gluten purchased from ChemNutra, Inc.

4) The majority of the recalled pet treats and food held by Del Monte are inventoried by product-type or SKU and date of manufacture (collectively "SKU date"). These units (pet treats or food packaged for retail sale) are stored in cases and stacked on full or partial pallets. This is similar or identical to the way Del Monte packages the units at its manufacturing facilities. As such, there are records and documents that show whether this product ever left Del Monte's warehouses, or was delivered to a retailer or distributor and returned. Attachment "1" to this Declaration is an inventory of the organized recalled pet treats and food currently stored by Del Monte, and quantity of same. Although this inventory is organized and has been stored with care, due to the length of time it has been stored and the damage caused by transporting it back to Del Monte, some of the cans and pouches containing recalled product have become compromised and are leaking their contents. The leaking contents has created an infestation problem, including flying insects and larvae.

5) As detailed in Attachment 1 to this Declaration, Del Monte is storing organized recalled pet treats and food for 47 SKU dates. There is one SKU date for which Del Monte neither held nor received any product. That SKU is 583880, Ol' Roy Country Stew Hearty Cuts in Gravy Dog Food. I have personal knowledge that ChemNutra, Inc. only wheat gluten from batch number 20061101 was used to manufacture this recipe on this SKU date. I also have personal knowledge that wheat gluten comprises 2.43% of the total formula for that recipe.

6) The cost to Del Monte of storing the 1,028,306 units of organized recalled product is over \$27,000 per month and \$324,000 per year.

7) In addition to the organized recalled product that is inventoried by SKU and production date and stored on pallets, there is a substantial amount of unorganized material that Del Monte received directly from retailers and is holding at warehouses in Mira Loma, California; Independence, Missouri; and, Watsonstown, Pennsylvania. There are approximately 83,526 containers of this unorganized material. The containers are predominantly re-used banana boxes but are also various types of other boxes and bags used by retailers to ship product back to Del Monte.

8) The unorganized containers are filled with Del Monte recalled pet treats and food mixed together with non-recalled pet treats and food, products produced by other manufacturers, non pet food products, such as household cleaners and auto parts, and in some cases trash. These containers are haphazardly filled. In some cases, a single unit of product is contained in a container, in others, the containers are overflowing with recalled and non-recalled product. Because of the unorganized nature of these containers and the amount of handling that they have been subject to prior to Del Monte's receipt of them, their contents frequently break

open, causing the contents to spill or leak, resulting in infestation of a greater magnitude than the organized material. The unorganized containers are the single greatest cause of infestation.

9) In the event Del Monte is required to cull non-recalled product from these containers and organize the recalled product contained among this unorganized material, the cost to Del Monte is estimated to be approximately \$167,052. I approximated this number based on my estimate of \$2.00/case to sort through, identify, organize and inventory the recalled pet treats and food contained in these boxes. This cost does not include continued costs related to storage or costs associated with pest control.

10) The raw, unprocessed wheat gluten purchased by Del Monte from ChemNutra, Inc. is stored in 55-pound bags. Del Monte is currently storing 46 full and 15 partial bags of wheat gluten in Watsonstown, Pennsylvania (21 full and 5 partial bags of ChemNutra, Inc. batch number 20061101; 17 full and 5 partial bags of ChemNutra, Inc. batch number 20061027; 7 full and 5 partial bags of ChemNutra, Inc. batch number 20061108; and, 1 full bag without a ChemNutra, Inc. batch number). At its Topeka, Kansas location, Del Monte is storing 47 55-pound bags of ChemNutra, Inc. batch number 20061203; 60 55-pound bags of ChemNutra, Inc. batch number 20061202; and, 779 55-pound bags of ChemNutra, Inc. batch number 20070116.

11) Del Monte is also currently storing work-in-progress in Topeka, Kansas. Del Monte is currently storing 6 different types of work-in-progress, reflecting 6 different recipes that were being manufactured at the time the dry mix was pulled from the production line. Del Monte is storing 4,400 pounds of recipe "A" in 6 totes; 6,000 pounds of recipe "B" in 4 totes; 12,000 pounds of recipe "C" in 12 totes; 7,210 pounds of recipe "D" in 5 totes; 4,000 pounds of recipe "E" in 4 totes; and, 9,000 pounds of recipe "F" in 9 totes.

12) The cost to Del Monte of storing this raw wheat gluten and work-in-progress is over \$1,215 per month and \$14,580 per year.

13) In all locations where pet treats and food (organized and unorganized), raw wheat gluten and work-in-progress are being stored, infestation in the form of flying insects and larvae is present, requiring periodic fumigation. Del Monte has been forced to fumigate on several occasions at each location in order to keep the infestation of the recalled product at manageable levels. However, repeated future fumigation will be required.


14) Because of this infestation, Del Monte had to relocate recalled pet treats and food stored in its Fort Worth, Texas distribution center to the Independence, Missouri warehouse due to fears that the Fort Worth location would fail a safety and health audit by the American Institute of Baking ("AIB"), which inspects food distribution centers for food safety risks. Passing AIB audits is a condition precedent to Del Monte's ability to sell food, human or pet, to many of its customers, including Wal-Mart.

15) Del Monte has received communications from the Food and Drug Administration (FDA) advising that the pet treats, food, raw wheat gluten, and work-in-progress it is currently storing should be destroyed because the continued storage of these items poses a health and safety hazard to the general public. The FDA acknowledged that this recommendation was not issued because of Del Monte's handling of these items, but rather, the FDA's past experiences, which have shown that the longer an allegedly defective product is held after the initiation of a recall, the greater the chance it will be accidentally introduced into the stream of commerce. The FDA also requested that it be notified of this destruction so that it can have a witness present. Attachment 2 to this Declaration is a copy of an email from the FDA

confirming these communications and directing Del Monte to start destroying the recalled product, wheat gluten and work-in-progress.

16) Attachment 3 to this Declaration is a series of true and accurate photographs depicting the material stored in Del Monte's warehouses.

17) I have a general understanding of Dr. McCabe's proposed sampling plan for the products and ingredients that Del Monte is storing. Del Monte will be able to gather samples of the products and ingredients it is storing in accordance with the sampling plan recommended by Dr. McCabe to the extent there is product available for each SKU date, batch or recipe of work-in-progress.


Michael Hayes

NOTARIAL CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

On this 14th day of November, 2007, before me personally appeared
MICHAEL HAYES, to me known, who, being by me duly sworn, did depose and
say that he is the Director of Quality Assurance of Del Monte Foods Company, the
company described in and which executed the foregoing instrument; and that he is
duly authorized to execute the foregoing instrument on behalf of said company.

Rosemary A. Pelitta

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Rosemary A. Pelitta, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires June 15, 2010
Member, Pennsylvania Association of Notaries

ATTACHMENT 1

DEL MONTE PET PRODUCTS - RECALL REGARDING MDL LITIGATION
Held Inventories (Excluding Banana Boxes) - Del Monte Distribution Centers

SKU	Product Description	Size	Lot Code	Total Units
103500	Dollar General Beef Flavored Jerky Strips Dog Treats	12x3oz	TP7C05	1,392
103500	Dollar General Beef Flavored Jerky Strips Dog Treats	12x3oz	TP7C06	40,440
103500	Dollar General Beef Flavored Jerky Strips Dog Treats	12x3oz	TP7C07	47,424
103500	Dollar General Beef Flavored Jerky Strips Dog Treats	12x3oz	TP7C08	22,260
103590	Dollar General Beef Flavored Beef Sticks Dog Treats	12x4.5oz	TP7B20	23,496
103590	Dollar General Beef Flavored Beef Sticks Dog Treats	12x4.5oz	TP7B21	29,988
103590	Dollar General Beef Flavored Beef Sticks Dog Treats	12x4.5oz	TP7C08	6,492
103590	Dollar General Beef Flavored Beef Sticks Dog Treats	12x4.5oz	TP7C09	29,676
103590	Dollar General Beef Flavored Beef Sticks Dog Treats	12x4.5oz	TP7C10	12,480
106850	Ol' Roy Beef Flavor Snack Sticks Dog Treats	6x26oz	TP7B19	9,450
106850	Ol' Roy Beef Flavor Snack Sticks Dog Treats	6x26oz	TP7B20	40,308
106850	Ol' Roy Beef Flavor Snack Sticks Dog Treats	6x26oz	TP7B21	22,152
106860	Ol' Roy Beef Flavor Jerky Strips Dog Treats	6x26oz	TP7B06	2,976
106860	Ol' Roy Beef Flavor Jerky Strips Dog Treats	6x26oz	TP7B07/08	7,824
107610	Jerky Treats Beef Flavor Dog Snacks	12x3.75oz	TP7C05/06	20,784
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7B08	10,044
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7B09	45,888
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7B10	7,932
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7B15	26,892
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7B16	540
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7C05	36,984
107630	Jerky Treats Beef Flavor Dog Snacks	12x7.5oz	TP7C06	33,612
107650	Jerky Treats Beef Flavor Dog Snacks	8x11.25oz	TP7B06	4,480
107650	Jerky Treats Beef Flavor Dog Snacks	8x11.25oz	TP7B07	30,968

107650	Jerky Treats Beef Flavor Dog Snacks	8x11.25oz	TP7B08	5,832
130040	Jerky Treats Beef Flavor Dog Snacks	8x20oz	TP7B15	27,560
314410	Jerky Treats Beef Flavor Dog Snacks (BOGO)	12x15oz	TP7B08	7,560
314410	Jerky Treats Beef Flavor Dog Snacks (BOGO)	12x15oz	TP7B09	31,152
344330	Gravy Train Beef Sticks Dog Snacks	12x4.5oz	TP7B19/20	168
363310	Happy Tails Meaty Cuts with Beef in Gravy Dog Food	12x22oz	BC7A29	75,372
396050	Ol' Roy with Beef Hearty Cuts in Gravy Dog Food	24x13.2oz	BC6M21	3,072
396060	Ol' Roy with Beef Hearty Strips in Gravy Dog Food	24x13.2oz	BC7A19	6,768
401870	Ol' Roy Beef Flavor Snack Sticks Dog Treats	6x30oz	TP7C08	29,826
401870	Ol' Roy Beef Flavor Snack Sticks Dog Treats	6x30oz	TP7C09	42,618
401870	Ol' Roy Beef Flavor Snack Sticks Dog Treats	6x30oz	TP7C10	6,294
401880	Ol' Roy Beef Flavor Jerky Strips Dog Treats	6x30oz	TP7C06	28,890
401880	Ol' Roy Beef Flavor Jerky Strips Dog Treats	6x30oz	TP7C07	57,438
401880	Ol' Roy Beef Flavor Jerky Strips Dog Treats	6x30oz	TP7C08	20,706
424070	Happy Tails Beef Flavor Beef Sticks	12x6oz	TP7C08/09	14,736
424110	Happy Tails Beef Flavor Jerky Strips	12x6oz	TP7B08/09	16,368
487280	Jerky Treats Beef Flavor Dog Snacks	6x7.5oz	TP7B08	8,136
487280	Jerky Treats Beef Flavor Dog Snacks	6x7.5oz	TP7B09	12,624
487280	Jerky Treats Beef Flavor Dog Snacks	6x7.5oz	TP7C05	27,990
487280	Jerky Treats Beef Flavor Dog Snacks	6x7.5oz	TP7C06	16,086
566400	Ol' Roy Beef Flavor Jerky Strips Dog Treats	12x6oz	TP7C05	36,396
566400	Ol' Roy Beef Flavor Jerky Strips Dog Treats	12x6oz	TP7C06	24,240
583880	Ol' Roy Country Stew Hearty Cuts in Gravy Dog Food	12x22oz	BC6M15	0
817080	Pounce Meaty Morsels Moist Chicken Flavor Cat Treats	12x2.3oz	TP7C12	13,992
DISTRIBUTION CENTER TOTALS:				1,028,306

ATTACHMENT 2

Fama, Richard

REDACTED
ATTORNEY CLIENT PRIVILEGE

From: Lauff, Megan [mailto:megan.lauff@fda.hhs.gov]
Sent: Tuesday, November 13, 2007 8:44 AM
To: Hayes, Michael
Subject: RE: Destruction of Recalled Products

Mike

Yes everything in your email below is correct. Please start the process of scheduling the destruction; let me know the tentative date and location so that I can have an investigator witness the destruction.

Please feel free to contact me with any additional questions.

Thanks,
Megan

Megan M. Lauff, Recall Coordinator
FDA/Philadelphia District
U.S. Customhouse, Room 900
2nd & Chestnut Streets
Philadelphia, PA 19106
(215) 717-3749
fax (215) 717-3721
megan.lauff@fda.hhs.gov

From: Hayes, Michael [mailto:Michael.Hayes@DELMONTE.com]
Sent: Friday, November 09, 2007 2:01 PM
To: Lauff, Megan
Subject: Destruction of Recalled Products

As you may recall, the FDA has advised Del Monte to destroy all recalled pet food products, all ingredients containing recalled wheat gluten distributed by Chem Nutra and all raw recalled Chem Nutra

11/15/2007

ATTACHMENT 3