

## EXHIBIT M

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★ MAY 01 2007 ★

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Phyllis A. Ullman, individually and on behalf of  
all others similarly situated,

cv07-0667 MSP

Plaintiff,

No.

CLASS ACTION COMPLAINT

v.

MENU FOODS, a foreign corporation,

Defendant.

Plaintiff Phyllis Ullman ("Plaintiff"), by and through her undersigned attorneys, brings this civil action for damages on behalf of herself and all others similarly situated against the above-named Defendant and complain and allege as follows:

I. NATURE OF ACTION

1. Plaintiff brings this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway.

CLASS ACTION COMPLAINT - 1  
Case No.

COPY



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1       3.     Dog and cat food that the Defendant produced caused an unknown number of  
 2     dogs and cats to become ill, and many of them to die.

3       4.     To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
 4     food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
 5     gravy wet" style.

6       5.     As a result of the Defendant's actions, Plaintiff and other Class members have  
 7     suffered economic damage.

## 8                   II.     PARTIES

9       6.     Plaintiff Ullman has at all material times been a resident of Houston, Texas. Ms.  
 10    Ullman had a pet that became sick and died after eating Defendant's pet food.

11    7.     Defendant Menu Foods is, upon information and belief, a corporation organized  
 12    under the laws of Canada that transacts business in Washington State.

## 13                   III.    JURISDICTION AND VENUE

14    8.     Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
 15    Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
 16    \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
 17    § 1337.

18    9.     Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
 19    Defendant systematically and continuously sold its product within this district and Defendant  
 20    transacts business within this district.

## 21                   IV.    CLASS ACTION ALLEGATION

22    10.   Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
 23    (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
 24    "Class") composed of all persons who purchased any dog or cat food that was produced by the  
 25    Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiff  
 26    reserves the right to modify this class definition before moving for class certification.

CLASS ACTION COMPLAINT - 2  
 Case No.



HAGENS BERMAN  
 SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1       11.   The Class is ascertainable and there is a well-defined community of interest  
 2 among the members of the Class.

3       12.   Membership in the Class is so numerous as to make it impractical to bring all  
 4 Class members before the Court. The identity and exact number of Class members is unknown  
 5 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
 6 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

7       13.   Plaintiff's claims are typical of those of other Class members, all of whom have  
 8 suffered harm due to Defendant's uniform course of conduct.

9       14.   Plaintiff is a member of the Class.

10       15.   There are numerous and substantial questions of law and fact common to all of  
 11 the members of the Class that control this litigation and predominate over any questions affecting  
 12 only individual members of the Class. The common issues include, but are not limited to, the  
 13 following:

14           (a)   Was the Defendant's dog and cat food materially defective, and unfit for  
 15 use as dog or cat food?

16           (b)   Whether Defendant breached any contract, implied contract or warranties  
 17 related to the sale of the dog and cat food?

18           (c)   Did the Defendant's dog and cat food cause Plaintiff's and other Class  
 19 members' pets to become ill?

20           (d)   Were Plaintiff and other Class members damaged, and, if so, what is the  
 21 proper measure thereof?

22           (e)   The appropriate form of injunctive, declaratory and other relief.

23       16.   The prosecution of separate actions by members of the Class would create a risk  
 24 of establishing incompatible standards of conduct for the Defendant – for example, one court  
 25 might decide that the Defendant is obligated under the law to pay damages to Class members,  
 26

CLASS ACTION COMPLAINT - 3  
 Case No.



HAGENS BERMAN  
 SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
 2 practical matter, be dispositive of the interests of the Class.

3       17. Plaintiff will fairly and adequately protect the interests of the Class in that she has  
 4 no interests that are antagonistic to other members of the Class and has retained counsel  
 5 competent in the prosecution of class actions to represent herself and the Class.

6       18. A class action is superior to other available methods for the fair and efficient  
 7 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
 8 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
 9 few, if any, Class members could afford to seek legal redress individually for the wrongs  
 10 Defendant has committed against them.

11       19. Without a class action, the Class will continue to suffer damage, Defendant's  
 12 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
 13 the fruits and proceeds of its unlawful misconduct.

14       20. This action will foster an orderly and expeditious administration of Class claims,  
 15 economies of time, effort and expense, and uniformity of decision.

16       21. Inferences and presumptions of materiality and reliance are available to obtain  
 17 class-wide determinations of those elements within the Class claims, as are accepted  
 18 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
 19 common liability, the Court can efficiently determine the claims of the individual Class  
 20 members.

21       22. This action presents no difficulty that would impede the Court's management of it  
 22 as a class action, and a class action is the best (if not the only) available means by which  
 23 members of the Class can seek legal redress for the harm caused them by Defendant.

24       23. In the absence of a class action, Defendant would be unjustly enriched because it  
 25 would be able to retain the benefits and fruits of its wrongful conduct.

26       24. The Claims in this case are also properly certifiable under applicable law.

CLASS ACTION COMPLAINT - 4  
 Case No.



HAGENS BERMAN  
 SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## V. STATEMENT OF FACTS

25. Plaintiff Phyllis Ullman was the owner of a two dogs, Scout and Vegas.

26. Ms. Ullman purchased Hills Prescriptive ID for Scout and Vegas to consume.

27. The dogs ate the Hills brand dog food before their death.

28. The dogs became extremely ill after eating the Hills Prescriptive ID food. Ms.

Ullman took the dogs to a veterinarian, who informed her that they had suffered kidney failure, also known as acute renal failure. Scout was euthanized on February 6, 2007 and Vegas was euthanized on February 9, 2007.

29. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become ill. One common symptom in the sick animals was kidney failure.

30. The Hills Prescriptive ID food the dogs consumed before their deaths is one of the brands that Menu Foods recalled.

31. As a result of Defendant's acts and omissions Plaintiff and other Class members have suffered economic damage.

## VI. BREACH OF CONTRACT

32. Plaintiff realleges all prior allegations as though fully stated herein.

33. Plaintiff and Class members purchased pet food produced by the Defendant based on the understanding that the food was safe for their pets to consume.

34. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of contract.

35. As a result of the breach Plaintiff and Class members suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

CLASS ACTION COMPLAINT - 5  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## VII. UNJUST ENRICHMENT

36. Plaintiff realleges all prior allegations as though fully stated herein.

37. Defendant was and continues to be unjustly enriched at the expense of Plaintiff and other Class members.

38. Defendant should be required to disgorge this unjust enrichment.

## **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

39. Plaintiff realleges all prior allegations as though fully stated herein.

40. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et seq.*, and similar statutory enactments of other states (including consumer protection and consumer sales practice acts).

41. Defendant's sale of hazardous pet food has the capacity to deceive a substantial portion of the public and to affect the public interest.

42. As a result of Defendant's unfair or deceptive acts or practices, Plaintiff and other Class members suffered injuries in an amount to be proven at trial.

## IX. BREACH OF WARRANTIES

43. Plaintiff realleges all prior allegations as though fully stated herein.

44. Cat food and dog food produced by Menu Foods are “goods” within the meaning of Uniform Commercial Code Article 2.

45. Defendant's conduct as described herein constitutes breach of an implied or express warranty of affirmation.

46. Defendant's conduct as described herein constitutes breach of an implied warranty of merchantability.

47. Defendant's conduct as described herein constitutes breach of an implied warranty of fitness for a particular purpose.

CLASS ACTION COMPLAINT - 6  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
ELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

48. As a proximate result of the aforementioned wrongful conduct and breach, Plaintiff and other Class members have suffered damages in an amount to be proven at trial. Defendant had actual or constructive notice of such damages.

## X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members request that the Court enter an order of judgment against Defendant including the following:

Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiff as Class Representative and her counsel of record as Class Counsel;

Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the states having a legally sufficient connection with Defendant and its acts or omissions) and such other relief as provided by the statutes cited herein;

Prejudgment and post-judgment interest on such monetary relief;

Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

Other appropriate injunctive relief;

The costs of bringing this suit, including reasonable attorneys' fees; and

Such other relief as this Court may deem just, equitable and proper.

DATED this 1<sup>st</sup> day of May, 2007.

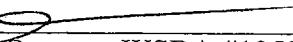
CLASS ACTION COMPLAINT - 7  
Case No.



HAGENS BERMAN  
SOBOL SHAP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 HAGENS BERMAN SOBOL SHAPIRO LLP  
2

3 By:   
4 Steve W. Berman, WSBA #12536  
5 1301 Fifth Avenue, Suite 2900  
6 Seattle, Washington 98101  
7 Telephone: (206) 623-7292  
8 Facsimile: (206) 623-0594  
9 E-mail: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

10 MYERS & COMPANY, P.L.L.C.  
11 Michael David Myers  
12 1809 Seventh Avenue, Suite 700  
13 Seattle, Washington 98101  
14 Telephone: (206) 398-1188  
15 Facsimile: (206) 400-1112  
16 E-mail: [mmyers@myers-company.com](mailto:mmyers@myers-company.com)

17 *Attorneys for Plaintiffs*

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CLASS ACTION COMPLAINT - 8  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## EXHIBIT N

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLEELIZABETH PALMER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. C 07-0668JUR

CLASS ACTION COMPLAINT  
FILED \_\_\_\_\_ ENTERED  
LODGED \_\_\_\_\_ RECEIVED  
★ (MAY 01 2007) ★CLERK AT SEATTLE  
U.S. DISTRICT COURT  
BY WESTERN DISTRICT OF WASHINGTON  
DEPUTY

Plaintiff Elizabeth Palmer ("Plaintiff"), by and through her undersigned attorneys, brings this civil action for damages on behalf of herself and all others similarly situated against the above-named Defendant and complain and allege as follows:

## I. NATURE OF ACTION

1. Plaintiff brings this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway.

CLASS ACTION COMPLAINT - 1  
Case No.HAGENS BERMAN  
SOBOL SHAPIRO LLP1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

COPY

1           3.    Dog and cat food that the Defendant produced caused an unknown number of  
 2 dogs and cats to become ill, and many of them to die.

3           4.    To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
 4 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
 5 gravy wet" style.

6           5.    As a result of the Defendant's actions, Plaintiff and other Class members have  
 7 suffered economic damage.

## 8           II.    PARTIES

9           6.    Plaintiff Palmer has at all material times been a resident of Little Falls, New York.  
 10 Ms. Palmer had a pet that became sick and died after eating Defendant's pet food.

11           7.    Defendant Menu Foods is, upon information and belief, a corporation organized  
 12 under the laws of Canada that transacts business in Washington State.

## 13           III.    JURISDICTION AND VENUE

14           8.    Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
 15 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
 16 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
 17 § 1337.

18           9.    Venue is proper in this judicial district under 28 U.S.C. § 1331(a) because the  
 19 Defendant systematically and continuously sold its product within this district and Defendant  
 20 transacts business within this district.

## 21           IV.    CLASS ACTION ALLEGATION

22           10.   Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
 23 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
 24 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
 25 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiff  
 26 reserves the right to modify this class definition before moving for class certification.

CLASS ACTION COMPLAINT - 2  
 Case No.



HAGENS BERMAN  
 SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1           11. The Class is ascertainable and there is a well-defined community of interest  
 2 among the members of the Class.

3           12. Membership in the Class is so numerous as to make it impractical to bring all  
 4 Class members before the Court. The identity and exact number of Class members is unknown  
 5 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
 6 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

7           13. Plaintiff's claims are typical of those of other Class members, all of whom have  
 8 suffered harm due to Defendant's uniform course of conduct.

9           14. Plaintiff is a member of the Class.

10           15. There are numerous and substantial questions of law and fact common to all of  
 11 the members of the Class that control this litigation and predominate over any questions affecting  
 12 only individual members of the Class. The common issues include, but are not limited to, the  
 13 following:

14           (a) Was the Defendant's dog and cat food materially defective, and unfit for  
 15 use as dog or cat food?

16           (b) Whether Defendant breached any contract, implied contract or warranties  
 17 related to the sale of the dog and cat food?

18           (c) Did the Defendant's dog and cat food cause Plaintiff's and other Class  
 19 members' pets to become ill?

20           (d) Were Plaintiff and other Class members damaged, and, if so, what is the  
 21 proper measure thereof?

22           (e) The appropriate form of injunctive, declaratory and other relief.

23           16. The prosecution of separate actions by members of the Class would create a risk  
 24 of establishing incompatible standards of conduct for the Defendant – for example, one court  
 25 might decide that the Defendant is obligated under the law to pay damages to Class members,  
 26

CLASS ACTION COMPLAINT - 3  
 Case No.



HAGENS BERMAN  
 SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
 2 practical matter, be dispositive of the interests of the Class.

3       17. Plaintiff will fairly and adequately protect the interests of the Class in that she has  
 4 no interests that are antagonistic to other members of the Class and has retained counsel  
 5 competent in the prosecution of class actions to represent herself and the Class.

6       18. A class action is superior to other available methods for the fair and efficient  
 7 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
 8 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
 9 few, if any, Class members could afford to seek legal redress individually for the wrongs  
 10 Defendant has committed against them.

11       19. Without a class action, the Class will continue to suffer damage, Defendant's  
 12 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
 13 the fruits and proceeds of its unlawful misconduct.

14       20. This action will foster an orderly and expeditious administration of Class claims,  
 15 economies of time, effort and expense, and uniformity of decision.

16       21. Inferences and presumptions of materiality and reliance are available to obtain  
 17 class-wide determinations of those elements within the Class claims, as are accepted  
 18 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
 19 common liability, the Court can efficiently determine the claims of the individual Class  
 20 members.

21       22. This action presents no difficulty that would impede the Court's management of it  
 22 as a class action, and a class action is the best (if not the only) available means by which  
 23 members of the Class can seek legal redress for the harm caused them by Defendant.

24       23. In the absence of a class action, Defendant would be unjustly enriched because it  
 25 would be able to retain the benefits and fruits of its wrongful conduct.

26       24. The Claims in this case are also properly certifiable under applicable law.

CLASS ACTION COMPLAINT - 4  
 Case No.

001958-11 168795 V1

  
 HAGENS BERMAN  
 SOBOL SHAPIRO LLP  
 1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## V. STATEMENT OF FACTS

25. Plaintiff Palmer was the owner of a female cat named Sky.

26. Ms. Palmer purchased Special Kitty cat food at Wal-Mart for Sky to consume.

27. Sky ate the Special Kitty brand cat food before her death.

28. The cat became extremely ill after eating the Special Kitty food. Ms. Palmer took a veterinarian, who informed her that Sky had suffered kidney failure, also known as renal failure. Sky had to be euthanized due to complete renal failure.

29. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become ill. One common symptom in the sick animals was kidney failure.

30. The Special Kitty food Sky consumed before her death is one of the brands that  
Menu Foods recalled.

31. As a result of Defendant's acts and omissions Plaintiff and other Class members have suffered economic damage.

## VI. BREACH OF CONTRACT

32. Plaintiff realleges all prior allegations as though fully stated herein.

33. Plaintiff and Class members purchased pet food produced by the Defendant based on the understanding that the food was safe for their pets to consume.

34. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of contract.

35. As a result of the breach Plaintiff and Class members suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

CLASS ACTION COMPLAINT - 5  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## VII. UNJUST ENRICHMENT

36. Plaintiff realleges all prior allegations as though fully stated herein.

37. Defendant was and continues to be unjustly enriched at the expense of Plaintiff and other Class members.

38. Defendant should be required to disgorge this unjust enrichment.

## **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

39. Plaintiff realleges all prior allegations as though fully stated herein.

40. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et seq.*, and similar statutory enactments of other states (including consumer protection and consumer sales practice acts).

41. Defendant's sale of hazardous pet food has the capacity to deceive a substantial portion of the public and to affect the public interest.

42. As a result of Defendant's unfair or deceptive acts or practices, Plaintiff and other Class members suffered injuries in an amount to be proven at trial.

## IX. BREACH OF WARRANTIES

43. Plaintiff realleges all prior allegations as though fully stated herein.

44. Cat food and dog food produced by Menu Foods are "goods" within the meaning of Uniform Commercial Code Article 2.

45. Defendant's conduct as described herein constitutes breach of an implied or express warranty of affirmation.

46. Defendant's conduct as described herein constitutes breach of an implied warranty of merchantability.

47. Defendant's conduct as described herein constitutes breach of an implied warranty of fitness for a particular purpose.

CLASS ACTION COMPLAINT - 6  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0568

48. As a proximate result of the aforementioned wrongful conduct and breach, Plaintiff and other Class members have suffered damages in an amount to be proven at trial. Defendant had actual or constructive notice of such damages.

## X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members request that the Court enter an order of judgment against Defendant including the following:

Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiff as Class Representative and her counsel of record as Class Counsel;

Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the states having a legally sufficient connection with Defendant and its acts or omissions) and such other relief as provided by the statutes cited herein;

Prejudgment and post-judgment interest on such monetary relief;

Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

Other appropriate injunctive relief;

The costs of bringing this suit, including reasonable attorneys' fees; and

Such other relief as this Court may deem just, equitable and proper.

DATED this 1<sup>st</sup> day of May, 2007

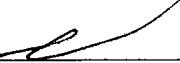
CLASS ACTION COMPLAINT - 7  
Case No.



HAGENS BERMAN  
SOBOL SHAW

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 HAGENS BERMAN SOBOL SHAPIRO LLP  
2  
3

4 By:   
5 Steve W. Berman, WSBA #12536  
6 1301 Fifth Avenue, Suite 2900  
7 Seattle, Washington 98101  
8 Telephone: (206) 623-7292  
9 Facsimile: (206) 623-0594  
10 E-mail: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

11  
12 MYERS & COMPANY, P.L.L.C.  
13 Michael David Myers  
14 1809 Seventh Avenue, Suite 700  
15 Seattle, Washington 98101  
16 Telephone: (206) 398-1188  
17 Facsimile: (206) 400-1112  
18 E-mail: [mmyers@myers-company.com](mailto:mmyers@myers-company.com)

19  
20 *Attorneys for Plaintiffs*  
21  
22  
23  
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26

CLASS ACTION COMPLAINT - 8  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## **EXHIBIT O**

FILED  
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MAY 01 2007

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTYUNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLEJASON LABBATE, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

No. C 07-0669 MJB  
CLASS ACTION COMPLAINT

Plaintiff Jason Labbate ("Plaintiff"), by and through his undersigned attorneys, brings this civil action for damages on behalf of himself and all others similarly situated against the above-named Defendant and complain and allege as follows:

#### I. NATURE OF ACTION

1. Plaintiff brings this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway.

CLASS ACTION COMPLAINT - 1  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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**COPY**

1       3.     Dog and cat food that the Defendant produced caused an unknown number of  
 2 dogs and cats to become ill, and many of them to die.

3       4.     To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat  
 4 food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and  
 5 gravy wet" style.

6       5.     As a result of the Defendant's actions, Plaintiff and other Class members have  
 7 suffered economic damage.

## 8                   II.     PARTIES

9       6.     Plaintiff Labbate has at all material times been a resident of Lindenhurst, New  
 10 York. Mr. Labbate had a pet that became sick and died after eating Defendant's pet food.

11       7.     Defendant Menu Foods is, upon information and belief, a corporation organized  
 12 under the laws of Canada that transacts business in Washington State.

## 13                   III.    JURISDICTION AND VENUE

14       8.     Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the  
 15 Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds  
 16 \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C.  
 17 § 1337.

18       9.     Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the  
 19 Defendant systematically and continuously sold its product within this district and Defendant  
 20 transacts business within this district.

## 21                   IV.    CLASS ACTION ALLEGATION

22       10.   Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and  
 23 (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the  
 24 "Class") composed of all persons who purchased any dog or cat food that was produced by the  
 25 Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiff  
 26 reserves the right to modify this class definition before moving for class certification.

CLASS ACTION COMPLAINT - 2  
 Case No.



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 SOBOL SHAPIRO LLP

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1           11. The Class is ascertainable and there is a well-defined community of interest  
 2 among the members of the Class.

3           12. Membership in the Class is so numerous as to make it impractical to bring all  
 4 Class members before the Court. The identity and exact number of Class members is unknown  
 5 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
 6 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

7           13. Plaintiff's claims are typical of those of other Class members, all of whom have  
 8 suffered harm due to Defendant's uniform course of conduct.

9           14. Plaintiff is a member of the Class.

10           15. There are numerous and substantial questions of law and fact common to all of  
 11 the members of the Class that control this litigation and predominate over any questions affecting  
 12 only individual members of the Class. The common issues include, but are not limited to, the  
 13 following:

14                   (a)     Was the Defendant's dog and cat food materially defective, and unfit for  
 15 use as dog or cat food?

16                   (b)     Whether Defendant breached any contract, implied contract or warranties  
 17 related to the sale of the dog and cat food?

18                   (c)     Did the Defendant's dog and cat food cause Plaintiff's and other Class  
 19 members' pets to become ill?

20                   (d)     Were Plaintiff and other Class members damaged, and, if so, what is the  
 21 proper measure thereof?

22                   (e)     The appropriate form of injunctive, declaratory and other relief.

23           16. The prosecution of separate actions by members of the Class would create a risk  
 24 of establishing incompatible standards of conduct for the Defendant – for example, one court  
 25 might decide that the Defendant is obligated under the law to pay damages to Class members,

26  
 CLASS ACTION COMPLAINT - 3  
 Case No.



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1 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
 2 practical matter, be dispositive of the interests of the Class.

3       17. Plaintiff will fairly and adequately protect the interests of the Class in that he has  
 4 no interests that are antagonistic to other members of the Class and has retained counsel  
 5 competent in the prosecution of class actions to represent himself and the Class.

6       18. A class action is superior to other available methods for the fair and efficient  
 7 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
 8 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
 9 few, if any, Class members could afford to seek legal redress individually for the wrongs  
 10 Defendant has committed against them.

11       19. Without a class action, the Class will continue to suffer damage, Defendant's  
 12 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
 13 the fruits and proceeds of its unlawful misconduct.

14       20. This action will foster an orderly and expeditious administration of Class claims,  
 15 economies of time, effort and expense, and uniformity of decision.

16       21. Inferences and presumptions of materiality and reliance are available to obtain  
 17 class-wide determinations of those elements within the Class claims, as are accepted  
 18 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
 19 common liability, the Court can efficiently determine the claims of the individual Class  
 20 members.

21       22. This action presents no difficulty that would impede the Court's management of it  
 22 as a class action, and a class action is the best (if not the only) available means by which  
 23 members of the Class can seek legal redress for the harm caused them by Defendant.

24       23. In the absence of a class action, Defendant would be unjustly enriched because it  
 25 would be able to retain the benefits and fruits of its wrongful conduct.

26       24. The Claims in this case are also properly certifiable under applicable law.

CLASS ACTION COMPLAINT - 4  
 Case No.

001958-11 168686 V1



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 SOBOL SHAPIRO LLP

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 TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## V. STATEMENT OF FACTS

25. Plaintiff Jason Labbate was the owner of a female Italian Greyhound, named Sophie.

26. Mr. Labbate purchased Mighty Dog pouches at King Kullen for Sophie to consume.

27. Sophie ate the Mighty Dog brand dog food before her death.

28. The dog became extremely ill after eating the Mighty Dog food. Mr. Labbate took Sophie to a veterinarian, who informed him that she had suffered kidney failure, also known as acute renal failure. Sophie died a very distressing death, even with the intervention of a veterinarian.

29. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become ill. One common symptom in the sick animals was kidney failure.

30. The Mighty Dog food Sophie consumed before her death is one of the brands that  
Menu Foods recalled.

31. As a result of Defendant's acts and omissions Plaintiff and other Class members have suffered economic damage.

## VI. BREACH OF CONTRACT

32. Plaintiff realleges all prior allegations as though fully stated herein.

33. Plaintiff and Class members purchased pet food produced by the Defendant based on the understanding that the food was safe for their pets to consume.

34. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of contract.

35. As a result of the breach Plaintiff and Class members suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be

CLASS ACTION COMPLAINT - 5  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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1 supposed to have been in the contemplation of the parties, at the time they made the contract, as  
 2 the probable result of the breach of it.

3 **VII. UNJUST ENRICHMENT**

4 36. Plaintiff realleges all prior allegations as though fully stated herein.

5 37. Defendant was and continues to be unjustly enriched at the expense of Plaintiff  
 6 and other Class members.

7 38. Defendant should be required to disgorge this unjust enrichment.

8 **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

9 39. Plaintiff realleges all prior allegations as though fully stated herein.

10 40. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair  
 11 business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et*  
 12 *seq.*, and similar statutory enactments of other states (including consumer protection and  
 13 consumer sales practice acts).

14 41. Defendant's sale of hazardous pet food has the capacity to deceive a substantial  
 15 portion of the public and to affect the public interest.

16 42. As a result of Defendant's unfair or deceptive acts or practices, Plaintiff and other  
 17 Class members suffered injuries in an amount to be proven at trial.

18 **IX. BREACH OF WARRANTIES**

19 43. Plaintiff realleges all prior allegations as though fully stated herein.

20 44. Cat food and dog food produced by Menu Foods are "goods" within the meaning  
 21 of Uniform Commercial Code Article 2.

22 45. Defendant's conduct as described herein constitutes breach of an implied or  
 23 express warranty of affirmation.

24 46. Defendant's conduct as described herein constitutes breach of an implied  
 25 warranty of merchantability.

26  
 CLASS ACTION COMPLAINT - 6  
 Case No.



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47. Defendant's conduct as described herein constitutes breach of an implied warranty of fitness for a particular purpose.

48. As a proximate result of the aforementioned wrongful conduct and breach, Plaintiff and other Class members have suffered damages in an amount to be proven at trial. Defendant had actual or constructive notice of such damages.

## X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members request that the Court enter an order of judgment against Defendant including the following:

Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiff as Class Representative and his counsel of record as Class Counsel;

Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the states having a legally sufficient connection with Defendant and its acts or omissions) and such other relief as provided by the statutes cited herein;

Prejudgment and post-judgment interest on such monetary relief;

Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

### Other appropriate injunctive relief;

The costs of bringing this suit, including reasonable attorneys' fees; and

Such other relief as this Court may deem just, equitable and proper.

DATED this 1<sup>st</sup> day of May, 2007.

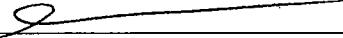
CLASS ACTION COMPLAINT - 7  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1 HAGENS BERMAN SOBOL SHAPIRO LLP  
2

3 By:   
4 Steve W. Berman, WSBA #12536  
5 1301 Fifth Avenue, Suite 2900  
6 Seattle, Washington 98101  
7 Telephone: (206) 623-7292  
8 Facsimile: (206) 623-0594  
9 E-mail: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

10 MYERS & COMPANY, P.L.L.C.  
11 Michael David Myers  
12 1809 Seventh Avenue, Suite 700  
13 Seattle, Washington 98101  
14 Telephone: (206) 398-1188  
15 Facsimile: (206) 400-1112  
16 E-mail: [mmyers@myers-company.com](mailto:mmyers@myers-company.com)

17 *Attorneys for Plaintiffs*

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CLASS ACTION COMPLAINT - 8  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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## **EXHIBIT P**

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MEGAN WHITT, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

MENU FOODS, a foreign corporation,

Defendant.

CV 07-0670 RSM  
No.

CLASS ACTION COMPLAINT

Plaintiff Megan Whitt ("Plaintiff"), by and through her undersigned attorneys, brings this civil action for damages on behalf of herself and all others similarly situated against the above-named Defendant and complain and allege as follows:

I. NATURE OF ACTION

1. Plaintiff brings this action as a Class Action under Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased any dog or cat food that was produced by defendant Menu Foods and/or has had a dog or cat become ill or die as a result of eating the food.

2. The Defendant is a producer of, *inter alia*, dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway.

CLASS ACTION COMPLAINT - 1  
Case No.

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3. Dog and cat food that the Defendant produced caused an unknown number of dogs and cats to become ill, and many of them to die.

4. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat food that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and gravy wet" style.

5. As a result of the Defendant's actions, Plaintiff and other Class members have suffered economic damage.

## II. PARTIES

6. Plaintiff Whitt has at all material times been a resident of Dover, Delaware. Ms. Whitt had a pet that became sick and died after eating Defendant's pet food.

7. Defendant Menu Foods is, upon information and belief, a corporation organized under the laws of Canada that transacts business in Washington State.

### III. JURISDICTION AND VENUE

8. Subject-matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.00. This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1337.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(a) because the Defendant systematically and continuously sold its product within this district and Defendant transacts business within this district.

#### IV. CLASS ACTION ALLEGATION

10. Plaintiffs bring this suit as a class action under Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the "Class") composed of all persons who purchased any dog or cat food that was produced by the Defendant and/or has had a dog or cat become ill or die as a result of eating the food. Plaintiff reserves the right to modify this class definition before moving for class certification.

CLASS ACTION COMPLAINT - 2  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

1           11. The Class is ascertainable and there is a well-defined community of interest  
 2 among the members of the Class.

3           12. Membership in the Class is so numerous as to make it impractical to bring all  
 4 Class members before the Court. The identity and exact number of Class members is unknown  
 5 but is estimated to be at least in the hundreds, if not thousands considering the fact that Menu  
 6 Foods has identified 50 dog foods and 40 cat foods that may be causing harm to pets.

7           13. Plaintiff's claims are typical of those of other Class members, all of whom have  
 8 suffered harm due to Defendant's uniform course of conduct.

9           14. Plaintiff is a member of the Class.

10          15. There are numerous and substantial questions of law and fact common to all of  
 11 the members of the Class that control this litigation and predominate over any questions affecting  
 12 only individual members of the Class. The common issues include, but are not limited to, the  
 13 following:

14           (a)     Was the Defendant's dog and cat food materially defective, and unfit for  
 15 use as dog or cat food?

16           (b)     Whether Defendant breached any contract, implied contract or warranties  
 17 related to the sale of the dog and cat food?

18           (c)     Did the Defendant's dog and cat food cause Plaintiff's and other Class  
 19 members' pets to become ill?

20           (d)     Were Plaintiff and other Class members damaged, and, if so, what is the  
 21 proper measure thereof?

22           (e)     The appropriate form of injunctive, declaratory and other relief.

23          16. The prosecution of separate actions by members of the Class would create a risk  
 24 of establishing incompatible standards of conduct for the Defendant – for example, one court  
 25 might decide that the Defendant is obligated under the law to pay damages to Class members,  
 26

CLASS ACTION COMPLAINT - 3  
 Case No.



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1 and another might decide that the Defendant is not so obligated. Individual actions may, as a  
 2 practical matter, be dispositive of the interests of the Class.

3       17. Plaintiff will fairly and adequately protect the interests of the Class in that she has  
 4 no interests that are antagonistic to other members of the Class and has retained counsel  
 5 competent in the prosecution of class actions to represent herself and the Class.

6       18. A class action is superior to other available methods for the fair and efficient  
 7 adjudication of this controversy. Given (i) the substantive complexity of this litigation; (ii) the  
 8 size of individual Class members' claims; and (iii) the limited resources of the Class members,  
 9 few, if any, Class members could afford to seek legal redress individually for the wrongs  
 10 Defendant has committed against them.

11       19. Without a class action, the Class will continue to suffer damage, Defendant's  
 12 violations of the law or laws will continue without remedy, and Defendant will continue to enjoy  
 13 the fruits and proceeds of its unlawful misconduct.

14       20. This action will foster an orderly and expeditious administration of Class claims,  
 15 economies of time, effort and expense, and uniformity of decision.

16       21. Inferences and presumptions of materiality and reliance are available to obtain  
 17 class-wide determinations of those elements within the Class claims, as are accepted  
 18 methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendant's  
 19 common liability, the Court can efficiently determine the claims of the individual Class  
 20 members.

21       22. This action presents no difficulty that would impede the Court's management of it  
 22 as a class action, and a class action is the best (if not the only) available means by which  
 23 members of the Class can seek legal redress for the harm caused them by Defendant.

24       23. In the absence of a class action, Defendant would be unjustly enriched because it  
 25 would be able to retain the benefits and fruits of its wrongful conduct.

26       24. The Claims in this case are also properly certifiable under applicable law.

CLASS ACTION COMPLAINT - 4  
 Case No.



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 SOBOL SHAPIRO LLP

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## V. STATEMENT OF FACTS

25. Plaintiff Megan Whitt was the owner of a female dog named Missy.

26. Ms. Whitt purchased Old Roy canned dog food at Wal-Mart for Missy to consume.

27. Missy ate the Old Roy brand dog food before her death.

28. The dog became extremely ill after eating the Old Roy food. Ms. Whitt took Missy to a veterinarian, who informed her that Missy had suffered kidney failure, also known as acute renal failure. Missy was euthanized as a result of kidney failure.

29. In March 2007, Menu Foods recalled 50 brands of cuts and gravy wet-style dog food and 40 brands of cuts and gravy wet-style cat food that had caused dogs and pets to become ill. One common symptom in the sick animals was kidney failure.

30. The Old Roy food Missy consumed before her death is one of the brands that  
Menu Foods recalled.

31. As a result of Defendant's acts and omissions Plaintiff and other Class members have suffered economic damage.

## VI. BREACH OF CONTRACT

32. Plaintiff realleges all prior allegations as though fully stated herein.

33. Plaintiff and Class members purchased pet food produced by the Defendant based on the understanding that the food was safe for their pets to consume.

34. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill. The unsafe nature of the pet food constituted a breach of contract.

35. As a result of the breach Plaintiff and Class members suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

CLASS ACTION COMPLAINT - 5  
Case No.



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SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

## VII. UNJUST ENRICHMENT

36. Plaintiff realleges all prior allegations as though fully stated herein.

37. Defendant was and continues to be unjustly enriched at the expense of Plaintiff and other Class members.

38. Defendant should be required to disgorge this unjust enrichment.

## **VIII. UNLAWFUL, DECEPTIVE AND UNFAIR BUSINESS PRACTICES**

39. Plaintiff realleges all prior allegations as though fully stated herein.

40. Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair business act within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et seq.*, and similar statutory enactments of other states (including consumer protection and consumer sales practice acts).

41. Defendant's sale of hazardous pet food has the capacity to deceive a substantial portion of the public and to affect the public interest.

42. As a result of Defendant's unfair or deceptive acts or practices, Plaintiff and other Class members suffered injuries in an amount to be proven at trial.

## IX. BREACH OF WARRANTIES

43. Plaintiff realleges all prior allegations as though fully stated herein.

44. Cat food and dog food produced by Menu Foods are "goods" within the meaning of Uniform Commercial Code Article 2.

45. Defendant's conduct as described herein constitutes breach of an implied or express warranty of affirmation.

46. Defendant's conduct as described herein constitutes breach of an implied warranty of merchantability.

47. Defendant's conduct as described herein constitutes breach of an implied warranty of fitness for a particular purpose.

CLASS ACTION COMPLAINT - 6  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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48. As a proximate result of the aforementioned wrongful conduct and breach, Plaintiff and other Class members have suffered damages in an amount to be proven at trial. Defendant had actual or constructive notice of such damages.

## X. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class members request that the Court enter an order of judgment against Defendant including the following:

Certification of the action as a class action under Rule 23(b)(1) - (3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiff as Class Representative and her counsel of record as Class Counsel;

Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), punitive damages (as allowed by the law(s) of the states having a legally sufficient connection with Defendant and its acts or omissions) and such other relief as provided by the statutes cited herein;

Prejudgment and post-judgment interest on such monetary relief;

Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendant as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

Other appropriate injunctive relief;

The costs of bringing this suit, including reasonable attorneys' fees; and

Such other relief as this Court may deem just, equitable and proper.

DATED this 1st day of May, 2007.

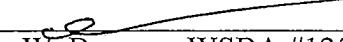
CLASS ACTION COMPLAINT - 7  
Case No.



HAGENS BERMAN  
SOPOLSKY GROUP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101  
TELEPHONE (206) 467-3222 • FAX (206) 467-0604

1 HAGENS BERMAN SOBOL SHAPIRO LLP  
2

3 By:   
4 Steve W. Berman, WSBA #12536  
5 1301 Fifth Avenue, Suite 2900  
6 Seattle, Washington 98101  
7 Telephone: (206) 623-7292  
8 Facsimile: (206) 623-0594  
9 E-mail: [steve@hbsslaw.com](mailto:steve@hbsslaw.com)

10 MYERS & COMPANY, P.L.L.C.  
11 Michael David Myers  
12 1809 Seventh Avenue, Suite 700  
13 Seattle, Washington 98101  
14 Telephone: (206) 398-1188  
15 Facsimile: (206) 400-1112  
16 E-mail: [mmyers@myers-company.com](mailto:mmyers@myers-company.com)

17 *Attorneys for Plaintiffs*

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CLASS ACTION COMPLAINT - 8  
Case No.



HAGENS BERMAN  
SOBOL SHAPIRO LLP

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