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21 Attorneys for Plaintiff and the Class

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA

24 SHERRY INGLES, Individually and on Behalf )  
25 of All Others Similarly Situated, )  
26 )  
27 Plaintiff, )  
28 )  
29 vs. )  
30 )  
31 MENU FOODS, INC., MENU FOODS )  
32 INCOME FUND, MENU FOODS MIDWEST )  
33 CORPORATION, and MENU FOODS )  
34 SOUTH DAKOTA INC., )  
35 )  
36 Defendants. )

FILED  
MAR 30 11:20  
RICHARD J. ...  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

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Case No. CLASS ACTION COMPLAINT

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1 Plaintiff Sherry Ingles, individually and on behalf of all others similarly situated, files this  
2 Class Action Complaint against defendants Menu Foods, Inc., a New Jersey Corporation, Menu  
3 Foods Income Fund, a foreign corporation, Menu Foods Midwest Corporation, a Delaware  
4 corporation, and Menu Foods South Dakota Inc., a Delaware corporation, and alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action lawsuit brought on behalf of plaintiff and others similarly  
7 situated who purchased pet food and pet food products produced, manufactured and/or distributed by  
8 defendants that caused injury, illness, and/or death to their household pets.

9 2. Defendants are the leading North American private label/contract manufacturer  
10 of wet pet food products sold by supermarket retailers, mass merchandisers, pet specialty retailers,  
11 and other wholesale and retail outlets, including Wal-Mart Stores, Inc., Safeway Inc., Kroger  
12 Company, PetSmart, Inc., Giant Food, and other large retail chains, and has provided pet food  
13 products to or for Procter & Gamble Company. Defendants produce hundreds of millions of  
14 containers of pet food annually.  
15

16 3. Defendants designed, manufactured, marketed, advertised and warranted their pet  
17 food products. In conjunction with each sale, defendants marketed, advertised and warranted that  
18 the products were fit for the ordinary purpose for which such goods were used – consumption by  
19 household pets – and were free from defects. Defendants produce the pet food products intending that  
20 consumers will purchase the pet food products, regardless of brand or label name, place of purchase,  
21 or the location where pets actually consume them. The pet food products were intended to be placed  
22 in the stream of commerce and distributed and offered for sale and sold to plaintiff and purchasers in  
23 California and the United States and fed to their pets.  
24

25 4. Plaintiff brings this action, pursuant to Rule 23 of the Federal Rules of Civil  
26 Procedure, on her own behalf and as a representative of a class of persons consisting of all persons in  
27 the United States who purchased, or incurred damages by using pet food produced manufactured  
28

1 and/or distributed by defendants that was or will be recalled by defendants, including that produced  
2 from December 3, 2006 up to and including March 6, 2007 (the "Class"). The pet food products  
3 referenced in this paragraph will hereinafter be referred to as the "Products."

4 5. As a result of the defective Products, plaintiff and members of the Class have suffered  
5 damages in that they have incurred substantial veterinary bills, death of pets, and purchased and/or  
6 own pet food and pet food products that they would not otherwise have bought had they known such  
7 products were defective.  
8

9 6. Defendants know and have admitted that certain of the Products produced by  
10 defendants between December 3, 2006 and March 6, 2007 are defective and causing injury and death  
11 to household pets, and on March 16, 2007, initiated a recall of some of the Products. Further, the  
12 Food and Drug Administration has reported that as many as one in six animals died in tests of the  
13 Products by defendants last month after defendants received complaints the products were poisoning  
14 pets around the country. A spokeswoman for the New York State Department of Agriculture and  
15 Markets has said that rodent poison was determined to have been mixed into the Products by  
16 defendants.  
17

## 18 II. PARTIES

19 7. Plaintiff is a resident of Alameda County, California, who, in February 2007,  
20 purchased Priority Beef Slices in Gravy, UPC Code #2113041452, "Jan 11 10." The Priority dog  
21 food purchased by plaintiff is a part of the group of Products that was produced, manufactured  
22 and/or distributed by defendants.  
23

24 8. Defendant Menu Foods, Inc. is a New Jersey corporation with its principal place of  
25 business in the State of New Jersey, specifically located at 9130 Griffith Morgan Lane, Pennsauken,  
26 New Jersey 08110.  
27  
28



1 including plaintiff, and members of the Class. The Products were purchased for consumption by the  
2 pets of plaintiff and the other members of the Class. Defendants made or caused these products to be  
3 offered for sale and sold to the public, including plaintiff.

#### 4 **IV. SUBSTANTIVE ALLEGATIONS**

##### 5 **Defendants and Their Defective Pet Food**

6 15. Defendants are in the business of manufacturing, producing, distributing, and/or  
7 selling pet food under various brands or labels, and/or for third-party firms, including: America's  
8 Choice, Authority, Best Choice, Companion, Compliments, Demoulus Market Basket, Eukanuba,  
9 Fine Feline Cat, Food Lion, Food Town, Giant Companion, Hannaford, Hill Country Fare, Hy-Vee,  
10 Iams, Laura Lynn, Li'l Red, Loving Meals, Meijer's Main Choice, Nutriplan, Nutro Max Gourmet  
11 Classics, Nutro Natural Choice, Paws, Pet Pride, Preferred Pets, President's Choice, Priority, Sav-a-  
12 Lot, Schnucks, Science Diet Feline Savory Cuts Cans, Sophsitacat, Special Kitty US, Springfield  
13 Prize, Sprout, Total Pet, Wegmans, Western Family, White Rose, and Winn Dixie. Defendants has  
14 manufactured or produced pet food for private labels for approximately 17 of the 20 leading retailers  
15 in the United States.

16  
17  
18 16. Defendants' business includes manufacturing, producing, distributing, or selling dog  
19 food under various brands or labels, and/or for third-party firms, including: America's Choice,  
20 Authority, Award, Best Choice, Big Bet, Big Red, Bloom, Bruiser, Cadillac, Companion, Demoulus  
21 Market Basket, Eukanuba, Food Lion, Giant Companion, Great Choice, Hannaford, Hill Country  
22 Fare, Hy-vee, Iams, Laura Lynn, Li'l Red, Loving Meals, Meijer's Main Choice, Mixables,  
23 Nutriplan, Nutro Max, Nutro Ultra, Nutro, Ol'Roy US, Paws, Pet Essentials, Pet Pride - Good &  
24 Meaty, Preferred Pets, President's Choice, Price Chopper, Priority, Publix, Roche Brothers, Sav-a-  
25 Lot, Schnucks, Shep Dog, Sprout, Statler Bros, Total Pet, Western Family, White Rose, Winn Dixie,  
26 and Your Pet.





1           27.    Commonality: There are questions of fact and law common to members of the Class  
2 that predominate over any questions affecting any individual members including, *inter alia*, the  
3 following:

- 4                   (a)    Whether defendants sold the Products that were recalled or subject to a recall;
- 5                   (b)    Whether defendants advertised, represented, or held themselves out as  
6 producing or manufacturing a pet food product that was safe for pets of the Class members;
- 7                   (c)    Whether defendants expressly warranted these products;
- 8                   (d)    Whether defendants purported to disclaim any express warranty;
- 9                   (e)    Whether defendants purported to disclaim any implied warranty;
- 10                  (f)    Whether any limitation on warranty fails to meet its essential purpose;
- 11                  (g)    Whether defendants intended that the Products be purchased by plaintiff, Class  
12 members, or others;
- 13                  (h)    Whether defendants intended or foresaw that plaintiff, Class members, or  
14 others would feed the Products to their pets;
- 15                  (i)    Whether defendants recalled the Products;
- 16                  (j)    Whether defendants was negligent in manufacturing or processing the  
17 Products;
- 18                  (k)    Whether using the Products as intended – to feed their pets – resulted in loss,  
19 injury, damage, or damages to the Class;
- 20                  (l)    Whether defendants’ negligence proximately caused loss or injury to damages;
- 21                  (m)    Whether Class members suffered direct losses or damages; and
- 22                  (n)    Whether Class members suffered indirect losses or damages.

23           28.    Typicality: Plaintiff’s claims are typical of the claims of the other members of the  
24 Class in that all such claims arise out of defendants’ conduct in manufacturing, producing and  
25 entering into the stream of commerce defective pet food and pet food products, defendants’ conduct  
26 surrounding the recall of its product, and plaintiff’s and Class members’ purchase and use of  
27 defendants’ products. Plaintiff and the other members of the Class seek identical remedies under  
28

1 identical legal theories, and there is no antagonism or material factual variation between plaintiff's  
2 claims and those of the Class.

3 29. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.  
4 Plaintiff's claims are coextensive with, and not antagonistic to, the claims of the other members of  
5 the Class. Plaintiff is willing and able to vigorously prosecute this action on behalf of the Class, and  
6 plaintiff has retained competent counsel experienced in litigation of this nature.

7  
8 30. Plaintiff brings this action under Fed. R. Civ. P. 23(b)(3) because common questions  
9 of law and fact (identified in ¶25 above) predominate over questions of law and fact affecting  
10 individual members of the Class. Indeed, the predominant issue in this action is whether defendants'  
11 Products are defective and have caused damages to plaintiff and the members of the Class. In  
12 addition, the expense of litigating each Class member's claim individually would be so cost  
13 prohibitive as to deny Class members a viable remedy. Certification under Fed. R. Civ. P. 23(b)(3)  
14 is appropriate because a class action is superior to the other available methods for the fair and  
15 efficient adjudication of this action, and plaintiff envisions no unusual difficulty in the management  
16 of this action as a class action.

17  
18 31. The undersigned counsel for plaintiff and the Class request that the Court appoint  
19 them to serve as class counsel first on an interim basis and then on a permanent basis. Undersigned  
20 counsel will fairly and adequately represent the interests of the Class, have identified or investigated  
21 the Class' potential claims, are experienced in handling class actions, other complex litigation, and  
22 consumer claims of the type asserted in the action, know the applicable law, will commit sufficient  
23 resources to represent the Class, and are best able to represent the Class.

24  
25 32. Plaintiff requests this Court to certify this Class in accordance with Fed. R. Civ. P. 23  
26 and the Class Action Fairness Act of 2005.

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Breach of Implied Warranty**

4 33. Plaintiff hereby adopts and incorporates by reference ¶¶1-32 as if more fully set forth  
5 herein.

6 34. Defendants manufactured, marketed, sold and distributed the Products.

7 35. At the time that defendants marketed, sold, and distributed the Products, defendants  
8 knew of the purpose for which the Products were intended and impliedly warranted that the Products  
9 were of merchantable quality and safe and fit for such use.  
10

11 36. Plaintiff reasonably relied upon the skill, superior knowledge and judgment of  
12 defendants as to whether the Products were of merchantable quality and safe and fit for its intended  
13 use.

14 37. Due to defendants' wrongful conduct as alleged herein, plaintiff could not have  
15 known about the risks and side effects associated with the Products until after ingestion by plaintiff's  
16 dog.  
17

18 38. Contrary to such implied warranty, the Products were not of merchantable quality and  
19 were not safe or fit for their intended use.

20 39. As a direct and proximate result of defendants' breach of implied warranty, plaintiff  
21 suffered damages as alleged herein.

22 WHEREFORE, plaintiff, on behalf of herself and all others similarly situated, prays for relief  
23 and judgment against defendants as follows:

24 A. For an order certifying the Class under the appropriate provisions of Fed. R. Civ. P.  
25 23, as well as any appropriate subclasses, and appointing plaintiff and her legal counsel to represent  
26 the Class;

27 B. Awarding actual and consequential damages;  
28

- 1 C. Granting injunctive relief;  
2 D. For pre- and post-judgment interest to the Class, as allowed by law;  
3 E. For reasonable attorneys' fees and costs to counsel for the Class if and when  
4 pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and  
5 F. Granting such other and further relief as is just and proper.

6 **SECOND CAUSE OF ACTION**

7 **Breach of Express Warranty**

8 40. Plaintiff hereby adopts and incorporates by reference ¶¶1-39 as if more fully set forth  
9 herein.

10 41. Defendants expressly warranted that the Products were safe for consumption by pets.

11 42. The Products did not conform to these express representations because the Products  
12 are not safe and cause serious side effects in pets, including death.

13 43. As a direct and proximate result of the breach of said warranties, and as the direct and  
14 legal result of the defective condition of the Products as manufactured and/or supplied by  
15 defendants, and other wrongdoing of defendants described herein, plaintiff was caused to suffer  
16 damages.  
17

18 WHEREFORE, plaintiff, on behalf of herself and all others similarly situated, prays for relief  
19 and judgment against defendants as follows:

20 A. For an order certifying the Class under the appropriate provisions of Fed. R. Civ. P.  
21 23, as well as any appropriate subclasses, and appointing plaintiff and her legal counsel to represent  
22 the Class;

23 B. Awarding actual and consequential damages;

24 C. Granting injunctive relief;

25 D. For pre- and post-judgment interest to the Class, as allowed by law;

26 E. For reasonable attorneys' fees and costs to counsel for the Class if and when  
27 pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and  
28

1 F. Granting such other and further relief as is just and proper.

2 **THIRD CAUSE OF ACTION**

3 **Negligence**

4 44. Plaintiff hereby adopts and incorporates by reference ¶¶1-43 as if more fully set forth  
5 herein.

6 45. Defendants owed plaintiff a duty to only offer safe, non-contaminated products for  
7 consumption by household pets.

8 46. Through their failure to exercise due care, defendants breached this duty by  
9 producing, processing, manufacturing, and offering for sale the Products in a defective condition that  
10 was unhealthy to plaintiff's pet.

11 47. Additionally, defendants breached their duty of care to plaintiff by failing to use  
12 sufficient quality control, perform adequate testing, proper manufacturing, production, or processing,  
13 and failing to take sufficient measures to prevent the Products from being offered for sale, sold, or fed  
14 to pets.

15 48. Defendants knew or, in the exercise of reasonable care should have known, that the  
16 Products presented an unacceptable risk to the pet of plaintiff, and would result in damage that was  
17 foreseeable and reasonably avoidable.

18 49. As a direct and proximate result of defendants' above-referenced negligence, plaintiff and the  
19 Class have suffered loss and damages.

20 WHEREFORE, plaintiff, on behalf of herself and all others similarly situated, prays for relief  
21 and judgment against defendants as follows:

22 A. For an order certifying the Class under the appropriate provisions of Fed. R. Civ. P.  
23 23, as well as any appropriate subclasses, and appointing plaintiff and her legal counsel to represent  
24 the Class;

25 B. Awarding actual and consequential damages;

- 1 C. Granting injunctive relief;
- 2 D. For pre- and post-judgment interest to the Class, as allowed by law;
- 3 E. For reasonable attorneys' fees and costs to counsel for the Class if and when
- 4 pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and
- 5 F. Granting such other and further relief as is just and proper.

6 **FOURTH CAUSE OF ACTION**

7 **Strict Product Liability**

8 50. Plaintiff hereby adopts and incorporates by reference ¶¶1-49 as if more fully set forth  
9 herein.

10 51. Defendants are producers, manufacturers and/or distributors of the Products.

11 52. The Products produced, manufactured and/or distributed by defendants were  
12 defective in design or formulation in that, when the Products left the hands of defendants, the  
13 foreseeable risks exceeded the benefits associated with the design or formulation.  
14

15 53. Defendants' Products were expected to and did reach plaintiff without substantial  
16 change in condition.

17 54. Alternatively, the Products manufactured and/or supplied by defendants were  
18 defective in design or formulation, in that, when they left the hands of defendants, they were  
19 unreasonably dangerous, more dangerous than an ordinary consumer would expect, and more  
20 dangerous than other pet food products without concomitant accurate information and warnings  
21 accompanying the product for plaintiff to rely upon.  
22

23 55. The Products produced, manufactured and/or distributed by defendants were  
24 defective due to inadequate warning and/or inadequate testing and study, and inadequate reporting  
25 regarding the results of same.

26 56. The Products produced, manufactured and/or distributed by defendants were  
27 defective due to inadequate post-marketing warning or instruction because, after defendants knew or  
28

1 should have known of the risk of injury from the Products, defendants failed to immediately provide  
2 adequate warnings to plaintiff and the public.

3 57. As the direct and legal result of the defective condition of the Products as produced,  
4 manufactured and/or distributed by defendants, and of the negligence, carelessness, other  
5 wrongdoing and actions of defendants described herein, plaintiff suffered damages.  
6

7 WHEREFORE, plaintiff, on behalf of herself and all others similarly situated, prays for relief  
8 and judgment against defendants as follows:

9 A. For an order certifying the Class under the appropriate provisions of Fed. R. Civ. P.  
10 23, as well as any appropriate subclasses, and appointing plaintiff and her legal counsel to represent  
11 the Class;

12 B. Awarding actual and consequential damages;

13 C. Granting injunctive relief;

14 D. For pre- and post-judgment interest to the Class, as allowed by law;

15 E. For reasonable attorneys' fees and costs to counsel for the Class if and when  
16 pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and

17 F. Granting such other and further relief as is just and proper.

## 18 FIFTH CAUSE OF ACTION

### 19 Unjust Enrichment

20 58. Plaintiff hereby adopts and incorporates by reference ¶¶1-57 as if more fully set forth  
21 herein.

22 59. As a direct, proximate, and foreseeable result of defendants' acts and otherwise  
23 wrongful conduct, plaintiff suffered damages. Defendants profited and benefited from the sale of the  
24 Products, even as the Products caused plaintiff to incur damages.

25 60. Defendants have voluntarily accepted and retained these profits and benefits, derived  
26 from consumers, including plaintiff, with full knowledge and awareness that, as a result of  
27 defendants' unconscionable wrongdoing, consumers, including plaintiff, were not receiving products  
28

1 of the quality, nature, fitness, or value that had been represented by defendants or that reasonable  
2 consumers expected. Plaintiff purchased pet food that she expected would be safe and healthy for  
3 her dog and instead has had to now endure the death of her beloved pet.

4           61. By virtue of the conscious wrongdoing alleged in this Complaint, defendants have  
5 been unjustly enriched at the expense of plaintiff who is entitled to, and hereby seeks, the  
6 disgorgement and restitution of defendants' wrongful profits, revenue, and benefits, to the extent,  
7 and in the amount, deemed appropriate by the Court; and such other relief as the Court deems just  
8 and proper to remedy defendants' unjust enrichment.

9  
10           62. Plaintiff has no adequate remedy at law.

11           WHEREFORE, plaintiff, on behalf of herself and all others similarly situated, prays for relief  
12 and judgment against defendants as follows:

13           A. For an order certifying the Class under the appropriate provisions of Fed. R. Civ. P.  
14 23, as well as any appropriate subclasses, and appointing plaintiff and her legal counsel to represent  
15 the Class;

16           B. Awarding reimbursement, restitution and disgorgement from defendants of the  
17 benefits conferred by plaintiff and the Class;

18           C. For pre- and post-judgment interest to the Class, as allowed by law;

19           D. For reasonable attorneys' fees and costs to counsel for the Class if and when  
20 pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and

21           E. Granting such other and further relief as is just and proper.  
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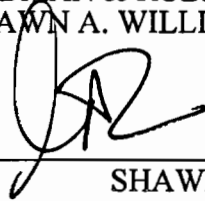
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**JURY DEMAND**

Plaintiff and the Class demand a jury trial on all issues triable by a jury.

DATED: March 30, 2007

LERACH COUGHLIN STOIA GELLER  
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Attorneys for Plaintiff and the Class

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.



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ATTORNEY OF RECORD FOR  
PLAINTIFF SHERRY INGLES

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