

Action No.: 0701-03550

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

BETWEEN:

JAMES J. O'KEEFE as representative Plaintiff

Plaintiff

- and -

MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION,
and MENU FOODS LIMITED

Defendants

A Class Proceeding pursuant to the *Class Proceedings Act*, Chapter C-16.5

Action No.: 0701-03248

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

BETWEEN:

BOBBY-JOE ROVENSKY

Plaintiff

- and -

MENU FOODS INCOME FUND, MENU FOODS GENPAR LIMITED, MENU FOODS LIMITED PARTNERSHIP, MENU FOODS ACQUISITION INC., MENU FOODS LIMITED, MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS HOLDINGS INC., MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, MENU FOODS SOUTH DAKOTA INC., 3036241 NOVA SCOTIA COMPANY, RETEX MANAGEMENT ASSOCIATES LIMITED, 1446431 ONTARIO LTD., 1446432 ONTARIO LTD., ROBERT W. LUBA, ALEXANDER A. AIRD, SERGE K. DARKAZANLI, ERIC A. DEMIRIAN, THOMAS A. DI GIACOMO

Defendant

A Class Proceeding pursuant to the *Class Proceedings Act*, Chapter C-16.5

FIAT: Let the within document be filed.

W. J. C. C. Q. B. A.
[Signature]

BEFORE THE HONOURABLE
MR. JUSTICE B. BURROWS
COURT HOUSE, EDMONTON, ALBERTA

)
) ON MONDAY, THE 23RD DAY
) OF JUNE, 2008

I hereby certify this to be a true copy of

the original Order
Dated this 23 day of July, 2008
[Signature]
for Clerk of the Court

ORDER

THIS MOTION made by the Plaintiffs for an Order conditionally certifying the Alberta Actions, as defined herein, and approving the form and the method of dissemination of the Class Notice was heard on the 23rd day of June, 2008 at Calgary, Alberta in the presence of Clint Docken Q.C., in person, and Ward K. Branch, Luciana P. Brasil, Anthony Merchant Q.C. and Casey Churko, by video-conference, counsel for

the Plaintiffs, and Peter F. Howard, by video-conference and Stuart Chambers, in person, Counsel for the Defendants Menu Foods Income Fund, Menu Foods GenPar Limited, Menu Foods Limited Partnership, Menu Foods Acquisition Inc., Menu Foods Limited, Menu Foods Operating Limited Partnership, Menu Foods Holdings Inc., Menu Foods, Inc., Menu Foods Midwest Corporation, Menu Foods South Dakota Inc., 3036241 Nova Scotia Company, Retex Management Associates Limited, 1446431 Ontario Ltd. and 1446432 Ontario Ltd., and no one appearing on behalf of the other Defendants, although duly served with copies of the motion materials;

ON READING the materials filed including the Settlement Agreement dated May 22, 2008, a copy of which is attached as Schedule "A" to this Order (the "Settlement Agreement") and the Affidavits of James O'Keefe, sworn June 13, 2008 and of Luciana Brasil, sworn June 12, 2008 and on hearing the submissions of Counsel for the Plaintiffs and Defendants;

UPON BEING ADVISED (i) that the Settlement Agreement relates to Actions in both Canada and the United States; (ii) that Judge Hillman of the United States District Court for the District of New Jersey (the "MDL Court") in *re Pet Food Products Liability Litigation*, MDL No. 1850 granted an order preliminarily approving the Settlement Agreement and conditionally certifying a Settlement Class on May 30, 2008; (iii) that the Final Approval Hearing has been scheduled for hearing by the MDL Court on November 14, 2008; (iv) that the settlement is contingent upon final approval of the Settlement Agreement being granted in the MDL Court and each of the Canadian Courts as defined in the Settlement Agreement; (v) that the Settlement Agreement provides for the release of the Released Claims against the Released Entities some of whom have not been named as Defendants in the Alberta Actions, and (vi) on further being advised of the consent of Heffler, Radetich & Saitta L.L.P. to act as Claims Administrator, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order and, in addition, the following definition also applies:

"Alberta Actions" means the following actions in the Court of Queen's Bench of Alberta Judicial District of Calgary: No. 0701-03550 and No. 0701-03248;

2. The Plaintiff are granted leave to bring this application pursuant to section 2(3)(b) of the *Class Proceedings Act*, Chapter C-16.5 (the "Class Proceedings Act").

3. The Alberta Actions are consolidated and certified as a class proceeding (the "Alberta Class Proceeding"), on a preliminary basis, for settlement purposes, subject to the terms of the Settlement Agreement and the conditions set out below.

Class Definition

4. The Settlement Class for the Alberta National Class Proceeding is defined as all persons and entities in Alberta who purchased, used or obtained, or whose pets used or consumed Recalled Pet Foods Product(s), excluding Defendants and Released Entities. The Settlement Class also will exclude all Class Members who have properly Opted Out of the Settlement Class.

(the "Alberta Settlement Class")

Representative Plaintiffs

5. James O'Keefe is appointed as the Representative Plaintiffs for the Settlement Class in the Alberta Class Proceeding.

Common Issue

6. The following issue is common to the Alberta Settlement Class:

Were the Defendants, or any of them, negligent in the manufacture, distribution, sale and/or recall of the Recalled Pet Food Products?

Final Settlement Approval Hearing

7. At the Final Approval Hearing, this Court will be asked to decide:

- (a) Whether the certification of the Alberta Settlement Class should be made final;
- (b) Whether to approve the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Alberta Settlement Class;
- (c) Whether this Court should enter a Final Approval Order and Judgment;

- (d) Whether this Court should dismiss with prejudice the Alberta Actions, pursuant to the Settlement Agreement;
- (e) Whether this Court should permanently enjoin the assertion of any Released Claims against any of the Released Entities by Settlement Class Members or any other Releasing Parties;
- (f) Whether Counsel for the Canadian Plaintiffs' application for counsels' fees and reimbursement of expenses should be granted; and
- (g) Any other matters as the Court may deem appropriate

at a hearing to be held on the 3rd day of November, 2008 beginning at 10 a.m. Mountain Time at the Edmonton Law Courts, 1A Sir Winston Churchill Square, in Edmonton, Alberta, (the "Alberta Approval Hearing");

8. At the Alberta Approval Hearing the Court will consider objections to the Settlement Agreement by Settlement Classes Members in the Alberta National Class Proceeding, but, other than by leave of this Court, only if their objections are sent in written form to:

Ward Branch / Luciana P. Brasil
Branch MacMaster, Barristers and Solicitors
1410 – 777 Hornby Street, Vancouver, BC
V6Z 1S4

And one of:
Peter F.C. Howard / Danielle Royal
Stikeman Elliott LLP
Suite 5300, Commerce Court West
199 Bay Street, Toronto, ON
M5L 1B9

Or:

Deborah Glendinning
Osler Hoskin & Harcourt LLP
Suite 6100 – PO Box 50
1 First Canadian Place
Toronto, ON
M5X 1B8

and received on or before 5:00 p.m. Pacific Time on the 4th day of October, 2008 and filed with this Court by 4:00 p.m. Mountain Time on the 4th day of October, 2008..

9. The date and time of the Alberta Approval Hearing shall be set forth in the Class Notice, but shall be subject to adjournment by the Court without further notice to the Class Members other than that which may be posted on the settlement website.

10. The Alberta Approval Hearing may be conducted concurrently with similar hearings to be held in relation to the other Canadian Actions by video or teleconference.

Conditions of Certification

11. If the Settlement Agreement is terminated for any reason, or any specified condition to the Settlement Agreement is not satisfied or the Parties to the Settlement Agreement seek to terminate the Settlement Agreement pursuant to its terms:

- (a) this Order shall be set aside, be of no further force or effect, and be without prejudice to any party;
- (b) the Settlement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Plaintiffs and the Defendants;
- (c) the Alberta Class Proceeding shall immediately be decertified as a class proceeding pursuant to section 10 of the *Class Proceedings Act* without prejudice to the Plaintiffs' ability to reapply for certification; and
- (d) each party to the Alberta Actions shall be restored to his, her or its respective position as it existed immediately prior to the execution of the Settlement Agreement.

12. Certification of the Alberta Settlement Class under this Order is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of any Defendant that this action, or any other proposed or certified class action, is appropriate for any other purpose.

13. Entry of this Order is without prejudice to the rights of Defendants to terminate the Settlement Agreement as provided in the Settlement Agreement.

Notice

14. The Class Notice in the summary form (the "Short Form Notice") and long form (the "Long Form Notice") attached hereto as Schedules "B" and "C", respectively, is hereby approved.

15. Within 7 days of the last order approving the Class Notice being granted by a Canadian Court, notice to Class Members in Canada shall commence and be disseminated by direct mail and publication and through veterinarians as follows:

- (a) Notice by Direct Mail: The Claims Administrator shall cause the Long Form Notice be disseminated by direct mail to (1) all persons who were paid as part of a Historic Payment program and (2) all persons who completed and returned a claim form to Crawford & Company and whose names and addresses are in a readily accessible database maintained by Crawford & Company. Defendants and Crawford & Company shall provide the Claims Administrator on a confidential basis the names and address of all such persons.
- (b) Notice By Publication: The Claims Administrator shall cause the Short Form Notice to be published in the publications listed in Schedule "D" to this Order.
- (c) Notice to Veterinarians: The Short Form Notice and the Long Form Notice be provided to national veterinary organizations including the Canadian Veterinary Medical Association for further dissemination at their option to their members and veterinarians.

16. Counsel for the Plaintiffs in the Alberta Actions or the Claims Administrator shall provide copies of the Long Form Notice to all persons who contacted them and indicated they might be members of the Alberta Settlement Class.

17. Menu Foods and/or Crawford & Company are hereby authorized to provide to the Claims Administrator the names and addresses of all persons who returned a claim

form to Crawford & Company related to the Recall, and whose names and addresses are in a readily accessible database maintained by Crawford & Company. Further, upon the request of the Claims Administrator, Crawford & Company is authorized to provide to the Claims Administrator on a confidential basis the claim form and supporting documentation submitted therewith by any individual to Crawford & Company related to the Recall.

18. The costs of preparing, printing, publishing, mailing and otherwise disseminating the Notice shall be paid from the Settlement Fund in accordance with the applicable provisions of the Settlement Agreement.

19. The forms and manner of notice as set out above and approved herein are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the requirements of notice under section 19 of the *Class Proceedings Act*.

Claims Administrator

20. Heffler, Radetich & Saitta L.L.P. be appointed as the Claims Administrator. Responsibilities of the Claims Administrator include the following: (a) disseminating Notice to the Settlement Class; (b) certifying by affidavit to the Court that Class Notice was published; (c) certifying the dates that Class Notice was actually published by each newspaper, periodical, or other sources, providing a true copy of each Notice in each publication, and providing any other information relevant to the publication and mailing of the notice; (d) establishing a website for purposes of posting the Notice, Settlement Agreement and related documents; (d) accepting and maintaining documents sent from Class Members, including Claim Forms, requests to Opt Out and other documents relating to Claims administration; (e) administering Claims for the payments from the Settlement Fund to Settlement Class members, in accordance with the terms of the Settlement Agreement; and (f) all other responsibilities designated to the Claims Administrator in the Settlement Agreement.

Opt-In Rights

21. A person or entity not situated in Alberta who would otherwise be a Class Member is not allowed to opt into the Alberta Class Proceeding.

Opt-Out Rights

22. Any Class Member who wishes to be excluded from the Alberta Settlement Class shall fax, email or mail a written request to Opt Out to the Claims Administrator, at the address to be provided, postmarked, on or before the date which is sixty (60) days after the Canadian Notice Date as defined in section II.E.2(a) of the Settlement Agreement (the "Opt Out Deadline"), which date will be inserted into the Class Notice to be disseminated in Canada prior to publication.

23. All requests to Opt Out shall include the following information:

- (a) Name, address, phone number and, if available, an email address of the person(s) seeking to Opt Out of the Settlement Class;
- (b) The name of the litigation (Recalled Pet Food Products Class Actions);
- (c) A signed statement that "I/we request to be excluded from the Settlement Classes in the *Recalled Pet Food Products Class Actions*" or a signed statement substantially similar thereto.

24. Any person who validly Opts Out of the Alberta Settlement Class shall be excluded from the Alberta Settlement Class, shall not be bound by the Settlement Agreement or the Final Approval Order and Judgment, shall have no rights with respect to the Settlement Agreement and shall receive no payments as provided in the Settlement Agreement. Prior to the Opt Out Deadline, the Claims Administrator shall confirm receipt of valid requests to Opt Out to the persons who deliver such valid requests to Opt Out.

25. The initial determination that each request to Opt Out by a Class Member complies with the Opt Out procedures in the Settlement Agreement will be made by the Claims Administrator and is subject to final approval by this Court, as part of the final approval of the Settlement Agreement. The Court may disallow any request for exclusion that fails to comply with the provisions of this Order or the Opt Out procedures otherwise approved by the Court.

26. Any Class Member that does not mail a valid request to Opt Out as set forth in paragraphs 23 and 24 above shall be automatically included in the Alberta Settlement Class.

Other Provisions

27. All proceedings relating to Recalled Pet Food Products, except matters related to retention of Recalled Pet Food Products, raw wheat gluten, organized inventory and uninventoried or inventoried product, and any other matters necessary to implement, advance, or further the Settlement Agreement or settlement process, are hereby stayed until further order of this Court.

28. No discovery with regard to the Settlement or Settlement Agreement shall be permitted other than as may be directed by the Court by motion properly served in accordance with the applicable rules of this Court.

29. Pending Final Approval, no Settlement Class Member, either directly, representatively, or in any other capacity, shall file, commence, prosecute or continue against any or all of the Released Parties, any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement Agreement, and are hereby enjoined from so proceeding.

30. Any information received by the Claims Administrator in connection with the Settlement Agreement that pertains to a particular member of the Settlement Class shall be confidential and shall not be disclosed by the Claims Administrator to any other Settlement Class Member.

31. Upon Final Approval, each and every term and provision of the Settlement Agreement (except as modified by the Final Approval Order) shall be deemed incorporated into the Final Approval Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.


32. Neither this Order nor the Settlement Agreement, nor any negotiations, statements, or proceedings in connection therewith, shall be construed as or be deemed to constitute any evidence of, an admission or concession by any Defendant or Released Entity of any liability or wrongdoing by them, or that the claims and defences

that have been, or could have been, asserted in the litigation are or were not meritorious, and neither the Settlement Agreement nor any such communications shall be offered or received in evidence in any action or proceeding.

33. The Defendants may communicate with putative Class Members regarding the provisions of the Settlement Agreement, so long as such communications are not inconsistent with Class Notice or other agreed upon communications concerning the Settlement Agreement. The Released Entities may refer potential Class Members to the Claims Administrator, the toll free number and the web site. Defendants that have been reimbursing potential Class Members may continue to do so if necessary to complete claims and Released Entities also may encourage those persons to participate in the class settlement that is the subject of this Agreement. In addition, Defendants may continue to communicate with their customers, business contacts, and members of the public in the ordinary course of business.

34. Any party affected by this Order may apply to the Court for further directions.

35. THIS COURT ORDERS that a copy of this Order be filed in each of the Alberta Actions.


JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

APPROVED AS TO FORM AND CONTENT:
DOCKEN & COMPANY


APPROVED AS TO FORM AND CONTENT:
McLENNAN ROSS LLP

Per: 
Clint Docken, Q.C., Counsel for the Plaintiffs

Per: 
Stuart Chambers, Counsel for the Defendants
Menu Foods Income Fund, Menu Foods GenPar
Limited, Menu Foods Limited Partnership, Menu
Foods Acquisition Inc., Menu Foods Limited,
Menu Foods Operating Limited Partnership,
Menu Foods Holdings Inc., Menu Foods, Inc.,
Menu Foods Midwest Corporation, Menu Foods
South Dakota Inc., 3036241 Nova Scotia
Company, Retex Management Associates
Limited, 1446431 Ontario Ltd. and 1446432
Ontario Ltd.



87
July 2008

V.A. BRANDT 

V.A. BRANDT 

ENTERED THIS 27 DAY OF
June, 2008.

July

V.A. BRANDT



CLERK OF THE COURT OF QUEEN'S
BENCH OF ALBERTA

BETWEEN:

Action No.: 0701-03550

JAMES J. O'KEEFE as representative Plaintiff
Plaintiff

- and -

MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION,
and MENU FOODS LIMITED
Defendants

A Class Proceeding pursuant to the *Class Proceedings Act*, Chapter C-16.5

Action No.: 0701-03248

IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

B E T W E E N :

BOBBY-JOE ROVENSKY
Plaintiff

- and -

MENU FOODS INCOME FUND, MENU FOODS GENPAR LIMITED, MENU FOODS LIMITED PARTNERSHIP, MENU FOODS ACQUISITION INC., MENU FOODS LIMITED, MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS HOLDINGS INC., MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, MENU FOODS SOUTH DAKOTA INC., 3036241 NOVA SCOTIA COMPANY, RETEX MANAGEMENT ASSOCIATES LIMITED, 1446431 ONTARIO LTD., 1446432 ONTARIO LTD., ROBERT W. LUBA, ALEXANDER A. AIRD, SERGE K. DARKAZANLI, ERIC A. DEMIRIAN, THOMAS A. DI GIACOMO

Defendants

A Class Proceeding pursuant to the *Class Proceedings Act*, Chapter C-16.5



ORDER

Docken & Company
900, 800 – 6th Avenue S.W.
Calgary, AB T2P 3G3
Attention: Clint G. Docken
Phone: (403) 269-3612
Facsimile: (403) 269-8246