

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

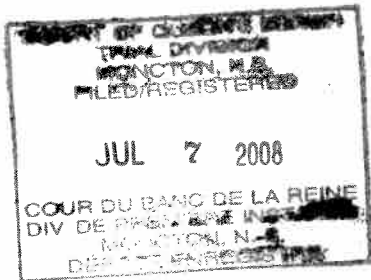
BETWEEN:

I certify that this document, each page of which had been
initialed by me, is a true copy of the original on file in the
office of the Court for the judicial District of Moncton.
Issued under the seal of the Court this 14 day
of July, 2008
Nancy Williamson
Under written authorization of the Registrar dated the
1st day of November, 1995.



GEORGETTE FILLMORE

PLAINTIFF



-and-

MENU FOODS GENPAR LIMITED, MENU
FOODS LIMITED PARTNERSHIP, MENU FOODS
ACQUISITION INC., MENU FOODS LIMITED,
MENU FOOD OPERATING LIMITED
PARTNERSHIP, MENU FOODS HOLDINGS, INC.,
MENU FOODS, INC., MENU FOODS MIDWEST
CORPORATION and MENU FOODS SOUTH
DAKOTA INC.

DEFENDANTS

ORDER

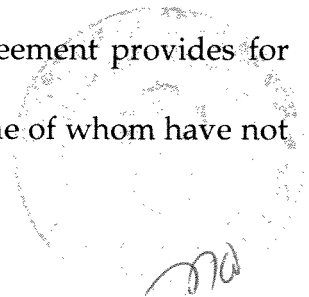
UPON HEARING Ward K. Branch and Luciana Brasil, by video-conference, and
Howard Spalding, Q.C., Talia Profit, and Nathalie Maude, in person, Counsel for the
Plaintiff, Georgette Fillmore

AND UPON HEARING Peter Howard, by video-conference, and Charles
LeBlond, in person, Counsel for the Defendants; Menu Foods Genpar Limited, Menu
Foods Limited Partnership, Menu Foods Acquisition Inc., Menu Foods Limited, Menu
Food Operating Limited Partnership, Menu Foods Holdings, Inc., Menu Foods, Inc.,
Menu Foods Midwest Corporation and Menu Foods South Dakota Inc.

THIS MOTION made by the Plaintiff in the New Brunswick Action, as defined herein, for an Order certifying the New Brunswick Action as a class proceeding for settlement purposes only, subject to the terms of the Settlement Agreement and upon certain conditions being met, approving the Class Notice and approving the method of dissemination of the Class Notice was heard on the 23rd day of June 2008, at Moncton, New Brunswick;

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 Georgette Fillmore, sworn June 13, 2008, Luciana Brasil, sworn June 11, 2008 and Talia Profit, sworn June 13, 2008, and on hearing the submissions of Counsel for the Plaintiff 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 June 2, 2008; (iii) that the Final Approval Hearing has been scheduled for hearing by the MDL Court on October 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

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been named as Defendants in the New Brunswick Action, and (vi) on further being advised of the consent of Heffler, Radetich & Saitta L.L.P. to act as Claims Administrator.

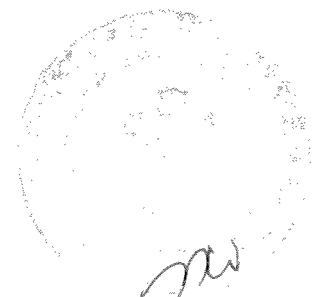
UPON the consent of the parties hereto that the New Brunswick Action be continued under the *Class Proceedings Act*, S.N.B. 2006, c. C-5.15 (the "*Class Proceedings Act*").

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

"New Brunswick Action" means the action in the Court of Queen's Bench of New Brunswick bearing Cause No. M/C/0221/07

2. THIS COURT ORDERS that the Plaintiff, Georgette Fillmore is granted leave to bring this application pursuant to section 3(4)(c) of the *Class Proceedings Act*.

3. THIS COURT ORDERS that the New Brunswick Action is certified as a class proceeding (the "New Brunswick Class Proceeding"), on a preliminary basis, for settlement purposes, subject to the terms of the Settlement Agreement and the conditions set out below.

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Class Definition

4. THIS COURT ORDERS that the Settlement Class for the New Brunswick Class Proceeding is defined as all persons and entities in New Brunswick 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 "New Brunswick Settlement Class")

Representative Plaintiffs

5. THIS COURT ORDERS that Georgette Fillmore is appointed as the Representative Plaintiff for the Settlement Class in the New Brunswick Class Proceeding.

Common Issue

6. THIS COURT ORDERS that the following issue is common to the New Brunswick 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 Approval Hearing

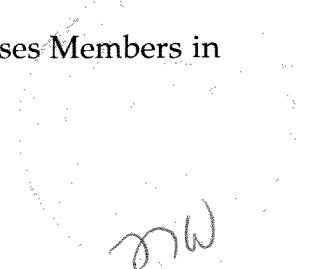
7. THIS COURT ORDERS that at the Final Approval Hearing, this Court will be asked to decide:

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- (a) Whether the certification of the New Brunswick Settlement Class should be made final;
- (b) Whether to approve the Settlement Agreement as fair, reasonable, adequate and in the best interests of the New Brunswick Settlement Class;
- (c) Whether this Court should enter a Final Approval Order and Judgment;
- (d) Whether this Court should dismiss with prejudice the New Brunswick Action, 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 1 p.m. Atlantic Time at Suite 604, 644 Main Street, Blue Cross Center, Moncton, New Brunswick (the "New Brunswick Approval Hearing");

8. THIS COURT ORDERS that at the New Brunswick Approval Hearing the court will consider objections to the Settlement Agreement by Settlement Classes Members in

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the New Brunswick Class Proceeding, but other than with leave of the Court, only if their objections are sent in written form to:

Ward Branch/Luciana P. Brasil
Branch MacMaster, Barristers & Solicitors
1410 - 777 Hornby Street, Vancouver, B.C.
V6Z 1S4

And one of:

Peter F.C. Howard/Danielle Royal
Stikeman Elliott LLP
Suite 5300, Commerce Court West
199 Bay Street, Toronto, Ontario
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. Atlantic Time on the 4th day of October, 2008.

9. THIS COURT ORDERS that the date and time of the New Brunswick 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 New Brunswick 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. THIS COURT ORDERS that 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 New Brunswick Class Proceeding shall immediately be decertified as a class proceeding pursuant to the *Class Proceedings Act* without prejudice to the Plaintiffs' ability to reapply for certification; and
- (d) each party to the New Brunswick Action shall be restored to his, her or its respective position as it existed immediately prior to the execution of the Settlement Agreement.



12. THIS COURT ORDERS that certification of the New Brunswick 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that within seven (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 to be disseminated by direct mail to (1) all persons who were paid as part of a Historic Payment program and (2) all persons who

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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 addresses 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. *in the language indicated adjacent to the publications identified in Schedule D for the Province of New Brunswick.*
- (c) Notice to Veterinarians: Class Notice in the Short Form Notice and Long Form Notice shall be provided to national veterinary organizations including the Canadian Veterinary Medical Association for further dissemination at their option to their members and veterinarians.

*Sum.
J.C.Q.B.
July 7/08*

16. THIS COURT ORDERS that counsel for the Plaintiffs in the New Brunswick 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 New Brunswick Settlement Class.

17. THIS COURT ORDERS that Menu Foods and/or Crawford & Company are hereby authorized to provide to the Claims Administrator, Crawford & Company is 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

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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. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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 the Settlement Agreement and the *Class Proceedings Act*.

Claims Administrator

20. THIS COURT ORDERS that 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

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to the publication and mailing of the notice; (d) establishing a website for purposes of posting the Notice, Settlement Agreement and related documents; (e) accepting and maintaining documents sent from Class Members, including Claim Forms, requests to Opt Out and other documents relating to Claims administration; (f) administering Claims for the payments from the Settlement Fund to Settlement Class members, in accordance with the terms of the Settlement Agreement; and (g) all other responsibilities designated to the Claims Administrator in the Settlement Agreement.

Opt-In Rights

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

Opt-Out Rights

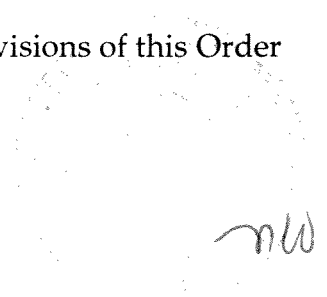
22. THIS COURT ORDERS that any Class Member who wishes to be excluded from the New Brunswick Settlement Class shall mail a written request to Opt Out to the Claims Administrator, at the address to be provided, postmarked, on or before the date which is sixty (60) days after the Canadian Notice Date as 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. THIS COURT ORDERS that 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 New Brunswick Settlement Class in the "Recalled Pet Food Products Class Actions" or a signed statement substantially similar thereto.

24. THIS COURT ORDERS that any person who validly Opts Out of the New Brunswick Settlement Class shall be excluded from the New Brunswick 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. THIS COURT ORDERS that 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.



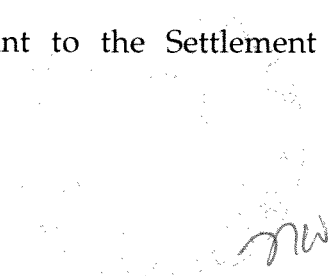
26. THIS COURT ORDERS that any Class Member that does not mail a valid request to Opt Out as set forth in paragraphs 23 and 24 above shall be automatically included in the New Brunswick Settlement Class.

Other Provisions

27. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that 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. THIS COURT ORDERS that the Defendants may communicate with putative Class Members regarding the provisions of this Order, 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 Order. In addition, Defendants may continue to communicate with their customers, business contacts, and members of the public in the ordinary course of business.

34. THIS COURT ORDERS that any party affected by this Order may apply to the court for further directions.

DATED at Moncton, New Brunswick this ^{7th} day of ^{July} ~~June~~, 2008. *gen*



J. C. Q. B. of New Brunswick

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