

**SUPERIOR COURT**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

Date: June 27, 2008

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**IN THE PRESENCE OF: THE HONOURABLE PIERRE JASMIN, J.S.C.**

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No: 500-06-000396-073

**CHANTAL DES CÔTEAUX**

Petitioner

v.

**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.  
ROBERT W. LUBA  
ALEXANDER R. AIRD  
SERGE K. DARKAZANLI,  
ERIC A. DEMIRIAN  
THOMAS A. DI GIACOMO**

Respondents

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N° : 500-06-000392-072

**MARK SIROIS**

Petitioner

v.

**MENU FOODS INCOME FUND**

Respondent

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N° : 500-06-000398-079

**OPTION CONSOMMATEURS**

Petitioner

And

**GÉRALD DUC**

Designated person

v.

**MENU FOODS INCOME FUND  
MENU FOODS LIMITED (ONTARIO)  
MENU FOODS MIDWEST CORPORATION  
MENU FOODS INC.  
MENU FOODS OPERATING LIMITED PARTNERSHIP**

Respondents

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**ORDER**

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**THIS MOTION** made by the Class Representative Chantal Des Côteaux in the Québec Class Actions, as defined herein for an order authorizing her Class Action Motion 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 23<sup>rd</sup> day of June, 2008 in Montréal, Québec, in the presence of Ward K. Branch and Luciana P. Brasil, by video-conference, and David Joanisse, in person, counsel for the petitioner Chantal Des Côteaux, and Peter Howard, by video-conference, and Anne-Marie Lévesque, in person, counsel for the respondents;

**ON READING** the material file including the settlement agreement dated May 22nd, 2008, and the affidavits of Luciana Brasil dated June 16th, 2008, and of Chantal Des Côteaux, dated June 17th, 2008, and on hearing the submissions of counsel for the petitioner and respondents and upon being advised that the Settlement Agreement provides for the release of the Released Claims against the Released Entities some of whom have not been named as respondents in the Québec Class Action, and on further being advised of the consent of Heffler, Radetich & Saitta L.L.P. to act as Claims administrator:

**THIS COURT:**

1. **GRANTS** the present motion;
2. **ORDERS** that unless otherwise provided herein, the definitions set out in the Settlement Agreement, Exhibit R-1, apply to this Order and, in addition, the following definition also applies: "Québec Actions" means the following class action motions in the Québec Superior Court:
  - a) Mark Sirois v. Menu Foods Income Fund, S.C.M. 500-06-000392-072;
  - b) Chantal Des Côteaux v. 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 and Menu Foods South Dakota Inc., S.C.M. 500-06-000396-073;
  - c) Option Consommateurs and Gérald Duc v. Menu Foods Income Fund, Menu Foods Limited (Ontario), Menu Foods Midwest Corporation, Menu Foods Inc., Menu Foods Acquisition Inc. and Menu Foods Operating Limited Partnership, S.C.M. 500-06-000398-079;
3. **AUTHORIZES** the institution of the class action herein on a preliminary basis for settlement purposes only, subject to the terms of the Settlement Agreement and the conditions set out below.;
4. **ORDERS** that the Québec Settlement Class be defined as follows:

All physical persons and all legal persons, partnerships or associations of less than 50 employees in Quebec who purchased, used or obtained, or whose pets used or consumed Recalled Pet Food Products, excluding Defendants and Released Entities. The Québec Settlement Class will also exclude Class members who have properly Opted Out of the Québec Settlement Class.
5. **ORDERS** that petitioner and Class Representative Chantal Des Côteaux be appointed as the representative for the Québec Settlement;
6. **ORDERS** that the issues raised by the Québec Class Actions involve claims for damages resulting from negligence as well as, other claims relating to the Recalled Pet Food Products;

7. **ORDERS** that the following issue is common to the Settlement Class:

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

8. **ORDERS** that at the Final Approval Hearing, this Court will be asked to decide:

- a) whether the authorization of the Settlement Class defined herein should be made final;
- b) whether to approve the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Settlement Class;
- c) whether this Court should enter a Final Approval Order and Judgment;
- d) 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;
- e) whether Counsel for the Canadian Plaintiffs' application for counsels' fees and reimbursement of expenses should be granted; and
- f) any other matters as the Court may deem appropriate;

at a hearing to be held on the 3rd day of November, 2008 beginning at 12:00 p.m. Eastern Time, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6 (the "Québec Approval Hearing");

9. **ORDERS** that at the Québec Approval Hearing the Court will consider objections to the Settlement Agreement by Settlement Class Members in the Québec class actions, 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 & 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 4:00 p.m. Eastern Time on the 4th day of October, 2008 and filed with this Court by 4:00 p.m. Eastern Time on the 4th day of October 2008;

10. **ORDERS** that the date and time of the Québec 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;
11. **ORDERS** that Approval Hearing may be conducted by videoconference;
12. **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 Respondents;

- c) the authorization of the Québec Class Action shall immediately be annulled as a class proceeding without prejudice to the petitioner's ability to reapply for authorization; and
  - d) each party to the Québec class action shall be restored to his, her or its respective position as it existed immediately prior to the execution of the Settlement Agreement;
13. **ORDERS** that any authorization of a 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 of the Defendants or any other proposed or authorized class action, is appropriate for any other purpose;
14. **ORDERS** that entry of this Order is without prejudice to the rights of the Defendants to terminate the Settlement Agreement as provided in the Settlement Agreement;
15. **ORDERS** that the Class Notice in the short form and long form attached hereto as Exhibit **R-3** is hereby approved in both their French and English versions;
16. **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 attached hereto as Exhibit R-3 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 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 of the Class Notice attached hereto as Exhibit R-3 to be published in the publications listed in La Presse and The Gazette in accordance with the terms of the Settlement Agreement;

- c) Notice to Veterinarians: Class Notice in the short and long forms shall be provided to national veterinary organizations including the American Veterinarian Medical Association and the Canadian Veterinary Medical Association for further dissemination at their option to their members and veterinarians;
17. **ORDERS** that Counsel for the Plaintiffs in the Quebec Actions of the Claims Administrator shall provide copies of the long form notice to all persons who contacted them and indicated that they might be members of the Quebec Settlement Class.
18. **ORDERS** that 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;
19. **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;
20. **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 Article 1006 C.C.P.;

#### **CLAIMS ADMINISTRATOR**

21. **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 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-OUT RIGHTS**

22. **ORDERS** that any Class Member who wishes to be excluded from the Settlement Class as provided by Article 1007 C.C.P. 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; Upon receipt, the Claims Administrator shall mail a copy of the written request to Opt Out to the Clerk of the Superior Court, District of Montréal, at 1 Notre-Dame East Street, Montréal, Québec H2Y 1B6;
  
23. **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 Settlement Classes in the Recalled Pet Food Products Class Actions" or a signed statement substantially similar thereto;
  
24. **ORDERS** that any person who validly Opts Out of the Settlement Class shall be excluded from the 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 delivered such valid requests to Opt Out;

25. **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. **ORDERS** that any Class Member that does not mail a valid request to Opt Out as set forth in paragraphs 21 and 22 above shall be automatically included in the Settlement Class;

#### **OTHER PROVISIONS**

27. **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. **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. **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. **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. **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. **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. **ORDERS** that the Defendants may communicate with Class Members regarding the provisions of this 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. **ORDERS** that any party affected by this Order may apply to the Court for further directions;
35. **ORDERS** that a copy of this Order be filed in each of the following Québec Actions:
  - a) Mark Sirois v. Menu Foods Income Fund, S.C.M. 500-06-000392-072;
  - b) Option Consommateurs and Gérald Duc v. Menu Foods Income Fund, Menu Foods Limited (Ontario), Menu Foods Midwest Corporation, Menu Foods Inc., Menu Foods Acquisition Inc. and Menu Foods Operating Limited Partnership, S.C.M. 500-06-000398-079;

36. **THE WHOLE** without costs.

  
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**PIERRE JASMIN, J.S.C.**