



ONTARIO
SUPERIOR COURT OF JUSTICE

) *Friday*, THE *4th* DAY OF
) *July*, 2008
)

Court File No. 07-CV-329875CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

AMANDA WHITING, GILLIAN ALEXANDER,
DIANA DES ROCHES, HAYLEY BOAM, ROBERT MILETTE, DIANA KRSTIC and
DEBBIE MULLEN

Plaintiffs

- and -

MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS, INC.,
MENU FOODS MIDWEST CORPORATION
and MENU FOODS LIMITED (ONTARIO)

Defendants

Court File No. 07-CV-330012CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ROBERT MILETTE, LEONA LANDRY, DANNY SALVADOR HAIG-CARTER
and SUSAN MALLA TRATT

Plaintiffs

- and -

MENU FOODS LTD., MENU FOODS INCOME FUND, LOBLAWS INC., SOBEYS
INC., THE IAMS COMPANY, NUTRO PRODUCIS and WAL-MART CANADA
CORP.

Defendants

Court File No 07-CV-338044PD1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KAREN DAYMAN, TAMMY CHRISTOFOROU
and LEONA CAMPAGNA

Plaintiffs

- and -

HILLS PEI NUTRITION INC., ROYAL CANIN CANADA COMPANY INC. and
PETSMART INC

Defendants

Court File No. CV-07-0999CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SHARON POWELL, BOBBY-JOE ROVENSKY
and KATHERINE EWASEW

Plaintiffs

- and -

MENU FOODS INCOME FUND

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

AMENDED ORDER

THIS MOTION made by the Plaintiffs in the Ontario Actions, as defined herein, for an Order certifying the Ontario Actions 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 day of June, 2008 at Toronto, Ontario in the presence of Ward K. Branch and Luciana P. Brasil, by video-conference, and Sonya Diesberger and Patricia LeFebour, in person, Counsel for the Plaintiffs Amanda Whiting, Gillian Alexander, Diana des Roches, Hayley Boam, Robert Milette, Diana Krstic, Debbie Mullen, Robert Milette, Leona Landry, Danny Salvador Haig-Carter, Susan Malla Tratt, Karen Dayman, Tammy Christoforou, Leona Campagna, and Anthony Merchant, QC and Casey Churko, by video-conference, Counsel for the Plaintiffs Sharon Powell, Bobby-Joe Rovensky, and Katherine Ewasew, Peter Howard, by video-conference, Danielle Royal and Suzy Kauffman, in person, Counsel for the Defendants Menu Foods Operating Limited Partnersip, Menu Foods, Inc., Menu Foods Midwest Corporation, Menu Foods Limited (Ontario), Menu Foods Ltd, Menu Foods Income Fund; David Kent, in person, Counsel for Robert W. Luba, Alexander R. Aird, Serge K. Darkanzali, Eric A. Demirian and Thomas Di Giacomo; Paul Morrison, in person, Counsel for the Defendants Wal-Mart Canada Corp and PetSmart Inc., Randy Sutton, in person, Counsel for the Defendant Hills Pet Nutrition Inc., Susan Paul, in person, Counsel for the Defendants Nutro Products and Royal Canin Canada Company Inc; and Deborah Glendinning, in person, Counsel for the Defendant, The Iams Company.

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 Karen Dayman sworn June 13, 2008, Leona Campagna sworn June 12, 2008, Leona Landry sworn June 13, 2008, Robert Millette sworn June 12, 2008, Debbie Mullen sworn June 12, 2008, Hayley Boam sworn June 12, 2008, Tammy Christoforou sworn June 12, 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 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 been named as Defendants in the Ontario Actions, and (vi) on further being advised of the consent of Heffler, Radetich & Saitta L.L.P. to act as Claims Administrator;

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:

"Ontario Actions" means the following actions in the Ontario Superior Court: No. 07-CV-329875CP, No. 07-CV-330012CP, No. 07-CV-338044PD1 and No. 07-CV-0999CP

2. **THIS COURT ORDERS** that the Plaintiffs are granted leave to bring this application pursuant to section 2(3)(b) of the *Class Proceedings Act, 1992*

3. **THIS COURT ORDERS** that the Order of this Court dated October 19, 2007 (the "Stay Order") in action no. 07-CV-0999CP (the "Powell Action") be lifted and that the Ontario Actions are consolidated and certified as a class proceeding (the "Ontario National Class Proceeding") under action no. 07-CV-329875CP (the "Whiting Action"), on a preliminary basis, for settlement purposes, subject to the terms of the Settlement Agreement and the conditions set out below.

Class Definition

THIS COURT ORDERS that the Settlement Class for the Ontario National Class Proceeding is defined as all persons and entities in Canada who purchased, used or obtained, or whose pets used or consumed Recalled Pet Foods Product(s), excluding Defendants and Released Entities and those persons and entities who are Class Members in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, and Newfoundland. The Settlement Class also will exclude all Class Members who have properly Opted Out of the Settlement Class (the "Ontario National Settlement Class").

Representative Plaintiffs

4. **THIS COURT ORDERS** that Hayley Boam, Karen Dayman, Leona Campagna, Tammy Christoforou, Leona Landry, Robert Millette and Debbie Mullen are appointed as the Representative Plaintiffs for the Ontario National Settlement Class in the Ontario National Class Proceeding Ontario.

Common Issue

5. **THIS COURT ORDERS** that the following issue is common to the Ontario National 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

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

- (a) Whether the certification of the Ontario National Settlement Class should be made final;

- (b) Whether to approve the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Ontario National Settlement Class;
- (c) Whether this Court should enter a Final Approval Order and Judgment;
- (d) Whether this Court should dismiss with prejudice the Ontario 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 12 p.m. Eastern Time at the Court House, 361 University Avenue, Toronto, Ontario (the "Ontario Approval Hearing");

7. **THIS COURT ORDERS** that at the Ontario Approval Hearing the court will consider objections to the Settlement Agreement by Settlement Classes Members in the Ontario 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 & 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. Eastern Time on the 4th day of October, 2008.

8. **THIS COURT ORDERS** that the date and time of the Ontario 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 at the settlement website.

9. **THIS COURT ORDERS** that the Ontario Approval Hearing may be conducted concurrently with similar hearings to be held in relation to the other Canadian Actions.

Conditions of Certification

10. **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 Ontario National Class Proceeding shall immediately be decertified as a class proceeding pursuant to section 10 of the *Class Proceedings Act, 1992* without prejudice to the Plaintiffs' ability to reapply for certification;
- (d) each party to the Ontario Actions shall be restored to his, her or its respective position as it existed immediately prior to the execution of the Settlement Agreement; and
- (e) the Ontario Actions will cease to be consolidated, and the Powell Action will be stayed pursuant to the Stay Order.

11. **THIS COURT ORDERS** that the certification of the Ontario National 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.

12. **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

13. **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.

14. **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 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: 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.

15. **THIS COURT ORDERS** that Counsel for the Plaintiffs in the Ontario 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 Ontario National Settlement Class

16. **THIS COURT 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.

17. **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.

18. **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 section 19 of the *Class Proceedings Act, 1992*.

Claims Administrator

19. **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 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-Out Rights

20. **THIS COURT ORDERS** that any Class Member who wishes to be excluded from the Ontario National 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.

21. **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 Ontario National 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 Ontario National Settlement Class in the *Recalled Pet Food Products Class Actions*" or a signed statement substantially similar thereto.

22. **THIS COURT ORDERS** that any person who validly Opts Out of the Ontario National Settlement Class shall be excluded from the Ontario National 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 request to Opt Out to the persons who deliver such valid requests to Opt Out.

23. **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.

24. **THIS COURT ORDERS** that any Class Member that does not mail a valid request to Opt Out as set forth in paragraphs 22 and 23 above shall be automatically included in the Ontario National Settlement Class.

Other Provisions

25. **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.

26. **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.

27. **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.

28. **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.

29. **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.

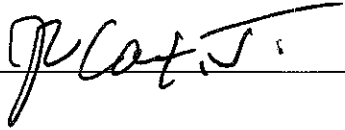
30. **THIS COURT ORDERS** that neither this Order nor the Settlement Agreement, nor any negotiations, statements, or proceedings in connection therewith, shall be construed as or be deemed to constitute any evidence of, an admission or concession by any Defendant or Released Entity of any liability or 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.

31. **THIS COURT ORDERS** that the Defendants may communicate with putative 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.

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

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

ENTERED AT THE OFFICE OF THE REGISTRAR
ON BACK TO
LE C. 1140 LE REGISTRE NO.:



Lax, J.

JUL - 4 2008

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
Entered this  day of _____, 2008

Clerk of the Ontario Superior Court

Signature of judge, officer or registrar
