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Animals' Deaths, Pet-Food Recall Prompt Class Actions

By **Rebecca Beyer**
Daily Journal Staff Writer

LOS ANGELES — A massive nationwide pet food recall is feeding a wave of class actions from Connecticut to California.

Two women alleging that their cats became extremely ill after eating food manufactured by Menu Foods filed a class action against the company Tuesday in Los Angeles County Superior Court.

The suit comes after the company recalled 60 million units of dog and cat food earlier this month. *Grady v. Menu Foods Income Fund*, BC368561 (L.A. Super. Ct., filed March 27, 2007).

On the same day, a class action was filed on behalf of Diane Swarberg and against Menu Foods and Iams in San Diego County Superior Court. Swarberg's cat, Oscar, was put to sleep March 15 after suffering kidney failure.

The two are believed to be the first brought in California state or federal courts.

In the last two weeks, plaintiffs have filed at least eight class actions against Menu Foods in federal courts in states including Washington, Arkansas, Florida, Connecticut, Tennessee, Illinois and New Jersey. Attorneys in Canada have filed at least two class actions against the company, which is based in Toronto.

"This is a massive recall," said Michael S. Morrison, an attorney from Schonbrun DeSimone Seplow Harris & Hoffman in Los Angeles and class counsel for the California plaintiffs. "So many people have pets, and the company makes so many different kinds of pet foods."

Class counsel include Gregory D. Helmer and Andrew H. Friedman of Helmer Friedman in Los Angeles and Paul L. Hoffman and Michael D. Seplow of Schonbrun DeSimone.

A spokeswoman for Menu Foods did not respond to a request for comment.

The class action also lists PETCO and Nutro Products as defendants. A spokesman

for PETCO said he had not seen the lawsuit and therefore could not comment. Nutro representatives did not respond immediately to a request for comment.

The lawsuit, filed on behalf of Lois Grady of Fresno and Kaye Steinsapir of Los Angeles, says Menu Foods manufactured and sold pet food contaminated with aminopterin, a highly toxic rat poison.

The company confirmed that the toxin was in its food in a press release March 24. In other releases, the president and chief executive officer of Menu Foods, Paul K. Henderson, has said the company has not identified how the toxin got into its products.

Recalled pet food includes the "cuts and gravy"-style food sold in pouches and cans under 95 brands, including Eukanuba, Best Choice, Iams, Science Diet, Nutro Natural Choice and some sold under store names.

Two plants in the United States produced the recalled food between Dec. 3, 2006 and March 6.

On Tuesday, Menu Foods confirmed 16 deaths linked to the food. Experts have said that number will continue to rise.

Morrison said potential class representatives contacted his firm soon after the recall, and, after veterinary exams confirmed the illnesses were related to the food, attorneys "decided to go forward with this class action to protect specifically California residents."

He added that he was not sure whether one or more of the national class actions would pre-empt his lawsuit.

Helmer agreed.

"There's going to be a lot of procedural questions that are going to be unanswerable this early on," he said. "But, for example, how does a federal court in Tennessee protect California pet owners under the laws of California? That's why we filed in California state court.

"Our state has some of the strongest consumer protection laws in the country, and

we think pet owners should get that protection."

Grady's cat is a 6-year-old male black and white short-hair domestic named Riley. Steinsapir's cat is a 4-year-old female caramel tabby named Lila.

Both cats were healthy before ingesting food produced by Menu Foods, and both experienced kidney failure shortly after the recall was announced. They are still alive.

"If they live, they will end up needing a lot of treatment throughout their lives," Morrison said. "It's a sad picture, these pets hooked up to IVs. You know how much people love their pets and how important they become in their lives."

Morrison said class counsel had no estimate for how much money they would seek in damages, adding that it would depend on how many people joined the class.

"We will be seeking damages for the veterinary bills that people have incurred," he said. "Vet care is extremely expensive, but when their pet is sick, people are going to pay for that. They'll put up lots of money to keep the animals they love."

On its Web site, Menu Foods wrote that, "if Menu Foods product is the cause of sickness or death, Menu Foods will take responsibility," and it told customers to keep copies of vet records and receipts for pet food purchases and vet bills.

"We don't want to leave it to Menu Foods to voluntarily decide when they will pay and who they will pay it to," Morrison said. "Who knows when they see the amount of costs if they are really going to want to voluntarily pay this money without the court process?"

Helmer, who owns a dog, added that the lawsuit gives plaintiffs the advantage of getting answers to their questions about what contaminated the food and when the company learned of the contamination.

"As a pet owner and a lawyer," he said, "we want answers to these questions."