

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

KIRBY COOPER, Individually and)
On behalf of all others similarly situated,)
Plaintiffs)

vs.)

) Case No. CV 07-4036

MENU FOODS INCOME FUND; MENU)
FOODS MIDWEST CORPORATION,)
MENU FOODS SOUTH DAKOTA, INC.,)
MENU FOODS INC., MENU FOODS)
HOLDINGS, INC. and WAL-MART)
STORES, INC.)
Defendants)

MOTION FOR EXTENSION OF TIME TO RESPOND

COMES NOW the Separate Defendant, MENU FOODS, INC., by and through counsel, JONES & HARPER, and for its Motion for Extension of Time To Respond, states:

1. Separate Defendant Menu Foods, Inc. was served with Plaintiffs' Complaint on April 24, 2007. The remaining Menu Foods defendants in this action have not been served. Accordingly, Menu Foods, Inc.'s first responsive pleading is due to be filed on or before May 14, 2007. Co-defendant Wal-Mart Stores, Inc. appears to have been served on or about April 26, 2007, according to Plaintiffs' Affidavit of Service filed on April 27, 2007.

2. Plaintiffs are seeking relief from Defendants for purchases of allegedly contaminated pet food and their action joins more than eighty (80) actions nationwide seeking relief from Defendants. Specifically, the pending cases allege that Defendant sold contaminated pet food to the general public and individuals whose pets consumed this pet food sustained injuries and/or death.

3. Federal courts have original jurisdiction over these state and common law based actions pursuant to the Class Action Fairness Act of 2005. *See* 28 U.S.C. §1332(d). The pending cases seek to certify a class of United States' residents who purchased allegedly contaminated pet food and seek to compensate them for all damages incurred as a result of Defendant's conduct. None of the pending cases are advanced and no discovery has been conducted. In addition to the above captioned action and three more which have been filed in the Western District of Arkansas, there are actions currently pending in the Western District of Washington, Eastern District of Tennessee, Northern District of Illinois, Western District of Wisconsin, District of Colorado, District of New Jersey, Northern District of Florida, Southern District of Florida, District of Connecticut, Central District of California, District of Rhode Island, District of Maine, Northern District of California, District of Nevada, District of Idaho, Northern District of Ohio, District of Washington, District of Tennessee, District of Minnesota, District of Colorado and District of Massachusetts.

4. To date, two (2) pet food cases in the Western District of Arkansas, *Gray v. Menu Foods, Inc., Wal-Mart Stores, et al.*, Civil No. 07-5065, and *Widen v. Menu Foods,*

Inc., Wal-Mart Stores, et al., Civil No. 07-5055, have both been stayed by the Honorable Robert T. Dawson pending a determination on Multidistrict Litigation.

5. Contemporaneous to this Motion for Extension of Time to Respond, Separate Defendant Menu Foods, Inc. has filed a Motion to Stay and Brief in Support of Motion to Stay with numerous exhibits, evidencing, *inter alia*, the granting of stays in other jurisdictions.

6. Furthermore, numerous Plaintiffs' groups, including the Arkansas Sims' Plaintiffs represented by Jason Hatfield, have filed motions for transfer and coordination or consolidation pursuant to 28 U.S.C. §1407. On April 12, 2007, the Judicial Panel on Multidistrict Litigation ("JPML") issued a Notice of Hearing Session for May 31, 2007 to consider the MDL motions ("Collectively known as MDL 1850 – *In re Pet Food Products Liability Litigation*). This Hearing is now only weeks away.

7. In light of the Motion to Stay, Separate Defendant Menu Foods, Inc. requests that the Court extend the deadline for Menu Foods' first responsive pleading until twenty (20) days after the Court rules on the Motion to Stay. If the Court grants the Motion to Stay, Menu Foods' first responsive pleading would not be due until after the stay is lifted.

8. Plaintiffs would not be prejudiced by the granting of a stay until such time as the Judicial Panel on Multidistrict Litigation ("JPML") can complete its Hearing Session

9. Plaintiffs' counsel was consulted by the undersigned on May 7, 2007, and the undersigned was advised by Plaintiffs' counsel the he does not agree to an extension of time based upon the timing of the Court's ruling on Defendant's Motion to Stay.

WHEREFORE, Separate Defendant MENU FOODS, INC. respectfully requests this Honorable Court enter an Order staying further proceedings in this matter and enter a separate Order extending the time of Separate Defendant Menu Foods, Inc. to respond to Plaintiffs' Complaint until twenty (20) days after the stay is lifted by the Court and for all relief to which Defendant may be entitled.

Respectfully submitted,

/s/ Christy Comstock
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ATTORNEYS FOR SEPARATE
DEFENDANT MENU FOODS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this _____ day of May, 2007, by first class mail, postage prepaid to:

Jason M. Hatfield
LUNDY & DAVIS, L.L.P.
300 N. College Ave., Suite 309
Fayetteville, AR 72701

 /s/ Christy Comstock
Christy Comstock