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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROBERT PAYNE and STEVE BARTILUCCI, individually, for class members, and on behalf of other members of the public similarly situated,

Plaintiffs,

vs.

MENU FOODS, INC, PETCO ANIMAL SUPPLIES, INC. a Delaware Corporation,. SAFEWAY, INC., a Delaware Corporation; THE PROCTOR & GAMBLE COMPANY, an Ohio Corporation, and DOES 1 to 50, INCLUSIVE

Defendants.

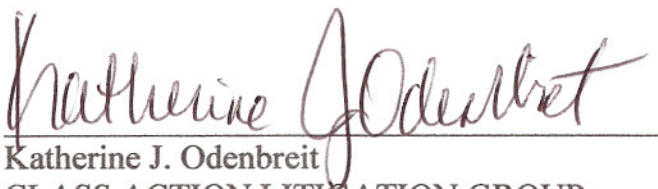
CASE NO. 07CV0705 JAH (CAB)

NOTICE OF PLAINTIFFS' OBJECTION TO DEFENDANT MENU FOODS' MOTION TO STAY CASE; NOTICE OF SUBSTITUTION OF ATTORNEY FOR PLAINTIFFS; DECLARATION OF KATHERINE J. ODENBREIT; [PROPOSED] ORDER.

TO THE HONORABLE UNITED STATES DISTRICT JUDGE AND TO ALL PARTIES:

Plaintiffs ROBERT PAYNE and ROBERT BARTILUCCI have filed with this Court a Motion to Substitute in as their attorney of record René L. Barge and Katherine J. Odenbreit of the law firm Class Action Litigation Group. Because the Notice of substitution has just been filed and the Court has not yet ordered such substitution, counsel did not previously have the opportunity to review Defendant MENU FOODS' Motion to Stay the case. Counsel respectfully request the Court consider this objection on behalf of Plaintiffs PAYNE AND BARTILUCCI.

Dated: June 1, 2007



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I.

INTRODUCTION

Plaintiffs PAYNE and BARTILUCCI have requested René L. Barge and Katherine J. Odenbreit of the law firm Class Action Litigation Group be substituted in as their counsel of record. These motions are being filed concurrently with this Notice. Attorney Katherine J. Odenbreit learned that Defendant MENU FOODS filed a Motion for Stay pending the outcome of the hearing before the Multidistrict Litigation Panel on May 31, 2007 just last week.[1] Counsel for Menu Foods was immediately contacted in reference to this motion. Plaintiffs initially requested MENU FOODS take the motion off-calendar as moot because Plaintiffs had no intention of engaging in discovery or motion practice prior to the decision by the MDL Panel to consolidate the many pending actions.[2] Plaintiffs were told MENU FOODS would consider the proposal.[3] In addition, upon review of the Motion, Plaintiffs' new counsel discovered defendant MENU FOODS is requesting a stay pending a determination on class certification by the transferee court should the MDL Panel consolidate the multiple Pet Food Product Litigation cases.[4] Subsequent to this conversation, the Court took the motion hearing off calendar stating the motion could be considered without oral argument. Plaintiffs then requested MENU FOODS withdraw their pending Motion to Stay, without prejudice.[5]

On Tuesday, May 29, 2007, defendant MENU FOODS declined Plaintiffs' proposal indicating they would not withdraw the motion.[6]

II.

A STAY PENDING A DETERMINATION OF CLASS CERTIFICATION WOULD SEVERELY PREJUDICE PLAINTIFFS AND DENY PLAINTIFFS DUE PROCESS.

Defendant MENU FOODS claims in its moving papers that Plaintiffs could not conceivably be prejudiced by a "brief stay".[7] However, this is not what defendants are asking. Defendant MENU FOODS has asked that the stay be in place well beyond the ruling and/or

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[1] Declaration of Katherine J. Odenbreit
[2] Odenbreit Declaration
[3] Odenbreit Declaration
[4] See Defendant Menu Foods Motion to Stay, pages 1 and 9.
[5] Odenbreit Declaration
[6] Odenbreit Declaration
[7] Defs. Motion to Stay, page 8.

transfer by the MDL Panel. Defendant is asking this stay be left in place "pending….a determination of class certification by the transferee court."[8]

Class certification in this case could be months even years away. In the meantime, Plaintiffs would be essentially denied any participation in this litigation. If a stay is in place until class certification is determined, Plaintiffs would be denied the opportunity to bring a motion for conditional certification motion and thereby denied due process to pursue their case. It is likely many different firms will be involved in the litigation. If this case is stayed pending the determination of class certification, plaintiffs would not be able to be represented in that process.

Further, there are many cases which have been stayed by various courts. If all cases were stayed pending a determination of class certification, no plaintiff would be able to bring such a motion. This would prohibit the case from moving forward or ever being certified.

Therefore, Plaintiffs respectfully request the Court deny defendant MENU FOODS' request for a stay pending the determination of class certification.

III.

STAYING THE CASE AT THIS POINT IS MOOT

The hearing to determine whether or not these cases will be consolidated and if so, where was held on May 31, 2007. The MDL Panel has taken the matter under submission. Surely, the MDL Panel will promptly issue a ruling in the matter. We anticipate a ruling within the next thirty days, if not sooner. In addition, Plaintiffs have agreed to stipulate to extensions of time for defendants' responses to any pending pleadings and to take reasonable efforts to prevent additional work for the parties pending the outcome of the MDL hearing.[9] Therefore, defendants are in no way prejudiced by denial of the Stay.

The Parties have an obligation to notify this Court of the outcome of the MDL hearing. It is also anticipated that it will take some time for the MDL to coordinate any transfer to a different District Court. Therefore, it would not make sense to be filing substantive motions, discovery requests and other pleadings that may involve the Court if the case is being transferred. Again, defendant will not be prejudiced by denial of their motion to stay or in the alternative, a delay in the Court's ruling.

[8] Odenbreit Declaration.
[9] Odenbreit Declaration

IV.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court deny defendant MENU FOODS' (and any joining defendants') Motion to Stay the case, or in the alternative, continue the hearing in order for the Court to rule on Plaintiffs' Motion for Substitution of attorney and allow Plaintiffs to present their oral arguments on this issue to the Court or take the matter under submission until such time a ruling has been issued by the MDL Panel.

DATED: June 1, 2007

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CERTIFICATE OF SERVICE

I certify that on June 1, 2007, I caused the following document:

NOTICE OF SUBSTITUTION OF ATTORNEY FOR PLAINTIFFS to be filed electronically with the Clerk of the Court through ECF.

I further certify, that I caused a copy of the foregoing document and the notice of electronic filing to be mailed via U.S. mail to the following:

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Dated: June 1, 2007

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