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7 Attorneys for Defendant
8 MENU FOODS, INC., a New Jersey corporation

9 Case 3:07-cv-00705-JAH-CAB Document 39 Filed 06/04/2007 Page 1 of 5

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ROBERT PAYNE and STEVE
13 BARTILUCCI,
14 Plaintiffs,

15 v.

16 MENU FOODS, INC., a New Jersey
17 corporation, PETCO ANIMAL SUPPLIES,
18 INC.; a Delaware corporation, SAFEWAY,
19 INC., a Delaware corporation, THE
20 PROCTOR & GAMBLE COMPANY, a
21 Ohio corporation, and DOES 1 through 50,
22 Defendants.

CASE NO. 07cv0705 JAH (CAB)

**DEFENDANT MENU FOODS, INC.'S
RESPONSE TO PLAINTIFFS'
OBJECTION TO MOTION TO STAY**

DATE: May 31, 2007
TIME: 3:00 p.m.
CTROOM: 11
JUDGE: Hon. John A. Houston
TRIAL DATE: Not Set

23 Defendant MENU FOODS, INC. ("Menu Foods") respectfully submits the following
24 response to the objection filed by plaintiffs to its motion to stay:

25 I.

26 **RESPONSE**

27 Plaintiffs have always been represented by counsel. Menu Foods removed this case to
28 federal court on April 18, 2007. Menu Foods' motion to stay was filed on April 23, 2007. The
hearing date was May 31, 2007. No opposition was filed.¹ One day after the unopposed motion
was taken under submission, plaintiffs' new counsel "objected" to the motion and asks that it be
denied because new counsel just read it and has concerns about the motion. Any of these

¹ Nor was there any opposition filed to the motion to stay filed in the related matter of Swarberg v. Menu Foods, 07CV0706 JAH (CAB). That motion was taken under submission on May 31, 2007 as well.

1 concerns could have and should have been raised by prior counsel. Ample notice of the motion
2 was given.

3 Plaintiffs express concern in their objection that Menu Foods seeks a stay until
4 determination of class certification. In response, Menu Foods agrees to withdraw any such
5 request. Menu Foods is only seeking a stay of this case pending transfer to the transferee court.

6 For these reasons, Menu Foods' motions should be granted and that this case and the
7 related case of Swarberg v. Menu Foods, 07CV0706 JAH (CAB) be stayed pending transfer to
8 the transferee court.

9
10 DATED: June 4, 2007

HIGGS, FLETCHER & MACK LLP

11
12 By: /s/ Susan M. Hack

13 SUSAN M. HACK, ESQ.
14 Attorneys for Defendant
15 MENU FOODS, INC., a New Jersey
16 corporation
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21 PROCTOR & GAMBLE COMPANY, a
22 Ohio corporation, and DOES 1 through 50,

23 Defendants.

CASE NO. 07cv0705 JAH (CAB)

**PROOF OF SERVICE BY
MAIL/ELECTRONIC NOTICE**

TRIAL DATE: No Date Set

24 I, the undersigned, declare:

25 I am a resident of the State of California and over the age of eighteen years, and not a
26 party to the within action; my business address is 401 West "A" Street, Suite 2600, San Diego,
27 California 92101. On June 4, 2007, I served the within documents:

28 **DEFENDANT MENU FOODS, INC.'S RESPONSE TO PLAINTIFFS'**
OBJECTION TO MOTION TO STAY

on the interested parties in this action, by placing true copies thereof in a separate
envelope addressed to each addressee, respectively, as follows:

- SERVED THE FOLLOWING VIA U.S. MAIL:

1 Priya Jesani
2 Pretzel and Stouffer Chartered
3 One Wacker Drive
4 Suite 2500
5 Chicago, IL 60606

6 Edward B Ruff, III
7 Pretzel and Stouffer Chartered
8 One South Wacker Drive
9 Suite 2500
10 Chicago, IL 60606

11 Brian D Wright
12 Frauki Ireland and Cox
13 500 Courthouse Plaza SW
14 10 North Ludlaw Street
15 Dayton, OH 45402

16 By transmitting via facsimile the document(s) listed above to the fax number(s) set
17 forth below on this date before 5:00 p.m. A copy of the transmission report issued
18 by the transmitting facsimile machine is attached hereto.

19 ((BY MAIL): I deposited such envelope in the mail at San Diego, California. The envelope was
20 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's
21 practice for collection and processing of correspondence for mailing with the United
22 States Postal Service; and that the correspondence shall be deposited with the United
23 States Postal Service this same day in the ordinary course of business. I am aware that
24 on motion of the party served, service is presumed invalid if postal cancellation date
25 or postage meter date is more than one day after date of deposit or mailing in affidavit.
26 (CCP §§ 1013, 2015.5.) Further, notice shall be electronically mailed pursuant to
27 the Southern District of California, Electronic Case Filing Administrative
28 Policies and Procedures, on the parties as indicated below.

SEE FOLLOWING PAGE:

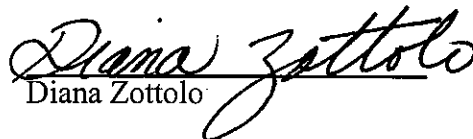
1 The following are those who are currently on the list
2 to receive e-mail notices for this case.

- 3 • **Eric Benink**
eric@kkbs-law.com
- 4 • **Susan Moriarty Hack**
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- 13 • **Michael P Turiello**
mturiello@pretzel-stouffer.com
- 14
- 15
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- 17

18 I am readily familiar with the firm's practice of collection and processing correspondence
19 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
20 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
21 motion of the party served, service is presumed invalid if postal cancellation date or postage
22 meter date is more than one day after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct.

25 Executed on June 4, 2007, at San Diego, California.

26
27 
28 Diana Zottolo