

) MDL Docket No. 1850

In re Pet Food Products Liability Litigation)

)

**PLAINTIFFS HAYLEY FORD, SHANNON J. KRAMER, JENNIFER HART,
SHEILA WASHINGTON AND MARIA MITCHELL'S INTERESTED PARTY
REPLY TO RESPONSE TO PENDING MOTIONS FOR TRANSFER AND
CONSOLIDATION OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FILED BY
DEL MONTE FOODS COMPANY**

Plaintiffs Hayley Ford and Shannon J. Kramer in the Southern District of California action *Ford, et al. v. Menu Foods Income Fund, et al.* No. 07CV734 JAH (CABx) and plaintiffs Jennifer Hart, Maria Mitchell, and Sheila Washington in the action removed from the Los Angeles Superior Court to the Central District of California, *Wahl et al. v. Menu Foods Income Fund, et al.* No. 07CV02779 SJO (AJW), by this Reply respectfully oppose defendant Del Monte Foods Company Response to the pending Motions for Transfer and Consolidation of Actions requesting that the In re Pet Food Products Liability Litigation cases be transferred to the Northern District of Illinois. Although the *Ford* and *Wahl* actions have not yet been a part of the pending consolidation and transfer proceedings, defendant Del Monte Foods Company has filed a Response to

Although the *Ford* and *Wahl* actions have not yet been a part of the pending consolidation and transfer proceedings, defendant Del Monte Foods Company has filed a Response to the Pending Motions for Transfer and Consolidation requesting the *Ford* action be transferred to the Northern District of Illinois. The *Ford* and *Hart* plaintiffs oppose this request and join in the request made by Plaintiffs Dawn Howe in the Central District of California, *Howe v. Menu Foods Limited, et al.* No. CV07-02060 GHD (AJWx), plaintiffs Dennis Lee Townsend and Glenna Townsend in the Central District of California action, *Townsend v. Menu Foods Limited, et al.*, No. ED CV07-398 GHK (AJWx), plaintiff Alexander Nunez in the District of New Jersey action, *Nunez v. Menu Foods Limited*, No. 07CV1490 (NHL), plaintiff Richard Chamberlain in the Central District of California action, *Chamberlain v. Nestle S.A.*, No. CV07-2476 FMG (SSx), and plaintiff Mark Golding in the District of New Jersey action, *Golding v. Menu Foods Limited, et al.*, No. 07CV01521 (NLH) to transfer and consolidate the In re Pet Foods Products Liability Litigation cases to the Central District of California pursuant to 28 U.S.C. §1369 and 28 U.S.C. § 1407.¹ The *Ford* and *Hart* plaintiffs request that this Interested Party Reply be accepted by this Panel and be presented at the hearing session scheduled for May 31, 2007. The *Ford* and *Hart* Plaintiffs reply to Del Monte Foods Company's averments as follows:

1. Admitted.
2. Admitted.

¹ See Plaintiffs Hayley et al. (07CV734 BTM (RBB) and Plaintiffs' Wahl et al, (07CV02779 SJO (AJW)- (Removed from Los Angeles Superior Court on or about May 8, 2007) Response to Motion to Transfer Actions to the Central District of California filed by Plaintiffs in the following actions: *Howe v. Menu Foods Limited et al.*, CV07-02060 GHK (AJWx); *Townsend v. Menu Foods Limited et al.*, ED CV07-GHK(AJWx); *Chamberlain v. Nestle S.A.*, CV07-2476 FMG (SSx); and *Golding v. Menu Foods Limited, et al.*, 07CV01521 (NLH).

3. Admitted in part. Denied in part. Plaintiffs Jennifer Hart, Sheila Washington and Maria Mitchell are named plaintiffs in a case originally filed in the Los Angeles Superior Court, case No. BC369261, as a putative class action limited to California residents who purchased dog and cat food manufactured, distributed and/or sold by various defendants and/or whose pets became ill and/or died after ingesting the pet food. This case was subsequently removed to the California Central District Court, case No. 07CV02779 SJO (AJW).
4. Admitted in part, denied in part. Also pending is Central District of California case No. 07CV02779 SJO (AJW): on behalf of plaintiffs Jennifer Hart, Sheila Washington and Maria Mitchell v. Menu Foods Income Fund; Menu Foods Midwest Corporation, Menu Foods South Dakota, Inc., Menu Foods, Inc., Menu Foods Holdings, Inc.; Del Monte Foods Company; Nestle Purina Petcare Company, Hills Pet Nutrition; Nutro Products, Inc; Petco Animal Supplies Stores, Inc.; Petco Animal Supplies, Inc.; Petco Southwest, Inc.; Petsmart, Inc., The Iams Company; Wal-Mart Stores, Inc. This action was originally filed in the Los Angeles County Superior Court alleging similar violations under various California consumer law statutes. Defendant Menu Foods, et al., filed a Notice of Removal in this case on May 8, 2007. The case has been assigned to Judge Otero in the California Central District Court and is likely to be transferred to the Honorable George H. King, to whom the low numbered case is assigned.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted in part, denied in part. Plaintiffs are informed and believe that some limited discovery has been agreed to between Nutro Products, Inc. and the plaintiffs in *Grady et al. v. Menu Foods et al.*, Central District of California case no. CV07-0232353 DDP (PLAx).

17. Admitted.

18. Admitted.

19. Admitted in part. Denied in part. Although centralized geographical location is one of the criteria considered by the MDL Panel, there are a wide variety of factors that go into the Panel's selection of a transferee

district. Factors such as location of evidence, place where the tort event occurred, venue of the pending actions, familiarity of judges with the issues and coordination with state court proceedings are also taken into consideration when choosing a transferee district. (*Multidistrict Litigation Manual*, (2007) section 6:4-6:23, pages 180-213).

20. Denied.

21. Admitted in part. Denied in part. *Hart et al. v. Menu Foods et al.*, No. 07CV02779 was filed in the Los Angeles County Superior Court on April 10, 2007.² This case alleges violations of and seeks damages from various defendants exclusively under California tort and consumer protection laws. Plaintiffs are aware of at least four other actions initially filed in the California Superior Court, subsequently removed to Federal Court, and alleging violations of California laws: *Lois Grady and Kaye Steinsapir v. Menu Foods Income Fund, Menu Foods, Inc., Menu Foods Limited, Menu Foods Operating Limited Partnership, Menu Foods Midwest Corp., Petco Animal Supplies, Inc., and Nutro Products*, No. 07CV02253 in the Central District of California; *Kelly Finestone v. Menu Foods, Inc., The IAMS Company, and Petco Animal Supplies, Inc.*, No. 07CV02338, in the Central District of California, *Robert Payne and Steve Bartilucci v. Menu Foods, Inc., Petco Animal Supplies, Inc., Safeway, Inc. and Proctor & Gamble*

² Defendants Menu Foods, et al. filed a Notice of Removal to Federal Court in this action on May 8, 2007.

Swarberg v. Menu Foods Holdings Inc. and The IAMS Company, No.

07CV00706.

Previously the Panel has considered coordination of pretrial proceedings between transferred federal court actions and related state court actions. Transferring the cases to a federal district in which state court actions are pending has been traditionally favored. (See In re General Motors Corp. Securities & Derivative Litigation 429 F.Supp.2d 1368 (J.P.M.L. 2006); In re Delphi Corp. Securities, Derivative and “ERISA” Litigation 403 F.Supp.2d 1358 (J.P.M.L. 2005); In re Texas Gulf Sulphur Securities Litigation 344 F.Supp.1398 (J.P.M.L. 1972)). Transfer to a district where state actions are pending allows the opportunity for discovery efforts to be coordinated thereby facilitating the processing of the various actions and minimizing the drain on judicial resources. (In re Bomb Disaster at Roseville, California on April 28, 1973 399 F.Supp. 1400 (J.P.M.L. 1975), 1403).

To Plaintiffs’ knowledge, no other parties have filed actions in any other state Superior Court. Any federal court sitting in diversity will be required to strictly apply the substantive state law to the California state claims. (Erie v. Thompkins (1938) 304 U.S. 64,78; Feldman v. Allstate Ins. Co. (2003) 322 F.3d 660, 666). Therefore California is a logical choice for transfer of all of the related litigation because California federal judges are

issues involved. (In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Litigation 398 F.Supp.2d 1361 (J.P.M.L. 2005); In re Data General Corp. 470 F.Supp. 855, 859).

Further, Del Monte Foods Company has its principal place of business and corporate headquarters are located in San Francisco, California.³ In addition, Del Monte has two of their three owner operated distribution centers located in California. It is likely that many documents and witnesses for Del Monte will be located in California, especially in regard to the California only class action pending in the Central District of California, case No. 07CV02779

22. Admitted.

WHEREFORE, for the aforementioned reasons supported by the cited legal authorities, Plaintiffs Hayley Ford, Shannon J. Kramer, Jennifer Hart, Sheila Washington and Maria Mitchell respectfully oppose Del Monte Foods Company's request that the

///

///

///

///

///

///

///

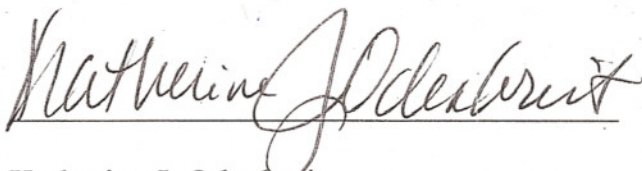
³ See attached Exhibit "1": Printout from the California Secretary of State website showing the Address listed for Del Monte Foods Company.

contaminated pet food products to the Northern District of Illinois.

DATED: May 14, 2007

Respectfully submitted,

CLASS ACTION LITIGATION GROUP



Katherine J. Odenbreit
11111 Santa Monica Blvd., Suite 1000
Los Angeles, CA 90025
Tel: (310) 481-9851
Fax: (310) 481-9854
Email: kodenbreit@class-action-attorneys.com
Attorneys for plaintiffs Ford, Kramer, Hart,
Washington and Mitchell.

California Business Portal

Secretary of State DEBRA BOWEN

DISCLAIMER: The information displayed here is current as of MAY 11, 2007 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
DEL MONTE FOODS COMPANY		
Number: C2110420	Date Filed: 6/3/1998	Status: active
Jurisdiction: DELAWARE		
Address		
1 MARKET @ THE LANDMARK		
SAN FRANCISCO, CA 94105		
Agent for Service of Process		
C T CORPORATION SYSTEM		
818 WEST SEVENTH ST		
LOS ANGELES, CA 90017		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

Exh. 1

DECLARATION OF SERVICE BY MAIL


I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 11111 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90025-3344.

2. That on May 14, 2007, declarant served **PLAINTIFFS' HAYLEY FORD, SHANNON J. KRAMER, JENNIFER HART, SHEILA WASHINGTON AND MARIA MITCHELL'S INTERESTED PARTY REPLY TO RESPONSE TO PENDING MOTIONS FOR TRANSFER AND CONSOLIDATION OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FILED BY DEL MONTE FOODS COMPANY** by depositing a true copy thereof in a United States mailbox at Los Angeles, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of May, 2007, at Los Angeles, California.



Mary McKeon

DECLARATION OF SERVICE BY MAIL


I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 11111 Santa Monica Boulevard, Suite 1000, Los Angeles, California 90025-3344.

2. That on May 14, 2007, declarant served **PLAINTIFFS' HAYLEY FORD, SHANNON J. KRAMER, JENNIFER HART, SHEILA WASHINGTON AND MARIA MITCHELL'S INTERESTED PARTY REPLY TO RESPONSE TO PENDING MOTIONS FOR TRANSFER AND CONSOLIDATION OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FILED BY DEL MONTE FOODS COMPANY** by depositing a true copy thereof in a United States mailbox at Los Angeles, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of May, 2007, at Los Angeles, California.



Mary McKeon

SERVICE LIST

Jeffrey Luthi
 Clerk of the MDL Panel
 Judicial Panel on Multidistrict Litigation
 Thurgood Marshall Federal Judiciary Building
 One Columbus Circle, N.E.
 Room G-255
 Washington, D.C. 20002-8004

**VIA FEDERAL EXPRESS ONLY TO CLERK OF THE MDL PANEL
 ORIGINAL AND FOUR (4) COPIES PLAINTIFFS' RESPONSE
 ORIGINAL PROOF OF SERVICE
 DISK WITH DOCUMENT IN WORDPERFECT**

VIA U.S. MAIL TO:

<p>Steve W. Berman HAGENS BERMAN SOBOL SHAPIRO 1301 5th Avenue, Suite 2900 Seattle, WA 98101 Telephone: 206-623-7292 Email: steve@hbsslaw.com</p>	<p>Heller, Stacey; Johnson, Suzanne E; Klemann, Craig R; Kornelius, Audrey; Mitchell; Cecily, Mitchell; Terrence, Rapp; David, Robinson; Toinette, Smith, Barbara</p>
<p>John Blim BLIM & EDELSON, LLC 53 West Jackson Blvd., Suite 1642 Chicago, IL 60604 Telephone: 312-913-9400 Facsimile: 312-913-9401 Email: john@blimlaw.com jay@blimlaw.com</p>	<p>Majerczyk, Dawn</p>
<p>Perry A. Craft CRAFT & SHEPPARD 214 Centerview Drive, Suite 233 Brentwood, TN 37027 Telephone: 615-309-1707 Facsimile: 615-309-1717 Email: perrycraft@crafsheppardlaw.com</p>	<p>Holt, Lizajean; Lefebvre, Donna; Leonard, Kim; Leroy Debra</p>

<p>James L. Davidson LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS 120 E. Palmetto Park Road, Suite 500 Boca Raton, FL 33432 Telephone: 561-750-3000 Facsimile: 561-750-3364 Email: jdavidson@lerachlaw.com</p>	<p>Troiann, Christina</p>
<p>Eukanuba One Proctor & Gamble Plaza C-2 Cincinnati, OH 45202</p>	<p>Eukanuba</p>
<p>Jason M. Hatfield LUNDY & DAVIS, LLP 300 North College Avenue, Suite 309 Fayetteville, AR 72701 Telephone: 479-527-3921 Facsimile: 479-587-9196 Email: jhatfield@lundydavis.com</p>	<p>Sims, Charles Ray; Sims, Pamela</p>
<p>Jeremy Y. Hutchinson PATTON, ROBERTS, McWILLIAMS & CAPSHAW 111 Center Street, Suite 1315 Little Rock, AR 72201 Telephone: 501-372-3480 Facsimile: 501-372-3488 Email: jhutchinson@pattonroberts.com</p>	<p>Widen, Barbara; Widen, Richard Scott</p>
<p>Ireland, D. Jeffrey Faruki, Ireland & Cox, P.L.L. 500 Courthouse Plaza, S.W. 10 North Ludlow Street Dayton, OH 45402 Telephone: 937-227-3710 Facsimile: 937-2273749 Email: djireland@ficlaw.com</p>	<p>Iams Co.</p>

<p>ANIMAL LAW OFFICES 114 W. Magnolia Street, Suite 425 Bellingham, WA 98225-4354 Telephone: 360-738-7273 Facsimile: 360-392-3936 Email: adam@animal-lawyer.com</p>	
<p>Michael David Meyers MYERS & COMPANY 1809 7th Avenue, Suite 700 Seattle, WA 98101 Telephone: 206-398-1188 Facsimile: 206-398-1189 Email: mmyers@myers-company.com</p>	<p>Whaley, Tom</p>
<p>Bruce E. Newman NEWMAN, CREED & ASSOCIATES P.O. Box 575 Bristol, CT 06011-0575 Telephone: 860-583-5200 Facsimile: 860-582-0012 Email: bnewman@newmancreedlaw.com</p>	<p>Osborne, Oauri A.; Sokolwski, Todd</p>
<p>Daniel L. Rottinghaus BERDING & WEIL 3240 Stone Valley Road West Almo, CA 94507 Telephone: 925-838-2090 Facsimile: 925-820-5592</p>	<p>Swarberg, Diane</p>
<p>Edward B. Ruff, III PRETZEL & STOUFFER, Chtd. One South Wacker Drive, Suite 2200 Chicago, IL 60606-4673 Telephone: 312-3461973 Email: eruff@pretzel-stouffer.com</p>	<p>Menu Foods Menu Foods Midwest Corporation Menu Foods, Inc. Menu Foods Income Fund Menu Foods Holding, Inc. Menu Foods Gen Par Limited Menu Foods Limited Partnership Menu Foods Operating Partnership Menu Foods, Inc. Menu Foods Ltd.</p>

BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Telephone: 215-875-3071
Facsimile: 215-875-5715

Wal-Mart Stores, Inc.
C/O Registered Agent
Corporation Trust Co.
1209 Orange Street
Wilmington, DE 19801-1120

Kenneth A. Wexler
WEXLER TORISEVA WALLACE
1610 Arden Way, Suite 290
Sacramento, CA 95815
Telephone: 916-568-1100

Wal-Mart Stores, Inc.

Sexton, Shirley