

*as de*

ORIGINAL

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A LIMITED LIABILITY LAW COMPANY

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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

SEP 11 2007  
at 3 o'clock and 15 min. M.J.  
SUE BEITIA, CLERK

Attorneys for Menu Foods, Inc.,  
Menu Foods Holdings, Inc., and  
Menu Foods Income Fund

IN THE UNITED STATES DISTRICT COURT CIRCUIT  
FOR THE DISTRICT OF HAWAII

YVONNE ORTIZ, Individually and )  
on behalf of all other similarly )  
situated persons, )

Plaintiff, )

vs. )

MENU FOODS, INC., a New Jersey )  
corporation; MENU FOODS )  
HOLDINGS, INC., a Delaware )  
corporation; MENU FOODS )  
INCOME FUND, an unincorporated )  
Canadian business; DOE ENTITIES )  
and INDIVIDUALS 1-100, )

Defendants. )

CIVIL NO. CV07-00323 DAE LEK  
(Class Action)

SUBMISSION OF ORIGINAL  
DECLARATION OF PAUL HENDERSON  
IN SUPPORT OF MENU FOODS  
HOLDINGS, INC.'S OBJECTIONS TO  
THE FINDINGS AND RECOMMEN-  
DATION TO GRANT IN PART AND  
DENY IN PART PLAINTIFF'S MOTION  
FOR REMAND AND ORDER DENYING  
DEFENDANTS' MOTION TO STAY AS  
MOOT, FILED 8/21/07, FILED 09/04/07;  
DECLARATION OF PAUL HENDERSON  
IN SUPPORT OF MENU FOODS'  
OBJECTIONS TO THE FINDINGS AND  
RECOMMENDATION OF THE  
MAGISTRATE JUDGE; CERTIFICATE  
OF SERVICE

**SUBMISSION OF ORIGINAL DECLARATON OF PAUL HENDERSON  
IN SUPPORT OF MENU FOODS HOLDINGS, INC.'S OBJECTIONS TO  
THE FINDINGS AND RECOMMENDATION TO GRANT IN PART  
AND DENY IN PART PLAINTIFFS' MOTION FOR REMAND  
AND ORDER DENYING DEFENDANTS' MOTION TO STAY  
AS MOOT, FILED 8/21/07, FILED 09/04/07**

Defendant MENU FOODS HOLDINGS, INC. ("Menu Foods") hereby submits the original of the Declaration of Paul Henderson. A true and accurate copy of this Declaration was attached as Exhibit D to "Menu Foods Holdings, Inc.'s Objections to The Findings and Recommendation to Grant In Part and Deny in Part Plaintiffs' Motion for Remand and Order Denying Defendants' Motion to Stay as Moot, filed 8/21/07", which was filed herein on September 4, 2007.

DATED: Honolulu, Hawaii, September 11, 2007.

  
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CHAD P. LOVE  
BARBARA J. KIRSCHENBAUM

Attorneys for Menu Foods Inc, Menu Foods Holdings, Inc., and Menu Foods Income Fund

IN THE UNITED STATES DISTRICT COURT CIRCUIT  
FOR THE DISTRICT OF HAWAII

YVONNE ORTIZ, Individually and )  
on behalf of all other similarly )  
situated persons, )

Plaintiff, )

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corporation; MENU FOODS )  
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corporation; MENU FOODS )  
INCOME FUND, an unincorporated )  
Canadian business; DOE ENTITIES )  
and INDIVIDUALS 1-100, )

Defendants. )

CIVIL NO. CV07-00323 DAE LEK  
(Class Action)

DECLARATION OF PAUL HENDERSON  
IN SUPPORT OF MENU FOODS'  
OBJECTIONS TO THE FINDINGS AND  
RECOMMENDATIONS OF THE  
MAGISTRATE JUDGE

**DECLARATION OF PAUL HENDERSON**

The undersigned hereby declares that:

1. I am the President and Chief Executive Officer of Menu Foods Gen Par Limited, the administrator of Menu Foods Income Fund. I submit this declaration in support of Menu Foods Holdings' Objections to the Findings and Recommendation of Magistrate Judge Leslie Kobayashi, dated August 21, 2007,

insomuch as it recommends granting Plaintiffs' motion for remand and denying Menu Foods Holdings' motion for a stay of proceedings.

2. Defendant Menu Foods, Inc. is a New Jersey corporation with its principal place of business in Pennsauken, New Jersey, and is a manufacturer of certain animal food products. Defendant Menu Foods Holdings, Inc. is a Delaware corporation with its principal place of business in Pennsauken, New Jersey. Defendant Menu Foods Income Fund is an unincorporated open-ended trust with its principal place of business in Streetsville, Ontario, Canada. (For purposes of this declaration, unless otherwise specifically identified, all of the Menu Foods defendants will be collectively referred to as "Menu Foods.")


3. None of the Menu Foods defendants sell directly to consumers, and Menu Foods, Inc. is the only Menu Foods defendant to this action that manufactures pet food.

4. Menu Foods does not have access to data regarding sales to consumers specific to any particular state.

5. Although Menu Foods has sales data relating to gross sales to retailers and the branded companies, these figures do not reflect (1) the retail price that consumers pay, or (2) the volume of sales to consumers by state. Such figures may be in the possession of the retailers and branded companies that Menu Foods sells to, but Menu Foods does not have access to such information.

I, PAUL HENDERSON, DECLARE UNDER PENALTY OF LAW THAT  
THE FOREGOING IS TRUE AND CORRECT.

DATED: Toronto, Canada, September 4, 2007.

  
\_\_\_\_\_  
PAUL HENDERSON

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

YVONNE ORTIZ, Individually and )  
on behalf of all other similarly )  
situated persons, )

Plaintiff, )

vs. )

MENU FOODS, INC., a New Jersey )  
corporation; MENU FOODS )  
HOLDINGS, INC., a Delaware )  
corporation; MENU FOODS )  
INCOME FUND, an unincorporated )  
Canadian business; DOE ENTITIES )  
and INDIVIDUALS 1-100, )

Defendants. )

CIVIL NO. CV07-00323DAELEK  
(Class Action)

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the following persons via the United States Postal Service, postage prepaid, at the addresses indicated on September 11, 2007:

THOMAS R. GRANDE, ESQ.  
851 Fort Street, Ste. 400  
Honolulu, HI 96813  
and

EMILY A. GARDNER, ESQ.  
Dillingham Transportation Building  
735 Bishop St., Ste. 402  
Honolulu, HI 96813  
(Attorneys for Plaintiffs)

DATED: Honolulu, Hawaii, SEP 11 2007.

  
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CHAD P. LOVE  
BARBARA J. KIRSCHENBAUM

Attorneys for Menu Foods, Inc., Menu Foods  
Holdings, Inc., and Menu Foods Income Fund