

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

YVONNE ORTIZ, Individually and	)	CIVIL NO. CV07-00323(DAE/LEK)
on behalf of all other similarly	)	(Class Action)
situated persons,	)	
	)	MEMORANDUM IN SUPPORT
Plaintiff,	)	OF MOTION
	)	
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.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF MOTION**

Pursuant to Local Rule 74.2, Defendant Menu Foods Holdings Inc. (“Menu Foods”) respectfully requests for leave to file the attached (Exhibit 1) Reply to Plaintiffs’ Response to Menu Foods’ Objections. The proposed reply is very brief (5 pages) and Menu Foods believes that it will assist the Court in resolving the matter before it because it (a) addresses a new argument made by

Plaintiffs that reaches the core issues of this matter, and (b) clarifies the standard of review, which has been challenged by Plaintiffs.

**Plaintiffs Raise a New Argument.** In Plaintiffs' Response to Menu Foods' Objections, Plaintiffs contend that arguments made by Menu Foods in the motion to vacate the conditional transfer order pending before the JPML in another action entitled, *Picus v. Walmart, et al*, (USDC Nevada), supports Plaintiffs' motion to remand. Plaintiffs are mistaken. However, because they never discussed *Picus* in their remand papers submitted to Judge Kobayashi, Menu Foods has had no opportunity to respond. In the attached Reply, Menu Foods briefly responds to this new argument, explains the dissimilarities between the case, and demonstrates that in *Picus*, the district court stayed all proceeding pending the determination by the JPML, the very relief sought by Defendants here.

**Plaintiffs Dispute the Applicable Standard of Review.** The applicable standard of review is critical to a fair resolution of this matter. Surprisingly, Plaintiffs dispute the applicability of LR 74.2, specifically its *de novo* standard of review, to this Court's review of Magistrate Judge Kobayashi's Findings and Recommendation. Because of its significance, the Reply briefly addresses this issue.

