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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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

Plaintiff,

v.

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)

NOTICE OF PLAINTIFF'S MOTION  
FOR REMAND; PLAINTIFF'S  
MOTION FOR REMAND;  
MEMORANDUM IN SUPPORT OF  
MOTION; CERTIFICATE OF  
SERVICE

HEARING SET:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Judge: \_\_\_\_\_

**NOTICE OF PLAINTIFF'S MOTION FOR REMAND**

TO: Chad P. Love  
Barbara J. Kirschenbaum  
Love & Kirschenbaum  
1164 Bishop Street, Ste. 1105  
Honolulu, Hawaii 96813

NOTICE IS HEREBY GIVEN that the above-entitled motion shall come for hearing before the Honorable \_\_\_\_\_, Judge of the above entitled Court, in \_\_\_\_\_ courtroom in the Prince Jonah Kuhio Kalaniana'ole Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850, at \_\_\_\_\_ .m, on \_\_\_\_\_, 2007, or as soon thereafter as counsel be heard.

DATED: Honolulu, Hawaii, July 12, 2007.

\_\_\_\_\_  
/s/ Thomas R. Grande  
THOMAS R. GRANDE  
EMILY A. GARDNER

Attorneys for Plaintiff

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PLAINTIFF'S MOTION FOR  
REMAND

**PLAINTIFF'S MOTION FOR REMAND**

Plaintiff above named moves pursuant to Federal Rules of Civil Procedure 7,  
Local Rule 7.2 and 28 USC 1447 for remand of this action to state court.

Under the Class Action Fairness Act (CAFA) and Lowdermilk v. U.S. Bank  
National Ass'n, 479 F.3d 994 (9<sup>th</sup> Circuit, 2007), Defendant Menu<sup>1</sup> has failed to prove to  
a "legal certainty" that the requirements for original jurisdiction in federal courts have  
been met. Specifically, Defendant Menu has failed to introduce any evidence of:  
(1) class size or (2) class damages to verify that damages in this action exceed \$5 million.  
Defendant Menu has instead only offered the court conjecture and speculation in specific  
violation of the requirements of Lowerdermilk. Because of Defendant Menu's failure to

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<sup>1</sup> At the time of filing the removal petition, only Defendant Menu Foods, Inc. had been served with the complaint. At the time of filing this motion, Defendant Menu Foods Holdings, Inc. has also been served with the complaint.

meet its burden, Plaintiff respectfully requests that the Court remand this case to Hawaii circuit court.

This motion is based upon the attached memorandum and all the pleadings and filings in this case.

DATED: Honolulu, Hawaii, July 12, 2007.

/s/ Thomas R. Grande  
THOMAS R. GRANDE  
EMILY A. GARDNER

Attorneys for Plaintiff