

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

VALERIE SYLVESTER; DAVID)	CIVIL NO. CV 07-00409 ACK-KSC
PANG; ANDREW GARCIA;)	(Non-Vehicle Tort)
RUTH CAMARGO; CHRIS)	
HUBBARD; STACEY COLLINS;)	MENU FOODS INCOME FUND’S
RANDALL BANDMANN; KELLY)	MOTION TO QUASH OR, ALTERNA-
ENGLE; PAM GOULD; and)	TIVELY, TO DISMISS
ERIK CORAL-SANDS,)	
)	
Plaintiffs,)	
)	
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.)	
)	

MENU FOODS INCOME FUND’S MOTION TO QUASH OR, ALTERNATIVELY, TO DISMISS

Defendant Menu Foods Income Fund (the “Income Fund”) moves to quash Plaintiffs’ purported service of process upon it or, alternatively, to dismiss pursuant to Fed. R. Civ. P. 12(b)(4), 12(b)(5), and 12(b)(2) for insufficiency of process, insufficiency of service of process, and lack of jurisdiction. Although service

undoubtedly was improper, counsel for the Income Fund nonetheless repeatedly has offered to accept service of Plaintiffs' Complaint in exchange for a brief extension to respond that is consistent with the extension this Court previously granted co-Defendants Menu Foods, Inc., and Menu Foods Holdings, Inc. Plaintiffs steadfastly refused to extend this reasonable courtesy. These obstructive actions have forced the Income Fund to file an *ex parte* application for an extension. That application remains pending, but if the Court grants it, the Income Fund hopes that it will be able to resolve service issues and withdraw this motion, and then respond to the Complaint at the same time as its co-defendants. However, to reserve its rights as a foreign unincorporated business entity that has not been sued and served properly, the Income Fund must file this motion to quash or dismiss.

This Motion is made pursuant to Fed. R. Civ. P. 4(f), 4(h), 7, 12(b)(4), 12(b)(5), and 12(b)(2), Rules 7.1 thru 7.6 of the Local Rules of the United States District Court for the District of Hawaii, the memorandum, and declarations attached hereto, and the records and files herein.

DATED: Honolulu, Hawaii, August 3, 2007.

/s/ Chad P. Love
CHAD P. LOVE
BARBARA J. KIRSCHENBAUM
Attorneys for Defendant Menu Foods
Holdings, Inc., and Menu Foods, Inc.,
and Menu Foods Income Fund