

Emily A. Gardner #6891
Attorney at Law, LLC
735 Bishop Street, Suite 402
Honolulu, HI 96813
Tel: (808) 540-0200
Fax: (808) 540-0201

Attorney for Plaintiffs
Valerie Sylvester, et al

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

Valerie Sylvester, David Pang, Andrew Garcia,
Ruth Camargo, Chris Hubbard, Stacey Collins,
Randall Bandmann, Kelly Engle, Pam Gould and
Erik Coral-Sands

Plaintiffs,

v.

MENU FOODS, INC., a New Jersey Corporation;
MENU FOODS HOLDINGS, INC., a Delaware
Corporation, MENU FOODS INCOME FUND, an
unicorporated Canadian business; Doe Entities
and Individuals 1- 100,

Defendants.

Civil No. CV07-00409HGKSC
(Non-Vehicle Tort)

PLAINTIFFS' MOTION TO REMAND;
MEMORANDUM IN SUPPORT OF
MOTION;
DECLARATION OF EMILY A.
GARDNER; EXHIBIT "1" & "2";
CERTIFICATE OF SERVICE

PLAINTIFFS' MOTION TO REMAND

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

In their Notice of Removal filed with this court on July 27, 2007, Defendants have
failed to prove to a "legal certainty" that the requirements for original jurisdiction in
federal courts have been met. Specifically, Defendants have failed to introduce any
evidence of damages to verify that damages in this action for one or more named

Plaintiffs exceed the jurisdictional threshold of \$75,000. Defendants instead have relied fully on Plaintiffs' Request to Exempt the Case from the Court Annexed Arbitration Program, filed in state court as proof of damages. In doing so, not only have Defendants failed to address the amount of damages, pled in the actual Complaint, but, as will be shown, have misinterpreted the Hawaii Arbitration Rules. Because no individual Plaintiff in this action is alleging damages greater than \$75,000, and Defendant has offered no evidentiary proof of such, Defendants failed to meet their burden.

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Moreover, at the time Defendants filed their Notice of Removal with the court on July 27, 2007, they joined Defendants Menu Foods Holdings and Menu Foods, Inc. in the removal. Defendant Menu Foods Inc. had not yet been served and was not in a position to consent to removal. In addition, Defendant Menu Foods Income Fund, had been served on July 13, 2007, and failed to join the Notice of Removal¹. Because Defendants failed to join the proper Defendants at the time of filing their Notice of Removal, the notice was defective, and should be denied.

For the above-stated reasons, Plaintiff respectfully requests that the Court remand this case to Hawaii circuit court.

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

DATED: HONOLULU, HAWAII, AUGUST 26, 2007

/s/Emily A. Gardner
Emily A. Gardner
Attorney for Plaintiffs Valerie Sylvester et al.

¹ Plaintiffs herein acknowledge that several weeks after filing their Notice of Removal, Defendants formally challenged service of process of Menu Foods Income Fund, and filed a Motion to Quash, or alternatively to Dismiss on August X, 2007.