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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
SEP 04 2007  
at 11 o'clock and 35 min. M.  
SUE BEITIA, CLERK

Attorney for Plaintiffs  
Valerie Sylvester, et al

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' NOTICE OF FILING  
OPPOSITION TO CONDITIONAL  
TRANSFER ORDER (CTO-4) WITH  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION;  
EXHIBIT "1"; CERTIFICATE OF  
SERVICE

PLAINTIFFS' NOTICE OF FILING OPPOSITION TO CONDITIONAL TRANSFER  
ORDER (CTO-4) WITH JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Plaintiffs Valerie Sylvester, David Pang, Andrew Garcia, Ruth Camargo, Chris  
Hubbard, Stacey Collins, Randall Bandmann, Kelly Engle, Pam Gould and Erik Coral-  
Sands have filed an Opposition to Conditional Transfer Order (CTO-4) with the Judicial  
Panel on Multidistrict Litigation, objecting to the transfer of this case as a "tag-along

**EXHIBIT 1**

action” pursuant to Rule 7.4 (c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (JPML). Exhibit “1,” attached hereto.

Procedure in MDL after Notice of Opposition Filed

According to JPML Rule 7.4(d), “within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel.” The briefing schedule is set by the clerk of the Panel. JPML Rule 7.4 (c).

Notice of Opposition Stays Service and Execution of Conditional Transfer Order to Transferee Court

Pursuant to JPML rule 7.4(c), upon receipt of the notice of opposition “the clerk of the panel shall not transmit the conditional transfer order to the clerk of the transferee court until further order of the Panel.” Because conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court, filing the notice of opposition stays execution of the conditional transfer order.” Fu’s Garden Restaurant v. Archer-Daniels Midland Company, 2000 WL 635440, \*1 (N.D. Cal. 2000).


Transferee Court Retains Jurisdiction to Decide Pending Motions to Remand and Stay

Under JPML Rule 1.5, this Court retains jurisdiction to decide the pending motions to remand and stay that have been filed.

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of the court. A transfer or remand pursuant to 28 U.S.C. § 1407 shall be effective when the transfer or remand order is filed in the office of the district court of the transferee district.

Thus, during the pendency of a conditional transfer order pursuant to 28 U.S.C. § 1407, the transferee court retains jurisdiction to decide a pending motion to remand. Fu's Garden, supra. Faulk v. Owens-Corning, Fiberglass Corp., 48 F. Supp. 2d 653, 657 n.2 (E.D. Texas Beaumont Division 1999).

DATED: HONOLULU, HAWAII, SEPTEMBER 4, 2007

  
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EMILY A. GARDNER  
ATTORNEY FOR PLAINTIFFS  
VALERIE SYLVESTER et al

UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

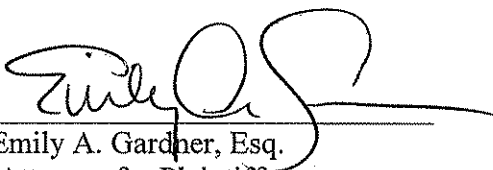
MDL NO. 1850

IN RE PET FOOD PRODUCTS LITIGATION

*Valerie Sylvester et al. v. Menu Foods, Inc., et al.*, D. Hawaii C.A. No. 1:07-409

NOTICE OF OPPOSITION TO CONDITIONAL TRANSFER ORDER (CTO-4)

Pursuant to Rule 7.4 (c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiffs Valerie Sylvester, David Pang, Andrew Garcia, Ruth Camargo, Chris Hubbard, Stacey Collins, Randall Bandmann, Kelly Engle, Pam Gould and Erik Coral-Sands file their Notice of Opposition to Conditional Transfer Order (CTO-4) for transfer of the above-captioned action as a “tag-along action.”

By:   
Emily A. Gardner, Esq.  
Attorney for Plaintiffs  
Valerie Sylvester, David Pang  
Andrew Garcia, Ruth Camargo, Chris  
Hubbard, Stacey Collins, Randall  
Bandmann, Kelly Engle, Pam Gould  
And Erik Coral-Sands

Emily A. Gardner,  
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Tel: (808) 540-0200

Date: Honolulu, Hawaii, August 31, 2007

**EXHIBIT** 1

UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION


MDL NO. 1850

IN RE PET FOOD PRODUCTS LITIGATION

*Valerie Sylvester et al. v. Menu Foods, Inc., et al.*, D. Hawaii C.A. No. 1:07-409

CERTIFICATE OF SERVICE

I hereby certify that Plaintiffs' Notice of Opposition to Conditional Transfer Order (CTO-4) was faxed to the Clerk of the Panel on August 31, 2007 and served by First Class Mail on August 31, 2007, upon all counsel on the Involved Counsel List attached to this Certificate of Service

By:   
Emily A. Gardner, Esq.  
Attorney for Plaintiffs  
*Valerie Sylvester et al.*

Date: Honolulu, Hawaii, August 31, 2007

**EXHIBIT 1**

**INVOLVED COUNSEL LIST (CTO-4)**  
**MDL NO. 1850**  
**IN RE Pet Food Products Liability Litigation**

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**EXHIBIT 1**

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,

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

Defendants.

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon the following persons via U.S. mail, postage prepaid at the addresses indicated on August 28, 2007.

Chad Love, Esq.  
Barbara J. Kirschenbaum, Esq.  
1164 Bishop Street, Suite 1105  
Honolulu, HI 96813

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

DATED: HONOLULU, HAWAII, September 4, 2007

  
\_\_\_\_\_  
EMILY A. GARDNER  
Attorney for Plaintiffs Valerie Sylvester et al.