

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;) DECLARATION OF CHAD P. LOVE
RANDALL BANDMANN; KELLY)
ENGLE; PAM GOULD; and)
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.)
_____)

DECLARATION OF CHAD P. LOVE

The undersigned hereby declares that:

1. I am an attorney licensed to practice law before all the Courts in the State of Hawaii and the United States District Court, District of Hawaii; I am one of the attorneys representing Defendant MENU FOODS INCOME FUND (“Income Fund”) in the above-captioned proceeding and am competent to testify as

to the matters stated herein and make this declaration upon personal knowledge except and unless stated to be upon information and belief.

2. Upon information and belief, on or about July 13, 2007, Plaintiffs allegedly served Defendant Menu Foods Income Fund with a copy of the First First Amended Complaint/Summons. Income Fund believes that this service was defective but nonetheless out of an abundance of caution is requesting this extension to answer or otherwise respond to the First Amended Complaint.

3. Defendants Menu Foods, Inc., and Menu Foods Holdings, Inc., filed a "Notice of Removal" on July 27, 2007. Pursuant to Federal Rules of Civil Procedure Rule 81, Defendants answer (or other response) to the First Amended Complaint is due on Friday, August 3, 2007.

4. In accordance with LR 6.2 (which requires counsel to attempt to obtain an extension before requesting an extension from this Court), on July 30, July 31, and August 2, 2007, I contacted Plaintiffs' counsel and attempted to obtain an extension of time to answer or otherwise respond to the First Amended Complaint. I was unable to obtain an extension.

5. This lawsuit involves claims arising out of the recent pet food recall. Upon information and belief, there are over 100 such lawsuits filed in Federal Courts around the country. On June 19, 2007, the Judicial Panel on Multipanel Litigation ("JPML") assigned the pet food recall cases to the District of New

Jersey (a true and accurate copy of the JPML decision is attached as Exhibit A). It is believed that the instant lawsuit will be “tagged” soon and transferred to the Multi District Litigation (“MDL”) action.

6. Based on the probability that this action will be transferred to the New Jersey MDL action, Defendants Menu Foods, Inc., and Menu Foods Holdings, Inc. filed a “Motion to Stay All Proceedings” on August 2, 2007. This will promote judicial economy and eliminate the risk of inconsistent and/or conflicting pretrial rulings between this Court and the MDL Court on, for example, discovery issues.

7. This is the first extension requested by Defendant Income Fund in this matter.

8. The requested extension will promote judicial economy by avoiding the filing and serving of pleadings while the JPML and MDL proceed; in the alternative, the requested extension will allow Defendant Income Fund time to apply for a further extension or enlargement by stipulation or duly noticed motion, if one should be necessary.

9. Defendant Income Fund notes that there is a related case, entitled *Yvonne Ortiz, individually and on behalf of all other similarly situated persons v. Menu Foods, Inc., a New Jersey Corporation; Menu Foods Holdings, Inc., a Delaware Corporation; Menu Foods Income Fund, an unincorporated Canadian business*, Civil No. 07-00323 DAE-LEK. Judge Kobayashi granted an extension

of time to Answer the Complaint, subsequent to which the parties entered into a Stipulation. A "Motion to Stay" and "Motion to Remand" are currently pending in that action. No answer has been filed in that action as of this time.

10. In addition, on August 2, 2007, this Court granted Defendants Menu Foods, Inc., and Menu Foods Holdings, Inc., a thirty-day extension in which to file their Answer or otherwise respond to Plaintiffs' First Amended Complaint.

11. Accordingly, (a) because the deadline to Answer or otherwise respond is today, Friday, August 3, 2007; and (b) because I have been unable to obtain Plaintiffs' agreement to an extension of time; and (c) because Defendants Menu Foods, Inc., and Menu Foods Holdings, Inc., filed a "Motion to Stay All Proceedings"; and (d) because of the likely transfer of this case to the MDL action; and (e) because there will be no prejudice to Plaintiffs to extend the answer/response date; and (f) because there is insufficient time to file a duly noticed Motion under LR 6.2(b), Defendant Income Fund files this *ex parte* Application and requests that it be granted an extension of time to answer (or otherwise respond) to the First Amended Complaint. Defendant Income Fund requests that the extension be given in the form in the attached proposed Order.

DATED: Honolulu, Hawaii, August 3, 2007.

/s/ Chad P. Love
CHAD P. LOVE