

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

MARK MONSOUR, SHEILA MONSOUR, )  
and MONSOUR’S INC., )

Plaintiffs, )

vs. )

Case No. 05-1204-MLB

MENU MAKER FOODS, INC., )

Defendant. )

\_\_\_\_\_ )

**DEFENDANT’S THIRD MOTION FOR EXTENSION OF TIME WITHIN WHICH TO  
FILE RESPONSE TO PLAINTIFFS’ MOTION REQUIRING DEFENDANT TO PAY  
COSTS ASSOCIATED WITH DEPOSITION OF PLAINTIFFS’ EXPERT**

COMES NOW the defendant, by and through its attorney of record, John Val Wachtel of Klenda, Mitchell, Austerman & Zuercher, L.L.C., and hereby moves this Court for a third order extending the time within the defendant must file a response to the Plaintiffs’ Motion Requiring Defendant to Pay Costs Associated with Deposition of Plaintiffs’ Expert (Doc. 90) hereinafter, “the Motion.” In support of the Motion, the Defendant states:

1. Plaintiffs filed the Motion on November 10, 2006, and served a copy of the Motion along with a brief in support upon counsel for the defendant.
2. Defendant’s counsel has and has had pneumonia, which has prevented defendant’s counsel from responding to the Motion within the amount of time allotted by the rules.
3. Counsel for the defendant filed a motion seeking additional time within which to respond to the Motion, that motion was granted by the court, and an order was entered extending defendant’s response date to November 29, 2006.

4. Counsel for the defendant had not yet recovered from pneumonia, had medical tests, and must undergo an additional battery of medical tests, all of which made it impossible to respond to the plaintiffs' motion by November 29<sup>th</sup>.

5. Counsel for the defendant discussed this matter with plaintiffs' counsel, including this request for an additional extension of time, and counsel for the plaintiffs does not object to such extension.

6. Counsel requested that the time for responding to plaintiffs' motion be extended until December 11, 2006.

7. The motion was granted and the response date was extended to December 11, 2006.

8. Counsel for defendant has continued to suffer from pneumonia and has been unable to prepare a response.

9. Counsel for the defendant hereby requests an extension until December 21, 2006 within which to respond.

10. Counsel has discussed this matter with counsel for plaintiffs, who does not object to the continuance.

11. Counsel for defendant anticipates that no further motions will be filed.

12. Granting this motion will not delay these proceedings.

13. This Motion is made in good faith and not for the purpose of delay.

WHEREFORE, the defendant prays for an order of this Court granting an extension of time within which to file a response to the Motion until December 21, 2006.

Respectfully submitted,

KLENDIA, MITCHELL, AUSTERMAN &  
ZUERCHER, L.L.C.

s/John Val Wachtel

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11<sup>th</sup> day of December, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send electronic notice of this filing to:

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