

Exhibit P



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

**MARK MONSOUR, et al.
VS.
MENU MAKER FOODS, INC.**

Case No. 05-1204-MLB

**DEPOSITION OF RON ORR
DECEMBER 13, 2005**

OFFICES MISSOURI ■ ILLINOIS ■ KANSAS

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RON ORR 12/13/2005

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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF KANSAS
 3
 4 MARK MONSOUR, SHEILA MONSOUR,) and MONSOUR'S, INC.,)
 5)
 6 Plaintiffs,)
 7 vs.)
 8) Case No. 05-1204-MLB
 9)
 10 MENU MAKER FOODS, INC.,)
 11)
 12 Defendant.)
 13
 14 THE VIDEOTAPED DEPOSITION OF RON ORR,
 15 produced, sworn, and examined on Tuesday, December 13, 2005,
 16 at 8:55 a.m. of that day, pursuant to Federal Rules of Civil
 17 Procedure and Notice to Take Deposition at Menu Maker Foods,
 18 913 Big Horn Drive, in the City of Jefferson, County of Cole,
 19 State of Missouri, before Monnie S. VanZant, Certified
 20 Shorthand Reporter, Registered Professional Reporter,
 21 Certified Court Reporter #0538, in a certain cause now
 22 pending in the United States District Court, for
 23 the District of Kansas, wherein the parties are as above set
 24 forth; taken on behalf of the Plaintiffs.
 25

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1 RON ORR,
 2 being first duly sworn to testify the truth, the whole truth,
 3 and nothing but the truth, testified as follows:
 4 DIRECT EXAMINATION
 5 BY MR. DEVAUGHN:
 6 **Q Would you please state your full name?**
 7 A Ron Orr.
 8 **Q Mr. Orr, my name is Dustin DeVaughn. I**
 9 **represent the plaintiffs in this case. Do you**
 10 **understand that?**
 11 A Yes.
 12 **Q Have you ever had your deposition taken before?**
 13 A No, sir.
 14 **Q Basically, I'm going to be asking you questions**
 15 **about yourself, your background, about -- about**
 16 **Menu Maker Foods and about the facts pertaining**
 17 **to this case.**
 18 **If I ask you any questions you don't**
 19 **understand, would you please stop me and ask me**
 20 **to repeat or rephrase the question?**
 21 A Okay.
 22 **Q You're doing a nice job on answering audibly.**
 23 **Please continue to do that.**
 24 **You've had a chance to speak with -- with**
 25 **Menu Maker Foods' attorney about what a**

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1 APPEARANCES
 2
 3 For Plaintiffs: Mr. Dustin L. DeVaughn
 4 and Mr. Richard W. James
 5 McDonald, Tinker, Skaer, Quinn
 6 & Herrington, PA
 7 300 West Douglas, Suite 500
 8 Wichita, KS 67202-2909
 9 (316) 263-5851
 10
 11 For Defendant: Mr. John Val Wachtel
 12 Klenda, Mitchell, Austerman
 13 & Zuercher, LLC
 14 1600 Epic Center
 15 301 North Main Street
 16 Wichita, KS 67202-4888
 17 (316) 267-0331
 18
 19 Also Present: Mr. Mark Monsour
 20 Mr. Creighton Cox
 21 Videotaped by: McDonald, Tinker, Skaer,
 22 Quinn & Herrington, PA
 23
 24 SIGNATURE INSTRUCTIONS: Read and sign, waive presentment.
 25 EXHIBIT INSTRUCTIONS: None marked.

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1 **deposition is, right?**
 2 A Yes.
 3 **Q Okay. If you need a break, tell me. I'll**
 4 **probably want to finish the line of questioning**
 5 **that I'm on. But you're not going to be held**
 6 **hostage here. If you need to take a break,**
 7 **we'll take a break. Is that fair?**
 8 A Yes, sir.
 9 **Q Can you tell me what your current position with**
 10 **Menu Maker Foods is?**
 11 A Produce Buyer and Logistics Manager.
 12 **Q Back in 1992, was your position the same as it**
 13 **is today?**
 14 A 1992. I don't believe so.
 15 **Q What was your position back in 1992?**
 16 A I believe that I was just a produce buyer.
 17 **Q What's the difference between produce manager**
 18 **and produce buyer? Did you say you're**
 19 **currently a produce manager?**
 20 A Produce buyer.
 21 **Q I'm sorry. I misunderstood you.**
 22 A That's okay.
 23 **Q Then strike that question.**
 24 A I don't believe I was doing logistics at that
 25 time is why I said that.

I N D E X

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21 **Q I'm sorry. I misunderstood you.**
 22 A That's okay.
 23 **Q Then strike that question.**
 24 A I don't believe I was doing logistics at that
 25 time is why I said that.

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1 A I don't know what it would be off the top of my
 2 head.
 3 **Q Okay. Let's talk about fruit. On average,**
 4 **what grade of fruit does Menu Maker Foods**
 5 **retail customers want?**
 6 A Extra fancy.
 7 **Q I said retail customers. I meant to say food**
 8 **service customers.**
 9 A Well, we have no retail, so, yes.
 10 **Q Okay. Is that a hundred percent of the time**
 11 **that they want extra fancy fruit, or is that --**
 12 A I'd say 95 just to --
 13 **Q Now just so I'm clear, why is it that they on**
 14 **average want a higher grade fruit than they do**
 15 **a vegetable?**
 16 A Again, because of the fact that a vegetable
 17 more often than not would be prepared and taken
 18 to them, where a piece of fruit would be
 19 something that they would visually pick with
 20 their eyes.
 21 **Q In representing my client, I'm going to have to**
 22 **ask you some difficult questions. And I -- I**
 23 **don't mean to -- to be rude or hostile in any**
 24 **fashion, but I do need to ask you some**
 25 **difficult questions. You understand you're**

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1 **under oath?**
 2 A Yes, sir.
 3 **Q Have you, prior to your employment at Menu**
 4 **Maker Foods, ever received any type of -- of**
 5 **personal payment or any type of compensation**
 6 **from any type of -- of produce supplier in**
 7 **exchange for you buying their -- their produce**
 8 **from them?**
 9 A No, sir.
 10 **Q While employed at Menu Maker Foods, have you**
 11 **ever received any type of compensation,**
 12 **payment, kickback, anything, from any produce**
 13 **supplier in exchange for you buying Menu**
 14 **Maker's produce from them?**
 15 A No, sir.
 16 **Q I'll represent to you that the Asset Purchase**
 17 **Agreement that was executed between Menu Maker**
 18 **Foods and the plaintiffs in this case,**
 19 **Monsour's Inc., Mark Monsour and Sheila**
 20 **Monsour, was executed on January 31st, 2002.**
 21 **Do you have a recollection of when you**
 22 **first learned of the Asset Purchase Agreement?**
 23 A No, sir.
 24 **Q My client, Mark Monsour, will testify that when**
 25 **he talked to you about the Asset Purchase**

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1 **Agreement after it had -- after it had been**
 2 **executed, that you indicated to him that you**
 3 **had no knowledge of it. Do you remember that**
 4 **conversation?**
 5 A No, sir.
 6 **Q Do you have any recollection of talking with**
 7 **any representative of Menu Maker Foods about**
 8 **Menu Maker Foods purchasing the assets of**
 9 **Monsour's, Inc., before it took place?**
 10 A Before?
 11 **Q (Witness nods head.)**
 12 A I'm not certain.
 13 **Q Let me ask you this: Do you have any**
 14 **recollection of how you found out about the**
 15 **Asset Purchase Agreement?**
 16 A Yes.
 17 **Q And how -- how did you find out about it?**
 18 A Mr. Graves so informed me.
 19 **Q And what was the -- the context of the**
 20 **situation?**
 21 A Just that we were going to expand into Kansas
 22 and that he was doing so by partnering with
 23 Mark Monsour.
 24 **Q But you have no personal recollection of**
 25 **whether that was before or after January 31st,**

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1 **2002?**
 2 A I'm sorry. I do not.
 3 **Q Back in 2002, can you tell me how you were**
 4 **compensated by Menu Maker Foods? Was it a flat**
 5 **salary? Was it a commission based upon profit**
 6 **of the company? I mean, can you explain to me**
 7 **how you were compensated back in 2002?**
 8 A It would be salary and a bonus.
 9 **Q The salary was a fixed salary?**
 10 A Yes, sir.
 11 **Q What was that salary back in 2002?**
 12 A I do not recall.
 13 **Q Can you give me a vicinity?**
 14 A Maybe 40 or somewhere in thereabouts.
 15 **Q The bonus. How was the bonus calculated?**
 16 A It was calculated off of service level, meaning
 17 percent of orders that I filled.
 18 **Q Can you give me an example?**
 19 A Yes. If 100 cases were ordered and I filled
 20 all 100 cases, that would be a 100 percent fill
 21 rate.
 22 **Q Okay. So your food service customers, if they**
 23 **ordered 100 cases from you and you filled all**
 24 **100 cases to them, that would be a 100 percent**
 25 **fill rate?**

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1 A Yes, sir.

2 **Q And then had you a -- like a sliding scale**

3 **bonus based upon your fill rate?**

4 A Yes, sir.

5 **Q What was the maximum bonus that you could**

6 **receive back in 2002?**

7 A For both?

8 **Q You said for both. What does that mean?**

9 A The bonus was split. It was 60 percent fill

10 rate, 40 percent inventory turn.

11 **Q Okay. Explain to me inventory turn.**

12 A Frequency of buying.

13 **Q Frequency of what?**

14 A Purchase. How many times I turned the

15 inventory a year.

16 **Q Okay. And you call that inventory what?**

17 A Turn.

18 **Q Just so I can make certain I understand it, if**

19 **-- go ahead and give me an example of that.**

20 A If I purchased my inventory only one time a

21 week and sold it all, that would equal 52

22 turns. I would have turned the inventory 52

23 times in one year.

24 **Q With respect to the fill rate, what's the**

25 **maximum bonus that you could get?**

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1 A Six hundred.

2 **Q Six hundred dollars?**

3 A Per quarter. I'm sorry.

4 **Q Six hundred dollars per quarter?**

5 A Yes, sir.

6 **Q What's the maximum bonus that you can get with**

7 **respect to inventory turn?**

8 A Four hundred.

9 **Q Per quarter?**

10 A Yes, sir.

11 **Q It's my understanding that several people are**

12 **going to testify that -- that they personally**

13 **heard you exclaim that -- something to the**

14 **effect that you would not allow -- or Menu**

15 **Maker Foods would not buy Monsour's produce.**

16 **Do you remember making statements to that**

17 **effect?**

18 A No, sir.

19 **Q Have you had a chance to -- to review Monsour,**

20 **Inc.'s, interrogatory responses?**

21 A Yes.

22 **Q Those are the responses to the questions that**

23 **Menu Maker Foods sent. Do you know what I'm**

24 **talking about?**

25 A I believe I do.

Page 23

1 **Q Okay. And have you had a chance to read those?**

2 A Yes.

3 **Q And in those responses, there are examples of**

4 **-- of people's recollections of comments that**

5 **you made. Do you remember reading those?**

6 A Yes.

7 **Q With respect to those specific assertions, you**

8 **have no recollection of -- of saying anything**

9 **to that effect?**

10 MR. WACHTEL: Let me -- let me -- let

11 me interpose an objection.

12 MR. DEVAUGHN: I think that's right.

13 Let me be more specific.

14 MR. WACHTEL: Okay. There are -- my

15 objection is that there are many assertions of

16 things he said in the interrogatories. And if

17 we're going to ask him about them, we ought to

18 ask him about them individually, not lump them

19 all together. But that's just my objection.

20 MR. DEVAUGHN: I wholly agree.

21 **Q (By Mr. DeVaughn) Do you have any recollection**

22 **of making any type of comment in the presence**

23 **of Ed Fairchild that you would not purchase**

24 **produce from Menu Maker Foods?**

25 A No.

Page 24

1 **Q Do you have any recollection of making any**

2 **statements to Mark Monsour that you would not**

3 **purchase Monsour's produce?**

4 A No.

5 **Q Do you have any recollection of making that**

6 **statement in the presence of Dennis Hughes?**

7 A No.

8 **Q When Dick Graves first advised you that Menu**

9 **Maker Foods would be expanding into Kansas and**

10 **that Menu Maker Foods would be buying produce**

11 **from Monsour's, Inc., did you voice any**

12 **opposition to that?**

13 A Yes.

14 **Q And explain to me what -- what you told**

15 **Mr. Graves.**

16 A General concern would have been over, A, the

17 quality, and, B, cost of goods.

18 **Q And was that during the very first meeting when**

19 **he told you that they were going to be --**

20 **A Yes.**

21 **Q -- purchasing it? Prior to that date, had Menu**

22 **Maker Foods ever purchased produce from**

23 **Monsour's?**

24 A Not to my knowledge. Not to my recollection.

25 **Q If you hadn't -- if -- if Menu Maker Foods had**

6 (Pages 21 to 24)

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1 not previously purchased any produce from
 2 **Monsour's, Inc., how would you have any**
 3 **knowledge about the quality of -- of its**
 4 **produce?**
 5 A Only from what I was told by the salespeople
 6 that we were bringing on board.
 7 **Q Specifically, who?**
 8 A I don't recall. It's been too long ago. It
 9 was just kind of a general comment.
 10 **Q What you're saying is that -- is that Monsour,**
 11 **Inc.'s employees told you that their own**
 12 **produce quality was not good?**
 13 A Basically, yes.
 14 **Q And you don't have any recollection of**
 15 **specifically who told you that?**
 16 A I'm sorry. I don't.
 17 **Q With respect to cost of goods sold, would you**
 18 **agree with me that you had no personal**
 19 **knowledge of the cost of goods since -- that**
 20 **Monsour's, Inc., would be selling to you all**
 21 **since you had never purchased produce from them**
 22 **previously? True?**
 23 A I was going more on the terms of the
 24 re-distributor.
 25 **Q What does that mean?**

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1 A Meaning that they would be buying it and
 2 turning around and reselling it to us.
 3 **Q But you still had no personal knowledge of what**
 4 **their cost of goods would be, true?**
 5 A Correct.
 6 **Q When you voiced your opposition to Dick Graves,**
 7 **what was his response?**
 8 A That he would be working with Mark to ensure
 9 that -- that this was a smooth transition and
 10 that the quality would be good and that the
 11 cost of goods would be competitive.
 12 **Q And do you agree with me that you voiced your**
 13 **opposition to people other than Dick Graves?**
 14 **True?**
 15 A I would not say opposition, no, sir. I would
 16 say concern perhaps, but not opposition.
 17 **Q Who did you voice your concerns to?**
 18 A Mr. Creighton Cox, our General Manager.
 19 **Q Who else?**
 20 A That's the only one I specifically recall.
 21 **Q What concerns did you voice to Creighton Cox?**
 22 A The same.
 23 **Q Did you ever voice those concerns to Mark**
 24 **Monsour?**
 25 A Before we started?

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1 **Q Right.**
 2 A I do not recall ever talking about that before
 3 we started.
 4 **Q Did you ever voice your concerns to any of the**
 5 **Monsour, Inc.'s employees once they provided**
 6 **you with -- with the information that you've**
 7 **testified they provided you?**
 8 A Before we started?
 9 **Q Right.**
 10 A I don't believe so.
 11 **Q When was the first time that you personally**
 12 **ever reviewed the actual Asset Purchase**
 13 **Agreement, the document itself?**
 14 A It would have been -- I don't recall. It would
 15 have been in Dick's office. I do not know
 16 that. But that's -- I don't know the date or
 17 anything.
 18 **Q Can you tell me the year?**
 19 A No. Not off the top of my head.
 20 **Q Let's just talk about the year 2002, the date**
 21 **that it was -- the time period that it was**
 22 **executed was on January 31st, 2002. Did**
 23 **anybody say, Here, take a look at this, or is**
 24 **it something that -- that you read after this**
 25 **-- this lawsuit had commenced?**

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1 A First of all, I should say I've never read it
 2 in its entirety, only -- only the produce.
 3 **Q Okay. Well, give me an idea when it was that**
 4 **you first reviewed the produce section of the**
 5 **Asset Purchase Agreement.**
 6 A When we were determining the items that we were
 7 going to purchase and -- and some specifics.
 8 Dick came to me and asked me for -- what those
 9 would be in terms of fill rate, expected fill
 10 rate and -- and grade and quality.
 11 **Q Did you -- did you understand that Menu Maker**
 12 **Foods was to purchase substantially all of its**
 13 **produce from Menu -- from Monsour's, Inc.?**
 14 A Yes.
 15 **Q In your mind, what does "substantially all"**
 16 **mean?**
 17 A As much as we could.
 18 **Q Putting it in percent form, can you give me an**
 19 **idea of what your understanding of**
 20 **"substantially all" means?**
 21 A I would say 75 percent, perhaps.
 22 **Q Was there any discussion between you and Dick**
 23 **Graves as to -- as to what "substantially all"**
 24 **meant?**
 25 A No.

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1 **Q Let's talk about Menu Maker Foods pickup of**
 2 **produce from Monsour's facility. Was there a**
 3 **set time that -- that Menu Maker Foods' reefers**
 4 **would go down to pick up Monsour's produce?**
 5 A I believe so.
 6 **Q And what time were the reefers supposed to be**
 7 **there on a daily basis?**
 8 A I'm not sure.
 9 **Q Do you know if it was morning or night or**
 10 **afternoon?**
 11 A The evening.
 12 **Q Okay. And whose employees would load the**
 13 **reefers? Would it be Monsour's employees?**
 14 A Monsour's. Yes, sir.
 15 **Q And when those -- when the produce was loaded,**
 16 **was there anybody -- any representative of Menu**
 17 **Maker Foods looking at quality of the produce**
 18 **that was being loaded?**
 19 A No.
 20 **Q What about the driver of the reefer? Whose**
 21 **employee was he?**
 22 A Menu Maker's.
 23 **Q He wouldn't look at the quality or check the**
 24 **quantity that's being put on his reefer?**
 25 A Did not.

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1 **Q And then how long of a drive is it from**
 2 **Monsour's facility back to Menu Maker's**
 3 **facility in the reefer? How long would the**
 4 **journey typically take?**
 5 A Well, I'll estimate it about three hours. I
 6 don't know how close that is, but it would be
 7 in that range.
 8 **Q Okay. And so once the produce was picked up by**
 9 **Menu Maker Foods at Monsour's facility and**
 10 **driven back to Menu Maker Foods that night, was**
 11 **it then unloaded that next morning by Menu**
 12 **Maker Foods' employees?**
 13 A Yes.
 14 **Q And what time did they typically unload the**
 15 **produce?**
 16 A Between six and seven as soon as they got it.
 17 **Q In general, when the produce was loaded on the**
 18 **Menu Maker's reefers, was that during the**
 19 **normal business hours at Monsour's? In other**
 20 **words, sometime before 5:00 in the evening?**
 21 A I don't know that. I didn't think it -- I
 22 don't believe it would have been that soon, but
 23 I don't know.
 24 **Q On average, do you know how long the produce**
 25 **was on Menu Maker's reefers before it was**

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1 **unloaded at Menu Maker's facility?**
 2 A I'll give you an approximate range of what I
 3 would guess, but this is strictly a guess. And
 4 I would say probably five hours, maybe, six,
 5 somewhere in that range.
 6 **Q Well, if we know it's a three-hour drive and we**
 7 **know it's loaded in the evening --**
 8 A Or early morning. I mean, I'm not -- I just
 9 don't recall.
 10 **Q Okay. Let's talk about the Heimos mushroom and**
 11 **cabbage. When was Menu Maker Foods' reefers**
 12 **loaded with those in 2002?**
 13 A They would be loaded at approximately 8:00 in
 14 the morning, 7:00, 8:00.
 15 **Q And then they would be transported to Menu**
 16 **Maker Foods' facility?**
 17 A Yes.
 18 **Q And how long of a drive would that be?**
 19 A Approximately two and a half hours.
 20 **Q And then they'd be unloaded once they got here?**
 21 A Yes.
 22 **Q You would agree with me that -- that at time**
 23 **that Heimos's produce was in the reefers was at**
 24 **least half of what Menu Maker -- of what**
 25 **Monsour's produce was, true?**

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1 A No. And here's why. They would have
 2 additional pickups to make in St. Louis before
 3 they would come back to Jefferson City.
 4 **Q Do you know that for a fact, or -- or is it**
 5 **possible that the other pickups were made**
 6 **before Heimos?**
 7 A I do not know that for a fact under that
 8 scenario.
 9 **Q Based upon your training and experience, would**
 10 **temperature fluctuation affect the -- the**
 11 **exterior of the produce? In other words, the**
 12 **-- would you be able to visually observe damage**
 13 **caused by temperature fluctuations of the**
 14 **produce?**
 15 A It would depend on how -- how great or how much
 16 and the extended period of time.
 17 **Q And you would agree with me that produce that**
 18 **has been exposed to fluctuating temperatures**
 19 **will deteriorate faster than produce that has**
 20 **not?**
 21 A True.
 22 **Q Do you have any recollection of any other**
 23 **conversation that you've had with Mark Monsour**
 24 **about produce other than what I've already**
 25 **asked you?**