

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

07-10745-EFH

IN RE PET FOODS PRODUCTS LIABILITY
LITIGATION

No. MDL DOCKET NO. 1850

**MOTION OF PLAINTIFFS FOR TRANSFER OF ACTIONS TO THE CENTRAL
DISTRICT OF CALIFORNIA AND FOR CONSOLIDATED OR COORDINATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407**

Plaintiff Dawn Howe in the Central District of California action, *Howe v. Menu Foods Limited, et al*, No. CV07-02060 GHK (AJWx), plaintiffs Dennis Lee Townsend and Glenna Townsend in the Central District of California action, *Townsend v. Menu Foods Limited, et al*, No. ED CV07-398 GHK (AJWx), plaintiff Alexander Nunez in the District of New Jersey action, *Nunez v. Menu Foods Limited*, No. 07CV1490 (NLH), plaintiff Richard Chamberlain in the Central District of California action, *Chamberlain v. Nestle S.A.*, No. CV07-2476 FMG (SSx), and plaintiff Mark Golding in the District of New Jersey action, *Golding v. Menu Foods Limited, et al*, No. 07CV01521 (NLH), (collectively, "Plaintiffs"), respectfully move the Panel for an Order pursuant to 28 U.S.C. §1407, to transfer the pending cases identified in the schedule of actions filed concurrently herewith, as well as any cases subsequently filed involving similar facts or claims, to the United States District Court for the Central District of California, and to consolidate or coordinate the cases for pretrial proceedings before the Honorable George H. King, to whom the low numbered case is assigned in the Central District of California.

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In support of their Motion for Transfer and Consolidation or Coordination to the Central District of California, Plaintiffs state as follows:

1. Movants are plaintiffs in the following cases:

Dawn Howe v. Menu Foods Limited, et al, No. CV07-02060 GHK (AJWx). C.D. Ca.

Dennis Lee Townsend and Glenna Townsend v. Menu Foods Limited, et al, No. ED CV07-398 GHK (AJWx). C.D. Ca.

Alexander Nunez v. Menu Foods Limited, No. 07CV1490 (NLH). D.N.J.

Richard Chamberlain v. Nestle S.A., No. CV07-2476 FMG (SSx). C.D. Ca.

Mark Golding v. Menu Foods Limited, et al, No. 07CV01521 (NLH). D.N.J.

2. The *Howe*, *Townsend*, *Nunez*, *Chamberlain*, and *Golding* actions are nationwide class actions that allege Menu Foods and/or Nestle Purina manufactured and sold contaminated dog and cat food that could and has caused severe illness or death to pets that consumed the food. Each of the actions listed in the schedule of actions (the “Actions”) are also nationwide class actions against Menu Foods, Nestle Purina, and/or other pet food companies (the “Pet Food Manufacturers”) alleged to have manufactured and sold contaminated dog and cat food to the public that has caused severe illness or death to pets that consumed the food.

3. Each of the Actions seeks relief for the same class of persons: all persons in the United States who purchased contaminated pet food manufactured by Menu Foods, Nestle Purina, and other pet food companies.

4. Each of the Actions and Related Actions arise out of the same or similar nucleus of operative facts, all arising out of the Pet Food Manufacturers’ wrongful conduct.

5. Each of the Actions assert similar claims for compensatory damages and common law claims, all arising out of the Pet Food Manufacturers' wrongful conduct.

6. The transfer and consolidation or coordination of the Actions to a single judicial district for consolidated pretrial proceedings will promote just and efficient administration of these Actions, as they all involve common questions of fact and law, including:

(a) whether the contaminated pet foods manufactured by the Pet Food Manufacturers were materially defective in design and formulation;

(b) whether the Pet Food Manufacturers failed to properly test the contaminated pet food products prior to market entry;

(c) whether the Pet Food Manufacturers negligently, recklessly, or intentionally delayed initiating recalls of the contaminated pet foods;

(d) whether the Pet Food Manufacturers breached their duty of care to Plaintiffs and other Class members;

(e) whether the Pet Food Manufacturers breached any contract or warranty, express or implied, relating to their sale of contaminated pet food;

(f) whether the contaminated pet food manufactured by the Pet Food Manufacturers caused Plaintiffs' and other Class members' pets to fall ill or die;

(g) whether the Pet Food Manufacturers were unjustly enriched as a result of their wrongful conduct;

(h) whether Plaintiffs and other Class members are entitled to compensatory damages; and

(i) whether Plaintiffs and other Class members are entitled to punitive damages.

7. Discovery conducted in each of the Actions will be substantially similar, and will involve the same or similar documents and witnesses, since each action arises from the same or similar nucleus of operative facts.

8. Discovery has not yet commenced in any of the Actions. Thus, no prejudice or inconvenience will result from transfer, coordination, and/or consolidation.

9. For the reasons stated in this Motion and the Memorandum of Law submitted herewith, Movants Howe, the Townsends, Nunez, Chamberlain, and Golding respectfully request that the Actions, and any other action subsequently filed asserting similar or related claims arising out of the same or similar nucleus of facts, be transferred to the Central District of California for consolidated or coordinated proceedings before the Honorable George H. King.

DATED: April 27, 2007

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. That on April 27, 2007, declarant served the MOTION OF PLAINTIFFS FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA AND FOR CONSOLIDATED OR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407 by depositing a true copy thereof in a United States mailbox at Los Angeles, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of April, 2007, at Los Angeles, California.


ANN MARIE GENOVESE

MENU FOODS
MDL Docket No. 1850
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<p>Menu Foods Operating Partnership c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801</p>	<p>Wal-Mart Stores, Inc. c/o The Corporation Company 425 W. Capitol Avenue, Suite 1700 Little Rock, AR 72201</p>
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<p>Nestle Purina Petcare Co. c/o CT Corporation System 120 South Central Avenue Clayton, MO 63105</p>	<p>Nestle, S.A. c/o Nestlé USA, Inc. 800 North Brand Blvd. Glendale, CA 91203</p>
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Sims v. Menu Foods
5:07-cv-05053-JLH
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5:07-cv-05055-RTD
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4:07-cv-04036-HFB
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Swarberg v. Menu Foods
3:07-cv-00706-BTM-POR

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Ingles v. Menu Foods
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Grady v. Menu Foods
2:07-cv-02253-DDP-PLA
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Finestone v. Menu Foods
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Waldhauer v. Menu Foods
3:07-cv-00131-MCR-EMT
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Streczyn v. Menu Foods
3:07-cv-00159-LRH-VPC
D. Nevada

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Richard & Kohler v. Menu Foods
1:07-cv-01457-NLH-AMD
D. New Jersey

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Workman v. Menu Foods
1:07-cv-01338-NLH-AMD
D. New Jersey

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Thomson v. Menu Foods
1:07-cv-01360-PGS-RJH
D. New Jersey

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Tinker v. Menu Foods
1:07-cv-01468-NLH-AMD
D. New Jersey

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Richard v. Menu Foods
1:07-cv-01457-NLH-AMD
D. New Jersey

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Wilson v. Menu Foods
1:07-cv-01456-NLH-AMD
D. New Jersey

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Bonier v. Menu Foods
1:07-cv-01477-NLH-AMD
D. New Jersey

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Hidalgo v. Menu Foods
1:07-cv-01488-NLH-AMD
D. New Jersey

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Nunez v. Menu Foods
1:07-cv-1490-NLH
D. New Jersey

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Gagliardi v. Menu Foods
1:07-cv-01522-NLH-AMD
D. New Jersey

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Golding v. Menu Foods
1:07-cv-01521-NLH-AMD
D. New Jersey

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Turturro v. Menu Foods
1:07-cv-01523-NLH-AMD
D. New Jersey

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Schneider v. Menu Foods
1:07-cv-01533-NLH-AMD
D. New Jersey

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Berndl v. Menu Foods
1:07-cv-01553-NLH-AMD
D. New Jersey

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Pittsonberger v. Menu Foods
07-cv-01561-NLH-AMD
D. New Jersey

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Carter v. Menu Foods
1:07-cv-01562-NLH-AMD
D. New Jersey

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Bullock v. Menu Foods
1:07-cv-01579-NLH-AMD
D. New Jersey

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Christina Johnson v. Menu Foods
1:07-cv-01610-NLH-AMD
D. New Jersey

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Conner v. Menu Foods
1:07-cv-01623-NLH-AMD
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Long v. Menu Foods
1:07-01624-NLH-AMD
D. New Jersey

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Conti v. Menu Foods
1:07-cv-01638-NLH-AMD
D. New Jersey

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Freeman v. Menu Foods
1:07-cv-01646-NLH-AMD
D. New Jersey

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Pirches v. Menu Foods
1:07-cv-01685-NLH-AMD
D. New Jersey

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Diedrich v. Menu Foods
1:07-cv-01700-NLH-AMD
D. New Jersey

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Sokolwski v. Menu Foods
1:07-cv-01709-NLH-AMD
D. New Jersey

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McCullouch v. Menu Foods
1:07-cv-01710-NLH-AMD
D. New Jersey

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Colquitt v. Menu Foods
1:07-cv-01738-NLH-AMD
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Debarthy v. Menu Foods
1:07-cv-01739-NLH-AMD
D. New Jersey

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Byers v. Menu Foods
1:07-cv-01747-NLH-AMD
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Carestio v. Menu Foods
1:07-cv-01762-NLH-AMD
D. New Jersey

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Boehm v. Menu Foods
1:07-cv-01018-PCE
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Brown v. Menu Foods
1:07-cv-00115-ML-LDA
D. Rhode Island

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Rozman v. Menu Foods Midwest Corp.
0:07-cv-01808-ADM-AJB
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Holt v. Menu Foods
3:07-cv-00094
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Light v. Menu Foods
3:07-cv-00098
E.D. Tennessee

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Whaley v. Menu Foods
2:07-cv-00411-RSM
W.D. Washington

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Heller v. Menu Foods
2:07-cv-00453-JCC
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Kornelius v. Menu Foods
2:07-cv-00454-MJP
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Johnson v. Menu Foods
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Suggett v. Menu Foods
 2:07-cv-00457-RSM
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Tompkins v. Menu Foods
 1:07-cv-00736-JLK
 D. Colorado

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