

3-07-cv-159 (W)

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APR 30 2007	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY _____	DEPUTY

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE PET FOODS PRODUCTS LIABILITY LITIGATION	No. MDL DOCKET NO. 1850
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**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.

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.


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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>
<p>Eukanuba One Proctor & Gamble Plaza C-2 Cincinnati, OH 45202</p>	<p>Xuzhou Anying Biologic Technology Development Co. Ltd c/o Mr. Mao Lujun Wangdian Industrial Pei County Jiangsu Xuzhou, Jiangsu, P. R. China</p>
<p>Suzhou Textile Import and Export Company 201 Zhuhui Road Suzhou, Jiangsu, China 215006</p>	<p>Nestle USA, Inc. Nestle Holdings, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801</p>
<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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Cooper v. Menu Foods
4:07-cv-04036-HFB
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Swarberg v. Menu Foods
3:07-cv-00706-BTM-POR

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3:07-cv-00705-JAH-CAB

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07-cv-01958-GHK-AJW
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Ingles v. Menu Foods
3:07-cv-01809-MMC
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Paul Randolph Johnson 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
2:07-cv-02338-CAS-CW
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Waldhauer v. Menu Foods
3:07-cv-00131-MCR-EMT
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0:07-cv-60428-JIC
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1:07-cv-00160-MHW
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Brazilian v. Menu Foods Income Fund
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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
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Thomson v. Menu Foods
1:07-cv-01360-PGS-RJH
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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
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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
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Hidalgo v. Menu Foods
1:07-cv-01488-NLH-AMD
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Nunez v. Menu Foods
1:07-cv-1490-NLH
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Gagliardi v. Menu Foods
1:07-cv-01522-NLH-AMD
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Golding v. Menu Foods
1:07-cv-01521-NLH-AMD
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Turturro v. Menu Foods
1:07-cv-01523-NLH-AMD
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Schneider v. Menu Foods
1:07-cv-01533-NLH-AMD
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Berndl v. Menu Foods
1:07-cv-01553-NLH-AMD
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Pittsonberger v. Menu Foods
07-cv-01561-NLH-AMD
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Carter v. Menu Foods
1:07-cv-01562-NLH-AMD
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1:07-cv-01579-NLH-AMD
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1:07-cv-01610-NLH-AMD
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Conner v. Menu Foods
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Long v. Menu Foods
1:07-01624-NLH-AMD
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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
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Pirches v. Menu Foods
1:07-cv-01685-NLH-AMD
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Diedrich v. Menu Foods
1:07-cv-01700-NLH-AMD
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Sokolwski v. Menu Foods
1:07-cv-01709-NLH-AMD
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McCullough v. Menu Foods
1:07-cv-01710-NLH-AMD
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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
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Byers v. Menu Foods
1:07-cv-01747-NLH-AMD
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1:07-cv-01762-NLH-AMD
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Brown v. Menu Foods
1:07-cv-00115-ML-LDA
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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
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2:07-cv-00411-RSM
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Heller v. Menu Foods
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 2:07-cv-00457-RSM
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Tompkins v. Menu Foods
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**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE PET FOODS PRODUCTS LIABILITY
LITIGATION

No. MDL DOCKET NO. 1850

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION 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 Court 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, 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 and 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.

I. BACKGROUND

Defendants Menu Foods and Nestle Purina, as well as other pet food manufacturers, (collectively, the "Pet Food Manufacturers"), produced and sold contaminated dog and cat food which caused serious illness and death to household pets. Many of the pet foods manufactured by the Pet Food Manufacturers and sold by retailers such as Wal-Mart, Petsmart, and Giant, are part of nationwide recalls, which lists continue to grow. *See* Exhibits A-I. The piecemeal, ever-expanding recalls leave concerned pet owners confused and uncertain of which products are safe for their pets to consume.

Plaintiffs brought their respective actions on behalf of all persons in the United States who purchased contaminated dog or cat food manufactured by Menu Foods and/or Nestle Purina, which were recalled or will be recalled. These products caused serious illness or death in many pets, including Plaintiffs' pets.

At least sixty-four cases, to the best of Plaintiffs' knowledge, have been filed against the Pet Food Manufacturers, in both state and federal courts, alleging similar causes of actions and seeking similar relief as Plaintiffs. The related actions all arise from the same or similar nucleus of operative facts as Plaintiffs' cases. Each action will involve substantially similar discovery, with the same or similar documents and witnesses. Discovery has not commenced in Plaintiffs' cases or any of the related actions.

Since these cases require same or similar questions of law and facts to be determined by a court of law, prompt action by the Panel to transfer and consolidate these actions will promote their just and efficient prosecution and judicial economy and serve the convenience of the parties.

II. ARGUMENT

A. Transfer And Consolidation Of All Actions Is Appropriate Under 28 U.S.C. §1407

28 U.S.C. §1407 provides for transfer of actions to one district for coordinated or consolidated pretrial proceedings where actions pending in different districts involve one or more common questions of fact. 28 U.S.C. §1407(a). The Panel authorizes consolidation where transfers will promote the convenience of the parties and witnesses, and the just and efficient conduct of the action. *Id.* The purpose of the multidistrict litigation process is to “eliminate the potential for contemporaneous pretrial rulings by coordinate district and appellate courts in multidistrict related civil actions.” *In re Multidistrict Private Civ. Treble Damage Litig.*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968). Consolidation is especially important in class actions where the “potential for conflicting, disorderly, chaotic” action is greatest. *Id.* at 493. Transfer of related actions to a single district for pretrial proceedings avoids conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedures. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006).

Transfer is appropriate here because many common questions of fact and law exist. The cases listed in the schedule of actions (the “Actions”) all arise from the same or similar nucleus of operative facts, and each seeks determination of, among other things:

1. whether the contaminated pet foods manufactured by the Pet Food Manufacturers were materially defective in design and formulation;
2. whether the Pet Food Manufacturers failed to properly test the contaminated pet food products prior to market entry;
3. whether the Pet Food Manufacturers negligently, recklessly, or intentionally delayed initiating recalls of the contaminated pet foods;

4. whether the Pet Food Manufacturers breached their duty of care to Plaintiffs and other Class members;
5. whether the Pet Food Manufacturers breached any contract or warranty, express or implied, relating to their sale of contaminated pet food;
6. whether the contaminated pet food manufactured by the Pet Food Manufacturers caused Plaintiffs' and other Class members' pets to fall ill or die;
7. whether the Pet Food Manufacturers were unjustly enriched as a result of their wrongful conduct;
8. whether Plaintiffs and other Class members are entitled to compensatory damages; and
9. whether Plaintiffs and other Class members are entitled to punitive damages.

Determination of these and other common issues in a single district will benefit the parties and witnesses, and promote the just and efficient prosecution of the Actions. Without transfer and consolidation of the Actions, the danger of inconsistent rulings exists, and judicial inefficiency, overlapping discovery, and unnecessary expense will certainly result. Transfer and coordination is especially appropriate as formal discovery has not yet commenced in any of the Actions. As such, transfer and consolidation of the Actions to a single district is appropriate for the just and efficient prosecution of the actions and the convenience of the parties and witnesses.

B. The Central District of California Is The Appropriate Forum For Transfer And Consolidation

In determining the most appropriate transferee forum, the Panel will consider, among other things, the number of actions pending in the district, the location of witnesses and documents, the stage of pretrial proceedings, whether a related government investigation or action is pending, whether the district is in an accessible metropolitan area, the status of the civil docket, and the experience of the transferee judge in handling multidistrict litigation. *See e.g., In re Educ. Testing Serv. Plt 7-12 Test Scoring Litig.*, 350 F. Supp. 2d 1363, 1365 (J.P.M.L. 2004) (Panel found district appropriate where four of thirteen actions were already pending in the district, the district provided an accessible, metropolitan location, the district had favorable caseload conditions, and the judge had experience managing multidistrict litigation); *In re Wheat Farmers Antitrust Class Action Litig.*, 366 F. Supp. 1087, 1088 (J.P.M.L. 1973) (Panel considered the conveniences of the parties and witnesses, location of relevant documents, stage of pretrial proceedings, and the status of civil dockets); *In re Peruvian Road Litig.*, 380 F. Supp. 796, 798 (J.P.M.L. 1974) (while both districts were appropriate, Panel chose the District of Idaho because of the judge's familiarity with the issues raised by defendants and because of the significantly lighter civil action docket of that court); *In re Tri-State Crematory Litig.*, 206 F. Supp. 2d 1376, 1378 (J.P.M.L. 2002) (in selecting the transferee court, the Panel considered the location of the crematory central to the allegations, the criminal investigation, the likely location of relevant documents, witnesses and other evidence, and where the actions were filed); *In re Foundry Resins Antitrust Litig.*, 342 F. Supp. 2d 1346, 1347 (J.P.M.L. 2004) (Panel considered, among other things, the presence of a government investigation in choosing the transferee district).

Transfer of the Actions to the Central District of California for consolidated pretrial proceedings is appropriate here because transfer will serve the convenience of the parties and promote just and efficient conduct of the Actions. The Central District of California is particularly appropriate because a number of the Actions are currently pending in this district.

Defendant Nestle's U.S. headquarters, as well as manufacturer Nutro Products, Inc., which has been named a defendant in other Actions, are located in this district. Thus, witnesses and documents are likely located in this district as well. Additionally, the Food and Drug Administration, U.S. Department of Agriculture, and California Department of Health Services are conducting investigations into a hog farm confirmed to have received contaminated pet food scraps in California. Consolidation of the Actions in the Central District of California will thus aid in the coordination of efforts likely to occur between the government investigations and the Actions. The Central District of California also provides a metropolitan location, easily accessible to all parties and witnesses, both domestic and foreign.

The Central District of California is also appropriate because of the status of its civil dockets. The median time to disposition in the Central District was 7.2 months last fiscal year, while the District of New Jersey, where some similar Actions have been filed, averaged 8.2 months. *See* Exhibits J-K. The median time to trial in the Central District of California was 21.3 months, while it took nearly a year longer in the District of New Jersey, at approximately 33.0 months. Because a case is more likely to be expeditiously handled in the Central District of California, transfer of the Actions to the Central District is appropriate.


The Honorable George H. King, to whom the low numbered case, *Sexton v. Menu Foods*, is assigned, has considerable experience managing class actions and complex litigation matters. *See, e.g., In re Nat'l Golf Props. Secs. Litig.*, No.: CV 02-1383-GHK (complex securities class action) and *Dagher v. Saudi Ref., Inc.*, No. CV-99-06114(GHK) (complex anti-trust action). Judge King's twelve years of experience on the bench and reputation for expeditious handling of matters makes the Central District of California as the forum for transfer and consolidation for pretrial proceedings all the more appropriate. On the other hand, the Honorable Noel L. Hillman, to whom the low numbered case in the District of New Jersey is assigned, has been on the bench for less than a year, and thus, does not have the experience and expertise Judge King has amassed over the years in presiding over complex matters such as this one.

III. CONCLUSION

At least sixty-four cases have been filed against Menu Foods, Nestle Purina, and other pet food manufacturers alleging defendants manufactured and sold contaminated pet food products which caused illness or death in household pets. These Actions all arise out of the same or similar nucleus of operative facts, allege similar claims, and seek similar relief. Without transfer and coordination of the Actions, judicial inefficiency, overlapping discovery, and unnecessary expense will certainly result, and the danger of inconsistent rulings may arise. As such, plaintiffs Howe, the Townsends, Nunez, Chamberlain, and Golding respectfully request transfer and consolidation or coordination of the Actions to the Central District of California, in order to promote just and efficient prosecution of the Actions and serve the convenience of the parties.

DATED: April 27, 2007

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**Before the Judicial Panel on Multidistrict Litigation
MDL-1850 - In re Pet Foods Products Liability Litigation**

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge
<p>Plaintiffs: Kirby Cooper</p> <p>Defendants: Menu Foods Income Fund, Menu Foods Midwest Corporation, Menu Foods South Dakota, Inc., Menu Foods, Inc., Menu Foods Holdings, Inc., and Wal-Mart Stores, Inc.</p>	W.D. Arkansas	4:2007cv04036	Harry F. Barnes
<p>Plaintiffs: Charles Ray Sims and Pamela Sims</p> <p>Defendants: Menu Foods Income Fund, Menu Foods Midwest Corporation, menu Foods South Dakota Inc., Menu Foods, Inc., Menu Foods Holdings, Inc.</p>	W.D. Arkansas	5:2007cv05053	Jimm Larry Hendren
<p>Plaintiffs: Richard Scott and Barbara Widen</p> <p>Defendants: Menu Foods, Menu Foods Income Fund, Menu Foods Gen Par Limited, Menu Foods Limited Partnership, Menu Foods Operating Partnership, Menu Foods Midwest Corporation, Menu Foods South Dakota; Menu Foods, Inc., Menu Foods Holdings, Inc. and Wal-Mart Stores, Inc.</p>	W.D. Arkansas	5:2007cv05055	Robert T. Dawson

Case Captions	Court	Civil Action No.	Judge
<p>Plaintiffs: Sandra L. Gray, Nick Jackson and Deena Jackson</p> <p>Defendants: Menu Foods, Menu Foods Income Fund, Menu Foods Gen Par Limited, Menu Foods Limited Partnership, Menu Foods Operating Partnership, Menu Foods Midwest Corporation, Menu Foods South Dakota; Menu Foods, Inc., Menu Foods Holdings, Inc., Wal-Mart Stores, Inc. and Xuzhou Anying Biologic Technology Development Co. Ltd.</p>	W.D. Arkansas	5:2007cv05065	Robert T. Dawson
<p>Plaintiffs: Shirley Sexton</p> <p>Defendants: Menu Foods Inc., Menu Foods Income Fund, Menu Foods Midwest Corporation, Suzhou Textile Import and Export Company, Xuzhou Anying Biologic Technology Development</p>	C.D. California	2:2007cv01958	George H. King
<p>Plaintiffs: Paul Randall Johnson and Tammy Navarrete</p> <p>Defendants: Menu Foods Inc., and Menu Foods Income Fund</p>	C.D. California	2:2007cv01987	George H. King
<p>Plaintiffs: Lois Grady and Kaye Steinsapir</p> <p>Defendants: Foods, Inc., Menu Foods Income Fund, Menu Foods Limited, Menu Foods Midwest Corp., Menu Foods Operating Limited Partnership, Menu Foods, Inc., Nutro Products, and Petco Animal Supplies, Inc.</p>	C.D. California	2:2007cv02253	Dean D. Pregerson