BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

3:07CV159

In re Pet Food Litigation

MDL Docket No. 1850

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. §1407

I. Background:

1. Plaintiff Gregory Boehm (hereinafter "Boehm") in the N.D. Ohio action filed his complaint against various Menu Foods entities (hereinafter "Menu Foods") for violations of the Ohio Consumer Sales Practice Act and breach of warranty in relation to Menu Foods' manufacturing, producing, supplying, advertising, and selling of adulterated pet food to Ohio consumers from November 2006 through at least such time as the recall was complete. Menu Foods manufactured, produced, supplied, advertised, and sold its pet food product throughout the United States at a multitude of retail stores under many different brand names.

II. Legal Argument:

2. The actions identified have been filed by the Plaintiffs in each action in the district indicated in the Schedule of Actions and each such action is now pending before that court.

3. There are currently at least 64 actions identified in the Schedule of Actions.

4. Certain Defendants have moved to transfer the actions to the Northern District of Illinois and specifically opposed the transfer of the actions to the District of New Jersey. Certain Plaintiffs have moved to transfer the actions to the District of New Jersey, and to various districts in California, Washington, Florida, Arkansas and other states. However, the Northern District of Ohio is the most suitable compromise among all parties. It is centrally located and in the Midwest as Defendants have requested. Yet, it is more convenient to access than Chicago. Defendants have stated that most of the pet food product in question was manufactured Kansas and Streetsville, Ontario, and that some was manufactured in New Jersey. The Northern District of Ohio stands in proximity to all of these locations. It is the most convenient location for Defendants, Plaintiffs, and potential witnesses. Cleveland, Ohio is home to an international airport and a Continental Airlines hub with multiple flights to and from Kansas, Ontario, and New Jersey everyday. Newark, New Jersey is also a Continental Airlines hub, making accessibility to and from Cleveland all the more convenient. There is also a second airport in the Northern District of Ohio in Akron, Ohio.

5. There is no clear location where all of the relevant information is concentrated in this case. Evidence is located in Ontario, Canada, New Jersey, Kansas, and China. Ohio is centrally located and is easily accessible.

6. Cleveland's proximity to Toronto is an important factor. The Northern District of Ohio would be the perfect center of gravity for the actions because of its geographic centrality.

7. Other motions in the Pet Food Litigation have argued that their forum is the best forum because they have many cases pending in that jurisdiction. While this is often an important factor in the MDL Panel's decision, it is irrelevant in this litigation. The Pet Food Litigation complaints all seek class certification. The matters pending in the same jurisdiction, for instance New Jersey, will out of necessity need to be consolidated in order to avoid overlapping classes within the same jurisdiction.

8. The Northern District of Ohio is currently home to 8 MDL actions. Its docket and its judges, including Judge Economus, the Judge assigned to the action filed in Ohio, are capable of handling additional MDL assignments. The Northern District of Ohio enjoys a swift civil action docket. The median time for civil cases from filing to trial is 22.3 months, as compared to 26.4 months in the Northern District of Illinois and 33 months in the District of New Jersey. Furthermore, the judges of the Northern District of Ohio, including Judge Economus, have ample experience administering class actions and complex products liability and commercial litigation cases.

9. The Northern District of Ohio has the capacity and is open to accepting Multi-District Litigation in an effort to use its expertise to promote efficient, streamlined litigation with just and consistent results.

10. *Gregory Boehm v. Menu Foods Inc.* et al. is pending in the Northern District of Ohio.

11. Many of the Class Action Complaints filed throughout the United States in the Pet Food Litigation have overlapping, if not identical, claims. In addition, a number of these Class

Action Complaints aver a national class and/or there are many Class Action Complaints filed in the same jurisdiction. The classes that overlap will need to be consolidated.

12. The Pet Food Litigation cases pending around the United States contain similar issues of fact that will be disclosed through discovery.

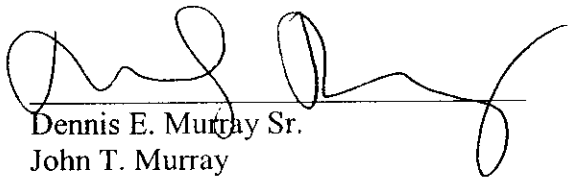
13. If the Pet Food Litigation is not coordinated at a Multi-District Litigation level, there will be duplicative discovery, bringing with it all of the dangers of inconsistent inputs into the judicial system resulting in potentially inconsistent outcomes.

14. Transfer of these actions to the Northern District of Ohio is appropriate because of its centrality , its ease of access, and its proximity between three key sites in this case: Streetsville, Ontario, Canada; New Jersey; and Kansas.

III. Conclusion

15. For the foregoing reasons, Plaintiff Boehm respectfully requests this Court to transfer the Pet Food Litigation actions to the Northern District of Ohio for pretrial procedures.

Respectfully Submitted,



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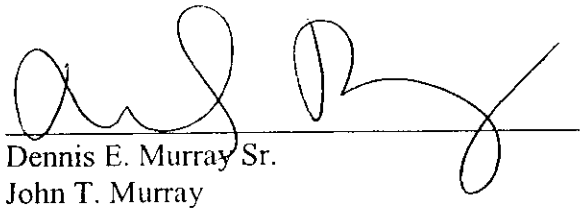
CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2007, the foregoing was filed via overnight mail. A copy of the foregoing has been served upon all District Court Clerks and Counsel for all parties of this proceeding, by mailing the same to each on the 11th day of May, 2007, by regular mail.



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