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May 21, 2007

BY ELECTRONIC FILING AND HAND DELIVERY

The Honorable Noel L. Hillman
United States District Court
District of New Jersey
Mitchell H. Cohen U.S. Courthouse
1 John F. Gerry Plaza, Room 6020
Camden, NJ 08101

Re: *Workman, et al. v. Menu Foods, et al.*
Civil Action No. 07-cv-1338

Dear Judge Hillman:

In furtherance of Your Honor's request at the May 18, 2007 hearing on Plaintiffs' Emergency Motion for an Order to Show Cause Why Defendants' Communications Should Not Be Limited or Supervised ("Motion"), we have attached hereto as Exhibit A a proposed letter to be sent by Defendants on behalf of Plaintiffs to pet owners with whom Menu Foods has previously communicated.

Before addressing the substance of Plaintiffs' proposed curative letter, however, we would like to further explain our request that Defendants provide us with all information they have thus far received from potential class members who responded to Defendants' initial Claim Form that prompted Plaintiffs' Motion in the first instance. During argument, Defendants' counsel was unable to confirm that this information will in no way be used for litigation purposes (including the May 31, 2007 MDL hearing), and instead assured the Court only that it is information they would likely have to produce in the regular course of discovery. This assurance, however, only illustrates the problem. Defendants can benefit from the information they received as a result of the improper

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communication to putative class members immediately, while Plaintiffs cannot. At a minimum, Plaintiffs should be made aware of exactly what information Defendants have actually received in response to the original Claim Form.

With regard to the curative letter, we set forth below an explanation as to why each statement in Plaintiffs' proposed letter is necessary to correct misleading omissions or statements in Defendants' communication. We believe this letter should be sent as soon as possible to the approximately 19,000 pet owners to whom Defendants sent a letter with revised Claim Form attached last week. We believe it should also be posted on Defendants' two websites where their communication is currently posted:

<http://www.menufoods.com/recall/United%20States%20Residents.pdf> and
<http://www.claimsalert.ca/menufoods/>.

After three introductory paragraphs, Plaintiffs state the following in their letter to pet owners:

1. "The numerous class action lawsuits that have been filed throughout the United States by pet owners against Menu Foods and other potentially responsible parties are likely to be coordinated or consolidated into a single action before a single judge within the next two months by the Judicial Panel on Multidistrict Litigation. All these cases that will likely be coordinated or consolidated are part of what is referred to as *In re Pet Food Products Liability Litigation*, MDL No. 1850. A list of attorneys representing pet owners in MDL No. 1850, including their contact information, is attached to this letter."

This paragraph corrects a material omission in Defendants' communication. It informs pet owners of the MDL process – to which Menu Foods consented - and that, as a result, there will likely be one class action remaining after consolidation. This information is critical to pet owners' decision of whether or not to forego settling directly with Defendants and continue as part of the class. Being a member of the class in a single consolidated class action is easier to understand, is less confusing and is far less intimidating to pet owners than being a member of a class where there are over 80 class actions now pending. Providing this information eliminates questions such as: "With so many class actions pending, which class will I be a member of?," or "If I do nothing, will I be assigned to one of the many class actions currently pending and how is such an assignment made?"

2. "As a pet owner whose pet may have been harmed by a recalled Menu Foods product, you are automatically a member of the class of plaintiffs who have brought actions against Menu Foods, and you do not need to do anything else to pursue your rights as a class member at this time. If you do not choose to settle directly with Menu Foods, you are automatically eligible to receive a portion of any recoveries received by the class if a class is certified."

While the Defendants' communication certainly advises recipients to contact an attorney if they have questions and supplies a partial list of class counsel to contact, it leaves the impression

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that recipients only have two options – to settle directly with Menu Foods or affirmatively contact an attorney. This is misleading. There exists a third option that Defendants have omitted – that recipients need not do anything because they are automatically members of the class if their pets were harmed by Menu Foods products and will be automatically eligible for any recoveries awarded to the class, which may, in fact, be greater than any recoveries potentially offered directly by Menu Foods. *See In re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1139 (7th Cir. 1979) (“The danger that the offer to settle individual claims would create is the possible misleading of class members about the strength and extent of their claims and the alternatives for obtaining satisfaction of those claims. Thus, an offer to settle should contain sufficient information to enable a class member to determine (1) whether to accept the offer to settle, (2) the effects of settling, and (3) **the available avenues for pursuing his claim if he does not settle**”) (emphasis added).

3. “If you choose to pursue a settlement directly with Menu Foods by filling out and submitting the Claim Form sent to you separately by Menu Foods, please know that returning the Claim Form to Menu Foods will not preclude you from pursuing other available avenues for recovery at a later date, including being a part of the class action, in the event that you are not satisfied with Menu Foods’ settlement offer. In addition, once you receive a settlement offer from Menu Foods, you are not bound to accept it and are free to contact an attorney for advice at that time. However, please note that if you do accept a settlement offer from Menu Foods you will not be able to participate in the class action.”

Defendants’ communication is also misleading by implying that once the Claim Form is filled out and returned, pet owners are locked in to settling directly with Defendants, no matter what the settlement offer is. To correct this, Plaintiffs propose the first sentence in the paragraph above. In addition, the second sentence in the paragraph above makes it clear that after receiving a settlement offer, pet owners are free to reject it and are free to consult with an attorney about the settlement offer or any other matter related to their claims. This language comports with the requirements of the *Keystone* decision with which defense counsel stated at the hearing Defendants attempted to comply. *See Keystone Tobacco Co., Inc. v. U.S. Tobacco Co.*, 238 F. Supp. 2d 151, 157 (D. D.C. 2002) (where defendant made a settlement offer to putative class members, the court held defendant “took steps to avoid providing inaccurate or misleading information” where defendant, *inter alia*, “advised customers to consult with their own lawyers before deciding to settle the case or sign the releases.”)

4. “If you are at all unclear of any of your legal rights or options at this time, please do not hesitate to contact any of the attorneys on the attached list, or another attorney of your choice.”

This language further reinforces the ability of recipients to consult with counsel and refers them to a complete list of counsel, adding the names of counsel that were omitted from the list included in Defendants’ communications.

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5. “If you are currently represented by counsel in this matter and have received a communication directly from Menu Foods, please disregard that communication completely and inform your attorney immediately.”

This language seeks to protect putative class members currently represented by counsel from future inadvertent communications from Defendants that violate the prohibition against communicating with represented parties and to allow Plaintiffs’ counsel to keep the Court informed of such matters. We can represent to Your Honor that this has, in fact, occurred on several occasions. Filed herewith is the Declaration of Mark J. Tamblyn, an attorney whose firm represents numerous plaintiffs in this litigation. In his Declaration, Mr. Tamblyn confirms that one of his clients, Ms. Shirley Sexton, named representative in *Sexton v. Menu Foods, et al.*, No. 07-CV-01958 GHK (C.D.Cal.) (Hon. George King), received a Claim Form *on the day of argument* of Plaintiffs’ Motion. To assist Defendants in their effort to extract represented parties from their pet owner contact list, attached hereto as Exhibit B is a list of all named representative plaintiffs in the class actions filed around the country naming Menu Foods as a defendant.

Finally, with Your Honor’s permission, we would also like to present to Defendants a list of all affected pet owners who are currently represented by counsel and, while not acting as representative plaintiffs, should also be removed from Defendants’ contact database. These pet owners have either signed attorney retainer agreements or have contacted counsel and have been sent retainer agreements to sign. These pet owners are among the 19,000 with whom Defendants improperly communicated last week. This list, however, will take more time to compile.

Respectfully yours,

/s Lisa J. Rodriguez

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EXHIBIT A

May __, 2007

Dear Concerned Pet Owner:

By this time you may have received communications from Menu Foods regarding settling any claims you may have against it as a result of injury to, or death of, your pet, along with expenses that you might have incurred due to the Menu Foods recall.

Along with other attorneys, we represent pet owners throughout the country who have purchased a Menu Foods product that is subject of the recall. We have been authorized by Judge Noel L. Hillman of the United State District Court for the District of New Jersey to send you this letter.

The purpose of this letter is to add some additional information to the prior communications you have received directly from Menu Foods to ensure that you are fully informed of all of your legal rights.

The class action lawsuits that have been filed throughout the United States by pet owners against Menu Foods and other potentially responsible parties are likely to be coordinated or consolidated into a single action before a single judge within the next two months by the Judicial Panel on Multidistrict Litigation. All these cases that will likely be coordinated or consolidated are part of what is referred to as *In re Pet Food Products Liability Litigation*, MDL No. 1850. A list of attorneys representing pet owners in MDL No. 1850, including their contact information, is attached to this letter.

As a pet owner whose pet may have been harmed by a recalled Menu Foods product, you are automatically a member of the class of plaintiffs who have brought actions against Menu Foods, and you do not need to do anything else to pursue your rights as a class member at this time. If you do not choose to settle directly with Menu Foods, you are automatically eligible to receive a portion of any recoveries received by the class if a class is certified.

If you choose to pursue a settlement directly with Menu Foods by filling out and submitting the Claim Form sent to you separately by Menu Foods, please know that **returning the Claim Form to Menu Foods will not preclude you from pursuing other available avenues for recovery at a later date, including being a part of the class action, in the event that you are not satisfied with Menu Foods' settlement offer. In addition, once you receive a settlement offer from Menu Foods, you are not bound to accept it and are free to contact an attorney for advice at that time. However, please note that if you do accept a settlement offer from Menu Foods you will not be able to participate in the class action.**

If you are at all unclear of any of your legal rights or options at this time, please do not hesitate to contact any of the attorneys on the attached list, or another attorney of your choice.

If you are currently represented by counsel in this matter and have received a communication directly from Menu Foods, please disregard that communication completely and inform your attorney immediately.

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