

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE PET FOOD PRODUCTS  
LIABILITY LITIGATION

MDL Docket No. 1850 (All Cases)

Case No. 07-2867 (NLH)

The Honorable Noel L. Hillman

**REPLY IN OPPOSITION TO MR. EARL'S REQUEST FOR  
RECONSIDERATION OF THIS COURT'S ORDER DENYING HIS REQUEST TO  
INTERVENE AND VACATE ORDERS**

This Reply responds to the letter from Mr. Earl to this Court dated March 12, 2009, in which Mr. Earl responded to Menu Foods' Opposition to Mr. Earl's request for reconsideration. Menu Foods' Opposition set forth the multiple bases supporting this Court's decision denying Mr. Earl's requests to intervene and set aside this Court's Orders related to product preservation issues. Menu Foods submits this Reply to respond to Mr. Earl's accusations in his March 12 response that Defendants and their counsel engaged in "felony obstruction of justice and professional misconduct."<sup>1</sup>

Mr. Earl's accusations are without any basis in law or fact. Defendants' Motion to Limit the Retention of Organized Recalled Product, Raw Wheat Gluten and Unorganized Inventory (Doc. No. 103, the "Preservation Motion") was filed as a matter of public record for decision by this Court, and supported with well-established authority, declarations from Defendants, and a declaration from Defendants' expert (who also was deposed by Lead Counsel for Plaintiffs in this proceeding). Menu Foods took extra steps to obtain approval from non-parties to this proceeding who were engaged in litigation against Menu Foods in other fora. Where consent to

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<sup>1</sup> The Iams Company joins in this Reply.

Menu Foods' proposal for addressing the Unorganized Inventory was not provided – such as in Mr. Earl's unrelated action filed against Menu Foods and The Kroger Company in the Superior Court for the State of Washington (the "Earl Action") – Menu Foods sought approval from the courts in which those cases were proceeding.

Thus, Mr. Earl was on notice of Menu Foods' intentions with regard to the Unorganized Inventory, and had a full opportunity to make any arguments he wanted in the Earl Action against destruction of the Unorganized Inventory. Mr. Earl implicitly acknowledges that he now is seeking relief from this Court because all of the rulings related to preservation and discovery issues in the Earl Action in Washington State were decided against him. See, e.g., Letter from Donald R. Earl dated March 12, 2009 at 3 ("With Washington courts withholding any effective relief based on the principal of comity, I have no alternative to seeking relief in this Court or the US Court of Appeals"). The fact that Mr. Earl has lost his arguments no less than seven times in the Earl Action Washington State does not give him a basis to spread his baseless litigation to this unrelated proceeding, seek another bite from a different apple, and make wild and unsubstantiated accusations of criminal conspiracy and misconduct. As set forth in Menu Foods' Opposition to Mr. Earl's Request for Reconsideration (Doc. No. 313 at 9-17), Mr. Earl has no basis to intervene in this proceeding under these circumstances and no basis to challenge this Court's prior rulings on product preservation. Accordingly, Mr. Earl's request for reconsideration of this Court's order denying his request to intervene and to vacate product preservation orders should be denied.

Dated: March 23, 2009

Respectfully submitted,

/s/ Mary E. Gately

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**CERTIFICATE OF SERVICE**

I certify that on the 23rd day of March, I caused the foregoing Reply In Opposition to Mr. Earl's Request for Reconsideration of This Court's Order Denying His Request to Intervene and Vacate Orders Response to be electronically with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and that I further caused a copy to be served by Federal Express as follows:

Donald R. Earl  
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Port Townsend, WA 98368

/s/ Gerard Hanson  
Gerard Hanson