

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARY DICAPRIO, individually and on	:	No. 2:07-cv-00734
behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	
	:	JURY DEMAND
vs.	:	
	:	
MENU FOODS INCOME FUND, MENU	:	(CLASS ACTION)
FOODS, INC., MENU FOODS MIDWEST	:	
CORPORATION, MENU FOODS SOUTH	:	
DAKOTA, INC., MENU FOODS	:	
HOLDINGS, INC., WAL-MART STORES,	:	
INC., a Delaware Corporation d/b/a WAL-	:	
MART SUPER CENTER STORE NO. 2287,	:	
	:	
Defendants.	:	

**MOTION FOR EXTENSION OF TIME TO PLEAD OR FILE FURTHER MOTIONS**

AND NOW, come, Defendants, MENU FOODS INCOME FUND, MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, MENU FOODS SOUTH DAKOTA, INC., MENU FOODS HOLDINGS, INC., (hereinafter referred to as “MENU FOODS” or “Defendant”), who file the within MOTION FOR EXTENSION OF TIME TO PLEAD OR FILE FURTHER MOTIONS, stating as follows:

1. MARY DICAPRIO, (hereinafter referred to as “Plaintiff”) individually and on behalf of all others similarly situated, filed this products liability action against Defendants, MENU FOODS INCOME FUND, MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, MENU FOODS SOUTH DAKOTA, INC., MENU FOODS HOLDINGS, INC., in the Court of Common Pleas of Lawrence County, Pennsylvania, on April 9, 2007 at Civil Action No. 10534 of 2007. Plaintiff alleges therein that her pet (cat) suffered from renal failure after consuming pet food

manufactured and distributed by the Defendants. Plaintiff further claims she sustained compensatory damages as a result of her cat's illness.

2. MENU FOODS was served with a copy of the Summons and the Complaint on May 10, 11 and 14, 2007 (each entity receiving service on different dates). On May 30, 2007 MENU FOODS filed a Notice of Removal to the U.S. District Court for the Western District of Pennsylvania pursuant to the Class Action Fairness Act. As such a responsive pleading is due to be filed by June 6, 2007.

3. Subsequently, a Motion to Stay was filed since currently, there are at least ninety-three (93) actions that seek relief for individuals who purchased allegedly contaminated pet food from MENU FOODS. Federal courts have original jurisdiction over these state and common law based actions pursuant to the Class Action Fairness Act of 2005. 28 U.S.C. §1332(d). Specifically, the pending cases allege that MENU FOODS sold contaminated pet food to the general public and individuals whose pets consumed this pet food sustained injuries and/or death. The pending cases seek to certify a class of United States residents who purchased allegedly contaminated pet food and seek to compensate them for all damages incurred as a result of Defendant's conduct. None of the pending cases are advanced and no discovery has been conducted. The actions are currently pending in the Western District of Washington, Eastern District of Tennessee, Northern District of Illinois, Western District of Wisconsin, Western District of Arkansas, District of New Jersey, Middle District of Florida, Northern District of Florida, Southern District of Florida, District of Connecticut, Central District of California, District of Rhode Island, District of Maine, Northern District of California, District of

Nevada, District of Idaho, Northern District of Ohio, District of Minnesota, District of Colorado and District of Massachusetts.

4. Since the Motion for Stay is pending and the Judicial Panel on Multidistrict Litigation (“JPML”) issued a Notice of Hearing Session for May 31, 2007, to consider the MDL motions (“Collectively known as MDL 1850 - *In re Pet Food Products Liability Litigation*). The JPML panel held a hearing on the pending MDL motions on May 31, 2007 and should issue its decision shortly; MENU FOODS seeks an extension of time to file a responsive pleading until the Western District has an opportunity to review the Motion for Stay. If said Motion to Stay is denied, MENU FOODS requests a forty five (45) day extension from the time it is notified of the denial to file a responsive pleading or further motion.

WHEREFORE, Defendants, MENU FOODS INCOME FUND, MENU FOODS, INC., MENU FOODS MIDWEST CORPORATION, MENU FOODS SOUTH DAKOTA, INC., MENU FOODS HOLDINGS, INC., pray this Honorable Court to grant Defendants’ Motion for Extension of Time to Plead or File Further Motions.

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FOODS MIDWEST CORPORATION,  
MENU FOODS SOUTH DAKOTA, INC.,  
MENU FOODS HOLDINGS, INC.,  
Five of the Defendants

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served the foregoing document to all counsel of record in the following manner on the 6<sup>th</sup> day of June, 2007:

Via Facsimile	_____
Via Hand Delivery	_____
Via First Class U.S. Mail	<u>  X  </u>
Via Overnight Mail	_____
ECF Filing	<u>  X  </u>

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Five of the Defendants