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Attorneys for Plaintiff

DEBORAH FELLNER, individually and on behalf of those similarly situated.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MORRIS COUNTY DOCKET No. <u>L-232-c6</u>
Plaintiffs	:	
vs.	:	Civil Action
TRI-UNION SEAFOODS, L.L.C., dba CHICKEN OF THE SEA.	:	CLASS ACTION COMPLAINT, JURY DEMAND, AND DESIGNATION OF CLASS COUNSEL
Defendant.	:	

Plaintiff, Deborah Fellner, individually and as class representative, by and through her counsel, Eichen Levinson, LLP, hereby makes this claim against the Defendant as follows:

1. This is a class action brought on behalf of all individual New Jersey consumers, and on behalf of all individual consumers throughout the United States, who purchased Tuna Products canned or distributed by the Defendant, Tri-Union, and which the Defendant canned or distributed in violation of the New Jersey Products Liability Act (“NJPLA”), N.J.S.A. 2A:58C-1, *et seq.*, and in violation of the New Jersey Consumer Fraud Act (“CFA”), N.J.S.A. 56:8-1 *et seq.* Included in the unlawful acts and practices committed by the Defendants are the following:

- a. Failure to disclose that the Defendant’s tuna contained Methylmercury and other harmful compounds that could result in mercury poisoning;

- b. Canning and distributing Tuna Products that were not reasonably fit, suitable, and safe; and
- c. Material misrepresentations or omissions regarding the safety of the of the Tuna Products canned or distributed by the Defendant;

Each of the aforesaid acts constitutes a violation of the NJPLA, N.J.S.A. 2A:58C-1, *et seq.*, a violation of the CFA, N.J.S.A. 56:8-1 *et seq.*, or common law fraud. This action seeks, *inter alia*, damages and compensation to all class members from the Defendant, interest, punitive damages, costs of suit, treble damages and attorneys' fees, and any other damages deemed just and proper by the Court.

### PARTIES

2. Plaintiff Deborah Fellner is a citizen of New Jersey and resides at 14 Bassett Avenue, Township of Mine Hill, County of Morris, and State of New Jersey.

3. Defendant Tri-Union Seafoods, dba Chicken of the Sea, is a California corporation duly organized and operating under the laws of New Jersey. It is through its officers, agents, and employees engaged in the business of distributing and/or selling Tuna Products to class members in New Jersey and nationwide, and its address is 9330 Scranton Boulevard, in San Diego, California.

4. At all times material hereto, the Defendant acted by and through its employees, agents and servants, actual or ostensible, who then and there were acting within the course and scope of their duties, agency, employment and/or authority.

### JURISDICTION AND VENUE

5. Jurisdiction is proper because Plaintiff is a citizen of the State of New Jersey and the Defendant purposefully avails itself of and regularly conducts business in

New Jersey and has sufficient minimal contacts therewith that maintenance of suit against said Defendant in this State does not offend traditional notions of fair play and substantial justice.

6. Venue is proper pursuant to New Jersey Court Rule 4:3-2(a) and (b) because the Defendant regularly conducts business in Middlesex County, and many of the class members are located in Middlesex County.

#### **FACTS UNDERLYING PLAINTIFF'S INDIVIDUAL COMPLAINT**

7. During the period 1999 through 2004, Plaintiff's diet consisted almost exclusively of Tuna Products canned and distributed by the Defendant.

8. Although aware that its Tuna Products contained methylmercury and other harmful compounds that could result in mercury poisoning, the Defendant canned and distributed its Tuna Products without warning or adequately disclosing the harmful effects of such compounds.

9. The Defendant, acting negligently, directly manufactured, processed, tested, canned, marketed and sold its Tuna Products.

10. Pursuant to N.J.S.A. 2A:58-C, *et seq.*, (New Jersey Products Liability Act) Plaintiff asserts all claims and causes of action against the Defendant, including but not limited to negligence, breach of implied warranty of merchantability, breach of implied warranty of fitness, strict liability, for failure to warn and/or inadequate warning on theories of both negligence and strict liability, all claims and causes of action pertaining to the design, manufacture, sale and distribution of the defective Tuna Products which were not reasonably fit, suitable or safe for their intended purposes as they were

defectively designed, manufactured and/or failed to contain adequate warnings and/or instructions.

### **FACTS COMMON TO ALL COUNTS AND CLASS CERTIFICATION**

11. Although aware that its Tuna Products contained methylmercury and other harmful compounds that could result in mercury poisoning, the Defendant negligently canned and distributed Tuna Products without warning or adequately disclosing to Plaintiff and members of the class the harmful effects of such compounds.

12. The Defendant, acting negligently, directly manufactured, processed, tested, canned, marketed and sold its Tuna Products to Plaintiff and members of the class without adequate warning.

### **CLASS ACTION ALLEGATIONS**

13. Plaintiff hereby incorporates the allegations of ¶¶ 1 through 12 as if fully set forth at length.

14. This action is brought by Plaintiff as a class action pursuant to New Jersey Court Rule 4:32, on behalf of herself and a class of all similarly situated individuals.

15. Plaintiff and millions of individuals have purchased Tuna Products from the Defendant.

16. The proposed classes consist of a class of all New Jersey individuals ("New Jersey Class"), and a class of all individuals in the United States ("Nationwide Class"), who purchased Tuna Products from the Defendant, and whom Defendant failed to apprise via adequate warnings of the methylmercury and other harmful compounds that could result in mercury poisoning, that Defendant knew and should have known were contained in its Tuna Products. Specifically excluded from the class are the Defendant,

any entity in which the Defendant has a controlling interest, and the Defendant's officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries and their assigns or any such entity, together with any immediate family members of any officer or employee of said companies.

17. The proposed classes are so numerous that the individual joinder of all their members is impractical. The exact number of class members is unknown at this time and can only be ascertained through appropriate investigation and discovery of Defendant's records. Plaintiff believes that the number of class members in the New Jersey Class is in the millions, and that the number of class members in the Nationwide Class is in the tens of millions. As a result, joinder of all class members in a single action is impractical.

18. The classes are manageable, and their members are identifiable through the Defendant's business records. The New Jersey Class members are concentrated in the State of New Jersey, and many or most of the Nationwide Class members are located in the State of New Jersey.

19. There exists in this matter questions of law and fact arising out of the Defendant's conduct which are common to all members of the classes and which questions predominate over individual questions. Among the numerous common questions of law and fact are:

- a. whether the actions and activities of the Defendant violated the New Jersey Product Liability Act, N.J.S.A. 2A:58-C, *et seq.*;
- b. whether the actions and activities of Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*;

- c. whether Defendants made material misrepresentations of fact, or omitted to state material facts to Plaintiff and the class regarding the harmful mercury compounds contained in their Tuna Products, which operated as a fraud and deceit upon the class; and
- d. whether Plaintiff and members of the class sustained damage and loss.

20. Plaintiff's claim is typical of the claims of the class members she seeks to represent. Plaintiff and all other class members sustained damages arising out of the Defendant's common course of conduct as complained of herein. The amount of money is such that proceeding by way of class action is the sole economically feasible and sensible means for vindicating the injuries sustained by Plaintiff and the class.

21. The prosecution of separate actions by individual members of the class would risk inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendant and incompatible rights for members of the class.

22. Adjudication with respect to individual class members would, as a practical matter, prove dispositive of the interests of other class members not parties to the individual adjudications and/or substantially impede the ability of the non-party class members to protect their interests.

23. The questions of fact and law common to the class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this action.

24. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained experienced counsel in complex civil litigation and said counsel has

no adverse interests and is qualified to serve as class counsel. Plaintiff understands the nature of the claims herein, has no disqualifying factors, and will vigorously represent the interests of the class. Plaintiff, by agreement with counsel, has the resources available to prosecute this class fully and completely.

## COUNT I

### INDIVIDUAL COMPLAINT

#### VIOLATION OF THE NEW JERSEY PRODUCTS LIABILITY ACT

25. Plaintiff hereby incorporates the allegations of ¶¶ 1 through 24 as if fully set forth at length.

26. The Defendant, acting negligently as aforesaid, directly manufactured, processed, tested, canned, marketed and sold its Tuna Products to Plaintiff without adequate warning regarding the harmful mercury compounds contained in said Tuna Products.

27. Pursuant to N.J.S.A. 2A:58-C, *et seq.*, (New Jersey Products Liability Act) Plaintiff asserts all claims and causes of action against the Defendant, including but not limited to negligence, breach of implied warranty of merchantability, breach of implied warranty of fitness, strict liability, for failure to warn and/or inadequate warning on theories of both negligence and strict liability, all claims and causes of action pertaining to the design, manufacture, sale and distribution of the defective Tuna Products which were not reasonably fit, suitable or safe for their intended purposes as they were defectively designed, manufactured and/or failed to contain adequate warnings and/or instructions.

28. Due to the negligence and statutory violations of the Defendant, Plaintiff Deborah Fellner contracted severe mercury poisoning and suffered extreme physical and emotional injuries.

WHEREFORE, Plaintiff Deborah Fellner demands judgment on this count against the Defendant for damages, costs of suit, interest, attorneys' fees pursuant to N.J.S.A. 2:15-3, *et seq.*, and other relief as this Court deems just and proper.

## COUNT II

### CLASS COMPLAINT

#### VIOLATION OF THE NEW JERSEY PRODUCTS LIABILITY ACT

29. Plaintiff hereby incorporates the allegations of ¶¶ 1 through 28 as if fully set forth at length.

30. The Defendant, acting negligently as aforesaid, directly manufactured, processed, tested, canned, marketed and sold its Tuna Products to Plaintiff and members of the classes without adequate warning regarding the harmful mercury compounds contained in said Tuna Products.

31. Pursuant to N.J.S.A. 2A:58-C, *et seq.*, (New Jersey Products Liability Act) Plaintiff asserts all claims and causes of action on her behalf and that of the classes against the Defendant, including but not limited to negligence, breach of implied warranty of merchantability, breach of implied warranty of fitness, strict liability, for failure to warn and/or inadequate warning on theories of both negligence and strict liability, all claims and causes of action pertaining to the design, manufacture, sale and distribution of the defective Tuna Products which were not reasonably fit, suitable or safe



for their intended purposes as they were defectively designed, manufactured and/or failed to contain adequate warnings and or instructions.

32. Plaintiff and members of the class suffered damage and loss due to Defendant's actions.

WHEREFORE, Plaintiff demands judgment on her behalf and that of the classes against the Defendant for damages, costs of future medical monitoring, costs of suit, interest, attorneys' fees pursuant to N.J.S.A. 2:15-3, *et seq.*, and other relief as this Court deems just and proper.

### COUNT III

#### CLASS COMPLAINT

#### VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

33. Plaintiff hereby incorporates the allegations of ¶¶ 1 through 32 as if fully set forth at length.

34. The Defendant, acting as aforesaid, violated the New Jersey Consumer Fraud Act (hereinafter, "CFA"), N.J.S.A. 56:8-1 *et seq.*, by knowingly misrepresenting, concealing, suppressing, omitting and failing to disclose material information regarding the presence of methylmercury and other harmful compounds in their Tuna Products, with the intent that Plaintiff and members of the class rely upon such concealment, suppression, omission and failure to disclose in purchasing the Defendant's Tuna Products.

35. Defendant, acting as aforesaid, violated the CFA by failing to disclose to Plaintiff and members of the class that its Tuna Products contained unreasonably high

levels of methylmercury and other harmful compounds that could result in mercury poisoning.

36. Defendant, acting as aforesaid, violated the CFA by the knowing use of false and misleading representations regarding the safety of its Tuna Products and the presence therein of harmful levels of methylmercury and other harmful compounds that could result in mercury poisoning.

37. Pursuant to the Defendant's misrepresentations and omissions, Plaintiff and members of the class were falsely led to believe that Defendant's Tuna Products did not contain unsafe levels of methylmercury and other harmful compounds that could result in mercury poisoning.

38. Plaintiff and members of the class suffered an ascertainable loss as a result of the Defendant's actions in violation of the CFA.

WHEREFORE, Plaintiff demands judgment against Defendants, on her own behalf and that of the class, for compensatory damages, costs, treble damages, reasonable attorneys' fees, and any other relief as this Court deems just and proper.

#### COUNT IV

#### CLASS COMPLAINT

#### COMMON LAW FRAUD

39. Plaintiff hereby incorporates the allegations of ¶¶ 1 through 38 as if fully set forth at length.

40. The actions of the Defendant as set forth above constitute fraudulent conduct, including but not limited to, knowingly making material misrepresentations and/or omissions regarding the Defendant's Tuna Products and their freedom from

unreasonably high levels of methylmercury and other harmful compounds, upon which misrepresentations and or omissions Plaintiff and members of the class reasonably relied.

41. Defendant knowingly made material misrepresentations and or omissions to Plaintiff and members of the class by concealing and failing to disclose the presence of unsafe methylmercury and other harmful compounds in the Defendant's Tuna Products.

42. Defendant knew or should have known that the above-referenced misrepresentations and/or omissions were false and misleading.

43. Plaintiff and members of the class reasonably relied on the Defendant's misrepresentations and/or omissions, and as a result thereof Plaintiff and members of the class suffered loss in the amount of the monies conveyed to the Defendant for Tuna Products containing unsafe methylmercury and other harmful compounds that could result in mercury poisoning.

WHEREFORE, Plaintiff demands judgment against the Defendant, on her own behalf and that of the class, for compensatory damages, including interest, punitive damages, costs of future medical monitoring, costs of suit, and any other relief as this Court deems just and proper.

#### **CERTIFICATION PURSUANT TO RULE 4:5-1**

I certify that the matter in controversy is not subject to a proceeding in another jurisdiction pending in New Jersey.

#### **DESIGNATION OF TRIAL COUNSEL**

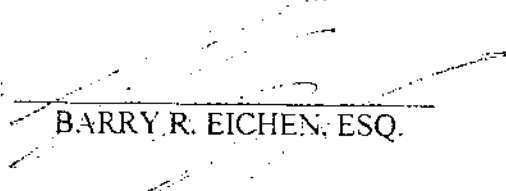
In accordance with Rule 4:5-1, Barry R. Eichen, Esquire, is hereby designated as trial counsel.

**JURY DEMAND**

Plaintiff demands trial of all issues by jury.

**EICHEN LEVINSON, LLP**  
Attorneys for Plaintiff and Plaintiff Class

Dated: January 16, 2006

By:   
**BARRY R. EICHEN, ESQ.**