

San Francisco Superior Courts  
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Case Number: CGC-04-432394

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ORDER

PEOPLE OF THE STATE OF CALIFORNIA VS. TRI-UNION SEAFOODS, LLC.,

001C01446953

### Instructions:

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FILED  
San Francisco County Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA

MAY 12 2006

COUNTY OF SAN FRANCISCO

GORDON PARK-LI, Clerk

BY: [Signature]  
Deputy Clerk

1	PEOPLE OF THE STATE OF CALIFORNIA, ex )	Case No.:	CGC-01-420975; CGC-04-
2			
3	rel., BILL LOCKYER, Attorney General )	432394	
4			
5	of the State of California; & PUBLIC )	RULINGS ON JUDICIAL NOTICE AND	
6		EVIDENCE	
7	MEDIA CENTER, , )		
8			
9	Plaintiff, )		
10			
11	vs. )		
12	TRI-UNION SEAFOODS, LLC., DEL MONTE )		
13			
14	CORPORATION, BUMBLE BEE SEAFOODS, )		
15			
16	LLC, and DOES 1 through 100, )		
17			
18	Defendant )		

At the close of this bench trial, the Court took under submission certain evidentiary issues. At the presentation of final argument, each side indicated that these matters were pending. The Court indicated that it would resolve the issues in a separate opinion. At this time, the Court will address each of the unresolved evidentiary matters.

The following unresolved evidentiary matters are decided as follows

1. Tuna Cannery unopposed motion to admit Trial Exhibit 654A, entitled "Northern Hemisphere" into evidence. GRANTED.
2. Tuna Cannery motion to admit Trial Exhibit 865, entitled "Mercury 101" into evidence. GRANTED. At trial, Dr. Rice contended that a methylmercury MADL of 0.3 ug/day is inappropriate because "actual clinical efforts" have been seen at levels less than 300 ug/day,

1 which is 1000 times the Tuna Cannery's MADL. Dr. Rice also  
2 maintained that the WHO had "observed" paresthesia in persons  
3 poisoned in the Iraqi grain episode at blood mercury levels of 50  
4 and 200 micrograms ("WHO Report"). However, Dr. Rice never provided  
5 the WHO Report that she purported to summarize in her expert report  
6 (TX 786). When confronted with a WHO Report on Iraq from WHO's  
7 website (TX 865), she claimed that it was different from the version  
8 she used, and plaintiff's counsel represented that it would provide  
9 to the Court and defense counsel a copy of the Rice WHO Report.  
10 Rice, 25 Tr. 3151:1-18. The plaintiff has not yet provided such  
11 report. Hence the defendants move to admit TX 865.

12 3. Tuna Cannerys make several objections to evidence proffered by  
13 plaintiffs in its Proposed Findings of Fact and Conclusions of Law  
14 Re: Warning and Preemption. These objections focus on the  
15 communications between Edward Weil of the AG Office and the FDA; on  
16 the grounds of hearsay and relevance; and Exhibits K and L attached  
17 to the Weil Declaration (Letters from Senators Feinstein and  
18 Boxer.) The Attorney General filed an opposition to the objections by  
19 defendants. After reviewing the papers, the Court GRANTS the motion  
20 to strike the Attachments K and L, the letters from Senators  
21 Feinstein and Boxer. They are hearsay and inadmissible. The Court  
22 DENIES the objections by defendants to the declaration of Edward  
23 Weil. The declaration is relevant and is not hearsay. The Court  
24 indicated that rather than have Mr. Weil testify (at the time, he  
25 was available for testifying) his declaration would be received in  
lieu of his testimony. Trial Transcript, 25, 3240:17-3241:20.

Each side also asks the Court to take judicial notice of certain documents or materials.

1 1. The Tuna Cannery seek judicial notice of documents in their  
2 Motion for Judgment on the Pleadings. Specifically they ask the  
3 Court to take judicial notice of Exhibit L, a California State  
4 Advisory titled "Protecting Yourself and your Family From  
5 Mercury in Fish," Exhibit M, an advisory of OEHHA titled  
6 "Fish: Advice for Women of Childbearing Years and Children,"  
7 and Exhibit N, an advisory concerning fish from OEHHA. There  
8 is no objection to each exhibit. The request for judicial  
9 notice is GRANTED.

10 2. Tuna Cannery request judicial notice regarding materials in  
11 the Motion for Judgment on the Pleadings. They make the  
12 request pursuant to §§452-453 of the Evidence Code. These  
13 items are Exhibit A-K, attached to the Pleading. The Court  
14 GRANTS defendants' request for judicial notice in support of  
15 their motion for judgment on the pleadings for all of the  
16 documents requested with certain limitations. Pursuant to  
17 §452(g) judicial notice may be taken where "facts and  
18 propositions are not reasonably subject to dispute and are  
19 capable of immediate accurate determination by resort to  
20 sources of reasonably indisputable accuracy." Additionally,  
21 §452(b) permits judicial notice for "regulations and  
22 legislative enactments issued by or under the authority of the  
23 United States or any public entity of the United States." The  
24 scope of judicial notice should be limited, as noted by  
25 plaintiffs, to the fact that the agency adopted a specific  
approach to dealing with methylmercury in fish. *Mangini v.*  
*R.J.Reynolds Co.* (1994) 7 Cal.4<sup>th</sup> 1057, 1063. Therefore, the  
Court should take judicial notice of the existence of the  
documents and the relative findings of each agency, but not

1 the truth of the matters asserted in all of the documents.  
2 That being said, the Court will take full judicial notice of  
3 Exhibit A of the Pleadings, the letter from FDA Commissioner  
4 Lester Crawford to Bill Lockyer, AG of California, dated  
5 August 12, 2005. The Court determines the opinion letter  
6 amounts to an informal agency decision and should be given  
7 proper deference. *Geier v. American Honda Motor Co.* (2000)  
8 529 U.S. 861, 881 (Supreme Court concluded that the Department  
9 of Transportation's interpretation of its safety standard  
10 should be accorded deference.) The Campbell letter is  
11 dispositive to the preemption issue and the Court should take  
12 judicial notice of the existence of the letter and its  
13 critical contents.

14 3. The Tuna Cannery request the Court to take judicial notice of  
15 attachments in their Reply to People's Proposed Findings of  
16 Fact and Conclusions of Law Re: Preemption, Exposure Analysis  
17 and Naturally Occurring. The first item is a Los Angeles  
18 Times article "Limits on the Table for Food Warnings Signs,"  
19 dated February 9, 2005. The request for judicial notice is  
20 DENIED. The second item is a Memo from AG Lockyer to members  
21 of the California delegation dated February 10, 2006,  
22 regarding the AG's opposition to the National Uniformity for  
23 Foods Act of 2005. The request for judicial notice is  
24 GRANTED. The Court relies on Evidence Code §§452(c) and (h) in  
25 that the sections allow judicial notice of official acts of  
the California Attorney General that are not reasonably  
subject to dispute and are capable of immediate and accurate  
determination by resort to sources of reasonably indisputable  
accuracy. The Memorandum is also relevant to the naturally

1 occurring issue because the AG states that Proposition 65 has  
2 provided an incentive to private companies to reduce the toxic  
3 chemicals in food products. The third request deals with a  
4 print out of the USDA Food and Nutrient Database for Dietary  
5 Studies. This listing is relevant under 22 CCR 12821(c)(2) to  
6 establish that canned tuna is a general category of product  
7 according to the USDA. This particular information source is  
8 specifically acknowledged as an appropriate source on the rate  
9 of intake based on 22 CCR 12821(c)(2). Giving judicial notice  
10 under §§452(c) and (h) as federal documents is also correct.  
11 This request for judicial notice is GRANTED. The fourth item  
12 of judicial notice is 21 CFR 161.190, which identifies the  
13 fish included in the class of tuna fish contained in canned  
14 tuna. Under 452(c) and (h), the Court GRANTS this request for  
15 judicial notice.

- 16 4. The People of the State of California ask this Court to take  
17 judicial notice of the Final Statement of Reasons for 22 CCR  
18 12601, along with defendants. That request is GRANTED.
- 19 5. Plaintiffs also seek judicial notice pursuant to Evidence Code  
20 §452(c) of the following: 1) the National Uniformity of Foods  
21 Act of 2005, H.R. 4167, 109<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2005); 2) Dept.  
22 of Health and Human Services, Food and Drug Administration,  
23 Proposed Rule re Food Labeling: Warning and Notice  
24 Requirements, 63 Fed. Reg. 20486 (April 24, 1998); and 3)  
25 Executive Order 13132 re Federalism, 64 Fed. Reg. 43255. Each  
application is GRANTED.
6. Plaintiffs seek judicial notice of a bill pending before the  
Congress, HR 4167. As amended, the bill has a provision that  
states the law would not expressly preempt "a State law,

1 regulation, proposition or other action that establishes a  
2 notification requirement regarding the presence or potential  
3 effects of mercury in fish or shellfish." Neither the  
4 amendment nor the actual bill have been passed by the  
5 Congress. This suggests the cited language has minimal impact  
6 in this case. Indeed, the issue here is not express  
7 preemption but conflict preemption as discussed in the  
8 decision itself. However, that being said, the issue is one  
9 of judicial notice. Putting aside the question of relevance,  
10 the Court GRANTS plaintiffs request for judicial notice.

11 SO ORDERED

12 DATE: May 10, 2006



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13 ROBERT L. DONDERO  
14 Presiding Judge of the Superior Court

**Superior Court of California**  
County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA,  
ex rel., BILL LOCKYER, Attorney General of  
the State of California; & PUBLIC MEDIA  
CENTER,

Plaintiff(s)

vs.

TRI-UNION SEAFOODS, LLC, DEL  
MONTE CORPORATION, BUMBLE BEE  
SEAFOODS, LLC, et al.,

Defendant(s)

Case Number: 420975 consol. w/432394

**CERTIFICATE OF SERVICE BY MAIL**  
(CCP 1013a (4) )

I, VERA MU, a Deputy Clerk of the Superior Court of the County of San Francisco,  
certify that I am not a party to the within action.

On May 12, 2006 I served the attached RULINGS ON JUDICIAL NOTICE AND  
EVIDENCE by placing a copy thereof in a sealed envelope, addressed as follows:

ROBERT C. GOODMAN, Esq.  
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and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: May 12, 2006

GORDON PARK-LI, Clerk

By:  \_\_\_\_\_  
VERA MU, Deputy Clerk