

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CIVIL ACTION NO.: 06-CV-688 (DMC)

DEBORAH FELLNER,
Individually and on Behalf of Those
Similarly Situated,

Plaintiffs,

v.

TRI-UNION SEAFOODS, L.L.C.,
d/b/a CHICKEN OF THE SEA,

Defendant.

**DEFENDANT’S MOTION REQUESTING JUDICIAL NOTICE
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF’S COMPLAINT
AND MOTION TO DISMISS PLAINTIFF’S CLASS ACTION ALLEGATIONS**

Pursuant to Rule 201 of the Federal Rules of Evidence, the Defendant, Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea (“Defendant”), respectfully requests that the Court take Judicial Notice of the matters listed below which support *Defendant’s Motion to Dismiss Plaintiff’s Complaint* and *Defendant’s Motion to Dismiss Plaintiff’s Class Action Allegations*.¹

1. That the Court take Judicial Notice of “What You Need to Know About Mercury in Fish and Shellfish,” published by the United States Department of Health and Human Services and the United States Environmental Protection Agency. Attached hereto as Exhibit “A” is a true and correct copy of said publication.

¹ See *Hollis-Arrington v. PHH Mortgage Corp.*, No. 05-2556FLW, 2005 WL 3077853, * (D. N.J. Nov. 15, 2005) (pursuant to Fed. R. Civ. P. 201 court may take judicial notice of public records on motion to dismiss); *Benak v. Alliance Capital Mgmt. L.P.*, 349 F. Supp. 2d 882, 889 n. 8 (D. N.J. 2004) (on motion to dismiss court may take judicial notice of publicly available documents); *Sonntag v. Papparozi*, 256 F. Supp. 2d 320, 324 (D. N.J. 2003) (“[T]he court may take judicial notice of certain ‘integral’ documents or facts in resolving a motion to dismiss.”).

2. That the Court take Judicial Notice of “Backgrounder for the 2004 FDA/EPA Consumer Advisory: What You Need to Know About Mercury in Fish and Shellfish,” published by the United States Department of Health and Human Services and the United States Environmental Protection Agency. Attached hereto as Exhibit “B” is a true and correct copy of said publication.
3. That the Court take Judicial Notice of the Letter from Lester M. Crawford, D.V.M., Ph.D., United States Commissioner of Food and Drugs, to Bill Lockyer, Attorney General of the State of California, dated August 12, 2005, re: a suit filed on June 21, 2004 in San Francisco Superior Court. Attached hereto as Exhibit “C” is a true and correct copy of said letter.²
4. That the Court take Judicial Notice that Section 540.600 of the Federal Food and Drug Administration’s Compliance Policy Guide allows up to one part of methyl mercury per million non-mercury parts of the edible portion of seafood. Attached hereto as Exhibit “D” is a true and correct copy of said provision.

² See e.g., *In re Vertex Pharmaceuticals, Inc., Securities Litigation*, 357 F. Supp. 2d 343, (D. Mass. 2005) (taking judicial notice of FDA policy regarding long-term animal testing as a matter of public record); *In re Wellbutrin SR/Zyban Antitrust Litigation*, 281 F. Supp. 2d 751, 755 n.2 (E.D. Pa. 2003) (taking judicial notice of FDA report posted on official FDA website); *Warner-Lambert Co. v. Fed. Trade Comm’n*, 562 F.2d 749, 754 (D. D.C. 1977) (granting motion requesting court take judicial notice of FDA study of over-the-counter cold remedies).

WHEREFORE, the Defendant, Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea, respectfully requests that the Court take Judicial Notice of the matters listed above.

Respectfully submitted,
TRI-UNION SEAFOODS, L.L.C,
d/b/a CHICKEN OF THE SEA .
By its attorney,

/s/ Kenneth A. Schoen
Kenneth A. Schoen (#KS-7180)
Bonner Kiernan Trebach & Crociata, LLP
140 Littleton Road – Suite 201
Parsippany, NJ 07054
(973) 335-8480

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