NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

DEBORAH FELLNER,
DEBORAII FELLNER,
Plaintiff,
V.
TRI-UNION SEAFOODS, L.L.C., d/b/a
CHICKEN OF THE SEA,
CHICKEN OF THE SEA,
Defendant.

Hon. Dennis M. Cavanaugh

ORDER

Civil Action No. 06-CV-0688 (DMC)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon motion to dismiss by Tri-Union Seafoods, LLC ("Defendant"). Deborah Fellner ("Plaintiff") asserts claims against Defendant, alleging violations of the New Jersey Products Liability Act ("NJPLA"), N.J.S.A. 2A:58C-1 *et seq.* and the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 *et seq.* for caning and distributing albacore tuna containing harmful mercury compounds, while failing to warn and disclose the harms associated with the mercury contained in its albacore tuna products. Defendant moves to dismiss Plaintiff's Amended Complaint pursuant to FED. R. CIV. P. 12(b)(6). Having considered the parties' submissions, and for the reasons set forth in the Court's Opinion of this day,

IT IS on this <u>13th</u> day of April, 2010;

ORDERED that Defendant's motion is granted with respect to Counts II and III of

Plaintiff's Amended Complaint (CFA and punitive damages claims); and it is further

ORDERED that Defendant's motion is denied as to Count I of Plaintiff's Amended

Complaint; and it is further

ORDERED that Plaintiff's motion to strike Defendant's motion for judicial notice is **denied**.¹

S/ Dennis M. Cavanaugh Dennis M. Cavanaugh, U.S.D.J.

Orig.: Clerk's Office cc: All Counsel of Record The Honorable Mark Falk, U.S.M.J. File

¹ In accordance with the Court's Opinion and Order of this day, Docket Entry Nos. 35, 44 are hereby terminated.