

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

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

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**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.**

**RETURN DATE: APRIL 10, 2006**

**DEFENDANT’S MOTION TO DISMISS  
PLAINTIFF’S CLASS ACTION ALLEGATIONS**

Pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative 12(f), the Defendant, Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea (“Defendant”), hereby moves for an Order dismissing, or otherwise striking, all class action allegations contained in the Complaint filed by the Plaintiff, Deborah Fellner (“Plaintiff”), individually, and on behalf of all other similar situated.

As grounds there for, the Defendant states that the Complaint itself demonstrates that the requirements for maintaining a class action cannot be met under any circumstances, and thus dismissal is appropriate as a matter of law. *See* Fed. R. Civ. P. 23. Specifically: (1) as set forth in the Defendant’s motion to dismiss, the Plaintiff has failed to state a valid cause of action upon which relief could be granted with respect to her individual claims; (2) numerous individual questions of fact and law regarding causation, the extent of damages, and exposure to

methylmercury will predominate over the alleged common questions of law and fact and therefore, class treatment is not the superior method of adjudication of the claims asserted; (3) the Complaint fails to set forth any legitimate common questions of law or fact; (4) the Plaintiff's claims are not typical of the claims of other class members and the Plaintiff is not an adequate representative of the class; (5) the numerosity requirement for class certification cannot be satisfied by the speculative allegations set forth in the Complaint; (6) the purported classes cannot be certified under Fed. R. Civ. P. 23(b)(1); and (7) alternatively, the Plaintiff's proposed class, as defined in the Complaint, cannot include all individuals throughout the United States because products sold in other states cannot be compelled to adhere to New Jersey state law.

In support of this motion, the Defendant submits and incorporates herein by reference (1) *Defendant's Memorandum of Law in Support of Its Motion to Dismiss Plaintiff's Class Action Allegations*; (2) *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*; and (3) *Defendant's Motion to Dismiss Plaintiff's Complaint*, and (4) all exhibits attached thereto, all of which have been filed herewith.

**WHEREFORE**, the Defendant Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea, requests that this Court enter an Order dismissing the class claims, Counts II, III and IV, in their entirety, or in the alternative, striking all class action allegations, ¶¶ 1-24, and 29-43, of the Complaint.

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

/s/ Kenneth A. Schoen  
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DATED: March 9, 2006