

BONNER KIERNAN

BONNER KIERNAN TREBACH & CROCIATA LLP

299 Cherry Hill Road • Suite 300 • Parsippany, New Jersey 07054 • Telephone: (973) 335-8480 • Facsimile: (973) 299-1337

www.bonnerkiernan.com

December 6, 2011

Via Fax (973-645-4549) and ECF

Hon. Joseph Dickson, U.S.M.J.

United States District Court

District of New Jersey

1 Federal Square

Newark, NJ 07101

Re: *Deborah Fellner, Individually and on Behalf of Those Similarly Situated v. Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea*
Civil Action No. **06-CV-688 (DMC)**
BKT&C File No. 0558.0049

Dear Judge Dickson:

We represent defendant Tri-Union Seafoods, L.L.C. d/b/a Chicken of the Sea in the above-captioned matter.

Pursuant to this Court's request at the previous settlement conference, the parties agreed to meet and confer to further address any issues regarding the scope and potential cost of discovery. We have conferred on two separate occasions (December 2 and December 5) and have addressed some potential proposals for resolving these outstanding discovery issues in this case. However, despite our best efforts, there are still some issues that have not yet been resolved. Accordingly, please accept this letter as an outline of Tri-Union's position regarding the remaining disputes between the parties regarding the extent and scope of certain aspects of discovery.

As an initial matter, at the recent meet and confer sessions with plaintiff's counsel, it was suggested that the parties engage in "staged" discovery. The first stage suggested by plaintiff would be for the defense to turn over documents that were prepared in connection with the Proposition 65 litigation in California.

We have performed some preliminary investigation into this suggestion. What we have learned is that many of these documents are subject to a joint protective order that involves several of the other defendants in the Proposition 65 litigation, including Bumble Bee, Del Monte, and numerous unnamed defendants. Many of the materials are marked "confidential" and/or "highly confidential" and appear to fall within the scope of the Protective Order. At present, we are investigating the extent of the protective order and what documents, as well as what parties are covered under it. In either event, one thing is clear; the documents that were previously prepared for the Proposition 65 action in California include data that is germane to a

very specific California statute, including sales data for California and whether mercury is naturally occurring in the earth's oceans. These are matters which were neither requested by plaintiff, herein, nor do they fall within the scope of this Court's Letter Order, dated March 11, 2011.

Pursuant to this Court's March 11, 2011 Order, discovery has been limited to the issue of failure to warn and is limited to 1) Defendant's knowledge of the presence of Methylmercury in tuna, 2) Defendant's understanding of the dangers of mercury in tuna, 3) Defendant's effort's and/or decision making regarding warnings that may have or could have been placed on labels from 1993-2004. In addition, the Court also granted the plaintiff limited discovery of post-2004 to those documents which relate to the Defendant's pre-2004 knowledge about warnings of methymercury in its tuna products.

Within the motion seeking a protective order, defendant had estimated that there were approximately 10 million pages of documents in hard copy, spanning the years of 1996 to the present that must be reviewed in order to locate and identify the documentation that would responsive to plaintiff's demands. In the interim, since our last opportunity to address the scope and cost of discovery, our client has been able to eliminate a large percentage of the hard copy documents that could contain potentially relevant materials. That figure has now been reduced from approximately 10 million documents to approximately 2 million pages of documents that may contain responsive documentation. While the pool of potentially responsive documentation has been significantly narrowed, there obviously still remains a substantial amount of material that must be reviewed to identify documents responsive to plaintiff's demands.

Along those lines, the projected cost for scanning the hard copy documents and producing them in searchable form for plaintiff has been reduced to approximately \$200,000 (not including attorney time reviewing the materials for confidentiality and privilege purposes). In addition, the cost for producing the potentially responsive electronic data in searchable form is likewise approximately \$200,000 (also not including attorney time for privilege review). Thus, the cost of producing materials responsive to plaintiff's limited requests is approximately \$400,000.

As discussed at the last settlement conference, despite the significant reduction in the scope of defendant's production and the defendant's ability to narrow down the pool of responsive documents, the production of these documents is still a very costly undertaking that will require the plaintiff to contribute a percentage of the funds to produce the documents responsive to their request. As such, defendant respectfully requests that this Court allocate a significant percentage of these costs to plaintiff.

Respectfully submitted,



Scott H. Goldstein
SG-8333

cc: Thomas Paciorkowski, Esq. (via Fax and e-mail)

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