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**VIA FACSIMILE ONLY (973) 645-4549**

Honorable Joseph Dickson, U.S.M.J.  
United States District Court  
MLK Federal Building and U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

Re: *Deborah Fellner v. Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea*  
Civil Action No. 06-CV-688 (DMC)

Dear Judge Dickson:

We represent Tri-Union Seafoods, L.L.C. in the above-captioned matter.

As you know, on June 7, the parties had a telephone conference with the Court to discuss progress made concerning the ongoing production of documents previously produced in the Proposition 65 and *Renshaw* cases. At that time, counsel addressed those areas on which agreement could not be reached, and discussed briefly the reasons why. Accordingly, the Court asked the parties to submit position statements addressing the areas of disagreement, and requested Tri-Union to make the first submission. This letter is submitted in accordance with the Court's request.

By way of brief background, Tri-Union first produced more than 1400 pages of what it deemed to be Relevant documents on April 13, 2012. At that time, in its cover letter to the Plaintiff, Tri-Union reminded the Plaintiff that the Court (Dickson, J.) had precisely identified the issue that is central to Ms. Fellner's allegations in this case. "The conduct at issue is the failure to warn Plaintiff of the potential dangers of consuming tuna fish." (Mar. 11, 2011 Letter Order at 7.) Thus, that is the lens through which all issues of discovery must be viewed. In that Letter Order, the Court restricted the scope of discovery to: (1) Tri-Union's knowledge of the presence of methylmercury in tuna fish; (2) its understanding of the dangers, if any, presented by such presence; and (3) its efforts and/or decision-making process regarding any warnings that may have, could have been, or were placed on its labels. Significantly, the Court also restricted the time period for discovery to the alleged exposure period of 1993 through 2004. (*Id.* at 9.) If the documents from the *Renshaw* and Proposition 65 cases do not concern these issues and fall within the alleged exposure period, then they are not relevant to the Plaintiff's lawsuit, and are

not subject to discovery under Rule 26. As the Court explained, “[t]he days of bare bones notice pleading are quickly disappearing, if not altogether gone.” (Letter Order at 7.)

Notwithstanding the above and the Plaintiff’s unwillingness to concede the patent irrelevance of many of the documents identified in the *Renshaw* and Proposition 65 Indices that Tri-Union previously produced to the Court, Tri-Union made its initial production in April of this year of more than 1400 pages.

The parties then had a telephone conference with the Court on April 17, 2012. During that call, counsel for Tri-Union reiterated a concern we had previously expressed regarding the Protective Order that had issued during the Proposition 65 case, as well as that Tri-Union had certain documents in its possession that contained financial information pertaining to certain of its Co-Defendants from the Proposition 65 case, which are not parties to this case. At that time, the Court suggested that Tri-Union could address some of its concerns regarding confidential information in certain of the previously-withheld documents by producing such documents with the confidential information redacted.

Accordingly, on May 8, 2012, Tri-Union made a supplemental production, in which it produced those documents that it had previously withheld as being Confidential, with all such confidential information redacted. In response, counsel for the Plaintiff drafted a letter, dated May 11, 2012, wherein counsel outlined Plaintiff’s position concerning various documents that Tri-Union had previously designated as Irrelevant. (*Pl. letter attached as Ex. A.*)

For ease of reference, Tri-Union refers to the various documents from the *Renshaw* and Proposition 65 cases by the same numerical designations that it originally gave the documents when it submitted an Index to the Court for the Court’s review on or about January 12, 2012.

## **I. Renshaw**

### **No. 31: Defendants’ Motion To Compel Plaintiff To Respond to Discovery Requests (Aug. 1, 2005)**

This Motion contains no information concerning Tri-Union’s knowledge of methylmercury in its canned tuna during the alleged exposure period relevant to the lawsuit brought by Ms. Fellner, and is therefore not subject to discovery in this case, pursuant to the terms set forth in the Court’s March 11, 2011 Letter Order. Rather, it seeks to compel responses to outstanding discovery requests, described in *Renshaw* Index Nos. 26 (*Defendants’ 2<sup>nd</sup> Set of Requests of Production to Plaintiff*) and 27 (*Defendants’ 2<sup>nd</sup> Set of Specially Prepared Interrogatories to Plaintiff*), which Tri-Union produced in complete and unredacted form to the Plaintiff on April 13, 2012.

In her May 11, 2012 letter, the Plaintiff argues that this Motion is relevant “in determining what information Tri-Union obtained in past litigation regarding issues that are relevant in this matter.” (*Ex. A at 1.*) In fact, this document is just that – a Motion. It contains no information that Tri-Union obtained from Mr. Renshaw. It contains only a request that the Court order Mr. Renshaw to respond to discovery requests previously served on Mr. Renshaw, copies of which are attached to the Motion, which documents have previously been given to the

Plaintiff in this case. Thus, this should satisfy the Plaintiff's concern that this document "is also relevant to determine Tri-Union's position regarding discovery issues in prior litigation[.]" as well as the throw-in judicial estoppel reference the Plaintiff raises in her May 11<sup>th</sup> letter. (*Id.*)

**No. 32:** Motion for Order that the Matter in Requests for Admission Be Deemed Admitted (Aug. 1, 2005)

This Motion contains no information concerning Tri-Union's knowledge of methylmercury in its canned tuna during the alleged exposure period relevant to the lawsuit brought by Ms. Fellner, and is therefore not subject to discovery in this case, pursuant to the Court's March 11, 2011 Letter Order. Rather, it seeks to compel responses to outstanding discovery requests, described in Renshaw Index No. 25 (*Defendants' 1<sup>st</sup> Set of Requests for Admissions to Plaintiff*), which Tri-Union produced in complete and unredacted form to the Plaintiff on April 13, 2012.

In her May 11, 2012 letter, the Plaintiff argues that this Motion is relevant for the same reasons as Renshaw Doc. No. 31. (*See Ex. A at 1-2.*) Tri-Union maintains that this document is irrelevant for the same reasons as stated *supra* with regard to Renshaw Doc. No. 31.

**No. 42:** Deposition Transcript of Jane M. Hightower, M.D. (Sept. 21, 2005)

As an initial matter, this transcript is irrelevant because Dr. Hightower's deposition was taken after 2004, therefore any testimony by Dr. Hightower could not have formed the basis of any knowledge of Tri-Union concerning the effects of methylmercury in tuna during the alleged exposure period of the Plaintiff in this case. Moreover, Dr. Hightower, in her capacity as Mr. Renshaw's treating physician did not offer any opinion testimony regarding Tri-Union's knowledge of methylmercury in tuna during the alleged exposure period. Therefore, the transcript is irrelevant to discovery in this case pursuant to the Court's March 11, 2011 Letter Order.

In addition, the transcript is irrelevant because Dr. Hightower testified only as a fact witness in the *Renshaw* case. She stated expressly during her deposition that she did not believe she had been disclosed as an expert witness in that case, and that she was being deposed only in her capacity as a treating physician.

Q. We've asked you here today because you've been designated as an expert in the case of Renshaw versus Chicken of the Sea. And we requested that you bring with you numerous documents. Do you have the file of Mr. Renshaw with you today?

A. I have the file. And I don't believe I've been disclosed as an expert.

MS. RICHARDS [Dr. Hightower's attorney for purposes of the deposition]: I don't think that Dr. Hightower agreed to be an expert in this case. You may ask her questions about that. She — her understanding is that she's being deposed here today as a treater. She was not given any review, file materials, other than Mr. Renshaw's chart.

*(Sept. 21, 2005 Depo. Trans. of Dr. Hightower at 6:16-7:3 (relevant excerpts attached hereto as Ex. B).)*<sup>1</sup>

Q. Dr. Hightower, today I suppose we will be treating you – we will be deposing you in your capacity as a treating physician of Jason Renshaw; is that correct?

A. Yes.

*(Ex. B at 7:21-25.)* Near the conclusion of the deposition, there was a telling exchange between counsel for Mr. Renshaw and Dr. Hightower, which demonstrated the disconnect between the two, and that Dr. Hightower had not only not agreed to serve as an expert witness for Mr. Renshaw, but had not even discussed the idea with Mr. Renshaw's lawyer.

Q. You have been asked to serve as an expert in this case. Will you be serving as an expert in this case on behalf of Mr. Renshaw?

MR. PRUTTON [counsel for Mr. Renshaw]: Well, we need to talk about that.

A. No, we haven't talked about it.

MS. RICHARDS: I have advised her not to serve as an expert unless she is given all the materials she feels she needs to render expert opinions on causation, damages, et cetera.

*(Ex. B at 41:12-21.)*

During her testimony, Dr. Hightower, as Mr. Renshaw's treating physician, testified more than once that she never actually diagnosed Mr. Renshaw.

Q. How many times have you met with Mr. Renshaw?

A. In-person, twice.

\* \* \*

Q. And at the first examination with plaintiff – I'm sorry – Mr. Renshaw, did you make any diagnosis?

A. No.

\* \* \*

Q. So, as of today, you have not made a diagnosis of Mr. Renshaw?

A. That is correct.

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<sup>1</sup> Tri-Union cites to and encloses limited and redacted portions of Dr. Hightower's deposition transcript only to assist the Court in its analysis and decision regarding this document. Its references to and inclusion of excerpts from this document are not to be construed as waivers of Tri-Union's continued position that this document is irrelevant to the allegations of the Plaintiff's Amended Complaint.

(*Ex. B at 12:18-19; 17:6-9; 26:1-3.*)

**No. 44:** Motion In Limine regarding Plaintiff's Proffered Expert Witness, Dr. Hightower  
(Sept. 23, 2005)

Tri-Union maintains that this document is irrelevant for all the same reasons that Dr. Hightower's deposition transcript is irrelevant. Further, Tri-Union represents that while it does not have a copy of Plaintiff's Expert Witness Disclosure, against which this Motion is obviously directed, the content of the Motion makes it clear that the Motion is based on the grounds that (1) Dr. Hightower represented in her deposition testimony that she had not agreed to testify as an expert witness; and (2) California rules of procedure require the party disclosing an expert to produce a representation that such expert has agreed to testify at trial. Plaintiff did not produce such a representation in its disclosure. Insofar as there is no indication anywhere in any of the documents from the *Renshaw* case that Dr. Hightower ever agreed to act in any capacity other than as a treating physician for Mr. Renshaw, documents referring to her are irrelevant for purposes of Ms. Fellner's lawsuit.

**No. 48:** Unexecuted Letter of Guarantee and Indemnification (undated)

This document is unsigned, undated, and irrelevant to the issue of methylmercury in tuna. There is no indication on the document that it has any relationship to the *Renshaw* matter, and nothing contained in the document has anything to do with the allegations of the Amended Complaint or is likely to lead to the discovery of admissible evidence.

**II. Proposition 65**

**Nos. 5-14:** Tax documents for Alaska, Colorado, Connecticut, Florida, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Texas, California, Wisconsin, Arkansas, Indiana, Michigan, Georgia, Hawaii, and Illinois (2000 – 2003)

These documents are tax returns for the aforementioned states, and, as such, have no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Moreover, New Jersey law is clear that a plaintiff must prove her prima facie entitlement to punitive damages as a condition precedent to discovery of a defendant's financial condition, in cases either arising under the New Jersey Product Liability Act or otherwise. *Herman v. Sunshine Chem. Specs., Inc.*, 133 N.J. 329, 346 (1993); *Hudak v. Fox*, 215 N.J. Super. 233, 235-36 (App. Div. 1987) ("Since the right of plaintiffs herein to punitive damages hinges ultimately on proof of actual malice, prima facie proof thereof is prerequisite to pretrial discovery of defendant's financial worth."). Thus, unless and until the Plaintiff has proven her prima facie entitlement to punitive damages against Tri-Union, she has no entitlement to discovery of any of Tri-Union's financial information. See *Herman*, 133 N.J. at 345 ("Discovery of income tax returns . . . may go too far.") (citing *Lepis v. Lepis*, 83 N.J. 139, 158 (1980)).

**No. 17:** Docket Sheet for Public Media Center vs. Tri-Union et al. (Dec. 31, 2001 through Mar. 24, 2006)

In her May 11, 2012 letter, the Plaintiff states that “[t]o the extent that this document contains information regarding documents filed and produced during prior litigation of the same issues in this case, this information is relevant because it may lead to the production of admissible evidence. . . . [M]otions are usually filed with certifications. Those certifications usually contain factual matters certified to by counsel or others and usually include attached documents produced in discovery.” (*Ex. A at 2 (emphasis added)*.) As defense counsel represented to Plaintiff’s counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, it is a docket sheet, which reflects only those items that were filed with the Court during the pendency of this action. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent that* it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

Further, such information is equally available to the Plaintiff, and defense counsel has already provided to counsel for the Plaintiff all the information necessary to access the docket sheet electronically on their own.

**No. 20: Order Continuing Status Conference (May 21, 2002)**

In their May 11, 2012 letter, counsel for the Plaintiff state that “[t]o the extent that any Order contains factual material or determinations of legal issues in the litigation, we take the position that document is relevant to the instant litigation.” (*Ex. A at 2-3 (emphasis added)*.) As defense counsel represented to Plaintiff’s counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, it is merely a standardized form, which indicates time, date, and location for a continued status conference. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent that* it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

**No. 27: Order Continuing Case Management Conference (Sept. 23, 2002)**

In their May 11, 2012 letter, counsel for the Plaintiff state that “[t]o the extent that any filing contains factual material or [determinations of] legal issues in the litigation, we take the position that document is relevant to the instant litigation.” (*Ex. A at 3 (emphasis added)*.) As defense counsel represented to Plaintiff’s counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, it is merely a standardized form, which indicates time, date, and location for a continued case management conference. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent that* it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

**No. 32:** Tri-Union's Responses to Public Media Center's 1<sup>st</sup> Set of Special Interrogatories  
(Aug. 14, 2003)

Tri-Union produced a redacted version of Proposition 65 Index No. 32 on May 8, 2012. This document consists of 16 pages. Tri-Union redacted a total of 6 sentences, which contain sales data concerning tuna fish sold in California between 1998 and 2003. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Further, insofar as such information concerns financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36.

**No. 36:** Tri-Union's Responses to Public Media Center's 2<sup>nd</sup> Set of Special Interrogatories (Sept. 25, 2003)

Tri-Union produced a redacted version of Proposition 65 Index No. 36 on May 8, 2012. This document consists of 15 pages. Tri-Union redacted a total of 18 sentences, which contain sales data concerning tuna fish sold in California between 1998 and 2003. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Further, insofar as such information concerns financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36.

**No. 44:** Docket Sheet for State of California vs. Defendants (June 21, 2004 – Dec. 2, 2005)

In her May 11, 2012 letter, the Plaintiff states that “[t]o the extent that this document contains information regarding documents filed and produced during prior litigation of the same issues in the instant case, this information is relevant because it may lead to the production of admissible evidence. . . . [M]otions are usually filed with certifications. Those certifications usually contain factual matters certified to by counsel or others and usually include attached documents produced in discovery.” (*Ex. A at 3 (emphasis added).*) As defense counsel represented to Plaintiff's counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, it is a docket sheet that reflects only those items that were filed with the Court during the pendency of this action. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent* that it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

Further, such information is equally available to the Plaintiff, and defense counsel has already provided to counsel for the Plaintiff all the information necessary to access the docket sheet electronically on their own.

**No. 47: Del Monte Answer to State of California Complaint (July 21, 2004)**

The Answer of one of Tri-Union's Co-Defendants from the Proposition 65 litigation is irrelevant to the allegations of the Amended Complaint. According to the Plaintiff, this Answer is relevant "*because Del Monte produces and/or distributes tuna products like Tri-Union and any admissions or responses by a producer or distributor of tuna products related to mercury in tuna products is factually relevant to the issues in the instant litigation.*" (Ex. A at 3 (*emphasis added*)).) Such an allegation does not demonstrate that it is more likely than not that anything contained within Del Monte's Answer is likely to lead to the discovery of admissible evidence. Moreover, insofar as the Defendants from the Proposition 65 case subsequently filed a single Amended Answer on April 15, 2005, and Tri-Union produced a copy of this Answer to the Plaintiff on April 13, 2012; (*See Proposition 65 Index No. 64.*); the Plaintiff has a copy of Del Monte's official, final Answer to the State of California's Complaint from the Proposition 65 case.

**No. 48: Bumble Bee Answer to State of California Complaint (July 22, 2004)**

The Answer of one of Tri-Union's Co-Defendants from the Proposition 65 litigation is irrelevant to the allegations of the Amended Complaint. According to the Plaintiff, this Answer is relevant "*because Bumble Bee produces and/or distributes tuna products like Tri-Union and any admissions or responses by a producer or distributor of tuna products related to mercury in tuna products is factually relevant to the issues in the instant litigation.*" (Ex. A at 3 (*emphasis added*)).) Such an allegation does not demonstrate that it is more likely than not that anything contained within Del Monte's Answer is likely to lead to the discovery of admissible evidence. Moreover, insofar as the Defendants from the Proposition 65 case subsequently filed a single Amended Answer on April 15, 2005, and Tri-Union produced a copy of this Answer to the Plaintiff on April 13, 2012; (*See Proposition 65 Index No. 64.*); the Plaintiff has a copy of Bumble Bee's official, final Answer to the State of California's Complaint from the Proposition 65 case.

**Nos. 54, 66, 71: Notices of Status Conference (various dates)**

In their May 11, 2012 letter, counsel for the Plaintiff state that "[t]o the extent that any filing contains factual material or [determinations of] legal issues in the litigation, we take the position that document is relevant to the instant litigation." (Ex. A at 4 (*emphasis added*)). As defense counsel represented to Plaintiff's counsel during the June 6<sup>th</sup> meet-and-confer, these documents do not contain such information. Rather, they are merely standardized forms, which indicate date, time, and location for upcoming status conferences. Accordingly, insofar as the Plaintiff deems these documents relevant *only to the extent that* they contain information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the documents contain no such information, Tri-Union asks the Court to order this issue closed.

**Nos. 46, 55, 59, 60, 67, 72: Status Conferences (various dates)**

In their May 11, 2012 letter, counsel for the Plaintiff state that "[t]o the extent that any filing contains factual material or [determinations of] legal issues in the litigation, we take the position that document is relevant to the instant litigation." (Ex. A at 4 (*emphasis added*)). As



defense counsel represented to Plaintiff's counsel during the June 6<sup>th</sup> meet-and-confer, these documents do not contain such information. Rather, they are merely standardized forms, which indicate date, location, and counsel present for various status conferences. Accordingly, insofar as that the Plaintiff deems these documents relevant *only to the extent that* they contain information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the documents contain no such information, Tri-Union asks the Court to order this issue closed.

**No. 62:** Tri-Union's Responses to State of California's 1<sup>st</sup> Set of Special Interrogatories (Mar. 1, 2005)

Tri-Union produced a redacted version of Proposition 65 Index No. 62 on May 8, 2012. This document consists of 18 pages. Tri-Union redacted 1 sentence, which contains sales data concerning tuna fish sold in California between 1998 and 2003. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Further, insofar as such information concerns financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36.

**No. 63:** Stipulation and Order for Expert Witness Disclosure and Depositions (Mar. 23, 2005)

In their May 11, 2012 letter, counsel for the Plaintiff state that “[t]o the extent that this document identifies experts in the prior litigation, the subject matter of their testimony, or anything related to the factual or legal issues of the instant litigation, we take the position that this document is relevant.” (*Ex. A at 4 (emphasis added)*.) As defense counsel represented to Plaintiff's counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, this document sets forth a discovery schedule pertaining to expert witnesses, pursuant to California Rules of Civil Procedure, wherein the Court provides a schedule of the order in which the parties will disclose experts and exchange their reports, and conduct the depositions of such experts. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent that* it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

Furthermore, as defense counsel represented to Plaintiff's counsel during the June 6<sup>th</sup> meet-and-confer, with regard to expert witnesses and the subject matter of their testimony pertaining to the Proposition 65 litigation, Tri-Union has already produced (on April 13, 2012) documents that identify not only the witnesses and subject matter of their testimony, but also the date and time that each witness testified during the course of the trial, as well as lists of all exhibits. (*See Proposition 65 Index Nos. 86-88, 91-93, 95-111, 113, 138-140.*)

**No. 65:** Stipulation and Order To Amend Answer (May 4, 2005)

In her May 11, 2012 letter, the Plaintiff suggests that Tri-Union's designation of this Stipulation and Order as Irrelevant is “*illogical and suspect*.” (*Ex. A at 4 (emphasis added)*.) In fact, this document reflects only what its title suggests, *i.e.*, that the parties to the Proposition 65

litigation agreed that the Defendants may file an Amended Answer. The “Order” is merely the Court’s selection of a due date for the Answer. Further, appended to this document is the Amended Answer, dated April 15, 2005, which Tri-Union produced to the Plaintiff on April 13, 2012. (*See Proposition 65 Index No. 64.*)

**No. 74:** Correspondence from Senior Vice President of Marketing for Chicken of the Sea to Defense Counsel (Aug. 25, 2005)

These documents contain financial data pertaining to Chicken of the Sea sales data in California, ranging from 2000 to 2005. Such information includes gross sales information, profit and loss statements, assets, liabilities, and total equity, net sales and income, and audited financial statements. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff’s claimed damages, or the Plaintiff’s failure to warn theory. Further, insofar as such information concerns financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36. Accordingly, Tri-Union redacted all such financial information from these documents in its May 8, 2012 document production. In addition, this correspondence itself is a privileged attorney-client communication.

**No. 76:** Tri-Union’s Supplemental Responses to State of California’s 2<sup>nd</sup> Set of Requests for Production (Sept. 7, 2005)

Tri-Union produced a redacted version of Proposition 65 Index No. 76 on May 8, 2012. This document consists of 12 pages. Tri-Union redacted 4 pages, which were stamped TU128 to TU130 from the Proposition 65 case, and which were designated as “**Highly Confidential, Subject To Protective Order**” in that case. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff’s claimed damages, or the Plaintiff’s failure to warn theory. Rather, such information concerns financial information of Tri-Union and other tuna producers. Therefore, insofar as the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36.

Further, in addition to containing financial information concerning Tri-Union, the redacted portions of these documents refer also to financial information pertaining to Tri-Union’s Co-Defendants from the Proposition 65 litigation, which information falls within the scope of the Protective Order of the Proposition 65 case.

**No. 90:** Stipulation and Order To Return Exhibits (Oct. 24, 2005)

In her May 11, 2012 letter, the Plaintiff states that “[t]o the extent that this document identifies exhibits presented at trial, it is likely to lead to the discovery of admissible evidence and is relevant to the instant matter.” (*Ex. A at 5 (emphasis added).*) As defense counsel represented to Plaintiff’s counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, this document describes the insufficient storage space in the courtroom, and notes the stipulation of the parties that all trial exhibits shall be returned to the party introducing them at the time the verdict is recorded. Moreover, as defense counsel told

Plaintiff's counsel during the meet-and-confer, Proposition 65 Index Nos. 138 and 139 identify the exhibits that were used during the Proposition 65 trial. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent that* it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

**No. 119:** Docket Sheet for California 1<sup>st</sup> Appellate District after Defense Verdict (Feb. 20, 2007 – Feb. 15, 2008)

In her May 11, 2012 letter, the Plaintiff states that “[t]o the extent that this document contains information regarding documents filed and produced during prior litigation of the same issues in this case, this information is relevant because it may lead to the production of admissible evidence. . . . [M]otions are usually filed with certifications. Those certifications usually contain factual matters certified to by counsel or others and usually include attached documents produced in discovery.” (*Ex. A at 5 (emphasis added)*.) As defense counsel represented to Plaintiff's counsel during the June 6<sup>th</sup> meet-and-confer, this document does not contain such information. Rather, it is a docket sheet that reflects only those items that were filed with the Court during the pendency of this action. Accordingly, insofar as the Plaintiff deems this document relevant *only to the extent that* it contains information as stated in the May 11<sup>th</sup> letter, and undersigned counsel represents that the document contains no such information, Tri-Union asks the Court to order this issue closed.

**No. 124:** Tri-Union's Answers to Plaintiff's Interrogatories Nos. 26 and 27 concerning Gross Sales, Contribution Margins, Apportioned Expenses, and Profit and Loss from Canned Tuna Sales in California from June 2000 through December 2000 (undated)

These documents contain financial data pertaining to Chicken of the Sea sales data in California, ranging from 2000 to 2005. Such information includes gross sales information, profit and loss statements, assets, liabilities, and total equity, net sales and income, and other consolidated financial information. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Further, insofar as such information concerns financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36. Accordingly, Tri-Union redacted all such financial information from these documents in its May 8, 2012 document production.

**No. 125:** Tri-Union's Answer to Plaintiff's Interrogatory No. 28 Concerning Current Assets, Liabilities, and Total Equity of Chicken of the Sea as of June 30, 2005; and Net Sales and Net Income from July 1, 2004 through June 30, 2005 (undated)

These documents contain financial data pertaining to Chicken of the Sea through mid-year 2005. Such information concerns assets, liabilities, equity, net sales, and net income. This information has no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Further, insofar as such information concerns

financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36. Accordingly, Tri-Union redacted all such financial information from these documents in its May 8, 2012 document production.

**No. 126:** Tri-Union's Response to Plaintiff's Document Request No. 10 Concerning Audited Financial Statements from June 30, 2000 through June 30, 2005 (undated)

These documents (audited financial statements of Tri-Union Seafoods from June 30, 2000 through June 30, 2005) are a subset of the documents contained in Proposition 65 Index No. 74. Therefore, Tri-Union reasserts the same arguments in support of its position that such documents are irrelevant. That is, as the documents pertain to financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36. Accordingly, Tri-Union redacted all such financial information from these documents in its May 8, 2012 document production.

**No. 135:** Tri-Union's Answers to Plaintiff's Interrogatories Nos. 26 and 27 Concerning Gross Sales, Contribution Margins, Apportioned Expenses, and Profit and Loss from Canned Tuna Sales in California from June 2000 through June 2005 (undated, though after June 30, 2005)

These documents contain financial data pertaining to Chicken of the Sea sales data in California, ranging from 2000 to 2005. Such information includes gross sales information, contribution margins, apportioned expenses, and profit and loss. Such information has no bearing on the allegations of the Amended Complaint, the Plaintiff's claimed damages, or the Plaintiff's failure to warn theory. Further, insofar as such information concerns financial information of Tri-Union, and the Plaintiff has not yet proven her prima facie entitlement to punitive damages against Tri-Union, the Plaintiff is not entitled to such information. *See Herman*, 133 N.J. at 346; *Hudak*, 215 N.J. Super. at 235-36. Accordingly, Tri-Union redacted all such financial information from these documents in its May 8, 2012 document production.

**Discovery Confidentiality Order**

The parties are still working toward an agreement regarding the content of a Proposed Discovery Confidentiality Order, and anticipate having such a Proposed Order ready to submit by the time Tri-Union's Reply to the Plaintiff's Letter Brief is due in two weeks.

Respectfully Submitted,



Kenneth A. Schoen

cc: Thomas Paciorkowski, Esq. (via FedEx)  
John A. Kiernan, Esq.