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May 11, 2012

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Re: Deborah Fellner v. Tri-Union Seafoods, LLC.
 Civil Action No. 2:06-cv-00688 (DMC)(JAD)

Dear Mr. Koosa:

I write in response to your letter dated May 8, 2012. First, I do not agree with your assertion that “documents pertaining to companies other than Tri-Union are irrelevant to this case.” There may have been studies, data, communications, and/or research by companies other than Tri-Union that are relevant to the issues in this case.

Second, after reviewing your summary of documents in the Renshaw and Proposition-65 actions, it appears that you have misclassified several documents as “IRRELEVANT” that are clearly relevant. “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” F.R.E. 401. Furthermore, parties can “obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense....” Fed. R. Civ. Proc. 26(b)(1).

Below is a listing of the documents we believe should be produced and the reasons why these documents are relevant in the instant action:

Renshaw Doc. No. 31. This document is described as “motion to compel Plaintiff to produce discovery by Tri-Union.” This document is relevant in determining what information Tri-Union obtained in past litigation regarding issues that are relevant in this matter. This document is also relevant to determine Tri-Union’s position regarding discovery issues in the prior litigation. Judicial estoppel prevents a party from arguing a different position in subsequent litigation when it was successful in the prior litigation. Therefore we deem this document to be relevant to the instant litigation.

Renshaw Doc. No. 32. This document is described as “Motion for an Order that Defendant’s Requests for Admissions be deemed admitted.” This document is relevant in

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determining what information Tri-Union obtained in past litigation regarding issues that are relevant in this matter. Therefore we deem this document to be relevant to the instant litigation.

Renshaw Doc. No. 42. This document is described as “the deposition transcript of Jane M. Hightower, M.D.” Dr. Hightower was plaintiff’s treating physician and proposed expert in the prior litigation and testified regarding causation and damages. This document is clearly relevant to the issues of causation and damages related to Plaintiff’s consumption of Tri-Union’s tuna product in the instant litigation. Therefore, we deem this document to be highly relevant to the instant litigation.

Renshaw Doc. No. 44. This document is described as a “Motion in Limine regarding Plaintiff’s proffered expert witness, Dr. Hightower.” Documents related to Dr. Hightower’s testimony are relevant to the issues of causation and damages related to Plaintiff’s consumption of Tri-Union’s tuna product. Therefore we deem this document to be highly relevant to the instant litigation.

Renshaw Doc. No. 48. This document is described only as an “Unexecuted Letter of Guarantee and Indemnification.” Because consumption of Tri-Union’s product in the Renshaw action took place at the same time Fellner consumed Tri-Union’s product, information regarding a party that may be liable to pay damages in this action is relevant. Therefore we deem this document to be highly relevant to the instant litigation.

Proposition-65 Doc. Nos. 5-14. These documents are described only as tax documents. During our telephone conversation on Tuesday, you told me that these documents are tax returns. To the extent that these documents contain information identifying the sources of the raw material in Tri-Union’s tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/ or damages.

Proposition-65 Doc. No. 17. This document is described as “Docket Sheet for *Public Media Center vs. Tri-Union et al.*” To 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. Furthermore, as I explained to you during our call on Tuesday, motions 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. Therefore we deem this document to be relevant to the instant litigation because it may lead to the discovery of admissible evidence.

Proposition-65 Doc. No. 20. This document is described only as “Order continuing Status Conference.” This document may be relevant; but without knowing the content of the document, we cannot make a determination at this time. As you are well aware, in the instant case, there have been many Orders continuing the status conferences before Judge Dickson. At some of those status conferences, relevant and determinative issues were discussed and agreed to by the parties. To the

extent any Order contains factual material or determinations of legal issues in the litigation, we take the position that document is relevant in the instant litigation.

Proposition-65 Doc. No. 27. This document is described only as “Order continuing Case Management Conference.” This document may be relevant; but without knowing the content of the document, we cannot make a determination at this time. As you are well aware, in the instant case, there have been many Orders continuing the status conferences before Judge Dickson. At some of those status conferences, relevant and determinative issues were discussed by the parties. To the extent any filing contains factual material or legal issues in the litigation, we take the position that document is relevant in the instant litigation.

Proposition-65 Doc. No. 32. This document is described as “Tri-Union’s Responses to Public Media Center’s 1st Set of Special Interrogatories.” You take the position that this document is relevant with the exception of the portion of the document that contains sales data. You take the position that the sales data is irrelevant. We take the position that Tri-Union’s sales data is relevant to the issue of defendant’s duty to warn consumers of the health risks associated with mercury in its product.

Proposition-65 Doc. No. 36. This document is described as “Tri-Union’s Responses to Public Media Center’s 2nd Set of Special Interrogatories.” You take the position that this document is relevant with the exception of the portion of the document that contains sales data. You take the position that the sales data is irrelevant. We take the position that Tri-Union’s sales data is relevant to the issue of defendant’s duty to warn.

Proposition-65 Doc. No. 44. This document is described as “Docket Sheet for *State of California vs. Defendants.*” To 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. Furthermore, as I explained to you during our call on Tuesday, motions 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. Therefore we deem this document to be relevant to the instant litigation because it may lead to the discovery of admissible evidence.

Proposition-65 Doc. No. 47. This document is described only as “Del Monte Answer to State of California Complaint.” This document 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.

Proposition-65 Doc. No. 48. This document is described only as “Bumble Bee Answer to State of California Complaint.” This document 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.

May 11, 2012

Robert Koosa

Page 4

Proposition-65 Doc. Nos. 54, 66, & 71. These documents are described only as "Notice of Status Conference." These documents may be relevant; but without knowing the content of the document, we cannot make a determination at this time. As you are well aware, in the instant case, there have been many status conferences before Judge Dickson. At some of those status conferences, relevant and determinative issues were discussed by the parties. To the extent any filing contains factual material or legal issues at issue in the litigation, we take the position that document is relevant in the instant litigation.

Proposition-65 Doc. Nos. 46, 55, 59-60, 67, & 72. These documents are described only as "Status Conference." These documents may be relevant; but without knowing the content of the document, we cannot make a determination at this time. As you are well aware, in the instant case, there have been many status conferences before Judge Dickson. At some of those status conferences, relevant and determinative issues were discussed by the parties. To the extent any filing contains factual material or legal issues at issue in the litigation, we take the position that document is relevant in the instant litigation.

Proposition-65 Doc. No. 62. This document is described as "Tri-Union's Responses to State of California's 1st Set of Special Interrogatories." You take the position that this document is relevant with the exception of the portion of the document that contains sales data. You take the position that the sales data is irrelevant. As previously explained, we take the position that Tri-Union's sales data is relevant to the issue of defendant's duty to warn.

Proposition-65 Doc. No. 63. This document is described as "Stipulation and Order for Expert Witness Disclosure and Depositions." This document may be relevant; but without knowing the content of the document, we cannot make a determination at this time. To 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 in the instant litigation, we take the position that this document is relevant.

Proposition-65 Doc. No. 65. This document is described as "Stipulation and Order to Amend Answer." You take the position that the Answer to the Complaint is relevant but the reason why the Answer is being amended is not relevant. Your reasoning is illogical and suspect. We take the position that any stipulation or Order related to the Answer is relevant.

Proposition-65 Doc. No. 74. This document is described as "Correspondence from Senior Vice President of Marketing for Chicken of the Sea to defense counsel." This communication is alleged to contain "many" financial documents. To the extent that these documents contain information regarding the sources of the raw material in Tri-Union's tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/or damages.

Proposition-65 Doc. No. 76. This document is described as “Tri-Union’s Responses to State of California’s 2nd Set of Requests for Production.” You take the position that the portion of this document that does not contain financial information is relevant but the portion that contains financial information is irrelevant. To the extent that this document and the attached documents contain financial information regarding the sources of the raw material in Tri-Union’s tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/or damages.

Proposition-65 Doc. No. 90. This document is described as “Stipulation and Order to return exhibits.” To the extent that this document identifies exhibits presented at trial, it is likely to lead to the discovery of admissible evidence and is relevant in the instant matter.

Proposition-65 Doc. No. 119. This document is described as “Docket Sheet for *California 1st Appellate District after defense verdict*.” To 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. Furthermore, as I explained to you during our call on Tuesday, motions 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. Therefore we deem this document to be relevant to the instant litigation because it may lead to the discovery of admissible evidence.

Proposition-65 Doc. No. 124. This document is described as “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.” To the extent that this document and the attached documents contain financial information regarding the sources of the raw material in Tri-Union’s tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/ or damages.

Proposition-65 Doc. No. 125. This document is described as “Tri-Union’s Answer to Plaintiff’s Interrogatory No. 28 concerning current assets, liabilities, and total equity of Chicken of the Sea as of 2005-06-30; and net sales and net income from 2004-07-01 through 2005-06-30.” To the extent that this document and the attached documents contain financial information regarding the sources of the raw material in Tri-Union’s tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/or damages.

Proposition-65 Doc. No. 126. This document is described as “Tri-Union’s Response to Plaintiff’s Document Request No. 10 concerning Audited Financial Statements from 2000-06-30 through 2005-06-30.” To the extent that this document and the attached documents contain financial information regarding the sources of the raw material in Tri-Union’s tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/or damages.

Proposition-65 Doc. No. 135. This document is described as “Answers to Interrogatories Nos. 26 and 27 from Plaintiff concerning Gross Sales, Contribution Margins, Apportioned Expenses, and Profit and Loss from canned tuna sales in California from June 2000 through June 2005.” To the extent that this document and the attached documents contain financial information regarding the sources of the raw material in Tri-Union’s tuna products, distribution of its tuna products including but not limited to number of cans sold, expenses such as testing and research, expenses for lobbying including lobbying the FDA regarding mercury warnings on tuna cans, information related to market research including tuna consumption, or any information related to factual or legal issues in this case, we take the position that this information is relevant to the issues of duty to warn, causation, and/ or damages.

Additionally, you take the position that Tri-Union is barred from producing any of its own documents in this litigation that it produced in prior litigation because it produced that information in the prior litigation subject to a protective order. Your reasoning is illogical. The purpose of a protective order is to protect the producing party by preventing a party to whom the documents are produced from disclosing those documents. A protective order does not bar a producing party from using or producing its own documents in subsequent litigation.

If you have any questions, feel free to contact me.

Sincerely,

Thomas Paciorowski, Esq.