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**VIA ECF ONLY**

Honorable Joseph A. Dickson, U.S.M.J.  
 United States District Court  
 Martin Luther King, Jr. Federal Building & U.S. Courthouse  
 50 Walnut Street  
 Newark, NJ 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) (JAD)

Dear Judge Dickson:

We represent the Plaintiff, Deborah Fellner, in this case.

On October 13, 2012 the parties held a telephone conference with Your Honor. That conferenced primarily addressed three documents that the Defendant possesses, which were produced in a prior litigation and previously designated as “confidential” under the terms of a protective order issued by a California court.

Defendant concedes these documents are relevant in this litigation. However, Defendant refuses to produce these documents because they were marked “confidential” and subject to a protective order in the prior litigation. The three documents have been identified by Tri-Union as follows:

Document No. 3  
 Estimated usual Intake of Fresh Tuna by U.S. Women Age 15-44  
 Bates Stamped: TU0018-TU0025  
 Dated: 2000-11-30  
 The origin of the document is unknown.

Document No. 24  
 Customer relations fact sheet for customer service operators  
 Bates Stamped: TU0080  
 Dated: 2002-07-19  
 The origin of the document is unknown.

<sup>⚖</sup> Certified by the Supreme Court of New Jersey as a Civil Trial Attorney

Also Admitted To Practice Law In: ‡ New York, § Pennsylvania, ◆ District of Columbia

Document No. 129  
Tuna information opinion survey performed by third party  
Bates Stamped: TU0026-TU0032  
Undated but after: 2001-04-29

During the October 13<sup>th</sup> conference, Your Honor instructed defense counsel to file a motion and to serve all parties in the California litigation with a copy of that motion. Your Honor also instructed that if no party in the California litigation opposed production, the Court would Order those three documents be produced. On October 18, 2012, Defendant filed a motion. To date, no party in the aforementioned case from California has responded to Defendant's motion.

Protective Orders in this District are governed by the Third Circuit holding in *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994). In *Pansy*, the Third Circuit held that protective orders should only issue upon a showing of "good cause" by the party seeking closure.

"Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir.1984). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a good cause showing. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986), *cert. denied*, 484 U.S. 976, 108 S.Ct. 487, 98 L.Ed.2d 485 (1987). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order.

*Id.* at 1121-22.

None of the aforementioned documents come close to meeting the *Pansy* standard. For example, document no. 3 is described as containing information concerning the "estimated usual Intake of Fresh Tuna by U.S. Women Age 15-44." Because this document is not described as containing any trade secrets or confidential information whatsoever, it falls woefully short of satisfying "good cause" under *Pansy*.

Document no. 24 is described as a "customer relations fact sheet for customer service operators." Its contents *intended* for communication to third parties, consumers, by customer service operators, this document cannot logically or any way properly be designated "confidential." Defendant proffers no showing at all of how disclosure in this case will work a "serious injury" to anyone.

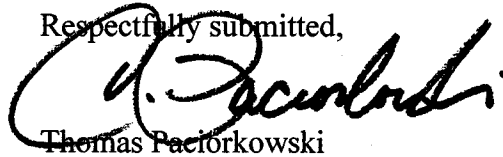
Document no. 129 is described as a "tuna information opinion survey performed by third party." This document's description, too, reflects no trade secrets or any confidential contents. Defendant's refusal to produce this document, too, defies logic and, equally important, nowhere shows how disclosure "will work a clearly defined and serious injury to the party seeking closure."

Defendant has not made the required showing that these three documents contain trade secrets or confidential information. From their descriptions, these three documents might have been improperly designated as “confidential” in the California litigation. But that is no reason at all to deny their production in our case. Confirming this point, during the October 13th telephone conference, counsel for Tri-Union represented to Your Honor that they could not even identify the party from whom the documents originated.

These three documents are clearly relevant to this litigation. The Defendant has not meet the *Pansy* “good cause” standard. Nowhere has the Defendant identified any injury – let alone the required “serious injury” - that would result from disclosure of these three documents. We respectfully request that the Court immediately Order Defendant to produce these documents – and any others similarly withheld – to us.

We would be happy to discuss this with the Court at the Court’s earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Paciorowski', written over the typed name.

Thomas Paciorowski

cc: John A. Kiernan (via email & ECF)