

**NOT FOR PUBLICATION****UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY****DEBORAH FELLNER,****Plaintiff,****v.****TRI-UNION SEAFOODS, L.L.C., d/b/a  
CHICKEN OF THE SEA****Defendant.****Civil Action No. 06-CV-00688  
(DMC)(JAD)****ORDER****JOSEPH A. DICKSON, U.S.M.J.**

This matter comes before the Court upon motion by defendant Tri-Union Seafoods, L.L.C. ("Defendant Tri-Union") for a protective order preventing the discovery of documents that were marked as confidential and produced pursuant to a protective order in a prior action. Pursuant to Federal Rule of Civil Procedure 78, no oral argument was heard. After having considered the parties' submissions, and for good cause shown; and

**WHEREAS** the instant dispute concerns the parties' disagreement regarding whether certain documents that were produced in a prior litigation that occurred in California state court, namely Ex rel. Lockyer v. Tri-Union Seafoods, LLC, Docket No. CGC-01-402975; CGC-04-432394 (the "Proposition 65 Litigation"), and designated as "confidential" under the terms of a protective order issued in the Proposition 65 Litigation are subject to production in this matter (Letter Br. 1, ECF No. 81); and

**WHEREAS** Defendant Tri-Union represented to this Court that it has in its possession, custody and control three (3) documents of unknown origin that it obtained during the course of

the Proposition 65 Litigation, which Defendant Tri-Union contended it received “for the limited purpose of use in that case under the terms of a Stipulated Protective Order entered in that litigation” (Id.); and

**WHEREAS** the parties identified the pertinent documents as:

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.

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

(the “Disputed Documents”) (11/13/12 Letter, ECF No. 83); and

**WHEREAS** the Disputed Documents did not originate from Defendant Tri-Union, but were produced by co-defendants in the Proposition 65 Litigation (Letter Br., ECF No. 81); and

**WHEREAS** the Disputed Documents were marked as “confidential” and produced pursuant to a Stipulated Protective Order that was issued in the Proposition 65 litigation; and

**WHEREAS** the parties disagree as to whether Defendant Tri-Union must produce the Disputed Documents, or whether production would violate the terms of the Stipulated Protective Order issued in the Proposition 65 Litigation (Id.); and

**WHEREAS** neither party argued that the Disputed Documents are not relevant under the broad discovery parameters of Fed. R. Civ. P. 26; and

**WHEREAS** on October 18, 2012, Defendant Tri-Union submitted, in letter form, a motion for a protective order concerning whether, at to what extent, the Disputed Documents are subject to production and/or retain the confidentiality afforded by the Stipulated Protective Order (Letter Br. 1, ECF No. 81); and

**WHEREAS** Fed. R. Civ. P. 26(c)(1)(B) provides that: "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . specifying terms, including time and place, for the disclosure or discovery . . ."; and

**WHEREAS** good cause must be demonstrated by the party seeking the protective order. Memory Bowl v. N. Pointe Ins. Co., 280 F.R.D. 181, 185 (D.N.J. 2012) (citing Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir.1994)). "Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure." Pansy, 23 F.3d at 786 (quoting Publicker Indus. v. Cohen, 733 F.2d 1059, 1071 (3d Cir.1984)). Such injury must be shown with specificity; "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing." Id.; and

**WHEREAS** Defendant Tri-Union did not argue that production of the Disputed Documents would "work a clearly defined and serious injury" upon it; rather, Defendant Tri-Union argued that it should not be compelled to produce such documents without (i) relief from the Stipulated Protective Order; and (2) an opportunity for the co-defendants in the Proposition 65 Litigation to respond to the issue, if they so choose. (Letter Br. 2, ECF No. 81); and

**WHEREAS** with respect to Defendant Tri-Union's argument regarding relief from the Stipulated Protective Order, the Stipulated Protective Order does not prohibit the Disputed Documents from being used in the instant litigation, as its terms restrict use of the Disputed

Documents to "solely for purposes of litigation" without any further limitation. (Stipulated and Protective Order ¶ 3, ECF No. 88-1); and

**WHEREAS** with respect to Defendant Tri-Union's argument regarding the opportunity for the co-defendants in the Proposition 65 Litigation to object, on December 3, 2012, Defendant Tri-Union represented that it provided written notice of this issue to the affected parties from the Proposition 65 Litigation via both electronic and first class mail. (12/3/12 Letter, ECF No. 88). To date, the Court has not received a response from any of the affected parties from the Proposition 65 Litigation;

IT IS on this 2<sup>nd</sup> day of January, 2013,

**ORDERED** Plaintiff's application for a protective order is **denied**; and

**IT IS FURTHER ORDERED** that Defendant Tri-Union shall produce the disputed documents within 5 days of the date of this Order.

  
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JOSEPH A. DICKSON, U.S.M.J.

cc: Honorable Dennis M. Cavanaugh, U.S.D.J.