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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 January 3, 2013 Your Honor issued a corrected Order denying Tri-Union's request for a protective order and compelling Tri-Union to produce documents to Plaintiff. The three documents that are the subject of Your Order are:

- (1) Estimated usual Intake of Fresh Tuna by U.S. Women Age 15-44
 Bates Stamped: TU0018-TU0025;
- (2) Tuna information opinion survey performed by third party
 Bates Stamped: TU0026-TU0032; and
- (3) Customer relations fact sheet for customer service operators
 Bates Stamped: TU0080.

On January 4, 2013, Tri-Union's counsel, John Kiernan wrote to Your Honor requesting a preliminary Order prohibiting the dissemination of those documents to Ms. Fellner. We write in opposition to Tri-Union's request for a preliminary Order designating those documents as "Attorney Eyes Only."

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.

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“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 786-87.

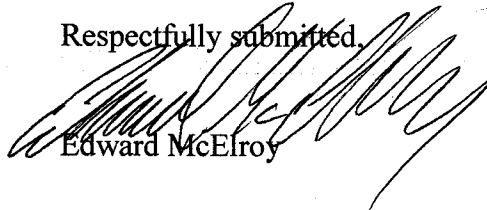
Tri-Union had a full and fair opportunity to show “good cause” related to the aforementioned documents when it filed moving papers for a protective order. Tri-Union failed to show how disclosure would work a “defined and serious injury” to anyone, much less itself. At no time did Tri-Union identify any injury – let alone the required “serious injury” - that would result from disclosure of these three documents.

Tri-Union’s inability to identify any injury that would result from the disclosure of these documents is evidenced by the documents themselves. The documents either contain consumer consumption information, consumer opinion information, or information intended to be communicated to consumers. The documents clearly contain general information communicated from consumers or information communicated to consumers.

Because the aforementioned documents do not contain confidential information, Tri-Union cannot designate the documents as “Confidential” under either proposed confidentiality order. As such, Tri-Union has no basis whatsoever to designate those documents under the higher designation of “Attorney-Eyes-Only.”¹

We respectfully request that the Court deny Tri-Union’s request for a preliminary Order prohibiting the dissemination of the aforementioned documents to Ms. Fellner,

Respectfully submitted,



Edward McElroy

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

¹ Under both Tri-Union’s and Plaintiff’s proposed confidentiality agreements, “Attorney-Eyes-Only” documents can only be designated as such if disclosure is “highly likely to cause significant harm to an individual or to the business or competitive position of the designating party.”