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Gentlemen:

I am writing to give you an update regarding 10 pages of documents that were included in my response to the grand jury subpoena your office served on me last summer. I will refer to these documents hereafter as the "Bio Trade Documents." These documents are stamped with Grove Fresh control numbers 10027809-18.

The Bio Trade Documents are significant because they are the only extant documents which establish that Everfresh purchased Oleum 320/IDEA from Bio Trade, Ltd., a European company. Oleum 320/IDEA has been described as being diethyl pyrocarbonate ("DEPC"), a cold-fill sterilizer that was banned by the Food and Drug Administration in 1972 as a carcinogenic agent. The circumstantial evidence is that Everfresh purchased and used Oleum 320/IDEA for nearly 10 years, from August 1979 to late 1988.

The originals of the Bio Trade Documents were delivered to McDermott, Will & Emery in February 1989. They have been in the continuous and exclusive possession of McDermott, Will & Emery from February 1989 through the present. These facts were confirmed to me in a letter from Lazar Raynal dated December 13, 1991. A copy of that letter is enclosed.

McDermott, Will & Emery received the Bio Trade Documents from their client, John Labatt Limited, the parent of Everfresh Juice Co. The documents were attached to a report from Labatt summarizing aspects of Everfresh's manufacturing practices. This report was the end result of an audit of Everfresh's practices that took place in February 1989. The audit was conducted by David Murray, Labatt's Director of Technical Services. (Murray's testimony concerning the delivery of the Bio Trade Documents appears at pp. 67-73 of his January 1992 deposition; copies of these pages are enclosed.)

Murray conducted the audit and prepared the report under the direction of William Appler, a partner in McDermott, Will & Emery's office in Washington, D.C. Appler has stated that "[Murray's] report was used by me to shape my subsequent presen-

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tation of information, both to the FDA and to the Canadian Health Protection Branch." Appler made this statement in an affidavit opposing a motion to compel production of the audit report, on the ground that the report is protected by the attorney-client privilege and the work product immunity. A copy of this affidavit is enclosed.

The presentation that Appler mentions took place at the Center for Food Safety and Applied Nutrition in Washington, D.C., on May 5 and June 21, 1989. Murray and Appler attended both presentations, along with other representatives of Labatt and McDermott, Will & Emery.

The purpose of these presentations, according to Murray, was "to alert the FDA to the fact that we had discovered in [Everfresh's] operations that there had been problems associated with products that were out of compliance." (1990 Murray Dep. 24) Labatt "wanted to share [the results of Murray's audit] with FDA and make them aware of the circumstances." (1990 Murray Dep. 25) At both meetings the Labatt representatives generally described the findings of the February 1989 audit. They turned over to the FDA certain documents indicating that Everfresh's orange juice was made with pulp wash.

Labatt, however, did not give the FDA copies of the Bio Trade Documents. Neither Labatt nor its lawyers have offered any explanation for why the Bio Trade Documents were not turned over to the FDA at the same time as documents about the use of pulp wash.

As a footnote, the Bio Trade Documents were responsive to document requests in the civil case that were served on Everfresh in December 1989. When Everfresh responded to these requests in April 1990, its lawyers (McDermott, Will & Emery) did not produce the Bio Trade Documents. Also, certain information in the Bio Trade Documents was responsive to several interrogatories that were served in December 1989. Nevertheless, the April 1990 answers to these interrogatories did not disclose such information.

The Bio Trade Documents were not produced to us until April 1991, and then only after we had established their existence by independent means and had made repeated requests for them. According to Mr. Raynal's December 13th letter, the explanation for his firm's failure to produce the Bio Trade Documents prior to April 1991 is that "we overlooked their presence in our files."

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If you have any questions about these matters, do not
hesitate to call.

Very truly yours,



John P. Messina

/jm

Enclosures (3)

cc: Agent George Bailey
Agent James Mundo
(w/enclosures)
Kenneth Baumgartner, Esq.
Warren S. Radler, Esq.