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**VIA FEDERAL EXPRESS**

David Kessler, M.D.  
HF-1 Room 1471  
Food and Drug Administration  
The Parklawn Building  
5600 Fishers Lane  
Rockville, Maryland 20857

**Re: Adulteration in the  
Orange Juice Industry**

Dear Commissioner Kessler:

I represent Grove Fresh Distributors, Inc., a Chicago distributor of orange juice. Grove Fresh is the plaintiff in five civil suits which challenge the misbranding and adulteration of orange juice from concentrate. Grove Fresh's cases have not received much public attention because almost all of the provocative information that we have developed is under a court-ordered seal.

That may soon change. In papers filed with the trial court on September 30, the seal has come under attack by a group of journalists calling itself The Ad Hoc Coalition of In Depth Journalists. (Copies of these papers are enclosed for your reference.) The reasons cited for vacating the seal include a swipe at the FDA's competence:

[T]his case raises issues of critical interest, including concerns about the prolonged use of a cancer-causing agent as a preservative for orange juice, concerns about industry practices regarding adulteration of orange juice and concerns about the effectiveness of the Food and Drug Administration in preventing and punishing such adulteration. (emphasis added)

The reference is to evidence developed by Grove Fresh that in at least 1987 and 1988, one of the defendants added diethyl pyrocarbonate ("DEPC") to its orange juice. DEPC is a cold-fill sterilizer that hydrolyzes when added to an aqueous solution. The FDA banned DEPC in 1972 after studies showed that when DEPC hydrolyzes in orange juice, one of its constituent compounds tends to recombine with ammonia (which is naturally present in orange juice) to form urethane, a carcinogen.

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The government's failure to prosecute those who used DEPC is a scandal waiting to happen. But from all that I can see, the failure to prosecute is not for want of effort by the two FDA field agents who have been monitoring Grove Fresh's lawsuits. These agents (James Mundo of Saginaw, Michigan, and George Bailey of Chicago) have subpoenaed Grove Fresh's investigatory files three times over the last two years. In response, Grove Fresh has produced all of its non-privileged files, which include more than 30 depositions, and more than 150,000 pages of documents.

From all that I can see, Agents Mundo and Bailey have gone through Grove Fresh's evidence with a fine-tooth comb. The responsibility for the government's failure to prosecute lies elsewhere. I request that you examine this investigation and determine for yourself why the wrongdoers are not being prosecuted.

Respectfully,



John P. Messina

/jm

cc: Mr. Cecil Troy  
Kenneth Baumgardner, Esq.  
(w/enclosures)