

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED  
APR 18 1990  
H. STUBBS  
UNITED STATES DISTRICT COURT

GROVE FRESH DISTRIBUTORS, INC., )  
an Illinois corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EVERFRESH INC. )  
et al., )  
Defendants. )

No. 89 C 1113

Judge Zagel

**PLAINTIFF'S MOTION TO ENFORCE  
AGREEMENT CONCERNING DISCOVERY**

Plaintiff Grove Fresh Distributors, Inc., by its attorney, John P. Messina, Esq., moves the court for entry of an order: (a) compelling defendant Everfresh Inc. to answer Plaintiff's Amended First Set of Interrogatories by April 24, 1990, in accordance with the agreements reached between counsel at a Rule 12k conference on March 20, 1990, and (b) finding that the failure to answer the interrogatories after the Rule 12k conference was willful and in bad faith.

In support of this motion plaintiff states the following:

1. Plaintiff served the interrogatories on December 1, 1990. Defendants served objections on February 22, 1990. A copy of the objections are attached hereto as Exhibit A. The objections are from the "Rambo" school of litigation.

2. For example, the very first interrogatory asked:

Identify every person who was an officer, director or shareholder of Everfresh [during the stated time period].

The defendants objected to this interrogatory on the ground that it was "confusing and ambiguous and beyond the scope of discovery." They refused to identify any officer or director other than Daniel Kotwicki, the Everfresh president who resigned

in late 1988, after the adulteration scandal had come to light. This "disclosure" was meaningless, however, because Kotwicki was already known to Grove Fresh and to everyone else in the industry who has followed the adulteration scandal.

3. Everfresh's evasiveness extended to the "answers" to the heart of the interrogatories, numbers 5, 6 and 7. These interrogatories are as follows:

5. Did you adulterate orange juice at any time during the period from January 1, 1983 to the present? If the answer is "yes," state the period of time during which you adulterated orange juice.

6. If the answer to interrogatory no. 5 is "yes,"  
(a) identify the plants or other facilities where the orange juice was adulterated;  
(b) identify every past or present officer, director, and employee of Everfresh who has any knowledge of the adulteration; and  
(c) for each person identified in your answer to subparagraph (b), state the date on which he or she first learned of the adulteration.

7. If the answer to interrogatory no. 5 is "yes," describe the formula used to manufacture the adulterated orange juice. If more than one formula was used, describe each such formula, and state the period of time during which it was used.

The defendants entire response to these three interrogatories, as well as to numbers 8, 9 and 10, is as follows:

Defendant repeats its objection to Interrogatory No. 1 as part of its interrogatory Nos. 5-10, and further objects to plaintiff's definition of [of the term "adulteration."] In order to minimize further disputes, however, defendant states that during the time Daniel Kotwicki was president of Everfresh Inc., orange juice from concentrate was prepared in a manner different from that prepared under the management that replaced Mr. Kotwicki.

4. On March 20, 1990, the parties held a Rule 12k conference and reached certain agreements about discovery. Those

agreements are set forth in a letter from plaintiff's counsel dated March 21, 1990, a copy of which is attached hereto as Exhibit B.

5. The Rule 12k conference was held in connection with the settlement of a related case, Grove Fresh Distributors, Inc. v. Flavor Fresh Foods Corp., No. 89 C 1114 (Judge Bua).<sup>1</sup>

Paragraph 10 of the Flavor Fresh settlement provided as follows:

10. On March 20, 1990, Grove Fresh's counsel and Everfresh's counsel met pursuant to local General Rule 12k to resolve Everfresh's objections to Grove Fresh's First Amended Interrogatories to Everfresh .... Subject to the understandings reached at this meeting, which are set forth in a letter from Grove Fresh's counsel to Everfresh's counsel dated March 21, 1990, Everfresh has agreed as follows:

(a) to serve Grove Fresh with amended answers to the Interrogatories by Monday, April 9, 1990;  
...

6. Everfresh has willfully willfully breached its agreement. Instead of answering the interrogatories, it has served Grove Fresh with an unexecuted, two and one-half page affidavit from a corporate officer, Hugo Powell, who has absolutely no personal knowledge of the facts underlying this case. (A copy of this affidavit is attached hereto as Exhibit C.

7. Powell did not begin working at Everfresh until January 1989, just a few weeks before Grove Fresh filed its complaint. His affidavit concedes that under his predecessor, Daniel Kotwicki, Everfresh had manufactured and distributed adulterated

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1. Everfresh was a party to the settlement of that case because it manufactures orange juice for Flavor Fresh. Because of its responsibility for Flavor Fresh's adulterated orange juice, Everfresh indemnified Flavor Fresh against Grove Fresh's claims. As part of the indemnity agreement, the same law firm (McDermott Will & Emery) represented both Everfresh and Flavor Fresh.

orange juice over a period of several years. These are facts that were already known by Grove Fresh; indeed, they are the very basis of the complaint.

8. What Grove Fresh does not yet know, and what it has been seeking to discover for the last five months, are the names of corporate officers and employees other than Kotwicki who participated in the adulteration or otherwise had knowledge of it. Other than Kotwicki, Powell's affidavit does not identify a single officer, director or employee who participated in or had knowledge of the adulteration scheme.

9. Every substantive statement in Powell's affidavit begins with the phrase, "I have been told," or "I was told," or "I learned." However, Powell does not identify any of the persons who supplied him with his information.

10. The Powell affidavit is so filled with anonymous hearsay, and so lacking in basic detail as to be practically useless. This affidavit would be bad enough if it were the initial response to the interrogatories. But as the response submitted in purported compliance with a Rule 12k conference, it is outrageously dilatory and evasive.

11. As part of the settlement agreement in the Flavor Fresh Foods Corp. case, Everfresh agreed that in addition to answering the interrogatories by April 9, 1990, it would produce Powell for a rule 30(b)(6) deposition on April 26, 1990. Grove Fresh specifically bargained for this sequence in discovery. The benefit of that bargain will be lost if the Powell deposition proceeds without complete answers to the interrogatories. Therefore, Grove Fresh requests that the defendants be ordered to

serve complete answers to interrogatories by noon on Tuesday, April 24, 1990.

12. Rule 33 provides that when the party to whom interrogatories are addressed is a corporation, the party "shall furnish such information as is available to the party." This Rule imputes to the corporation the knowledge of all officers and employees. General Dynamics Corp. v. Selb Manufacturing Cop., 481 F.2d 1204, 1210 (8th Cir. 1973). Thus, a corporation served with interrogatories is

duty bound to secure all information available to [it]. This would include information within the personal knowledge of former ... employees employed at the time [the lawsuit is] commenced. Additionally, it would include information possessed by its corporate counsel.

Id. at 1210-11. Accord, United States v. 3963 Bottles, more or less, 265 F.2d 332, 336 (7th Cir 1959); Trane Co. v. Klutznick, 84 F.R.D. 473 (W.D. Wisc. 1980); Weddington v. Consolidated Rail Corp., 101 F.R.D. 71 (N.D. Ind. 1984).

13. In accordance with these authorities, Grove Fresh asks that the defendants be ordered specifically to provide all of the information that is available to their attorneys and to persons who were employees at the time this action commenced on February 10, 1989.

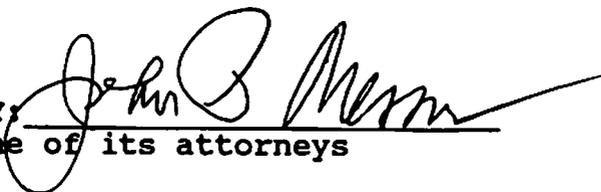
14. Finally, Grove Fresh calls the attention of the court to the fact that in August 1989, Everfresh moved for a stay of discovery pending a ruling on the motion to dismiss. The court told the defense that the stay would be granted, but only with the understanding that if the motion to dismiss were denied, discovery would proceed at a pace set by plaintiff. Everfresh

reiterated its request, and discovery was stayed with the understanding outlined by the court.

DATED: April 18, 1990

GROVE FRESH DISTRIBUTORS, INC.

John P. Messina, Esq.  
135 South LaSalle, Ste. 1960  
Chicago, Illinois 60603-4303  
(312) 630-1105

BY:   
One of its attorneys

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

GROVE FRESH DISTRIBUTORS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 89 C 1113
	)	
EVERFRESH JUICE COMPANY and	)	Judge Zagel
HUGO POWELL,	)	
	)	
Defendants.	)	

RESPONSE TO PLAINTIFF'S FIRST  
AMENDED SET OF INTERROGATORIES  
AND FIRST REQUEST FOR DOCUMENTS

Defendant Everfresh Inc. (named in the complaint as "Everfresh Juice Company") responds to plaintiff's First Amended Set of Interrogatories and First Request for Documents as follows:

Interrogatories

1. Identify every person who is or was an officer, director, or shareholder of Everfresh.

1. RESPONSE: Interrogatory No. 1, when read in light of definition (e), in Plaintiff's First Amended Set of Interrogatories is confusing and ambiguous and beyond the proper scope of discovery, and defendant therefore objects to Interrogatory No. 1. In order to minimize further disputes, however, defendant states that from August 10, 1988 to the date of this response, the sole shareholder of Everfresh Inc. has been John Labatt Inc. Since January, 1989, the president of Everfresh Inc. has been Hugo Powell, and his predecessor as president was Daniel Kotwicki.

2. State the address of every packaging plant owned or operated by Everfresh.

2. RESPONSE: Defendant repeats its objection to Interrogatory No. 1 as its objection to Interrogatory No. 2. In order to minimize further disputes, however, defendant states that from August 10, 1988 to the date of this response Everfresh Inc. has had two packaging facilities: one at 3333 North Mt. Prospect Road, Franklin Park, Illinois, and one at 6600 East Nine Mile Road, Warren, Michigan.

3. At any time during the period from January 1, 1983 to the present, did you, in the course of importing or exporting orange juice products and orange juice drink products, misrepresent to customs officials in either the United States or Canada that an orange juice product was an orange juice drink product, or vice versa? If the answer is "yes," provide the following information as to each misrepresentation:

- (a) the date it was made;
- (b) The quantity of products that were the subject of the misrepresentation;
- (c) the duty that was paid on the misrepresented products;
- (d) the duty that would have been due or paid if the misrepresentation had not been made;
- (e) the identity of all persons who have knowledge of the misrepresentation; and
- (f) the date on which each of the persons identified in your answer to subparagraph (e) first learned of the misrepresentation.

4. Identify all documents that refer or relate to the misrepresentations that are the subject of interrogatory no. 3.

3-4. RESPONSE: Defendant repeats its objection to Interrogatory No. 1 as its objection to Interrogatory Nos. 3-4.

5. Did you adulterate orange juice at any time during the period from January 1, 1983 to the present? If the answer is "yes," state the period of time during which you adulterated orange juice.

6. If the answer to interrogatory no. 5 is "yes,"  
(a) identify the plants or other facilities where the orange juice was adulterated;

(b) identify every past or present officer, director, and employee of Everfresh who has any knowledge of the adulteration; and

(c) for each person identified in your answer to subparagraph (b), state the date on which he or she first learned of the adulteration.

7. If the answer to interrogatory no. 5 is "yes," describe the formula used to manufacture the adulterated orange juice. If more than one formula was used, describe each such formula, and state the period of time during which it was used.

8. For each of the ingredients (including water and 100% orange juice concentrate) in the formulas described in the answer to interrogatory no. 7, give the following information:

(a) the identity of the vendors from whom you purchased such ingredients, and

(b) the purchase price of each ingredient.

9. Identify all documents that refer or relate to your adulteration of orange juice.

10. State whether you have received any complaints about the presence of sugar, or any other adulterant, in orange juice from concentrate you have manufactured. If your answer is "yes," identify the source, date and nature of each complaint, in complete detail.

5-10. RESPONSE: Defendant repeats its objection to Interrogatory No. 1 as part of its objection to Interrogatory Nos. 5-10, and further objects to plaintiff's definition (c). In order to minimize further disputes, however, defendant states that during the time Daniel Kotwicki was president of Everfresh Inc., orange juice from concentrate was prepared in a manner different from that under the management that replaced Mr. Kotwicki.

11. State whether you have ever received a notice of investigation from any federal or state regulatory agency regarding the presence of sugar, or any other adulterant, in orange juice from concentrate you have manufactured, or for the failure to meet the proper standards of identity required for orange juice from concentrate. If so, state the name of the agency, the date of the notice of the investigation, the name, address and title of the investigator, the nature of the notice of investigation and its present status.

11. RESPONSE: Defendant repeats its objection to Interrogatory Nos. 5-10 as its objection to Interrogatory No. 11. In order to minimize further disputes, however, defendant states that Everfresh Inc., as far as it can determine, has received no notice of investigation from any federal or state regulatory agency regarding sugar or "standards of identity" as to orange juice in the period from August 10, 1988 to the date of this response.

12. Identify each wholesaler, retailer, or other customer, except the ultimate consumer, to whom you have supplied orange juice from concentrate, and state:

(a) the inclusive dates you supplied the customer with product;

(b) the quantity of product sold to the customer, stated annually;

(c) the prices at which the product was sold to the customer;

(d) whether there exists any contract controlling or concerning the retail or wholesale price of the product, and, if so, the terms of such contract.

13. Identify all customers to whom you sold adulterated orange juice, and for each such customer, state whether you disclosed to it the fact that the orange juice was adulterated.

12. RESPONSE: Defendant repeats its objection to Interrogatory Nos. 5-10 as part of its objection to Interrogatory Nos. 12-13, and further objects that, as a competitor of Everfresh Inc., plaintiff is improperly seeking confidential business information from defendant that can be used in plaintiff's business activities, and is doing so without there being any proper relation to the issues raised by plaintiff's complaint. Defendant further objects in that the request is unduly burdensome, and the harm to defendant of disclosing the requested information outweighs any legitimate need by plaintiff for that information.

14. Identify all experts whom you intend to call as witnesses at trial in this case. As to each such expert, provide a biographical outline of his or her education, publications, work experience and like credentials which you assert qualify the witness to serve as an expert is expected to testify; the substance of the findings and opinions to which the expert is expected to testify; and summarize the grounds for each opinion the expert is expected to give at trial, attached hereto copies of all reports provided by said experts.

14. RESPONSE: As of the date of this response, defendant is still in the process of determining which experts it intends to call as witnesses at trial in this case. Defendant will identify the experts it intends to call as trial witnesses once that decision is made.

15. State whether you have ever advertised orange juice products bearing your label. If so, provide the following information for each advertisement:

- (a) the identity of the medium through which the advertising was conducted;
- (b) the dates on which the advertisement appeared in print or was broadcast over radio or television; and
- (c) the identity of the persons who have custody, possession or control of the text or other form of the advertisement.

16. State whether any of the advertisement described in your answer to interrogatory no. 15 was placed in the United States mail. If so, provide the following information for each such advertisement:

- (a) the date the advertisement was placed in the mail, and
- (b) the identity of each addressee of such mailing.

15-16. RESPONSE: Defendant repeats its objection to Interrogatory Nos. 12-13 as its objection to Interrogatory Nos. 15-16. In order to minimize further disputes, however, defendant states that, as far as it can tell, there have been no advertisements of orange juice bearing Everfresh's label in the period from August 10, 1988, to the date of this response, and, accordingly, that no such advertisements were placed in the United States mail. Nevertheless, Everfresh Inc. will

conduct a further search to determine if there were such advertisements.

Documents Requested

1-8. Defendant repeats the objections and responses set forth to plaintiff's interrogatories as its objections and responses to plaintiff's document requests.

EVERFRESH INC.

By: Bruce H. Weitzman  
One of its attorneys

Bruce H. Weitzman  
David J. Stetler  
McDermott, Will & Emery  
111 West Monroe Street  
Chicago, Illinois 60603  
(312) 372-2000

VERIFICATION

As president of Everfresh Inc. I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct, to the best of my knowledge.

Executed on February 16<sup>th</sup>, 1990.

Hugo Powell  
Hugo Powell

#0030k

CERTIFICATE OF SERVICE

I, Bruce H. Weitzman, an attorney, certify that I caused copies of the attached Response to Plaintiff's First Amended Set Of Interrogatories And First Request For Documents to be hand delivered to:

John P. Messina  
135 South LaSalle Street  
Chicago, Illinois 60603

on February 22, 1990.

  
Bruce H. Weitzman

**EXHIBIT B**

**JOHN P. MESSINA**

ATTORNEY AT LAW  
135 S. LASALLE STREET  
SUITE 1060  
CHICAGO, ILLINOIS 60603  
(312) 630-1105

March 21, 1990

David J. Stetler, Esq.  
McDERMOTT, WILL & EMERY  
111 West Monroe  
19th Floor  
Chicago, Illinois 60603

Re: Grove Fresh v. Flavor Fresh  
Grove Fresh v. Everfresh

Dear David:

I am writing to confirm the agreements that we reached at our Rule 12k conference yesterday concerning Grove Fresh's First Amended Set of Interrogatories and First Request for Documents in the Everfresh case, and certain deposition notices served in the Flavor Fresh case pursuant to Rule 30(b)(6).

Except as otherwise noted below, you have agreed to serve supplemental answers to interrogatories that are consistent with our understandings, by April 9.

**Interrogatory Nos. 1 and 2:** You have agreed to withdraw the objections and to answer these interrogatories.

**Interrogatory Nos. 3 and 4:** Your objections to these interrogatories incorporated your objections to nos. 1 and 2, which have been withdrawn. At our conference you asserted the additional objection that the subjects of these interrogatories are irrelevant and not calculated to lead to the discovery of admissible evidence. We did not resolve these objections. I reserved my right to compel answers to these interrogatories at some later date.

**Interrogatory Nos. 5 through 11:** You have withdrawn your objections to these interrogatories. Interrogatory no. 8 is not subject to the April 9 deadline; Everfresh will use its best efforts to provide this information within a reasonable period of time.

**Interrogatory Nos. 12 and 13:** You have withdrawn your objections to these interrogatories, but you have requested that the answers be made subject to a protective order.

I advised you that I will agree to the entry of a form of order that protects the confidentiality of legitimate competitive information. Ideally, such an order (the drafting of which I will leave to you) should be entered on or before the date of your supplemental answers. If we are unable to work out the

David J. Stetler, Esq.  
March 21, 1990  
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terms of such an order by April 9, I will maintain the confidentiality of your answers up to April 26, the date of Mr. Powell's deposition.

I will not agree to an order that would treat information concerning or relating to tortious acts as confidential business information. I will, however, agree informally to maintain for a limited period of time the confidentiality of any interrogatory answers or deposition testimony which discloses such information. My agreement is for the period ending on May 7, 1990, which is ten days after the agreed-upon date for Mr. Powell's deposition.

**Interrogatory Nos. 15 and 16:** You have withdrawn your objections to these interrogatories.

**Document Requests:** You will respond to the document requests in a manner that is consistent with the understandings we have reached on the interrogatories. If you claim a privilege for a document that is otherwise responsive, you will provide sufficient identifying information to support the claim of privilege.

**Rule 30(b)(6) Notices:** In December 1989, Grove Fresh served deposition notices under Fed. R. Civ. P. 30(b)(6) in the Flavor Fresh case. We have agreed that these deposition notices can be used for the purposes of the Everfresh case.

With respect to the notice served on Flavor Fresh, you objected to subjects 1 and 2 to the extent that they call for information about orange juice other than that packed by Everfresh. In order to facilitate the closing of the settlement agreement in the Flavor Fresh case, I agreed that in my initial examination, I would limit my inquiry on subjects 1 and 2 to Everfresh orange juice products. However, I reserved my right to obtain a court order to expand my examination at a later date to the full scope of subjects 1 and 2 as originally drafted.

You have no objections to subjects 3 and 4. You object to subjects 5 and 6 on grounds of relevance.

My position on your objections to subjects 1, 2, 5 and 6 is as follows: In settlement discussions, Bruce Weitzman has asserted that Grove Fresh can recover lost profits from Everfresh only if Grove Fresh establishes the lost profits specifically attributable to Everfresh. I will assume for the sake of discussion only that Mr. Weitzman's characterization of Grove Fresh's burden of proof is accurate.

In order to satisfy its burden of proof, as characterized by Mr. Weitzman, Grove Fresh would first have to establish the total lost profits proximately caused by competitors, including Everfresh, who sell adulterated orange juice. Then, Grove Fresh would have to make some rational allocation of this total among

David J. Stetler, Esq.

March 21, 1990

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all of the adulterators. In order to make the latter showing, of course, Grove Fresh would first have to establish the identity of each of the other adulterators.

Thus, Everfresh's position on damages makes the identification of other adulterators not merely relevant, but absolutely essential. Yet you are refusing to let us conduct discovery as to the identity of the other wrongdoers. This position is illogical and unreasonable, and I ask that you reconsider it. Either Everfresh must abandon Mr. Weitzman's characterization of Grove Fresh's burden of proof on damages, or else it must allow us to conduct discovery as to other wrongdoers; it cannot have it both ways.

If Everfresh persists in its present position, and you preclude me from inquiring at the Flavor Fresh deposition about other wrongdoers, you will leave Grove Fresh no choice but to bring a motion to compel discovery, and to argue that Everfresh's position is so illogical and unreasonable as to be sanctionable.

With respect to the notices directed to Everfresh Inc. and Everfresh Juice Co., you have objected to the geographical scope of subjects 7, 8, and 9. I have agreed to limit my examination on these subjects to the Northern District of Illinois. I reserve the right to seek at a later date information about the Southern District of Illinois, Wisconsin, Michigan and Indiana.

You have objected to the relevance of subject 11 in the Everfresh Inc. notice (subject 12 in the Everfresh Juice notice). I have agreed not to pursue an examination on this subject at the April 26 deposition session. However, I have reserved my right to pursue discovery of this subject at a later date.

If you have any different understanding of the agreements we reached at the 12k conference, please let me know.

Sincerely,



John P. Messina

/jm

cc: Mr. Cecil Troy  
Dorothy B. Zimbrakos, Esq.

**EXHIBIT C**

SUBJECT TO PROTECTIVE ORDER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

GROVE FRESH DISTRIBUTORS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 89 C 1113
	)	
EVERFRESH JUICE COMPANY and	)	Judge Zagel
HUGO POWELL,	)	
	)	
Defendants.	)	

AFFIDAVIT OF HUGO POWELL

I, Hugo Powell, state as follows, supplementing the responses previously made to Plaintiff's First Amended Set of Interrogatories:

1. I am the President, Chief Executive Officer and Chairman of Everfresh Inc. (the "Company"), and I have held these positions since January, 1989. My predecessor in these positions was Daniel F. Kotwicki.

2. In January, 1989, immediately after I joined the Company, I spoke with a number of employees. In the course of those discussions, I learned that under Daniel F. Kotwicki's control, the Company had prepared amounts of orange juice from concentrate in a manner contrary to the manner I believe should have been used.

3. Specifically, I was told that on some occasions in 1986, 1987 and some portion of 1988, Daniel F. Kotwicki had the Company prepare orange juice not only from concentrate, water and orange oils, but also with some additional orange

SUBJECT TO PROTECTIVE ORDER

pulp wash and/or liquid sugar. I have been told that on some of the occasions that liquid sugar was added, Mr. Kotwicki had the Company bolster the orange juice's levels of vitamin C, potassium, citrate and amino acids. In addition, I have been told that for some of the orange juice packaged in plastic bottles during part of that time, Mr. Kotwicki had the Company add a preservative.

4. I have been told that Mr. Kotwicki may have had the Company begin this manner of preparing orange juice as early as some time shortly after the acquisition of the Franklin Park, Illinois facility on January 21, 1986, and some time shortly after the acquisition of the Warren, Michigan facility on December 10, 1986. I have been told that this manner of preparation was not used for all of the orange juice made by the Company during the period 1986 to 1988.

5. I have been told that Mr. Kotwicki had the Company begin phasing out this manner of preparing orange juice in late 1987 or early 1988, and that it ended completely in 1988.

6. I have been told that Mr. Kotwicki implemented this manner of preparing orange juice through certain individual Company employees in Franklin Park, Illinois and Warren, Michigan. I ordered the termination of the employment of those employees in early 1989.

SUBJECT TO PROTECTIVE ORDER

7. In May, 1989, I made a presentation to the United States Food and Drug Administration, disclosing these matters that I had learned, and explaining the steps taken by the Company to be sure that there can be no recurrence.

8. As far as I can determine, the only complaints that the Company received concerning the manner in which orange juice was prepared was a lawsuit filed in Maryland in 1988 by attorney Jeffrey C. Hines, with Purity Products as plaintiff, and the litigation filed in Illinois in 1989 by attorney Jeffrey C. Hines, with Grove Fresh as plaintiff.

9. I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct, to the best of my knowledge.

Executed on April \_\_, 1990.

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HUGO POWELL

#0665k