

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DEBORAH FELLNER,	:	CIVIL ACTION NO. 2:06-CV-688-DMC-JAD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
TRI-UNION SEAFOODS, L.L.C.,	:	
d/b/a CHICKEN OF THE SEA,	:	
	:	
Defendant.	:	DECEMBER 15, 2010

**AFFIDAVIT OF JOHN BARKER IN SUPPORT OF
MOTION TO FOR PROTECTIVE ORDER**

I, John Barker, depose and say that:

1. I am over the age of eighteen (18), and believe in the obligation of an oath.
2. I am the Manager of Corporate Affairs of Chicken of the Sea International (“COSI”).
3. Tri-Union Seafood, LLC was formed on or about November 6, 1996.
4. There are approximately eighty desktop computers in the Defendant’s corporate headquarters in San Diego, California.
5. There are also approximately forty laptops, which are primarily utilized by the sales force.
6. Full e-mail system backup systems were installed in 2004, with monthly back-ups.
7. The current backup format is to transfer the information from disk to disk, rather than from disk to tape.
8. In response to this litigation, COSI implemented a “litigation hold,” which has suspended normal data and document destruction policies while this matter is pending.
9. At my direction, employees from each department have investigated the nature and extent of hard copy and electronic data currently in the possession, custody, and control of COSI.

Hard Copy Documents (1996-2004)

10. There are approximately 3,000,000 pages of documents in hard copy format for the time period 1996-2004.
11. Without having examined each of the 3,000,000 pages first-hand, on information and belief, an exceedingly high percentage of the documents are irrelevant to the allegations in this lawsuit and/or are protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
12. It is estimated that it will take approximately two seconds per page to scan such documents into electronic form. At such a rate, it will take nearly 1,700 machine hours to convert the hard copy documents into electronic form.
13. The aforementioned 1,700 hours represent only the machine-scanning time for such documents, and not the man hours necessary to perform the scanning. Adding time for the physical handling, including gathering, moving, and handling, of the documents, as well as examining them for relevance, attorney-client privilege, work product, and confidential or proprietary information would increase the number of total hours exponentially.
14. On information and belief, COSI will need to purchase licenses for document management software to facilitate the analysis and production of such documents. Such licenses will cost approximately \$4,000.00.
15. COSI will also need to purchase a scanner to work with such software. The cost of such a scanner will be approximately \$500.00.
16. COSI will need to purchase three additional scanners for conversion of documents into optical character recognition ("OCR") format. Such scanners will cost approximately \$5,000.00 each, for a total of \$15,000.00.
17. It is estimated that it will take between ten and fifteen seconds per page to convert such scanned documents into a format that is searchable through OCR programs. At such a rate, it will take more than 10,400 machine hours to convert such documents into a searchable form.
18. The aforementioned 10,400 hours represent only the machine-converting time for such documents, and not the man hours necessary to perform the converting. Adding time for the physical handling, including gathering, moving, and handling, of the documents, would increase the number of total hours substantially.

Hard Copy Documents (2005-present)

19. With regard to hard copy documents from 2005 through the present, on information and belief, there are approximately 6,900,000 such pages.
20. Without having examined each of the 6,900,000 pages first-hand, on information and belief, an exceedingly high percentage of the documents are irrelevant to the allegations in this lawsuit and/or are protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
21. It is estimated that it will take approximately two seconds per page to scan such documents into electronic form. At such a rate, it will take more than 3,800 machine hours to convert the hard copy documents into electronic form.
22. The aforementioned 3,800 hours represent only the machine-scanning time for such documents, and not the man hours necessary to perform the scanning. Adding time for the physical handling, including gathering, moving, and handling, of the documents, as well as examining them for relevance, attorney-client privilege, work product, and confidential or proprietary information would increase the number of total hours exponentially.
23. It is estimated that it will take between ten and fifteen seconds per page to convert such scanned documents into a format that is searchable through OCR programs. At such a rate, it will take nearly 24,000 machine hours to convert such documents into a searchable form.
24. The aforementioned 24,000 hours represent only the machine-converting time for such documents, and not the man hours necessary to perform the converting. Adding time for the physical handling, including gathering, moving, and handling, of the documents, would increase the number of total hours substantially.

E-mails (1996-2004)

25. A search of e-mails on COSI's server dated between 1996 and 2004 revealed more than 96,000 e-mails, which number does not include files attached to such e-mails.
26. Without having examined each of the e-mails first-hand, on information and belief, an exceedingly high percentage of them are irrelevant to the allegations in this lawsuit and/or are protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
27. The time needed to examine such e-mails for relevance, attorney-client privilege, work product, and/or confidential and/or proprietary information would impose an extraordinary burden upon COSI and inhibit its ability to function as a commercial enterprise or fulfill its corporate responsibilities.

28. On information and belief, there is no way to estimate the number of e-mails between 1996 and 2004 that contain attachments. Nor is it possible to determine the approximate total size of all the attachments for this time period.

Electronically-Stored Files (1996-2004)

29. Using the category of files, other than e-mails, that were last modified between 1996 and 2004, a search of electronically-stored files on COSI's server revealed more than 24,000 files, consisting of approximately 6.34 gigabytes of data saved in multiple formats, including Excel, Word, PowerPoint, .PDF, .HTML, Lotus 1,2,3, Word Perfect, and .RTF.
30. On information and belief, assuming all such files were in Word format, the result would be 1,500,000 full-text pages.
31. Without having examined such files first-hand, on information and belief, an exceedingly high percentage of them are irrelevant to the allegations in this lawsuit and/or are protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
32. The time needed to examine such files for relevance, attorney-client privilege, work product, and confidential or proprietary information would constitute an extraordinary burden upon COSI, and inhibit its ability to function as a commercial enterprise or fulfill its corporate responsibilities.
33. On information and belief, COSI will need to purchase licenses for a software document viewer for opening the various formats of these files. The cost of such software is approximately \$3,000.00.

E-mails (2005-present)

34. A search of e-mails on COSI's server dated from 2005 to the present revealed nearly 6,300,000 e-mails, which number does not include files attached to such e-mails.
35. This number of e-mails was calculated through December 14, 2010.
36. Without having examined each of the e-mails first-hand, on information and belief, an exceedingly high percentage of them are irrelevant to the allegations in this lawsuit and/or are protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
37. The time needed to examine such e-mails for relevance, attorney-client privilege, work product, and/or confidential and/or proprietary information would impose an extraordinary burden upon COSI and inhibit its ability to function as a commercial enterprise or fulfill its corporate responsibilities.

38. On information and belief, there is no way to estimate the number of e-mails between 2005 and the present that contain attachments. Nor is it possible to determine the approximate total size of all the attachments for this time period.

Electronically-Stored Files (2005-present)

39. Using the category of files, other than e-mails, that were last modified between 2005 and the present, a search of electronically-stored files on COSI's server revealed nearly 140,000 files, consisting of approximately 86.80 gigabytes of data saved in multiple formats, including Excel, Word, PowerPoint, .PDF, .HTML, Lotus 1,2,3, Word Perfect, and .RTF.
40. This number of files was calculated as of approximately December 10, 2010.
41. On information and belief, assuming all files were in Word format, the result would be 20,500,000 full-text pages.
42. Without having examined such files first-hand, on information and belief, an exceedingly high percentage of them are irrelevant to the allegations in this lawsuit and/or are protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
43. The time needed to examine such files for relevance, attorney-client privilege, work product, and confidential or proprietary information would constitute an extraordinary burden upon COSI, and inhibit its ability to function as a commercial enterprise or fulfill its corporate responsibilities.

Conclusion

44. From 1996 through the present, COSI has nearly 10,000,000 pages of hard copy documents, including approximately 3,000,000 from 1996 through 2004 and 6,900,000 from 2005 through the present.
45. It will take approximately 40,000 machine hours to copy and scan such documents.
46. The aforementioned 40,000 hours represent only the machine-scanning and converting time for such documents, and not the man hours necessary to perform the scanning and converting. Adding time for the physical handling, including gathering, moving, and handling, of the documents, as well as examining such documents for relevance, attorney-client privilege, work product, and confidential or proprietary information would increase the number of total hours substantially.
47. From 1996 through the present, COSI has nearly 6,400,000 e-mails, including more than 96,000 from 1996 through 2004, and nearly 6,300,000 from 2005 through the present.

48. The man hours necessary to examine such e-mails for relevance, attorney-client privilege, work product, and confidential or proprietary information would be an exceedingly high number that would inhibit COSI's ability to function as a commercial enterprise or fulfill its corporate responsibilities.
49. From 1996 through the present, COSI has approximately 164,000 files of electronically-stored data, including approximately 24,000 from 1996 through 2004, and 140,000 from 2005 through the present.
50. The total size of such files is more than 93 gigabytes.
51. On information and belief, assuming all files were in Word format, the result would be more than 22,000,000 full-text pages.
52. The man hours necessary to examine such files for relevance, privilege, work product, and confidential or proprietary information would be an exceedingly high number that would inhibit COSI's ability to function as a commercial enterprise or fulfill its corporate responsibilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of December, 2010.



John Barker