

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

DEBORAH FELLNER,

Plaintiff,

v.

TRI-UNION SEAFOODS, L.L.C.,
d/b/a CHICKEN OF THE SEA,

Defendant.

: CIVIL ACTION NO. 2:06-CV-688-DMC-JAD

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: JANUARY 26, 2011

**SUPPLEMENTAL 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. As the Manager of Corporate Affairs, I am responsible for oversight of the legal function and general corporate matters and related issues for COSI.
4. Tri-Union Seafoods, LLC was formed on or about November 6, 1996.
5. The proper name of the Defendant is Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea International.
6. In short, Tri-Union Seafoods and COSI are the same entity.
7. On information and belief, the Proposition 65 litigation was first filed in 2001.
8. Consequently, on information and belief, COSI has retained documents in the form of emails, which were created after 2001, in response to the Proposition 65 litigation.
9. On information and belief, most of said e-mails reflect communications between representatives of Tri-Union and its attorneys, relating to the Proposition 65 litigation, and are, therefore, protected by the attorney-client privilege.
10. On information and belief, said documents and e-mail files were created at the direction of counsel and are protected as work product.

11. On information and belief, said documents and e-mails contain the mental impressions of counsel and are protected as work product and/or the attorney client privilege.
12. On information and belief, written discovery in the Proposition 65 litigation ended in 2005.
13. On information and belief, no electronic searches were ever done of COSI's servers in conjunction with the Proposition 65 litigation.
14. On information and belief, COSI did not produce any electronic files or e-mails in conjunction with the Proposition 65 litigation.
15. Employees from each department of COSI, at my request, investigated the nature and extent of hard copy and electronic data currently in the possession, custody, and control of COSI, and provided such data to me for use in my initial Affidavit, dated December 15, 2010.
16. With regard to searches of e-mail and electronically-stored files, I specifically sought the assistance of members of the Information Technology Department at COSI.
17. Such members are experienced in the operation of computers and software that COSI utilizes.
18. Such members are similarly experienced in the operation of computers and software generally.
19. Such members possess the knowledge, education, and experience necessary to estimate the time necessary to scan hard copy documents into electronic form.
20. Such members possess the knowledge, education, and experience necessary to estimate the number of licenses, and associated costs, necessary to facilitate the analysis and production of such hard copy documents.
21. Such members possess the knowledge, education, and experience necessary to estimate the number of scanners, and associated costs, necessary to convert such hard copy documents into optical character recognition ("OCR") format.
22. Such members possess the knowledge, education, and experience necessary to estimate the time necessary to convert such scanned documents into a format that is searchable through OCR programs.
23. Such members possess the knowledge, education, and experience necessary to search the electronic archives of COSI to quantify, for a particular period of time, the number of e-mails that COSI's server contains.
24. Such members possess the knowledge, education, and experience necessary to determine that the number of files attached to such e-mails cannot be quantified

through electronic searches.

25. Such members possess the knowledge, education, and experience necessary to search the electronic archives of COSI to quantify, for a particular period of time, the amount of data consisting of electronically-stored files that COSI's server contains.
26. Such members possess the knowledge, education, and experience necessary to estimate the number of licenses, and associated costs, necessary to open the various formats of such electronically-stored files.
27. Based on my judgment, and the judgment of the Director of Information Technologies of COSI, as well as on samples of data and our collective knowledge and judgment regarding the various functions performed within each department at COSI, I was able to estimate that most of the information contained in the e-mails and electronic files is irrelevant to the allegations in this lawsuit and/or protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information.
28. Hard copy documents are currently stored in COSI's offices and in an off-site storage warehouse.
29. Hard copy documents in COSI's offices are stored in the various departments and are not indexed.
30. Such departments include Accounting, Consumer Affairs, Customer Service, Engineering, Executive, Finance, Human Resources, Information Technologies, Legal, Logistics, Marketing, Operations, Procurement, Production, Purchasing, and Sales.
31. Hard copy documents in the off-site storage warehouse are stored in boxes with labels describing the contents.
32. On information and belief, there is no overall set of categories for labeling such boxes; rather, the manner of labeling the boxes depends on the individual who packed each box.
33. On information and belief, the record storage bookkeeping has changed several times over the last ten years. The current system is filed by department.
34. Some examples of categories for hard copy documents stored in the off-site storage warehouse include Accounting – A/P Vouchers, Accounting – Payroll Input, Human Resources – Lump Sum Payments, Human Resources – Terminated Employees, Logistics – Bills of Lading, Logistics – Invoices, and Logistics – Receipts.
35. With regard to estimating the number of hard copy pages, at my direction, employees from each department estimated how many pages would fit into a standard storage box.

36. With regard to hard copy pages stored on-site in COSI's offices, department heads estimated the equivalent number of boxes each department had stored in file cabinets, desks, binders, and bookshelves.
37. With regard to hard copy documents stored in the off-site storage warehouse, COSI employees analyzed data from the off-site storage warehouse, which provided the number of boxes. The number of boxes was then converted to an approximate number of pages.
38. On information and belief, to date, COSI employees, at my direction, have already spent approximately 120 hours determining the nature and extent of the hard copy documents, e-mails, and electronically-stored files in the possession, custody, or control of COSI.
39. The 120 hours includes approximately eighty-one spent by members of the Information Technologies Department concerning e-mails and electronically-stored files.
40. The 120 hours also includes approximately thirty-nine hours for other COSI employees concerning hard copy documents stored both on-site and in the off-site storage warehouse.
41. I based my determination that most of the information contained in the hard copy documents stored on-site is irrelevant to the allegations in this lawsuit and/or protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information on my judgment and the judgment of the individual department heads and their staffs.
42. I based my determination that most of the information contained in the hard copy documents stored in the off-site storage warehouse is irrelevant to the allegations in this lawsuit and/or protected from disclosure by the attorney-client privilege, work product doctrine, and/or as confidential or proprietary information on the fact that the storage boxes containing such records are labeled, and very few labels indicate contents that pertain to the allegations of the Plaintiff's Amended Complaint.

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


Executed this 26th day of January, 2011.


John Barker

CERTIFICATION

I hereby certify that on this date a copy of the foregoing **Supplemental Affidavit of John Barker in Support of Motion for Protective Order** was filed electronically and served by mail on any party unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to any party unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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