




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September 24, 2012

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**VIA ECF ONLY**

Honorable Joseph A. Dickson, U.S.M.J.  
 United States District Court  
 Martin Luther King, Jr. Federal Building & U.S. Courthouse  
 50 Walnut Street  
 Newark, NJ 07101

Re: *Deborah Fellner v. Tri-Union Seafoods, L.L.C., d/b/a Chicken of the Sea*  
 Civil Action No. 06-CV-688 (DMC) (JAD)


Dear Judge Dickson:

We represent Plaintiff, Deborah Fellner in the above-captioned matter.

The parties have met and conferred regarding a Discovery Confidentiality Order. The parties have agreed on every provision but one.

The disagreement concerns whether a document produced in a prior litigation and previously designated as “confidential” under the terms of a previous protective order issued in a previous case by a court of competent jurisdiction, is producible in this case. Defendant’s position is that all such documents will not be produced in this case. Plaintiff’s position is that if a document was previously subject to a protective order in a previous case issued by a court of competent jurisdiction, that document shall be marked “CONFIDENTIAL” and, to the extent it is responsive and not subject to a privilege or otherwise immune from or subject to a limitation on discovery, shall be producible in this action.

Documents might have been erroneously marked “confidential” in the prior action. A “once confidential means always confidential” approach is unjustified. A previous litigation’s – perhaps overbroad - definition of “confidential,” made in light of possibly different facts and circumstances, should not control the definition of confidentiality in this case. A previous plaintiff’s failure to push hard to obtain documents claimed “Confidential” should not automatically foreclose Plaintiff here from the chance to obtain proper discovery. If Defendant needs to get permission to disclose documents previously marked “Confidential” in another case, that is properly Defendant’s job. That theoretical necessity, however, should not preclude Plaintiff here from the full and fair discovery to which she is entitled for her own case. Documents marked “confidential” in a prior action might be producible, after a certain period, in

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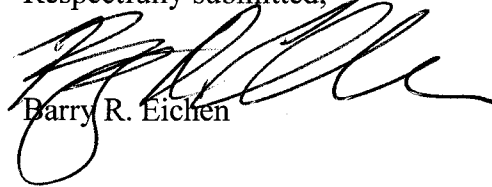
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Honorable Joseph A. Dickson, U.S.M.J.  
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this action, anyway. Finally, such documents will retain their Confidential status under the Confidentiality Order in this case.

Attached hereto is a proposed Discovery Confidentiality Order for your review and approval.

Respectfully submitted,



Barry R. Eichen

cc: John A. Kiernan (via email & ECF)