

# BONNER KIERNAN

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September 24, 2012

**VIA FACSIMILE ONLY (973) 645-4549**

Honorable Joseph Dickson, U.S.M.J.  
United States District Court  
U.S. P.O. & Courthouse Building  
Federal Square  
Newark, New Jersey 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)

Dear Judge Dickson:

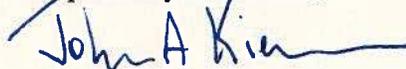
We represent Tri-Union Seafoods, L.L.C. in the above-captioned matter.

In accordance with previous communications with the Court, the parties have endeavored to agree on the terms of a Discovery Confidentiality Order. The parties have, in fact, agreed on nearly all of the provisions of such an agreement. The subject on which the parties disagree concerns whether, and to what extent, a document, which was previously designated as “confidential” under the terms of a protective order, issued by a court of competent jurisdiction, retains that protection in this matter. The existing protective order requires consideration by this Court of the rights of non-parties whose materials remain protected by the terms of such order.

The parties are each submitting their proposed Discovery Confidentiality Orders for your review and approval. As you know, there is currently a conference scheduled for October 12, 2012. Counsel for Tri-Union would be happy to address this issue with the Court at that time, though would be glad to make themselves available at the Court’s convenience if the Court wishes to address the issue before the conference.

A copy of this letter was circulated to counsel for the Plaintiff for their review and comments prior to submission to the Court.

Respectfully submitted,



John A. Kiernan

cc: Thomas Paciorkowski, Esq. (via e-mail)  
Stephen Grygiel, Esq. (via e-mail)

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

DEBORAH FELLNER,	:	CIVIL ACTION NO. 2:06-CV-688 (DMC)-JAD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	<b>DISCOVERY CONFIDENTIALITY ORDER</b>
	:	
TRI-UNION SEAFOODS, L.L.C.,	:	
d/b/a CHICKEN OF THE SEA,	:	
	:	
Defendant.	:	

Plaintiff, Deborah Fellner, and Defendant, Tri-Union Seafoods, LLC d/b/a Chicken of the Sea, have submitted to the Court this Discovery Confidentiality Order, pursuant to Appendix S of the Local Rules of Procedure for the United States District Court for the District of New Jersey. It appearing that discovery in the above-captioned action is likely to involve the disclosure of confidential information, it is ORDERED as follows:

1. Any party to this litigation and any third party shall have the right, acting in good faith, to designate as “**Confidential**” and subject to this Order any information, document, or thing, or any portion of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, sales, or other confidential business information; (b) that contains private or confidential personal information; (c) that contains information received in confidence from third parties; (d) or which the producing party otherwise believes to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure and Local Civil Rule 5.3. Any party to this litigation or any third party covered by this Order, who produces or discloses any Confidential material, including, without limitation, any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “**CONFIDENTIAL**” or “**CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER**” (hereinafter “**Confidential**”). The designation of “Confidential” shall not render that document producible, if said document was previously subject to a protective order, issued by a court of competent jurisdiction. In lieu of marking the originals or documents, the party may mark the copies that are produced or exchanged.

2. Any party to this litigation and any third party shall have the right, acting in good faith, to designate as “**Attorneys’ Eyes Only**” and subject to this Order any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party. Any party to this litigation or any third party who is covered by this Order, who produces or discloses any Attorneys’ Eyes Only material, including, without limitation, any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “**ATTORNEYS’ EYES ONLY**” or “**ATTORNEYS’ EYES ONLY –**

**SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER**” (hereinafter “**Attorneys’ Eyes Only**”). The designation of “Attorneys’ Eyes Only” shall not render that document producible, if said document was previously subject to a protective order, issued by a court of competent jurisdiction. In lieu of marking the originals or documents, the party may mark the copies that are produced or exchanged. Any party choosing to designate any documents Attorneys’ Eyes Only shall submit those documents to the Court for approval of such designation. The party producing said documents to the Court shall also contemporaneously produce said documents to counsel for all other parties with the Attorneys’ Eyes Only designation. Until the Court renders a decision regarding such designation, said documents are to be treated as Attorneys’ Eyes Only.

3. Information disclosed at the deposition of a party or one of its present or former officers, directors, employees, agents, or independent experts retained by a party for purposes of litigation may be designated by that party, again acting in good faith, as “Confidential” or “Attorneys’ Eyes Only” by indicating so on the record at the deposition. A party may also designate information disclosed at such deposition as “Confidential” or “Attorneys’ Eyes Only” by writing all parties in writing, within 20 days of receipt of the transcript, of the specific pages and lines of the transcript, which are so designated. Each party must also attach a copy of such written statement to the face of the transcript and each copy thereof in that party’s possession, custody, or control. All depositions shall be treated as Attorney Eyes Only until a full and complete transcript is available, and then for an additional 20 days thereafter.

4. All Confidential or Attorneys’ Eyes Only material shall be used by the receiving party or its counsel (in the case of Attorneys’ Eyes Only material) solely for purposes of the prosecution or defense of this action; shall not be used by the receiving party for any business, commercial, competitive, personal, or other purpose; and shall not be disclosed by the receiving party or any of its agents or representatives to anyone other than those set forth in Paragraphs 5 or 6, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court. It is, however, understood that counsel for a party may give advice and opinions to his or her client relating to the above-captioned action based on his or her evaluation of Confidential or Attorneys’ Eyes Only material, provided that such advice and opinions shall not reveal the content of Attorneys’ Eyes Only material, except by prior written agreement of counsel for the parties, or by Order of the Court.

5. Confidential material and the contents of Confidential material may be disclosed only to the following individuals under the following conditions:

- a. outside counsel (herein defined as any attorney at the parties’ outside law firms) and any of Defendant’s in-house counsel who are actively involved in or charged with monitoring the litigation;
- b. outside experts or consultants retained by outside counsel for the purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;
- c. secretarial, paralegal, clerical, duplicating, and data processing personnel of the foregoing;

- d. representatives of insurance carriers who are involved in the handling of this matter;
  - e. the Court and court personnel;
  - f. without limiting the provisions of Paragraph 7, below, any deponent may be shown or examined on any information, document, or thing designated Confidential, if it appears that the witness authored or received a copy of it; was involved in the subject matter described therein; or is employed by the party who produced the information, document, or thing; or if the producing party consents to such disclosure;
  - g. deponents, subject to the provisions of Paragraph 7, below;
  - h. vendors retained by or for the parties to assist in preparing for pretrial discovery, trial, and/or hearings, including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and
  - i. the parties. In the case of parties that are corporations or other business entities, "party" shall mean executives who are required to participate in decisions with reference to this lawsuit.
6. Material designated as Attorneys' Eyes Only shall not be disclosed to any party to this litigation. Rather, such disclosure shall be limited only to:
- a. outside counsel (herein defined as any attorney at the parties' outside law firms) and any of Defendant's in-house counsel who are actively involved in or charged with monitoring the litigation;
  - b. outside experts or consultants retained by outside counsel for the purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;
  - c. secretarial, paralegal, clerical, duplicating, and data processing personnel of the foregoing;
  - d. representatives of insurance carriers who are involved in the handling of this matter;
  - e. vendors retained by or for the parties to assist in preparing for pretrial discovery, trial, and/or hearings, including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials.

7. With respect to any depositions that involve a disclosure of Confidential or Attorneys' Eyes Only material of a party to this action, such party, acting in good faith, shall have until 20 days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated Confidential or Attorneys' Eyes Only, which period may be extended by agreement of the parties. No such deposition transcript or its contents shall be disclosed to any individual other than the individuals described in Paragraphs 5(a), (b), (c), (d), (f) and (h), and 6(a-e) above during these 20 days. Upon being informed that certain portions of a deposition are being designated as Confidential or Attorneys' Eyes Only, all parties shall immediately cause each copy of the transcript in their custody or control to be marked appropriately and shall limit disclosure of such transcripts in accordance with Paragraphs 5 and 6.

8. Any recipient of Attorneys' Eyes Only material – whether in conjunction with a deposition or otherwise – shall not distribute such material to any of the parties.

9. If counsel for a party receiving documents or information designated as Confidential hereunder objects to such designation of any or all of such items, the following procedure shall apply:

- a. Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation within 21 days of such designation, which shall describe, with particularity, the documents or information in question, and shall state the grounds for objection. Counsel for the designating party shall respond, in writing, to such objection within 21 days, and shall state, with particularity, the grounds for asserting that the document or information is Confidential or Attorneys' Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or nonparty makes a timely response to such objection, asserting the propriety of the designation, counsel shall then confer in good faith to resolve the dispute.
- b. If a dispute as to a Confidential or Attorneys' Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1(a)(1), before filing a formal motion for an Order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

10. If a party requests that documents or information designated as Confidential or Attorneys' Eyes Only be filed under seal, the Clerk of Court is directed to maintain, under seal, all documents and transcripts of deposition testimony filed in Court in this litigation, which are being designated, in whole or in part, as Confidential or Attorneys' Eyes Only provided that the party requested that such records be filed under seal, complies with Local Civil Rule 5.3.

11. In the event that a party wishes to use any Confidential or Attorneys' Eyes Only information in any affidavit, brief, memorandum of law, or other paper filed with the Court in

this litigation, such information used therein shall be filed and maintained by the Court under seal.

12. If the need arises during trial or at any hearing before the Court for any party to disclose Confidential or Attorneys' Eyes Only information, it may do so only after giving notice to the producing party and as directed by the Court.

13. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential material that should have been designated as such, regardless of whether the information, document, or thing was so designated at the time of disclosure, shall not be deemed a waiver, in whole or in part, of a party's claim of confidentiality, either as to the specific information, document, or thing disclosed, or as to any other material, or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by providing, within a reasonable time after disclosure, written notice to counsel for all parties to whom the material was disclosed that the material should have been designated Confidential. Such notice shall constitute a designation of the information, document, or thing as Confidential under this Discovery Confidentiality Order.

14. When the inadvertent or mistaken disclosure of any information, document or thing protected by privilege or work product immunity is discovered by the producing party and brought to the attention of the receiving party, the receiving party's treatment of such material shall be in accordance with Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure. Such inadvertent or mistaken disclosure of such information, document, or thing shall not, by itself, constitute a waiver by the producing party of any claims of privilege or work product immunity. Nothing, herein, however, restricts the right of the receiving party to challenge the producing party's claim of privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure.

15. No information that is in the public domain or which is already known by the receiving party through proper means, including, without limitation, from a source that is under no confidentiality obligations concerning disclosure of such information, or which otherwise is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential material under this Discovery Confidentiality Order.

16. This Discovery Confidentiality Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground.

17. Nothing contained herein precludes either party from applying to the Court to modify or seek other relief from this Discovery Confidentiality Order or for such further protection as the Court may deem appropriate.

18. This Discovery Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties, which they shall file with the Court.

19. Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall be under an obligation to assemble Confidential and Attorneys' Eyes Only

material and to destroy all copies of such material except attorney work product. However, counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Discovery Confidentiality Order. To the extent a party requests the return of Confidential or Attorneys' Eyes Only material from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

20. This Order shall not prevent any attorney herein, in the course of rendering advice regarding this action to his client, (i.e., in-house counsel or business persons with overall responsibility for the conduct of the litigation, and not technical personnel), from conveying his evaluation in a general way of Confidential information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific content of any Confidential information produced by another party or non-party herein.

**SO ORDERED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph A. Dickson, U.S.M.J.

**EXHIBIT A**

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

DEBORAH FELLNER,	:	CIVIL ACTION NO. 2:06-CV-688 (DMC)-JAD
	:	
Plaintiff,	:	
v.	:	
	:	<b>AGREEMENT TO BE BOUND BY</b>
TRI-UNION SEAFOODS, L.L.C.,	:	<b>DISCOVERY CONFIDENTIALITY ORDER</b>
d/b/a CHICKEN OF THE SEA,	:	
	:	
Defendant.	:	

I, \_\_\_\_\_, being duly sworn, state that:

1. My present address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_, and the address of my present employment is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.
4. I have carefully read and understood the provisions of the Discovery Confidentiality Order in this Case, signed by the Court (Dickson, J.), and I agree to comply with all provisions of the Discovery Confidentiality Order.
5. I will hold in confidence, and will not disclose to anyone not qualified under the Discovery Confidentiality Order any Confidential and/or Attorneys' Eyes Only material or information or any words, summaries, abstracts, or indices of Confidential and/or Attorneys' Eyes Only material or information disclosed to me or learned or discovered by me.
6. I will limit use of Confidential and/or Attorneys' Eyes Only material or information disclosed to me or learned or discovered by me solely for purposes of this lawsuit.

7. No later than the final conclusion of this lawsuit, I will return all Confidential and/or Attorneys' Eyes Only material or information, and summaries, abstracts, and indices thereof, which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed, retained, or otherwise associated during this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct. Please sign in the space provided and print your name below your signature.

Dated: \_\_\_\_\_