IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, Plaintiff, v. TYSON FOODS, INC., et al., Defendants.	)))))))))	Civil Action No. 05-cv-329-TCK-SAJ Confidentiality Order **[PROPOSED]**

Whereas, the parties to this action ("parties"), have stipulated that certain discovery material is and should be treated as confidential, and have requested that the court enter a confidentiality order; and whereas the court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the court; accordingly, it is this __ day of _____, 20__, ORDERED:

1. **Scope.** All documents or items of information produced in the course of discovery, all responses to discovery requests, all deposition testimony and deposition exhibits and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Documents claimed to be subject to the "CONFIDENTIAL ATTORNEYS' EYES ONLY" designation shall be so designated by placing or affixing the words "CONFIDENTIAL ATTORNEYS' EYES ONLY" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of said designation. Documents claimed to be subject to the "CONFIDENTIAL" designation shall be so designated by placing or affixing the word

"CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of said designation. Documents shall be designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL shall not be deemed a waiver, in whole or in part, of the right to designate documents as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL as otherwise allowed by this Order.

3. **Documents Which May be Designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL.** Any party may designate documents as CONFIDENTIAL ATTORNEYS' EYES ONLY but only after review of the documents by an attorney[1] who has, in good faith, determined that the documents contain information which, if disclosed to a competitor may cause material injury to the disclosing party. Any party may designate documents as CONFIDENTIAL but only after review of the documents by an attorney[2] who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, and shall be accomplished by either (a) an indication within or near the

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[1] The attorney who reviews the documents and certifies them to be CONFIDENTIAL ATTORNEYS' EYES ONLY must be admitted to the Bar of at least one state but need not be admitted to practice in the Northern District of Oklahoma and need not apply for *pro hac vice* admission. By signing the certification, counsel submits to the jurisdiction of this court in regard to the certification.

[2] The attorney who reviews the documents and certifies them to be CONFIDENTIAL must be admitted to the Bar of at least one state but need not be admitted to practice in the Northern District of Oklahoma and need not apply for *pro hac vice* admission. By signing the certification, counsel submits to the jurisdiction of this court in regard to the certification.

CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL stamp with the name of the attorney who determined that the document should be designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL, or (b) provision of a sheet setting forth the bates number of the document(s) and the name(s) of the respective attorney(s) who determined that the respective document(s) should be designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL. The name of the designating attorney must be legible. Information or documents which are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

5. **Protection of Material Designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL.**

a. **General Protections.** Documents designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (¶ 5.b and 5.c.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

b. **Limited Third Party Disclosures of Documents Designated as CONFIDENTIAL.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth

at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

(1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

(2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed[3];

(3) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

(4) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit 4; and

(5) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. Limited Third Party Disclosures of Documents Designated as CONFIDENTIAL ATTORNEYS' EYES ONLY. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL

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[3] At or prior to the time such party or employee completes his or her acknowledgment of review of this Order and agreement to be bound by it (Attachment A hereto), counsel shall complete a certification in the form shown at Attachment B hereto. Counsel shall retain the certification together with the form signed by the party or employee.

4 At or prior to the time such party, employee, consultant, investigator or expert completes his or her acknowledgement of review of this Order and agreement to be bound by it (Attachment A hereto), counsel shall complete a certification in the form shown at Attachment B hereto. Counsel shall retain the certification together with the form signed by the party, employee, consultant, investigator or

ATTORNEYS' EYES ONLY under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL ATTORNEYS' EYES ONLY pursuant to this Order:

(1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit 5;

(2) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

(3) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit 6; and

(4) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

d. Control of Documents. Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL pursuant to the terms of this order. Counsel

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expert.

5 At or prior to the time such employee of counsel completes his or her acknowledgement of review of this Order and agreement to be bound by it (Attachment A hereto), counsel shall complete a certification in the form shown at Attachment B hereto. Counsel shall retain the certification together with the form signed by the employee of counsel.

6 At or prior to the time such consultant, investigator or expert completes his or her acknowledgement of review of this Order and agreement to be bound by it (Attachment A hereto), counsel shall complete a certification in the form shown at Attachment B hereto. Counsel shall retain the

shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order.

e. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL under this Order or any portion of such a document, shall be immediately affixed with the designation CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Filing of Materials Designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in Local Civil Rule 79.1, or such other rule or procedure as may apply in the relevant jurisdiction. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL to determine if some

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certification together with the form signed by the consultant, investigator or expert.

measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion pursuant to Local Civil Rule 79.1.

7. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

8. **Challenges to Designation as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL.** Any CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL designation remains with the party asserting CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL treatment.

b. A party who contends that documents designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL are not entitled to such treatment shall give written notice to the party who affixed the designation of a challenge to the designation. The party who so designated the documents shall have fifteen (15) days from service of the written notice to respond. If no response is made or if the dispute cannot be resolved without judicial intervention, following a meet and confer complying with the requirements of LCvR 37.1, the party challenging the CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL designation may petition the Court for a determination of the propriety of the CONFIDENTIAL

ATTORNEYS' EYES ONLY or CONFIDENTIAL designation.

c. Notwithstanding any challenge to the designation of documents as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL, all material previously designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are subject to CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL treatment withdraws such designation in writing;

(2) the court rules that the documents should no longer be designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL; or

(3) the court makes some other ruling governing the use of and protections afforded the documents.

d. Challenges to designations of documents as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

9. **Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as CONFIDENTIAL ATTORNEYS'

EYES ONLY or CONFIDENTIAL under this Order, including copies as defined above (¶5.e.) shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of such documents. This work product continues to be subject to CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL treatment under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the documents themselves.

10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel in this action and their respective law firms and clients.

IT IS SO ORDERED.

_____
UNITED STATES DISTRICT JUDGE

_____ ___, 2006
Tulsa, Oklahoma

ATTACHMENT A

ACKNOWLEDGMENT OF UNDERSTANDING
AND
AGREEMENT TO BE BOUND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	Civil Action No. 05-cv-329-TCK-SAJ
	)	
Plaintiff,	)	
v.	)	
	)	
TYSON FOODS, INC., et al.,	)	Acknowledgment of Understanding and Agreement to be Bound
	)	
Defendants.	)	
	)	

The undersigned hereby acknowledges that he or she has been provided with and has read the Confidentiality Order dated_____, 2006, in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the United States District Court for the Northern District of Oklahoma in matters relating to the Confidentiality Order and understands that the terms of said Order obligate him/her to use documents designated CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such information contained within documents subject to CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL treatment to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____
_____
_____

Date: _____

_____
Signature

ATTACHMENT B

CERTIFICATION OF COUNSEL OF NEED FOR ASSISTANCE OF PERMITTED PERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	Civil Action No. 05-cv-329-TCK-SAJ
	)	
Plaintiff,	)	
v.	)	
	)	
TYSON FOODS, INC., et al.,	)	Certification of Counsel of Need for Assistance of Permitted Person
	)	
Defendants.	)	
	)	

Pursuant to the Confidentiality Order entered in this action, I certify that the assistance of _____ _____ is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL.

I have explained the terms of the Confidentiality Order to the individual named above and will obtain his or her signature on an "Acknowledgment of Understanding and Agreement to be Bound" prior to releasing any documents subject to CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL treatment to the named individual and I will release only such documents as are reasonably necessary to the conduct of the litigation.

The individual named above is:

- ❑ A named party;
- ❑ An employee of named party _____. This employee's job title is _____ and work address is _____ _____.

❑ Other (describe in detail)_____

Date: _____ _____
Signature