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June 30, 2006

VIA FAX: (405) 842-2913

Robert Allen Nance
RIGGS, ABNEY, NEAL, NEAL, TURPEN,
ORBISON & LEWIS
5801 N. Broadway, Ste. 101
Oklahoma City, OK 73118

Re: *State of Oklahoma, et al. v. Tyson Foods, Inc., et al.*

Dear Mr. Nance:

I have reviewed Plaintiff's Objections and Responses to Separate Defendant Cobb-Vantress, Inc.'s Second Set of Interrogatories (the "State's Discovery Responses"). Please consider this letter to constitute my attempt to confer in good faith with the State in an effort to secure the material and information sought in the Second Set of Interrogatories without court action pursuant to Fed. R. Civ. P. 26(a)(2)(B).

The more significant deficiencies in the State's Discovery Responses are described in detail below. This is not an exhaustive list and Cobb-Vantress reserves the right to seek relief from the Court on all deficiencies whether expressly listed in this letter or not. If the deficiencies identified hereinafter are not corrected by close of business on July 14, 2006, Cobb-Vantress will file a motion to compel pursuant to Fed. R. Civ. P. 26(a)(2)(A).

General Issues or Deficiencies

Privilege Log. First, please confirm that the privilege log attached to the State's Discovery Responses describes all information and documents responsive to these interrogatories which have been withheld on the basis of a claim of privilege. If there is additional information being withheld because of such claims that is not listed on the privilege log, please supplement the privilege log immediately. Second, the privilege log supplied does not indicate which documents or information withheld would be responsive to which interrogatories. Please provide supplemental interrogatory responses or a revised privilege log to specify which of the withheld documents are responsive to which interrogatories.

EXHIBIT
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Rule 33(d) Business Records References. In response to many of the interrogatories the State has elected to refer Cobb-Vantress to "business records" pursuant to Fed. R. Civ. P. 33(d) instead of actually answering the interrogatories. Cobb-Vantress does not believe that the Rule 33(d) option is truly available to the State for many of the interrogatories. In any event, the State's specifications of records is insufficient. As you know, Rule 33(d) requires the responding party to "specify the records from which the answer may be derived or ascertained." The specification must "be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained." FED. R. CIV. P. 33(d). Broad references to the State's document production and/or web-accessible document repositories for various state agencies are not sufficient under Rule 33(d). Accordingly, please amend the State's Discovery Responses to specifically identify the records wherein Cobb-Vantress can find the answers to each interrogatory.

Attorney-Work Product Claims with Respect to Sampling Data and Other Facts. It appears that the State is continuing its unfounded claim that facts known to experts including the results of environmental sampling can be withheld as privileged under Fed. R. Civ. P. 26. These issues are the subject of Cobb-Vantress' pending First Motion to Compel (Dkt. No. 743.) As explained by Cobb-Vantress in the briefing associated with that motion, the State's position is contrary to the law. Accordingly, Cobb-Vantress asks the State to immediately supplement its discovery responses to provide responsive factual information regardless of whether those facts were gathered by or are known to the State's consulting experts.

Additionally, Cobb-Vantress challenges the State's claim of protection under the work product doctrine. Materials produced during the ordinary course of business are not entitled to protection as attorney work product. Neither the State's answers nor its Privilege Log provide sufficient information for Cobb-Vantress to reasonably determine whether the State agency materials for which work product protection is asserted were prepared in anticipation of litigation or in the ordinary course of business. Accordingly, Cobb-Vantress asks the State to immediately supplement its discovery responses by providing additional information that will allow Tyson to assess the applicability of the work product doctrine.

Interrogatory-Specific Deficiencies

Interrogatory No. 2. This interrogatory asks the State to identify reports, studies or data establishing that water bodies *in the IRW* have been impacted by microbial pathogens. In response you have identified several articles, some of which do not relate to the IRW. In any event, please provide copies of these articles or specify by Bates number where these documents may be found within the State's document production. Also, I note that the articles you have listed all seemingly relate to agricultural activities as a possible source of bacteria. Interrogatory No. 2 was not limited to studies or data pertaining to agricultural activities. If the State is aware

of studies or data sets pertaining to the impact of microbial pathogens, *from whatever source,* upon water bodies in the IRW, those studies or data sets must be identified.

Interrogatory No. 3. This interrogatory asks the State to *describe in detail* the remediation or measures necessary to ameliorate the conditions which Cobb-Vantress and the other defendants are accused of causing. The State's response offers generalities without any detail. Other than "limiting land application of poultry waste" no specific actions or measures have been identified and the State has not specified the geographic locations and time periods for corrective actions as requested. Please supplement the State's response to this interrogatory with the specific and detailed information requested.

Interrogatory Nos. 6 and 7. In response to these interrogatories, the State has generically identified categories of response, removal or remediation actions for which the State seeks to recover costs from Cobb-Vantress in this lawsuit. The State's description of these actions/costs is so vague as to render the responses meaningless to Cobb-Vantress (e.g., "periphyton/biological monitoring," "costs incurred for monitoring," etc.) No specific response, remedial or removal actions are identified. No cost figures are provided and the vague descriptions are insufficient to permit Cobb-Vantress or any other party to determine the extent to which, if at all, these costs were incurred consistent with the National Contingency Plan, 42 U.S.C. § 9607(a)(4)(A) which was the focus of these two interrogatories. Please supplement the State's responses to these interrogatories with more specific and detailed information.

Interrogatory No. 8. The State has failed to provide any information responsive to this interrogatory seeking an identification of assessments of alleged environmental or health injuries the costs of which the State will seek to recover from Cobb-Vantress. Notwithstanding the State's unfounded work-product objections, if there are any historical (i.e., pre-dating this litigation) assessments, studies or evaluations for which the State seeks to recover the costs of conducting from Cobb-Vantress, please identify such assessments, studies or evaluations as requested in this Interrogatory.

Interrogatory No. 9. The State's response to this interrogatory requesting the identification of the CERCLA hazardous substances for which the State seeks to hold Cobb-Vantress liable purports to identify a substance as the following: "Unlisted hazardous waste characteristic of reactivity." This interrogatory asked the State to identify each hazardous substance "by name and Chemical Abstract Survey Registry Number." To the extent that the foregoing phrase is intended by the State to represent a CERCLA hazardous substance, please specifically identify the name of the substance being referred to by the State.

Interrogatory No. 11. The State has not provided any specific information responsive to this interrogatory. Please supplement the State's response with the specific and detailed information requested in this interrogatory.

Interrogatory No. 13. This interrogatory asked the State to identify all recorded statements which relate to the subject matter of this lawsuit. In its response, the State has redefined "statement" to mean depositions, affidavits and signed witness statements. The interrogatory was not so limited and, in fact, expressly sought the identification of written statements (whether signed or unsigned), audio-taped statements and videotaped statements. Please respond to this interrogatory fully, in accordance with how it is drafted.

Your prompt attention to the above requests is imperative. The information sought in these interrogatories is essential to my client's defense of this case. Consequently, while I sincerely hope that we can resolve the above-described deficiencies without having to involve the Court, my client will not delay is seeking relief from the Court should your response to this letter be inadequate.

Cordially,

Robert W. George

cc via e-mail: Stephen Jantzen
Patrick Ryan
Mark Hobson
Jay Jorgenson