FAEGRE & BENSON LLP

UNITED STATES | ENGLAND | GERMANY | CHINA

DARA D. MANN
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(612) 766-7089

ATLANTA OFFICE: 678-627-8190

April 26, 2007

VIA EMAIL

Mr. Richard T. Garren
Riggs, Abney, Neal, et al.
502 West Sixth Street
Tulsa, OK 74119-1010

Re: State of Oklahoma v. Tyson, et al.
Case No. 05-CV-0329 GKF-SAJ

Dear Mr. Garren:

The Cargill defendants will complete production of hard-copy files responsive to the State's document requests in the near future. The Cargill defendants will then produce more electronically stored information it has identified as responsive to the State's requests. Pursuant to the recommendations and reasoning set forth in *The Sedona Principles: Best Practices Recommendations & Principles for Address Electronic Document Production* (July 2005), Cargill will produce its remaining ESI in TIFF rather than native format.

With regard to responsive information in the Cargill defendants' communication systems (e.g. Microsoft Outlook email and the MyTurkey.com intranet) and office productivity systems (e.g. Microsoft Word, Excel and PowerPoint applications), the Cargill defendants have already produced any responsive information that may have been printed out and retained in their hard-copy files. The Cargill defendants will produce responsive ESI from these systems in TIFF format. Consistent with the State's previously expressed preference, the files provided will contain single-page TIFF images, each bearing a unique file name. As with each of our prior productions, a text file will be provided along with the TIFF. The text of native files will be extracted directly from the native file, but the Cargill defendants will not produce metadata.

With regard to the Cargill defendants' productivity systems (e.g. FICIMS, BILLS, REPETE, TFS etc.), the Cargill defendants have already produced custom reports generated by them in the normal course of business that are responsive to the State's requests. For example, the Cargill defendants have produced Prime Cost Settlement Reports, which are

Exhibit 1

custom reports generated from TFS that contain information regarding feed, medications and grower payment, among other things. We acknowledge that these systems may be capable of reporting the responsive information in different formats than previously provided. However, the Cargill defendants do not anticipate making any further production of ESI contained in these systems at this time. Should the State seek additional or different reports from these systems at some point in the future, the Cargill defendants will certainly consider such a specific request when and if made.

Our intention is to commence production of this remaining ESI after May 4th. If you have any questions or concerns about Cargill's proposed method of production of ESI as outlined above, please contact Theresa or me before May 4th.

Very truly yours,

Dara D. Mann

MANDD

cc: Trevor Hammons
Theresa Hill

fb.us.1973709.04

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June 26, 2007

VIA E-MAIL

Mr. John Trevor Hammons
Office of Attorney General
State of Oklahoma
313 N.E. 21st Street
Oklahoma, City, OK 73105

Re: State of Oklahoma v. Tyson, et al.
Case No. 05-CV-0329 GKF-SAJ

Dear Mr. Hammons:

This letter responds to your June 21st correspondence, the matters discussed during our teleconference the afternoon of June 22nd, and to your electronic communication of June 25th.

With regard to your June 21st letter to all Defendants, the State made several statements which are either inaccurate or inapplicable insofar as the Cargill Defendants are concerned. First, your letter suggests that the State has been unable to determine the nature and format of the Cargill Defendants' ESI production and/or that the information provided in this regard is "not complete." However, as early as April 26, 2007, the Cargill Defendants initiated communication with the State regarding the parameters of their remaining ESI production. Since that time the Cargill Defendants have exchanged additional communication (dated May 16th and June 11th) further delineating their anticipated ESI production and attempting, if possible, to reach an agreement with the State in this regard. Given the correspondence that has been exchanged prior to June 21st as well as the length of time that has passed since the Cargill Defendants commenced this discussion, the State has had ample opportunity to address and resolve any concerns it had with the Cargill Defendants' proposed production.

Second, your letter improperly suggests the Cargill Defendants have not identified for the State ESI that is not reasonably available. Yet, this very topic (among many others) was covered during the ESI meet and confer between the State and the Cargill Defendants on January 12, 2007.

Exhibit 2

Third, though we need not resolve the issue at this time in light of the agreement reached during the June 22nd teleconference, the Cargill Defendants continue to disagree with the State that production of responsive ESI in native format is less costly than production in TIFF format. Beyond the costs associated with duplicating electronic storage systems, databases and software, there are intangible costs associated with native format productions including, for example, the capacity for manipulation and the inability to properly manage information through Bates numbering, redaction, and designation of confidentiality and privilege.

Fourth, your letter states that the agreement among the parties with regard to the State's ESI production as to outstanding discovery requests was limited to producing ESI from OSRC, ODEQ, OWRB, OSE and OKCC on July 2nd. However, our understanding of the parties' agreement as well as our reading of the plain language of the Court's Order memorializing that agreement was that all of the State's responsive ESI, not just the identified agencies, would be produced on July 2nd. Neither our agreement nor the Order contemplated production of responsive ESI after July 2nd, and contrary to the State's apparent position, the Cargill Defendants believe there is a distinction between delayed production and "supplemental" production.

That said, we are pleased that the parties were able to reach at least a partial agreement during Friday's teleconference with regard to ESI production. Our understanding of the agreements reached are as follows:

The Cargill Defendants' July 2, 2007 ESI Production

The State has agreed to the ESI production protocol set forth by the Cargill Defendants. As noted in my April 26th and July 11th correspondence, this means that responsive ESI in the Cargill Defendants' communications systems (e.g. Outlook, Word, Excel, PowerPoint, etc.) will be produced in TIFF format with native text extracted in load files so that they are searchable. To confirm, email attachments with responsive information will also be produced in TIFF with native text extracted, and the load file will identify for the State the "parent" email associated with each attachment. Please note, however, that to the extent a "parent" email is responsive but one or more attachments are not responsive, neither the non-responsive attachment nor the text of the non-responsive attachment will be produced.

As also noted in my April 26th correspondence, the Cargill Defendants have already produced ESI from their productivity systems (e.g. FICIMS, BILLS, REPETE, TFS etc.). The Cargill Defendants do not anticipate making any further production of ESI contained in these systems at this time. However, should the State desire reports generated from these

systems in a format different from that previously provided, we are certainly willing to consider such a specific request when and if made.

Except as set forth in the production protocol attached to my June 11th letter, this letter will confirm that the Cargill Defendants are not producing metadata or embedded data. Without rehashing our prior correspondence on this issue, the Cargill Defendants disagree with the State's position that either the Court's "guidance and direction," the District of Kansas Guidelines or applicable case law support a blanket production of metadata or ESI in native format. Nevertheless, the Cargill Defendants will preserve and continue to maintain responsive ESI in native format with applicable metadata in the event the necessary predicate for native format or metadata production is ever established.

The State's July 2, 2007 ESI Production

For the record, the Cargill Defendants repeat their concerns about the State's proposed ESI production in native format, and we again note that the Cargill Defendants have not asked the State to produce its responsive ESI in this manner. It is our position that all the State is obligated to produce to the Cargill Defendants is the ESI responsive to their specific requests and, frankly, that is all the ESI the Cargill Defendants want at this time. Nevertheless, the Cargill Defendants have agreed to accept the State's responsive ESI in native format based on the State's express representation that it will provide the Cargill Defendants the precise information, queries and technical support, if necessary, that will allow them to identify the ESI specifically responsive to their requests.

The State's ESI production will proceed as follows:

1. Responsive email will be produced in .pst format;
2. Responsive office productivity files (Word, Excel, PowerPoint, Adobe, etc.) will be produced in native format;
3. Responsive MS Access tables will produced in native format; and
4. Responsive GIS data not available online will be produced in native format along with ArcView software.

With regard to databases containing responsive information, it is our understanding that the State believes it to be more efficient and cost-effective for it to produce the databases in their entirety in native format. For ORACLE and SQL databases, the State will ascertain whether responsive data can be provided utilizing MS Access or as direct reports. As indicated during Friday's teleconference, the Cargill Defendants do not believe that simply providing ORACLE or SQL databases will allow responsive data to be sufficiently identified through queries because of the interface required with these systems. Therefore, if it is not possible for the State to provide the responsive information from these databases by converting them to an MS Access format, including an appropriate interface within MS

Access to identify responsive data, or as direct reports, we will expect the State to identify an alternate method of production that renders the responsive data or information from ORACLE and SQL databases reasonably useable. In any event, for every database produced by the State, the State will provide to each defendant the specific queries that will allow the defendant to ascertain the data or information responsive to its requests.

Finally, it is our understanding that the State will produce ESI in accordance with the above parameters on July 2nd for ODEQ, OWRB, OKCC and OSRC. As noted during Friday's call, it is the Cargill Defendants position that the agreed and Court ordered deadline of July 2nd applies to all agencies with information responsive to their outstanding discovery requests, not just ODEQ, OWRB, OKCC, and OSRC. Given the State's apparent inability to comply with the Order as to the remaining agencies with responsive information, the defendants requested at a minimum that the State provide them with an anticipated schedule for completion of the State's hard copy and electronic production on June 25th. We will address under separate cover your email communication of June 25th purportedly responding to the defendants' request.

To facilitate the State's production, the Cargill Defendants will provide the State with a hard drive that the State can use to store the ESI responsive to the Cargill Defendants' discovery requests. So that we can properly identify the source of the information contained on the hard drive once the State completes its download of responsive information, we ask that the State provide the responsive data in a folder structure that identifies the source and/or custodian of each data set provided.

Sincerely,

Dara D. Mann

MANDD

cc: Richard Garren
Theresa Hill

fb.us.2139417.01

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UNITED STATES | ENGLAND | GERMANY | CHINA

DARA D. MANN
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ATLANTA OFFICE: 678-627-8190

May 16, 2007

VIA EMAIL

Mr. Richard T. Garren
Riggs, Abney, Neal, et al.
502 West Sixth Street
Tulsa, OK 74119-1010

Re: State of Oklahoma v. Tyson, et al.
Case No. 05-CV-0329 GKF-SAJ

Dear Mr. Garren:

I am in receipt of your letter dated May 3, 2007 objecting to the Cargill Defendants' proposed production of remaining ESI, which includes but is not limited to email, in TIFF format. As your letter only references email, it is my assumption that email is the sole category of ESI for which the State wishes to discuss alternative production methods.

With regard to production of email, although your letter notes your "strenuous objection" to production in TIFF format, your letter fails to provide your reasoning for why production of native format email or email metadata is necessary or required in this case. Moreover, your letter is unclear as to whether the State is requesting production of all, or only some, of the Cargill Defendants' responsive email in native format with metadata. If you will kindly provide a more detailed letter outlining your position, it would be quite helpful towards resolving this issue.

Frankly, we have given considerable thought to the merits of producing ESI in native format and to producing metadata. Sedona Principle 12 observes that responding parties should not be obliged to produce metadata unless said metadata is material to resolving a dispute. We believe that the relatively insignificant expense involved in producing ESI in TIFF format, including a load file with text and standard fields (author, recipient, date, etc.), far outweighs the potential harm that might result to the Cargill Defendants from production of ESI in native that, to date, has not been shown to be relevant or necessary to this case. Among the problems we see with producing in native format are the following:

Exhibit 3

- *Manipulation.* ESI in native format is dynamic in that it is easily, and often inadvertently, manipulated, distributed or changed. Given that the contemplated production involves the Cargill Defendants' business information, maintaining the integrity and control of its ESI is paramount. Notwithstanding the potential legal implications of unauthorized manipulation and/or distribution of native e-mail ESI, we are unaware of any cost effective and reasonable method you are proposing to reduce or eliminate the likelihood of native data manipulation. We are also unaware of any reasonable and cost effective method for addressing authentication for the purpose of admissibility at trial of alterable data in native format.
- *Bates numbering.* We are unaware of any reasonable method for permanently identifying or tracking native format ESI for future reference, such as stamping with Bates numbers. The inability to Bates number native ESI productions creates major logistical problems for both the producing and receiving parties. Moreover, Magistrate Judge Joyner has expressed a preference for Bates numbered productions. (Order of Feb. 26, 2007 at 7-8.)
- *Confidentiality.* The Cargill Defendants' ESI contains confidential and, in certain instances, highly confidential information which, if publicly disseminated, could significantly damage or disadvantage the company competitively. Just as with the inability to Bates number, we are unaware of any reasonable method for stamping native format ESI with confidentiality designations so as to permanently identify, track and preserve the appropriate level of confidentiality.
- *Privilege.* The Cargill Defendants' ESI contains information protected by the attorney-client privilege, joint defense privilege, and/or work product doctrine. Without the ability to Bates number in native format, we are unaware of any reasonable method of producing a privilege log for this form of ESI.
- *Redaction.* The Cargill Defendants' ESI likewise contains some documents that may only partially contain privileged information but are otherwise responsive. We are unaware of any reasonable method for producing appropriately redacted ESI in native format.

That said, just because the Cargill Defendants have elected to produce their ESI in TIFF format, we do not believe that the State is automatically obligated to produce its ESI in the same format. Obviously, if that is a concern that the State has, the State should propose a meet and confer with the entire defense group as the Cargill Defendants are not in a position to represent what form of production from the State might be acceptable to all defendants.

With regard to the series of "issues" you raise in the second paragraph of your May 3rd letter, while I do not have an exact document count, there are approximately 4,000 electronically stored documents that we have identified as responsive to your requests and which we intend to produce. For email, we identified responsive documents by developing a list of key terms and using these terms to search the Cargill Defendants' systems. Email containing the search terms were then further reviewed for responsiveness, privilege and confidentiality.

Unfortunately, the Cargill Defendants are not in a position to share the list of search terms they developed. This list was developed by the Cargill Defendants' counsel not just to encompass the State's discovery requests in this case, but also to encompass additional needs the Cargill Defendants may have for information in this or other litigation. Accordingly, the list we have developed is privileged. However, if the State has a list of search terms they would like for the Cargill Defendants to consider, I ask that you provide that list to me within the next week. Upon receipt of the State's proposed list, the Cargill Defendants can advise the State whether its proposed terms are ones that were included in the search already conducted.

I am confused by the remaining "issues" outlined in your letter, as I am not sure what "obvious questions" pertain to existing file format, including native file format. Regardless, the Cargill Defendants propose to extract the text of native e-mail files along with the standard fields (author, recipient, date, etc.). As we will provide this file with the TIFF images, we do not understand your demand for native ESI. The text and standard fields file will enable the State to search the ESI produced in the same way as it would be able to search the native files, while avoiding the problems I discuss above.

We look forward to receiving your clarification of the State's position as requested in this letter. Also, should you feel it important that the Cargill Defendants consider your proposed search terms, we will look forward to receiving those as well. Because production of the Cargill Defendants' remaining ESI is in limbo pending resolution of these issues, I ask that you provide your clarification and search terms on or before May 23, 2007.

After receiving your further communication, we will gladly engage in a meet and confer with the State as to any unresolved issues. However, we do not understand the necessity of bringing technical advisors to such a meeting until these basic concerns are settled.

Sincerely,

Dara D. Mann

MANDD

cc: Trevor Hammons
Theresa Hill

6ms.203771.02

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, ex rel. W.W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma,	)	05-CV-0329 GKF-SAJ
Plaintiffs,	)	
v.	)	
Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Aviagen, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc.,	)	
Defendants.	)	

AFFIDAVIT OF THERESA N. HILL

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Theresa N. Hill, being first duly sworn, states and declares the following:

1. I am a partner with Rhodes, Hieronymus, Jones, Tucker & Gable, P.L.L.C.

2. I represent Cargill, Inc. and Cargill Turkey Production, LLC ("Cargill Defendants") in the above-referenced litigation.

3. Dara D. Mann, from Faegre & Benson, LLP also represents the Cargill Defendants in the above-referenced litigation.

4. Pursuant to the Stipulated Order Implementing Parties' Agreement Concerning Discovery of Electronically Stored Information ("ESI") (Dkt. 1125), Dara Mann and I are designated as the "ESI liaisons" for the Cargill

Defendants.

5. I have personally been involved in many meet-and-confer sessions and in conversations with the State's ESI liaisons concerning discovery of ESI. I was also involved in the production of the Cargill Defendants' ESI on July 1, 2007.

6. I have read and reviewed the "State of Oklahoma's Omnibus Motion Regarding Deficiencies in Defendants' Respective ESI Responses and Integrated Brief in Support."

7. Between the Cargill Defendants' ESI production on July 1, 2007 and the State's "motion" filed on September 17, 2007, there has been no communication between the Cargill Defendants and the State regarding any alleged "deficiencies" in the Cargill Defendants' ESI production. Specifically, the State's ESI liaisons have not requested to meet and confer with either Dara Mann or me concerning the alleged deficiencies described in State's "motion."

8. One of the alleged "deficiencies" raised for the first time in the State's "motion" involves a document identified as CART103889-905.

9. Upon receipt of the State's "motion", I investigated this document with Dara Mann and others involved in the production of the Cargill Defendants' ESI. I also spoke with the Cargill Defendants' IT personnel.

10. Through my investigations, I understand that this document is a schematic (or visual representation) of a database used ***only*** at the turkey production complex in Virginia. This is ***not*** a schematic of a database used by the Cargill Defendants' Arkansas turkey production complex. The database has never been used by the Cargill Defendants' Arkansas turkey production complex. It is ***not*** a schematic of a database that contains any information regarding the Cargill Defendants' IRW growers.

Further, Affiant saith not.

Theresa N. Hill

SUBSCRIBED AND SWORN TO BEFORE ME by the said Theresa N. Hill on this 20th day of September, 2007.

Notary Public Oklahoma
OFFICIAL SEAL
MARSHA A. NAVE
OKMULGEE COUNTY
COMMISSION #04008886
Comm. Exp. 07-30-2008

Marsha A. Nave
NOTARY PUBLIC, IN AND FOR
THE STATE OF OKLAHOMA