UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al.,	)	
	)	05-CV-0329 GKF-SAJ
Plaintiffs,	)	
v.	)	**DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF JOINT MOTION TO ENFORCE SCHEDULING ORDERS**
Tyson Foods, Inc., et al.,	)	
Defendants.	)	

Defendants jointly moved this Court on September 15, 2008 for an Order enforcing the Court's deadlines for expert disclosures under the Scheduling Orders. (Dkt. No. 1759.) As described in Defendants' Reply (Dkt. No. 1767), after service of the Motion, Plaintiffs served five additional expert "errata," four of which were prompted by a first errata of Dr. Bernard Engel, on whose work many of Plaintiffs' experts rely. The Court heard oral argument on October 8, 2008 and has taken the Motion under advisement. (Dkt. No. 1769.)

On October 17, 2008, Plaintiffs served Defendants with a new (second) errata for Dr. Engel, a copy of which is attached as Exhibit A. Plaintiffs did not produce, or even offer to produce, Dr. Engel's file materials that underlie his second errata.

Counsel's cover letter to Dr. Engel's new errata asserts that it corrects a single mistake – a column of numbers regarding observed P loads that "were stated incorrectly" on Table 10.1 – which then purportedly affected multiple tables and figures. (Ex. A at 1.) In fact, Dr. Engel's latest errata changes *calculations*. If the underlying error was simply a misstatement of numbers in Table 10.1, there would be no changes to anything in the original report or first errata aside from Table 10.1 itself. Instead, Dr. Engel modifies four additional tables and figures that involve calculations of the comparisons between observed P loads and predicted / modeled P loads and

daily P loads at various locations. It appears that Dr. Engel has performed new calculations, without explanation and without providing any back-up file materials.

Plaintiffs' service of yet another new errata – particularly one by Dr. Engel – further supports Defendants' request that the Court order Plaintiffs to stop supplementing and bolstering their expert opinions, at least without leave of the Court. In addition, the new errata provides yet more support for Defendants' argument that Plaintiffs' continued alternation of their experts' reports directly results in continued losses of Defendants' time, effort, and money.

The Court should grant Defendants relief from the prejudice caused by Plaintiffs' repeated failures to abide by the Court's expert deadlines, and should strike all of Plaintiffs' late-produced expert reports.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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