

**ELECTRONICALLY FILED**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF KENTUCKY**  
**OWENSBORO DIVISION**

CHARLES MORRIS, et al.	)	
	)	
Plaintiffs.	)	Case No. 4:15-cv-00077
	)	
v.	)	Judge: Joseph H. McKinley, Jr.
	)	
TYSON CHICKEN, INC., et al.	)	
	)	
Defendants.	)	

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**AGREED ORDER ENTERING THE PARTIES PROPOSED  
CONFIDENTIALITY ORDER**

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Upon joint application by the Plaintiffs and Defendants (“Parties”), the Parties believing that there is good cause that certain documents within this litigation may be deemed confidential, and the Parties agreeing to be bound by the Proposed Protective Order attached hereto as Exhibit A, it is hereby:

ORDERED that the Parties Proposed Confidentiality Order be entered.

On this the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
The Honorable Joseph H. McKinley, Jr.  
United States District Judge

HAVE SEEN AND AGREED:

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Plaintiffs,	)	
	)	Case No. 4:15-cv-00077
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TYSON CHICKEN, INC., <i>et al.</i> ,	)	McKinley
	)	
Defendants.	)	

**PROTECTIVE ORDER**

Plaintiffs Charles Morris, Morvatt Enterprises, LLC, William Rickard, Sondra Rickard, Rickard Farms, LLC, ICU Chickens, LLC, Wishbone Poultry LLC, Dennis Clapp, John Pinkston, Loi Hong, H & L Farms, LLC, Doug Brown, Tim Vincent, TLC Poultry, LLC, Poultry Specialty Service, LLC, Keith Crabtree, Christopher Burch, Mike Murphy, Murphy Farms, LLC, and Calvin Leisure (collectively, “Plaintiffs”), and Defendants Tyson Chicken, Inc., James Gottsponer and David Mears (“Defendants”), having agreed to the following, and for good cause shown, IT IS HEREBY ORDERED as follows:

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure may be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the information or items that are entitled to be treated as confidential consistent with this Order.

**2. CONFIDENTIAL INFORMATION**

“Confidential Information” shall mean Social Security or taxpayer-identification numbers; dates of birth; names of minor children; financial account numbers; home addresses; sensitive information involving personal financial, medical, matrimonial, or family matters; or trade secrets and other proprietary and confidential research, development, business, financial or commercial information (regardless of how generated, stored or maintained).

“Confidential Information” does not include information that:

- a. is in the public domain at the time of disclosure;
- b. the Receiving Party can show was in its rightful and lawful possession at the time of disclosure and not subject to any confidentiality obligations of the Receiving Party.

Parties and non-parties may designate any Confidential Information supplied in any form, or any portion thereof, as Protected Material (defined below) for purposes of these proceedings. Such designation shall constitute a representation to the Court that counsel believes in good faith that the information (1) constitutes Confidential Information and (2) that there is good cause for the Confidential Information to be protected from public disclosure. The parties and non-parties shall make a good faith effort to designate information appropriately in this Order.

**3. ADDITIONAL DEFINITIONS**

3.1. Party: any party to this action, including all of its affiliates, officers, directors, consultants, retained experts, inside and outside counsel (and their support staff).

3.2. Non-party: any individual, corporation, association, or other natural person or entity other than a Party.

3.3. Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony,

transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

3.4. Protected Material: any Disclosure or Discovery Material that is designated by a Party or Non-party as “confidential” according to paragraphs 1 and 5, unless the Receiving Party challenges the confidentiality designation and (a) the Court decides such material is not entitled to protection as confidential, or (b) the Designating Party withdraws its confidentiality designation in writing.

3.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3.6. Producing Party: a Party or Non-party that produces Disclosure or Discovery Material in this action.

3.7. Designating Party: a Party or Non-party that designates information or items that it produces in disclosures or in responses to discovery as Protected Material.

3.8. Challenging Party: a Party that elects to initiate a challenge to a Designating Party’s confidentiality designation.

3.9. Outside Counsel: attorneys and their agents or representatives who are not employees of a Party but who are retained to represent or advise a Party in this action.

3.10. House or In-House Counsel: attorneys who are employees of a Party.

3.11. Counsel (without qualifier): Outside Counsel and House or In-House Counsel (as well as their support staffs).

3.12. Expert: a person who has been retained by a Party or its/her/his Counsel to serve as a testifying or non-testifying expert witness or as a consultant in this action, including any person specially retained to provide expert opinions in a hybrid capacity. This definition

includes a professional jury or trial consultant retained in connection with this litigation. Nothing about this definition or this Order is meant to preclude exchange of information under this Order or otherwise with any consultant or testifying expert, regardless of whether they are specially retained for the purposes of this litigation.

3.13. Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; *etc.*) and their employees and subcontractors.

#### **4. DURATION**

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

#### **5. DESIGNATING PROTECTED MATERIAL**

5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-party that designates information or items for protection under this Order must use good faith efforts to limit any such designation to specific material or portions thereof that qualifies for such protection under this Order. A Designating Party who becomes aware that a designation is improper shall remove the designation.

5.2. Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

a. For information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), the Producing Party must affix the legend

“CONFIDENTIAL” at the bottom of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins, but not over text).

A Party or Non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed confidential. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the legend “CONFIDENTIAL” at the bottom of each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins, but not over text).

b. For testimony given in deposition or in other pretrial or trial proceedings, the Party or Non-party offering or sponsoring the testimony must make a good faith effort to identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony. In addition, the Party or Non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days after receipt of the transcript to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective

Order. Any failure to designate testimony per the time limits above shall be curable upon timely notice by the Designating Party to the other Party.

Transcript pages containing Protected Material must be affixed at the bottom of each such page with the legend “CONFIDENTIAL,” as instructed by the Party or Nonparty offering or sponsoring the witness or presenting the testimony. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins, but not over text).

c. For information produced in some form other than documentary, and for any other tangible items, the Producing Party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall also identify the protected portions in such a way that does not interfere with the viewing of the evidence.

5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “confidential” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “confidential” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5.4. Inadvertent Production of Privileged Information. If a Party, through inadvertence, produces or provides material that it believes is subject to a claim or attorney-client privilege, work product immunity, or any other privilege or immunity, the Producing Party may give written notice to the Receiving Party that the material is subject to a specific privilege or

immunity and request that the material be returned to the Producing Party. The Receiving Party shall return the material. Return of the material shall not constitute an admission or concession, or permit any inference that the returned material is, in fact, properly subject to a claim of any privilege or immunity, nor shall it foreclose any Party from moving the Court for an order that such document or thing has been improperly designated or should be producible for any reason. Inadvertent production, in itself, is not a basis to challenge the privileged nature of the material. This provision is meant to allow the Parties reasonable claw-back measures.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly with Counsel for the Designating Party. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party ten (10) days to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3. Formal Challenge to Designation. If, after engaging in the meet and confer process, a Challenging Party still contends that a confidentiality designation was not proper, the

Challenging Party may at any time give written notice by way of a letter to the Designating Party stating its objection to the confidentiality designation. The Challenging Party thereafter has fourteen (14) days from delivery of such written notice to move the Court for an order specifically designating the Disclosure or Discovery Material at issue is not confidential.

6.4. Treatment of Information While Challenge is Pending. Notwithstanding any challenge to the designation of Disclosure or Discovery Material as confidential, all materials designated as such must be treated as such and subject to this order until one of the following occurs:

- a. the Designating Party withdraws its confidentiality designation in writing; or
- b. the Court decides the material at issue is not subject to protection as confidential.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions as are described herein. When the litigation has been terminated, a Receiving Party must comply with the provisions of paragraph 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2. Disclosure of Protected Material. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated confidential only to:

a. Inside or Outside Counsel of any Party in this action, including associated personnel necessary to assist inside or Outside Counsel in these proceedings, such as litigation assistants, paralegals, and secretarial and other clerical personnel;

b. Parties to this litigation and their officers, directors, and employees (including House or In-House Counsel) to whom disclosure is reasonably necessary for this litigation;

c. Experts (as defined in this Order) of the Receiving Party, including associated personnel necessary to assist Experts in these proceedings, such as litigation assistants, paralegals, and secretarial and other clerical personnel;

d. the Court, including associated personnel necessary to assist the Court in its functions, and the jury;

e. litigation support services, including outside copying services, court reporters, stenographers, videographers, or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a Party or its Counsel for the purpose of assisting that Party in these proceedings;

f. other Professional Vendors to whom disclosure is reasonably necessary for this litigation;

g. any actual or potential witness in the action provided that Counsel believes, in good faith, that such disclosure is reasonably necessary for the prosecution or defense of these proceedings;

h. the author of the document or the original source of the information;

i. Counsel for issuers of insurance policies under which any issuer may be liable to satisfy part or all of a judgment that may be entered in these proceedings or to indemnify or reimburse payments or costs associated with these proceedings;

j. any mediator or arbitrator appointed by the Court or selected by mutual agreement of the parties and the mediator or arbitrator's secretarial and clerical personnel; and

k. any other person as to whom the Producing Party has consented to disclosure in advance and in writing, on notice to each Party hereto.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “confidential,” the Receiving Party must make reasonable efforts to notify the Designating Party, in writing (by e-mail or fax, if possible) within five (5) business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. Protected Material shall not be so-disclosed absent court order, and, the Receiving Party shall file and/or serve all necessary objections per any applicable rules in relation to the requested production.

The Receiving Party also must inform the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party is authorized to deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue, if appropriate.

**9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must make reasonable efforts to promptly (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use a good faith effort to retrieve all

copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to destroy all copies of the Protected Material.

**10. PROTECTED MATERIAL IN COURT**

This Order does not seal court records in this case or apply to the disclosure of Protected Material at trial. It is only intended to facilitate the prompt production of Disclosure or Discovery Materials. A Party that seeks to file Protected Material shall do so preliminarily under seal, notifying the Court that the materials have been designated protected pursuant to this Order. The filing Party shall not be required to move to maintain those documents under seal. Within five (5) days of filing any materials that contain Protected Material, the filing Party shall meet and confer with the Designating Party regarding what Protected Material it will object to being filed under seal. At that meet and confer, the filing Party shall state specifically which documents of the Designating Party it will object to being filed under seal. Within thirty (30) days of that meet and confer, the Designating Party shall bear the burden to file a motion to maintain the seal of any Protected Material. The Designating Party's failure to move to maintain the seal of a document will result in the Designating Party waiving its right to have the document sealed. The fact that the Disclosure or Discovery Material has been designated as confidential shall not be admissible as evidence that the material in fact contains confidential information entitled to protection from disclosure under the law.

**11. FINAL DISPOSITION**

Unless otherwise ordered or agreed in writing by the Producing Party, and if requested by the Producing Party, each Receiving Party must return all Protected Material to the Producing Party or destroy it after the final termination of this action. Notwithstanding this provision,

Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in paragraph 4 (DURATION), above. Nothing about the termination of this matter, however, shall itself release the confidentiality obligations in relation to the receipt of Protected Material.

**12. MISCELLANEOUS**

12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

SO ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CONSENTED TO:

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