

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

JIMMY W. BELUE, ET AL.

PLAINTIFFS

VS.

CASE NO. 4:06-CV-2095-RDP

WAYNE FARMS LLC

DEFENDANT

STIPULATED DISCOVERY AND PROTECTIVE ORDER

This matter is before the court on Defendant's Motion for Protective Order covering all discovery, including initial disclosures, and also pursuant to a joint submission of agreed resolutions of those and other discovery and scheduling matters. (Doc. # 27). The court approves the parties' resolutions submitted here and orders as follows.

Protective Order

1. Plaintiffs in this wage payment litigation believe that discovery in this case will require viewing and inspecting Defendant Wayne Farms LLC's (hereafter "Wayne Farms") plant operations and processes, production of documents or information considered by Wayne Farms to be Rule 26(c)(7) "trade secret or other confidential research, development, or commercial information" (hereafter "Confidential Information"), and production of relevant payroll information and payroll records of Wayne Farms. Wayne Farms anticipates that much of this viewing and inspection should be permitted and that much of this Confidential Information and other documents and

information should be produced, with adequate assurances that this specific discovery and all related records will be kept and used appropriately and returned after the case ends. By agreement of the parties, the court orders as follows:

a. Such documents, information, or Confidential Information, or the content or substance thereof, shall not be given, shown or otherwise communicated to any person or entity, except the parties to this case, counsel and co-counsel and their respective employees, experts or consultants employed and retained by them specifically in connection with this case, and only to such other parties, experts or consultants who first execute an affidavit in which they acknowledge receipt of this Confidentiality Agreement and agree to be bound by the terms of this Confidentiality Agreement.

b. Records which reflect legally protected, private, personal identification information, such as Social Security Numbers ("SSNs") are of special concern to both sides. If Plaintiffs' counsel seeks to discover Wayne Farms records reflecting protected identifying information of persons who have not filed a Consent to Sue, and if Wayne Farms produces such records, the protected identifying information in them will first be redacted if Plaintiffs' counsel provides information to third parties.

c. Such documents, materials, or information shall not be used for any purpose other than for use in the litigation of this case.

d. At the conclusion of the litigation of this case, counsel for the Plaintiffs who have obtained such employee identification information or Confidential Information shall in good faith collect from all recipients and shall return to the undersigned attorney for Wayne Farms all copies, lists, prints, negatives, or summaries thereof, identifying at that time all such known recipients; and providing copies of the affidavits of said

recipients of compliance with this stipulation; and

e. Nothing in this stipulation anticipates, concerns or resolves any objection Wayne Farms may have to any discovery request Plaintiffs may serve. This stipulation prescribes Plaintiffs' and Defendant's obligation with respect to employee identification information and Confidential Information that Wayne Farms provides to Plaintiffs. Any party has the right to challenge the designation of any material labeled as protected employee identification information or Confidential Information. The parties agree to honor any material designated under this stipulation until such time as the status of said material can be resolved.

2. Plant Inspections: Plaintiffs' counsel shall be permitted access to Wayne Farms' Albertville live chicken processing plant during regular and reasonable business hours (any shift hours on which processing employees have hours worked recorded by master card), by advance appointment, to view the areas in which their clients work and have worked in the relevant discovery period (and associated break areas). Two visits shall be allowed, lasting no longer than two hours each, with the number and duration of subsequent visits, if any, to be determined by the court absent the parties' agreement. All information gathered during such plant inspections shall be regarded as trade secret or confidential commercial information and subject to this protective order, as shall all records of that information, as if they had been produced to Plaintiffs by Wayne Farms, designated as protected by this order. Among other things, experts and other non-attorney agents of Plaintiffs who inspect the plant or review inspection records shall first execute the affidavit required by paragraph 1(a) above. Wayne Farms may impose reasonable conditions on the number and identities of people who may visit the plant,

may require advance disclosure of their number and their identities, and may require compliance with terms normally imposed on other plant visitors. During such visits, Plaintiffs' counsel and accompanying agents shall not interview or communicate about the case with plant personnel, except Wayne Farms' designated representatives. Plaintiffs counsel shall promptly furnish to Wayne Farms' counsel, at Wayne Farms' cost, a complete, unedited copy of any video or audio-video record made during each plant visit. There shall be no photography or other video record of USDA inspectors and any inadvertent recording of such images that is discovered shall be edited to delete or obscure their images.

3. The foregoing terms having resolved to the parties' satisfaction all issued that Wayne Farms raised in its Motion for Protective Order (Doc. # 27), the court finds that motion is **MOOT**.

Additional Discovery and Scheduling Matters

4. **Discovery of Reports of Testifying Experts:** Only the final written report of a testifying expert shall be subject to disclosure, despite the arguably broader requirement of disclosure of expert written reports under FED. R. CIV. P. 26(a)(2)(B). Although Rule 26(a)(2)(B) requires disclosure of "the data or other information *considered* by the witness in forming the opinions" expressed in the expert's written report, neither attorney communications with the expert nor attorney work product supplied by counsel to a testifying expert shall be discoverable, except to the extent that the expert relies on such data or information to support his or her opinions expressed in the final written report.

5. **Logging Records of Privileged Communications:** Neither side shall seek

disclosure of the other side's post-litigation attorney client communications or attorney work product, neither side shall have any duty to disclose such, and, therefore, neither side need create or maintain a privilege log of records of such. With regard to pre-filing attorney client communications and attorney work product, despite the arguable duty under Rule 26 to make a separate privilege log entry describing each record withheld from discovery under claim of privilege, the parties may instead log pre-litigation attorney work product and attorney-client communications records by type, such as "[Type of Communication] between [Job Title] and counsel, RE: [Brief Description of the Subject Matter]." The following will be considered "Types of Communication":

Email Communications

Phone Conversations

Non-electronic Written Communications

In-person Communications

Any party has the right to challenge the attorney work product or attorney client communication designation.

6. Electronically Stored Information Production and Filing Format:

Unless otherwise specifically requested for a particular class of electronically stored information ("ESI" hereafter), parties may produce that information in word searchable Adobe Portable Document Format (.pdf) and may file such ESI, when used to support pleadings, motions and other filed papers, in the same format.

7. Special Master: Neither party has dismissed the court's February 2, 2007 proposition that a "Special Master" be appointed. Before making a final decision, both parties would like to meet with the court to develop a better understanding of what role

the special master will play in this litigation. The parties are concerned that the court may envision the combination of FED. R. CIV. P. 53 judicial powers and FED. R. EVID. 706 expert witness functions. Both parties request a meeting with this court and would like to allow via conference call co-counsel for both parties and in-house counsel for Defendant to participate in the special master discussion.

8. Impact of Multi-District Class Claims by Albertville Plaintiffs: The parties thoroughly discussed this issue in a conference held March 2, 2007 but did not resolve their differences related to Wayne Farms' pending Motion to Stay, or Alternatively, Motion to Apply the First-Filed Rule (Doc. # 15). Wayne Farms filed that motion January 16, 2007 and Plaintiffs have not responded. Plaintiffs shall file and serve their response **no later than March 14, 2007**. Wayne Farms shall file and serve any reply **no later than March 28, 2007**. The court will thereafter rule on the matter.

DONE and **ORDERED** this 6th day of March, 2007.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE