

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel. 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**

**PLAINTIFFS**

**v.**

**CASE NO.: 05-CV-00329 TCK –SAJ**

**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**

**TYSON DEFENDANTS' MOTION TO COMPEL**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. TYSON DEFENDANTS’ INTERROGATORIES AND PLAINTIFFS’  
RESPONSES/OBJECTIONS .....3

III. LEGAL AUTHORITY AND ARGUMENT .....4

    A. Plaintiffs’ Interrogatory Answers are Incomplete and Evasive .....5

    B. Plaintiffs’ Rule 33(d) Elections Are Improper and Do Not Excuse them  
    from Answering the Interrogatories .....8

        1. Rule 33(d) is an Improper Response to Contention Interrogatories .....9

        2. Plaintiffs’ Rule 33(d) Designations Are Non-Committal and,  
        Therefore, Improper.....12

        3. Plaintiffs’ References Lack the Specificity Required Under  
        Rule 33(d) .....14

    C. Plaintiffs’ “Attorney Work-Product” and “Expert Opinion” Objections are  
    Invalid .....17

    D. Plaintiffs’ Objection to the Number of Interrogatories is Unfounded .....22

IV. CONCLUSION .....24

**TABLE OF AUTHORITIES**

FEDERAL CASES

*Budget Rent-A-Car of Mo. v. Hertz Corp.*, 55 F.R.D. 354 (W.D. Mo. 1972) .....8, 15

*Clark v. Burlington N. R.R.*, 112 F.R.D. 117 (N.D. Miss. 1986) .....23

*Continental Illinois Nat'l Bank & Trust Co. of Chicago v. Caton*, 136 F.R.D. 682  
(D. Kan. 1991)..... 10, 11

*Equal Employment Opportunity Commission v. Anchor Continental, Inc.*  
74 F.R.D. 523 (D. S.C. 1977)..... 15,16, 17

*Ginn v. Gemini, Inc.*, 137 F.R.D. 320 (D. Nev. 1991).....23

*Hansel v. Shell Oil Corp.*, 169 F.R.D. 303 (E.D. Pa. 1996).....5, 8

*Herdlein Techs v. Century Contractors*, 147 F.R.D. 103 (W.D.N.C. 1993) .....5

*Hoffman v. United Telecommunications, Inc.*, 117 F.R.D. 436 (D. Kan. 1987) .....9, 10

*In re Bilzerian*, 190 B.R. 964 (M.D. Fla. 1995) .....9, 15

*In re Master Key*, 53 F.R.D. 87 (D. Conn. 1971).....8, 14

*J.J. Delaney Carpet Co. v. Forest Mills, Inc.*, 34 F.R.D. 152 (S.D.N.Y. 1963)..... 14

*J.M. Clemnshaw Co. v. City of Norwich*, 93 F.R.D. 338 (D. Conn. 1981) .....5

*King v. E.F. Hutton & Co., Inc.*, 117 F.R.D. 2 (D. D.C. 1987).....21

*Lundy v. Interfirst Corp.*, 105 F.R.D. 499 (D. D.C. 1985).....20

*Marine Petroleum Co. v. Champlin Petroleum Co.*, 641 F.2d 984 (D.C. Cir. 1980).....21, 22, 23

*Martin v. Easton Publishing Co.*, 85 F.R.D. 312 (E.D. Pa. 1980) .....10, 15

*Nyfield v. Virgin Islands Tel. Corp.*, 200 F.R.D. 246 (D.V.I. 2001) .....23

*Obiajulu v. City of Rochester*, 166 F.R.D. 293 (W.D. N.Y. 1996).....20

*Pippenger v. Gruppe*, 883 F. Supp. 1201 (S.D. Ind. 1994).....20

*Puerto Rico Aqueduct & Sewer Authority v. Clow Corp.*, 108 F.R.D. 304  
(D. Puerto Rico 1985)..... 14

*Rickles, Inc. v. Frances Denney Corp.*, 508 F. Supp. 4 (D. Mass. 1981).....6

*Sabel v. Mead Johnson & Co.*, 110 F.R.D. 553 (D. Mass. 1986).....13, 15

*Truck Treads, Inc. v. Armstrong Rubber Co.*, 818 F.2d 427 (5th Cir. 1987) .....5

*United States v. El Paso Co.*, 682 F.2d 530 (5th Cir. 1982).....20

*U.S. v. West Virginia Pulp & Paper Co.*, 36 F.R.D. 250 (S.D.N.Y. 1964).....6

*White v. Aetna Finance Co.*, 1986 WL 6870 (M.D. Ga. 1986) .....5

*William Houdstermaatschaap BV v. Apollo Computer, Inc.*, 707 F. Supp. 1429  
 (D. Del. 1989).....9

*Williams v. Bd. of Cty. Comm'rs of Unified Gov't of Wyandotte Cty. and Kansas  
 City, Kan.*, 192 F.R.D. 698 (D. Kan. 2000).....23

STATE CASES

*Bells Ferry Landing v. Wirtz*, 373 S.E.2d 50 (Ga. App. 1980) .....4

*Hernandez v. State*, 408 S.E.2d 160 (Ga. App. 1991).....20

RULES

FED. R. CIV. P. 11(b).....1

FED. R. CIV. P. 26(a)(1)(B) .....18, 19

FED. R. CIV. P. 26(b)(4) .....19

FED. R. CIV. P. 33(a).....22

FED. R. CIV. P. 33(d).....8-17

FED. R. CIV. P. 33, 1993 Amendment Advisory Note.....9

FED. R. CIV. P. 37(a)(2)(B) .....3, 24

FED. R. CIV. P. 37(a)(3).....6

FED. R. CIV. P. 37(a)(4)(A).....24

LCvR 37.2(d).....3

TREATISES

*Option to Produce Business Records*,  
 23 AM. JUR. 2D DEPOSITION AND DISCOVERY § 134 (2006).....8

4A MOORE'S FEDERAL PRACTICE P. 37.02(3) at 37-36 (1981 ed.).....5

Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc. and Cobb-Vantress, Inc. (collectively the “Tyson Defendants”) move this Court pursuant to Fed. R. Civ. P. 37(a) to enter an order compelling Plaintiffs to answer fully the interrogatories served by the Tyson Defendants on Plaintiffs on May 2, 2006. In support of this Motion to Compel, the Tyson Defendants state the following:

### **I. INTRODUCTION**

Plaintiffs commenced this lawsuit more than eighteen (18) months ago. Plaintiffs allege that reckless and illegal conduct by the Tyson Defendants and other poultry companies has contaminated the soils, water, sediment and biota throughout more than 1,000,000 acres of the Illinois River Watershed (“IRW”) to the extent that the alleged contamination poses an imminent and substantial endangerment to human health. *See* First Amended Complaint (“FAC” or “Complaint”) ¶¶ 1, 6-9, 31, 50-57, 95, 121, 126, 131, 135 and 138 (Dkt. No. 18). The Complaint includes sprawling generic allegations and strong rhetoric but no specifics concerning the defendants’ alleged wrongdoing or Plaintiffs’ alleged injuries.

Since the filing of this lawsuit, the defendants have diligently sought to discover the true scope and nature of Plaintiffs’ claims and the factual basis, if any, for their contentions. As an attorney and officer of the Court, Mr. Edmondson’s signature on the Complaint constitutes a certification that Plaintiffs have “evidentiary support” for these allegations. FED. R. CIV. P. 11(b). Yet, at every turn, Plaintiffs have thwarted defendants’ discovery efforts. *See, e.g.*, Tyson Defs. Mot. for More Definite Statement (Dkt. No. 71) and Pltfs. Response in Opposition (Dkt. No. 131); Cobb-Vantress First Mot. to Compel (Dkt. No. 743) and Pltfs. Response in Opposition (Dkt. No. 817); Cargill Mot. to Compel; (Dkt. No. 902) and Pltfs. Response in Opposition (Dkt. No. 912); Tyson Defs. Mot. for Leave to Exceed Numerical Limit on Req. for Adm. (Dkt. No.

949) and Pltfs. Response in Opposition (Dkt. No. 969); and Defs. Mot. for Entry of Case Management Order (Dkt. No. 946) and Pltfs. Response in Opposition (Dkt. No. 978). What has emerged in this case is a clear pattern of obstruction and delay by Plaintiffs.

Even more troubling than Plaintiffs' flouting of its discovery obligations in this case are reports arising from another case which indicate that the Attorney General's office asked a former State employee to destroy documents potentially relevant to this case. In an interview with KFOR TV in Oklahoma City, former Assistant Attorney General, Marie West, details misconduct within the Attorney General's office which is not only shocking but potentially prejudicial to the rights of the defendants in this case to discover all documents and information relevant to this case, including potentially exculpatory documents. A complete transcript of the December 19, 2007, KFOR TV story and Marie West's interview is attached hereto as Exhibit 1. Marie West "was an Assistant Attorney General in the environmental protection unit of the AG's office. West was the assigned lawyer for two state agencies working on the poultry pollution issues . . ." Ex. 1, p. 1. "[S]he was asked [by the Attorney General's office] to lie, to spy on and to give shoddy legal advice to the very state agencies she was employed to represent." *Id.* Ms. West claims she was forced to leave the Attorney General's office after "she blew the whistle on what she calls unethical behavior inside Drew Edmondson's office." *Id.* After Ms. West filed suit against the Attorney General's office, the State approached her with a settlement proposal. One of the conditions that the Attorney General attached to his settlement offer was that Ms. West "would have to take confidential documents and have them destroyed." *Id.* at p.3. While Ms. West refused to be complicit with the State in such clearly inappropriate conduct, other employees in the Attorney General's office might not be so principled.

In light of the pattern of obstruction demonstrated by Plaintiffs, it is imperative that this Court remind Plaintiffs that such tactics will not be tolerated in this case. This motion presents a perfect opportunity for delivering such a message. The Tyson Defendants seek relief from the Court because Plaintiffs refuse to provide straightforward answers to interrogatories. Plaintiffs' "responses" to those interrogatories reflect an utter disregard for the letter and spirit of Rule 33 of the Federal Rules of Civil Procedure. The Tyson Defendants have conferred with Plaintiffs pursuant to FED. R. CIV. P. 37(a)(2)(B) in a good faith effort to resolve this discovery dispute without the necessity of intervention by this Court, but Plaintiffs continue to refuse to answer the interrogatories straightforwardly.<sup>1</sup>

## II. TYSON DEFENDANTS' INTERROGATORIES AND PLAINTIFFS' RESPONSES/OBJECTIONS<sup>2</sup>

On May 2, 2006, each of the Tyson Defendants served Plaintiffs with a set of interrogatories. Cobb-Vantress served thirteen (13) interrogatories; Tyson Poultry, Tyson Chicken and Tyson Foods each served eleven (11) interrogatories. These interrogatories asked Plaintiffs, *inter alia*, to specify the basis for their claim that natural resources in the IRW need to be replaced or restored due to contamination, to identify the specific areas of the IRW contaminated with CERCLA hazardous substances, to provide a computation and explanation of Plaintiffs' damages and to identify studies, publications or data supporting Plaintiffs' allegations.

Plaintiffs responded to these interrogatories on June 15, 2006, with a multitude of unfounded objections and the mantra-like claim that "pursuant to Fed. R. Civ. P. 33(d), information sought . . . may be found within the business records being provided to this

---

<sup>1</sup> The good faith conferral by Cobb-Vantress included several written communications and telephone conferences from June 30, 2006 through January 8, 2007.

<sup>2</sup> In compliance with LCvR 37.2(d), the verbatim discovery requests, responses and objections which are the subject of this motion are attached hereto as Exhibits 2-5 and incorporated herein by reference.