

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

JENNIFER LEIGH HOLT,  
Individually and as Parent of J.S.H., a minor,

Plaintiffs,

vs.

QUALITY EGG, LLC, d/b/a “Wright County  
Egg,” an Iowa limited liability company,

Defendant.

Case No. \_\_\_\_\_

**ORDER ON JOINT MOTION FOR  
ENTRY UPON LAND FOR  
INSPECTION AND FOR A  
PROTECTIVE ORDER**

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**ORDER REGARDING RULE 34 REQUEST FOR  
ENTRY UPON LAND FOR INSPECTION  
AND FOR A PROTECTIVE ORDER**

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The parties in the above-captioned matter having jointly moved the Court for an Order regarding the timing and sequence of certain discovery—*i.e.*, inspection and testing pursuant to Rule 34, and for preservation of evidence and a protective order, and having stipulated to an agreed upon such inspection, THE COURT HEREBY FINDS that authorizing the parties to proceed with the Rule 34 inspection is for the convenience of the parties, and in the interest of justice, as required by Rule 26(d), and THEREFORE ORDERS as follows:

1. Inspection and Testing: The plaintiffs, by their counsel, WANDRO, BAER & McCARTHY, P.C and Marler Clark LLP, will serve on defendant Wright

County Egg a Request for Entry Upon Land for Inspection and Other Purposes pursuant to Rule 34 of the Federal Rules of Civil Procedure. Specifically, the plaintiffs will seek to enter the premises of the Galt, Iowa plant for purposes of:

- (a) inspecting the condition of the plant, its equipment, any and all adjacent or related structures, and the surrounding grounds;
- (b) documenting (by photographs and videotaping) such conditions;
- (c) having one or more retained or specially-employed persons participate in the inspection; and
- (d) conduct microbiological, environmental, or other non-destructive testing, as subsequently agreed to by the parties.

2. The parties will stipulate further to an agreed upon inspection procedure, making it thus unnecessary for the Court to issue an order on the specifics of this. Such inspection shall, however, occur not later than 20 days from the date of this stipulation.

3. The plaintiffs will share with the defendant the results of any testing performed during the inspection ordered here, along with all photographs or videotapes.

4. Other Interested Parties. As far in advance as reasonably possible, and to the extent known, counsel for the defendant shall provide notice of the inspection to each other attorney who represents an individual who has filed a lawsuit, or asserted a claim, alleging injury as a result of the purchase of ingestion of Wright County Egg product. Any testing results, photographs, videotapes, or other things shared between the parties pursuant to paragraph 3, above, shall also be made available to other interested parties upon satisfaction of the conditions set forth in paragraph 7 below.

5. Continuing Duty to Preserve.

(a) It is the duty of the parties and their counsel to preserve all documents, tangible things, and electronically-stored information that is potentially

relevant to, or may lead to the discovery of evidence that is relevant to, the subject matter of this action. Specifically, this duty extends to documents, electronically-stored information, and tangible things in the possession, custody, or control of the parties to this action.

(b) Counsel for all parties have a duty to exercise reasonable efforts to identify and notify such nonparties, including employees of corporate or institutional parties, of obligations those non-parties may have to preserve relevant evidence.

(c) “Preservation” is to be interpreted to accomplish the goal of maintaining the integrity of all documents, data, and tangible things reasonably anticipated to be subject to discovery in this action pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of materials, as well as negligent or intentional handling that would make such materials incomplete or inaccessible.

(d) If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of such materials, the party must either:

- (1) halt such business practice;
- (2) sequester or remove such material from the business practice; or
- (3) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

(e) The parties, in order to effectuate and put into practice the provisions of this subparagraph, will seek resolution, whether by order of this court or mutual agreement of the parties, of any question or issue related to their respective

obligations under the stipulated agreement prior to taking any action that leads or may lead to the partial or total destruction of the evidence in question.

6. The results of any product-testing performed, or any documented inspections, *e.g.* photographs or videotapes, will be made available, upon written requests and the execution of an appropriate protective order, to parties of any subsequently filed related litigation. Requesting parties will, however, be required to reimburse the providing parties for actual expenses related to responding to the request.

FURTHER, the Court grants the defendant Wright County Egg's request for a limited protective order regarding the inspection as follows:

All information and material collected as a result of any measurement, survey, inspection, nondestructive test, sample, photo or video at Wright County Egg's Galt, Iowa processing plant are proprietary in nature and constitute trade secrets. As a result, such information, material, and documentation shall be maintained in confidence, shall be used only in connection with this and related litigation, and not for any commercial or business purpose, and shall not be shared with any third parties except for persons retained or specially employed for trial preparation purposes, *see* Rule 26(b)(4), or as may be later ordered by the Court.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day OF \_\_\_\_\_, 2010.

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Judge/Magistrate

Order Presented By:

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