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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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MARY SWEARINGEN, *et al.*,

CASE NO. 3:13-cv-05322 – SC

16

Plaintiffs,

The Hon. Samuel Conti  
Dept. 1

17

vs.

**JOINT STIPULATION AND  
[PROPOSED] ORDER TO STAY  
CASE**

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CONAGRA FOODS, INC.

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Defendant.

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STIPULATION

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2           In furtherance of judicial economy and to avoid potentially unnecessary  
3 expense, Plaintiffs Mary Swearingen, Robert Figy, and Daniel Bates (“Plaintiffs”)  
4 and Defendant ConAgra Foods, Inc. (“Defendant”) (collectively, the “Parties”),  
5 jointly wish to stay all proceedings and deadlines in this litigation (including all  
6 remaining class certification briefing deadlines) pending the Ninth Circuit Court of  
7 Appeals’ ruling in *Jones v. ConAgra Foods, Inc.* Accordingly, the Parties stipulate  
8 as follows:

9           1.     *Jones v. ConAgra Foods, Inc.*, No. 12-01633 CRB, 2014 WL 2702726  
10 (N.D. Cal. June 13, 2014) appeal docketed, No. 14-16327 (9th Cir. 2014) is  
11 currently pending on appeal in the Ninth Circuit Court of Appeals.

12           2.     The Ninth Circuit’s ruling in *Jones* will likely implicate issues affecting  
13 class certification in this case, including (a) whether a “presently ascertainable class  
14 can exist in food misbranding cases,” (b) the impact, if any, of *Comcast Corp. v.*  
15 *Behrend*, 133 S. Ct. 1426 (2013) on Plaintiff’s alleged damages, and (c) Plaintiffs’  
16 standing to seek injunctive relief.

17           3.     This Court recently stayed, *sua sponte*, *Parker v. J.M. Smucker Co.*,  
18 3:13-cv-00690-SC (N.D. Cal. Dec. 18, 2014)(hereinafter, “*Parker*”) pending the  
19 Ninth Circuit’s decision in *Jones* for the reasons discussed above. Other courts in  
20 the Ninth Circuit have issued similar stays. *See, e.g., Gustavson v. Mars, Inc.*, 2014  
21 WL 6986421, at \*2 (N.D. Cal. Dec. 10, 2014).

22           4.     No party will suffer damage, hardship or inequity from a stay of this  
23 case. Additionally, the Parties believe that considerations of judicial economy  
24 weigh heavily in favor of a stay.

25           5.     The Parties stipulate to a stay of all proceedings and deadlines in the  
26 case at bar pending the Ninth Circuit Court of Appeals’ ruling in *Jones v. ConAgra*  
27 *Foods, Inc.* The parties further stipulate that they will submit notice of the *Jones*  
28 decision and a joint statement outlining their future plans with respect to the motion

1 for class certification within fourteen days (14) of the Ninth Circuit's ruling in  
2 *Jones*.

3 6. Plaintiffs stipulate that Defendant shall be given sufficient time and  
4 opportunity to depose Plaintiffs and Plaintiffs' experts before filing Defendant's  
5 Response in Opposition to Class Certification.

6 7. Defendant further stipulates that Plaintiffs shall have 30 days from the  
7 filing of Defendant's Response in Opposition to Class Certification to file their  
8 Reply in Support of Class Certification.

9 8. The parties stipulate that upon the lifting of this stay, they shall submit  
10 to the Court a new proposed scheduling order.

11 Respectfully submitted,

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13 **McGUIREWOODS LLP**

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15 By: /s/ Angela M. Spivey  
16 A. Brooks Gresham  
17 Laura Coombe  
18 Angela M. Spivey (*pro hac vice*)  
Attorneys for ConAgra Foods, Inc.

19 **PRATT & ASSOCIATES**

20  
21 By: /s/ Ben F. Pierce Gore  
22 Ben F. Pierce Gore  
23 Attorneys for Plaintiffs

24 **LAW OFFICES OF RICHARD R.  
25 BARRETT, PLLC**

26 By: /s/ Richard R. Barrett  
27 Richard R. Barrett  
28 Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I, Angela M. Spivey, am the ECF user whose ID and password are being used to file the following: JOINT STIPULATION TO STAY CASE. In compliance with L.R. 5-1(i)(3), I hereby attest that Pierce Gore and/or Richard Barrett has concurred in this filing.

/s/ Angela M. Spivey  
Angela M. Spivey

**~~PROPOSED~~ ORDER**

Pursuant to the foregoing stipulation, and good cause appearing, IT IS SO ORDERED.

