

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**JARED GABRIELE, individually and on behalf
of all others similarly situated**

PLAINTIFF

v.

Case No. 5:14-CV-05183

CONAGRA FOODS, INC.

DEFENDANT

ORDER OF DISMISSAL

Currently before the Court are Plaintiff Jared Gabriele's Motion for Dismissal with Prejudice (Doc. 61) and Defendant ConAgra Foods, Inc.'s ("ConAgra") Response in Opposition (Doc. 62). This lawsuit was originally filed by Gabriele as a purported class action on June 18, 2014 (Doc. 1). On December 15, 2014, Gabriele filed a Motion to Certify Class (Doc. 22), and shortly thereafter, ConAgra filed a Motion for Judgment on the Pleadings (Doc. 30).

The parties briefed both Motions, and on June 25, 2015, the Court granted in part and denied in part the Motion for Judgment on the Pleadings. The Court then held a consolidated hearing on August 28, 2015 as to the Motion to Certify Class that was filed in this case and the one filed in *Center v. ConAgra Foods, Inc.*, Case No. 5:14-CV-05248—which involved similar causes of action, the same Plaintiff's counsel, the same Defendant's counsel, and the same procedural posture as the instant case. Following the hearing, the Court took under advisement the class certification decisions in both cases and informed the parties that a written opinion would be filed in the next couple of weeks.

One week after the hearing, and before the Court had the opportunity to rule on class certification, Gabriele filed a short Motion for Dismissal with Prejudice, without

providing any specific reasons for the dismissal. ConAgra now objects to Gabriele's Motion, pointing out that it would be unfair and prejudicial to ConAgra for the Court to simply dismiss this action "at this late juncture after submission of the motion for class certification to the Court." (Doc. 62, p. 2). First, ConAgra observes that, given Gabriele's failure to justify why he seeks a dismissal, the Court must infer that he wishes to dismiss the case in order to avoid an adverse ruling on the Motion to Certify Class. Although the Court finds ConAgra's inference both logical and probable, the Court cannot speculate as to the reasons underlying Gabriele's Motion. Next as to ConAgra's characterization of Gabriele's attorneys in this action, the Court agrees that they appear to have filed multiple, related class action lawsuits in this jurisdiction and others alleging essentially the same causes of action on behalf of several putative classes. It follows that ConAgra would prefer that the class certification issues be decided on the merits in order to foreclose the possibility of relitigating these same claims in the future—albeit through a different named plaintiff. Finally, ConAgra observes that it has put forth considerable effort and expense in defending this lawsuit and the related one, *Center v. ConAgra*, in this Court, including taking discovery related to class certification issues, briefing the Motions to Certify in both cases, and appearing for the hearing on the Motions. The Court has also expended significant judicial resources in considering the class certification issues in this case.

Notwithstanding the validity of the above points, the Court in its discretion has determined that Gabriele's Motion for Dismissal with Prejudice (Doc. 61) should be granted pursuant to Federal Rule of Civil Procedure 41(a)(2), prior to the Court's issuance of a decision on class certification, and despite the fact that Gabriele's claims made on behalf of a putative class must be dismissed without prejudice. The Court finds that the parties'

and the Court's resources will be maximally conserved by dismissing Gabriele's case with prejudice at this juncture. The district court enjoys broad discretion in determining whether to grant or deny a motion for voluntary dismissal. *Metro. Fed. Bank of Iowa, F.S.B. v. W.R. Grace & Co.*, 999 F.2d 1257, 1263 (8th Cir. 1993).

With that said, the Court also acknowledges that ConAgra may suffer some degree of prejudice due to the Court's dismissal of this case prior to a final ruling on class certification, especially considering ConAgra's expenditure of time and resources briefing and arguing the Motion to Certify. To cure this prejudice, the Court is inclined to order Gabriele to pay ConAgra's costs as a condition of dismissal. See *Sequa Corp. v. Cooper*, 245 F.3d 1036, 1037-38 (8th Cir. 2001) (finding that a district court has the discretion to award costs when a party dismisses an action, with or without prejudice). The Court will require ConAgra to file a separate motion that itemizes and documents the particular costs they seek to recover. Gabriele will then be afforded an opportunity to respond to the Motion before the Court makes its final decision.

IT IS THEREFORE ORDERED that Plaintiff Jared Gabriele's Motion for Dismissal with Prejudice (Doc. 61) is **GRANTED**, and Gabriele's individual claims are **DISMISSED WITH PREJUDICE**, while the claims of the purported class are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that ConAgra is to file a motion for an award of costs, itemizing in detail the particular costs it requests to be reimbursed. The motion should be filed no later than **October 2, 2015**. Gabriele may file a response to this motion no later than **October 16, 2015**.

IT IS FURTHER ORDERED that if these or any substantially similar class allegations are re-filed in Arkansas against ConAgra by Gabriele's counsel, the Court will entertain a motion by ConAgra at that time for reimbursement of any duplicative costs and fees, and, in the Court's discretion, will order Plaintiff's counsel to pay to ConAgra any duplicative costs and fees incurred in the litigation of the subsequent action, pursuant to Fed. R. Civ. P. 41(d).

IT IS FURTHER ORDERED that if these or any substantially similar class allegations are re-filed in Arkansas against ConAgra by Gabriele's counsel, Plaintiff's counsel will be required to comply with Local Rule 40.1(c).

IT IS SO ORDERED this 18th day of September, 2015.

/s/ Timothy L. Brooks

TIMOTHY L. BROOKS

UNITED STATES DISTRICT JUDGE