

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: CONAGRA PEANUT )  
BUTTER PRODUCTS LIABILITY )  
LITIGATION )

CIVIL ACTION NO. )  
1:07-MD-1845-TWT )

\*\*\*\*\* )

\*\*\*\*\* )

DAVID BAUMGARTNER, et al., )

CIVIL ACTION NO. )  
1:11-CV-00569-TWT )

Plaintiffs, )

v. )

CONAGRA FOODS, INC., )

Defendant. )  
\_\_\_\_\_ )

**MOTION TO ENFORCE SETTLEMENT AGREEMENT and**  
**INCORPORATED MEMORANDUM OF LAW**

Defendant, ConAgra Foods, Inc. (“ConAgra Foods”) moves this Court for an order to enforce the binding settlement agreement previously entered into between ConAgra Foods and Plaintiffs David and Cheryl Baumgartner on July 1, 2013, showing as follows:

**INTRODUCTION AND FACTUAL BACKGROUND**

Plaintiffs David and Cheryl Baumgartner filed their Complaint in the United States District Court for the Eastern District of Texas on January 17, 2011. This

case was transferred via Conditional Transfer Order 55 into the MDL on February 17, 2011 (Dkt. No. 2220, 1:07-md-01845-TWT).

Counsel for the parties engaged in discovery, including, but not limited to, the depositions of both Plaintiffs on August 9, 2012, Steven Cohen, M.D. on January 28, 2013, Anthony Davis, M.D. on January 29, 2013, and Stephen, Hutto, M.D. on January 30, 2013. ConAgra Foods filed a motion for summary judgment on June 11, 2013, which is pending before this Court (Dkt. No. 2805, 1:07-md-1845-TWT and Dkt. No. 21, 1:11-cv-00569-TWT). At the request of Plaintiffs' counsel, the parties engaged in settlement discussions. *See, Exhibit A.* On July 1, 2013, counsel for the parties settled Plaintiffs' claims and explicitly confirmed the settlement in writing. *See, Exhibit B.* Counsel for ConAgra Foods and Plaintiffs contemplated the parties would execute a formal written agreement to memorialize their settlements. *See, Exhibit B.* On July 2, 2013, the Court was notified by e-mail of the settlement. *See, Exhibit C.*

On July 15, 2013, Angela Spivey forwarded to Peter Cambs, counsel for Plaintiffs, the proposed Settlement Agreement & General Release codifying the terms of the agreed upon settlement for Plaintiffs. *See, Exhibit D.* Mr. Cambs responded by providing the details of how the settlement draft was to be made payable. *See, Exhibit D.* On July 25, 2013, counsel for Plaintiffs notified counsel

for ConAgra Foods that Plaintiffs had second thoughts and refuse to sign the release.

ConAgra Foods now moves this Court for an order to enforce the binding settlement agreement previously entered into between ConAgra Foods and Plaintiffs on July 1, 2013.

### ARGUMENT

The enforcement of settlement agreements is governed by Georgia state contract law. *See Wong v. Bailey*, 752 F.2d 619, 621 (11th Cir. 1985).

Under Georgia law, an agreement in settlement of a pending lawsuit must meet the same requisites of formation and enforceability as any other contract. Thus, there must be a meeting of the minds between the parties as to the terms of the contract. Assent to the terms of an agreement can be implied from the circumstances, and conduct inconsistent with a refusal of the terms raises a presumption of assent upon which the other party can rely.

*Id.* (citations omitted); *see also Greenwald v. Kersh*, 275 Ga. App. 724 (2005) (“[T]he law also favors compromise, and when parties have entered into a definite, certain, and unambiguous agreement to settle, it should be enforced”). A district court has the “inherent power to summarily enforce settlement agreements entered into by parties litigant in a pending case.” *Ford v. Citizens & Southern National Bank*, 928 F.2d 1118, 1131 (11th Cir. 1991) (quoting *Cia Anon Venezolana de Navegacion v. Harris*, 374 F.2d 33, 36 (5th Cir. 1967)). “Where the suit is

pending, either of the parties to the case is entitled to a final judgment based on the terms of the agreement of settlement so as to render certain the termination of the case.” *Mason v. Rabun Waste, Inc.*, 174 Ga. App. 462, 463 (Ga. Ct. App. 1985) (quoting *Olson v. Chicago Title Ins. Co.*, 158 Ga. App. 713, 714 (1981)).

Here, counsel for Plaintiffs confirmed acceptance of ConAgra Foods’ written offer of settlement on July 1, 2013. Under Georgia law, counsel for the parties had authority to bind Plaintiffs and ConAgra Foods to these settlement agreements. *See*, O.C.G.A. § 15-19-5 (“Attorneys have authority to bind their clients in any action or proceeding by any agreement in relation to the cause, made in writing.”).

The settlement agreements provide for all material terms that constitute a definite, certain, and unambiguous agreement to settle, namely: (1) ConAgra Foods will pay the agreed upon settlement amounts; (2) Plaintiffs will dismiss their claims with prejudice; (3) Plaintiffs will not make any disparaging statements against ConAgra Foods; (4) the settlements will be confidential; and (5) the parties will memorialize their settlements in written settlement agreements. The contemplation that the parties would execute formal written settlement agreements to memorialize their agreements does not affect the enforceability of the agreements. *See, Mason v. Rabun Waste, Inc.*, 174 Ga. App. 462, 462-463 (Ga. Ct.

App. 1985) (“An agreement to make and execute a certain written agreement, the terms of which are mutually understood and agreed on, is in all respects as valid and obligatory as the written contract itself would be if executed.” (citing *Hart v. Doss Rubber & Tube Co.*, 32 Ga. App. 314, 314, 123 S.E. 751, 751 (1924)). Therefore, the Court should enter an order enforcing the binding settlement agreements previously entered into between ConAgra Foods and Plaintiffs on July 1, 2013.

### CONCLUSION

For the reasons stated above, ConAgra Foods respectfully asks that this Court enter an Order:

- a) That the settlement agreement by and among Plaintiffs David and Cheryl Baumgartner and Defendant ConAgra Foods, Inc. (in the form attached as **Exhibit E**) are valid and enforceable;
- b) That 4% of the agreed upon settlement amount shall be deposited into the common benefit fund per this Court’s prior Order;
- c) Dismiss, with prejudice, the lawsuit filed by and on behalf of Plaintiffs David and Cheryl Baumgartner; and
- d) Grant such other further relief as it deems proper.

This 29th day of July, 2013.

CONAGRA FOODS, INC.  
BY COUNSEL:

/s/ Angela M. Spivey

James H. Walsh, Esquire  
VSB No. 15113  
Bethany G. Lukitsch, Esquire  
VSB No. 42859  
McGUIREWOODS LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
(804) 775-4356  
(804) 698-2200 (Facsimile)

James F. Neale, Esquire  
VSB No. 43060  
McGUIREWOODS LLP  
310 Fourth Street, N.E.  
Suite 300  
Charlottesville, Virginia 22902  
(434) 977-2582  
(434) 980-2263 (Facsimile)

Angela M. Spivey, Esquire  
GA Bar No. 672522  
McGUIREWOODS LLP  
1230 Peachtree Street, NE  
Promenade II, Suite 2100  
Atlanta, Georgia 30309-3534  
(404) 443-5720  
(404) 443-5792 (Facsimile)

*Attorneys for Defendant ConAgra Foods,  
Inc.*

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: CONAGRA PEANUT	)	
BUTTER PRODUCTS LIABILITY	)	CIVIL ACTION NO.
LITIGATION	)	1:07-MD-1845-TWT
	)	
*****	)	*****
	)	
DAVID BAUMGARTNER, et al.,	)	
	)	CIVIL ACTION NO.
Plaintiffs,	)	1:11-CV-00569-TWT
	)	
v.	)	
	)	
CONAGRA FOODS, INC.,	)	
	)	
Defendant.	)	
_____	)	

**CERTIFICATE OF SERVICE, FONT AND MARGINS**

I hereby certify that on July 29, 2013, I electronically filed the foregoing *MOTION TO ENFORCE SETTLEMENT AGREEMENT and INCORPORATED MEMORANDUM OF LAW* with the Clerk of the Court using the CM/ECF System, which sent notification of such filing to all counsel of record.

I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this court.

          /s/ Angela M. Spivey            
Angela M. Spivey



EXHIBITS A  
THROUGH E

**FILED**  
**UNDER SEAL**