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

IN RE: CONAGRA PEANUT BUTTER PRODUCTS LIABILITY LITIGATION	)	**Civil Action NO. 1:07-MD-1845 TWT**
	)	**Case:** *1:07-CV-0425-CC*

CEASE PLAINTIFFS' OPPOSITION TO PLAINTIFFS' MOTION TO ESTABLISH A COMMON BENEFIT FUND

COMES NOW, the undersigned counsel of record for certain Plaintiffs in *Cease v. ConAgra, 1:07-CV-0425-CC* [the *Cease* Plaintiffs] hereby submit their Opposition to Plaintiffs' Motion to Establish a Common Benefit Fund and impose a 4% tax on plaintiffs' who have received zero benefit from the failed efforts of certain counsel to certify this matter as a class action. In support of its Opposition, Cease Plaintiffs do hereby join and incorporate by reference Defendant ConAgra's Opposition to Plaintiffs' Motion to Establish a Common Benefit Fund and further plead as set forth below.

Certain Plaintiffs have requested the establishment of a 4% tax to be imposed both retrospectively and prospectively on nearly all settlements or judgments for the benefit of MDL attorneys whose efforts have resulted in zero benefit to anyone, let alone the injured victims. The requested assessment is

being made arbitrarily regardless of whether the taxed party received any benefit from MDL efforts or expenditures. In the *Cease* case, the requested assessment amounts to an "ex post facto taxation" on plaintiffs who are not even involved in the MDL proceedings, and who conditionally settled their minor injury cases more than three months ago on June 5, 2008. Not only is the requested assessment patently unfair, it violates the due process rights of injury victims who never took into consideration during the decision making process the "4% tax" sought to be imposed.

No benefit has been achieved in this case because: (1) liability has been admitted; and (2) class certification has been denied. Upon information and belief, ConAgra is not denying that certain jars of their peanut butter products were contaminated with Salmonella Tennessee, and that they are responsible for injuries resulting therefrom. A "Common Benefit Fund," simply put, should not be funded by those who realized no common benefit. The Cease Plaintiffs received no MDL assistance and therefore should not be subjected to an arbitrary 4% tax levied against them indiscriminately without regard to the indisputable absence of any common benefit.

In fact, the Cease Plaintiffs independently developed an Alternative Dispute Resolution (ADR) model before any MDL ever existed. This ADR model was used by other plaintiff groups outside of the MDL and has now resulted in the

settlement of a significant number of cases. The MDL proceedings and the attorneys involved in the MDL proceedings, other than undersigned counsel, made no contributions whatsoever to this ADR process. This ADR process began in early June 2007 and it resulted in the settlement of the undersigned's minor injury cases on June 5, 2008. During this time period, the undersigned attorneys, and attorneys for ConAgra, met and conferred on no less than six separate occasions in an effort to agree upon a case evaluation process and the use of a neutral third parties to: (1) interview claimants and complete jointly developed questionnaires; (2) obtain medical records and bills, (3) compile epidemiological data; and (4) mediate a settlement. Over the course of these protracted negotiations the Cease Plaintiffs were able to effectively develop and negotiate a comprehensive settlement matrix which has served as a model for the settlement of other cases.

This costly undertaking enabled the Cease Plaintiffs to reach an accord with ConAgra whereby Conagra admitted liability for the purposes of settlement, leaving only proximate cause and damages issues to be resolved. Once such issues were resolved, the case settled. The Cease Plaintiffs invited the MDL to join this process early on, but those attorneys insisted on failed strategy of class certification. That invitation was summarily declined. With no MDL participation, the Cease Plaintiffs engagement in this independent settlement effort came at great expense. Indeed, the Cease Plaintiffs expended upwards of five

hundred thousand dollars ($500,000.00) in developing a peanut butter testing protocol, retrieving and analyzing medical records and bills, epidemiological data, and ultimately a complex settlement matrix that in combination, led to the settlement of the Cease claims.

The inequity of this taxation is further evidenced by the fact that the Cease Plaintiffs provided considerable time, effort and science to the MDL at no charge. The MDL was not billed for this gratuity nor was the MDL asked to provide anything in return, all with the express understanding that the Cease plaintiffs would never be asked for any contribution for either their fees or costs. In sum, not a single common benefit was realized by the Cease Plaintiffs and any attempt to tax settlements made on their behalf is fundamentally unfair and wholly without justification.

WHEREFORE, Cease Plaintiffs respectfully request that Plaintiffs' Motion to Establish a Common Benefit fund be denied.

Respectfully submitted this 19th day of September, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2008 I electronically filed the Cease Plaintiffs' Opposition to Establish a Common Benefit Fund with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys registered. I also hereby certify that I have mailed by United States Postal Service the Cease Plaintiffs' Opposition to Establish a Common Benefit Fund to all counsel listed on the Counsel List (CTO-1) who have not registered for electronic service.

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