

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

IN RE CONAGRA PEANUT
BUTTER PRODUCTS LIABILITY
LITIGATION

MDL DOCKET NO. 1845
1:07-md-1845-TWT

CARLOS M. ANDREWS
through his guardian ad litem, Tiffany
K. Searcy, et al.,

Plaintiffs,

v.

CIVIL ACTION FILE
NO. 1:07-CV-3058-TWT

CONAGRA FOODS, INC.,
a Delaware corporation, et al.,

Defendants.

WENDY JOAN AHRENS
an individual, et al.,

Plaintiffs,

v.

CIVIL ACTION FILE
NO. 1:08-CV-3693-TWT

CONAGRA FOODS, INC.,
a Delaware corporation, et al.,

Defendants.

LAMONT ANDERSON
an individual, et al.,

Plaintiffs,

v.

CIVIL ACTION FILE
NO. 1:09-CV-1545-TWT

CONAGRA FOODS, INC., a
Delaware corporation,

Defendant.

SUSAN HOFFMAN, et al.,

Plaintiffs,

v.

CONAGRA FOODS, INC.,

Defendant.

KIMBERLY ABRAHAM
individually and as next friend of
Autumn Abraham, a minor, et al.,

Plaintiffs,

v.

CONAGRA FOODS, INC.,

Defendant.

CIVIL ACTION FILE
NO. 1:09-CV-2242-TWT

CIVIL ACTION FILE
NO. 1:09-CV-2844-TWT

ORDER

These are personal injury actions. They are before the Court on the Defendant's Motion to Deem Admitted Defendant's First Requests for Admissions and Motion for Summary Judgment [Doc. 2139], which is GRANTED in part and DENIED in part.

I. Introduction

This case arises out of Defendant ConAgra's 2007 recall of Peter Pan and Great Value peanut butter, after the CDC and FDA reported an association between these products and Salmonella Tennessee. After the recall, some consumers sued ConAgra, alleging that they contracted Salmonellosis, a bacterial infection caused by Salmonella Tennessee, after eating Peter Pan or Great Value peanut butter. The lawsuits were consolidated in this Court for pretrial proceedings. During discovery, ConAgra issued and served individually captioned requests for admission to each of the plaintiffs identified in this motion. The plaintiffs did not admit or deny the requests within thirty days as required under the Federal Rules of Civil Procedure or seek an extension for filing responses. Accordingly, ConAgra asks the Court to deem the requests admitted and to grant summary judgment based on the admissions.

II. Summary Judgment Standard

Summary judgment is appropriate only when the pleadings, depositions, and affidavits submitted by the parties show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court should view the evidence and any inferences that may be drawn in the light most favorable to the nonmovant. Adickes v. S.H. Kress & Co.,

398 U.S. 144, 158-59 (1970). The party seeking summary judgment must first identify grounds that show the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). The burden then shifts to the nonmovant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986).

III. Discussion

A. Motion to Deem Admitted Defendant’s First Requests for Admissions

Federal Rule of Civil Procedure 36 allows a party to serve on any other party a written request to admit the truth of certain matters. If the party to whom the request is directed does not respond within 30 days after being served, the matter is admitted. The following plaintiffs did not respond within the allotted time:

Case Caption	Plaintiff Name	Case No.
Andrews	Ali, Mango Littleton Jr.	1:07-cv-03058-TWT
Andrews	Anderson, Jarmaria D'sean (Nicotra Anderson, mother)	1:07-cv-03058-TWT
Andrews	Arnold, Ethan Ray (Lance C. Arnold, father)	1:07-cv-03058-TWT
Andrews	Arola, Duane	1:07-cv-03058-TWT
Andrews	Avila, Viveca Marie	1:07-cv-03058-TWT
Andrews	Bailey, Brooklyn Elizabeth (Bobbie Jo Staggs)	1:07-cv-03058-TWT

Andrews	Barton, Gary L.	1:07-cv-03058-TWT
Andrews	Benyard, Destiny Ariani (Montena Benyard, signator)	1:07-cv-03058-TWT
Andrews	Berry, Devin Lester (Stacy Berry, mother)	1:07-cv-03058-TWT
Andrews	Berry, Hallie Lynn	1:07-cv-03058-TWT
Andrews	Bodey, Corey James	1:07-cv-03058-TWT
Andrews	Boring, Margaret A.E.	1:07-cv-03058-TWT
Andrews	Bowles, Charles	1:07-cv-03058-TWT
Andrews	Bowles, Mandy Lynn	1:07-cv-03058-TWT
Andrews	Brandon, Trevor Dylan (Vivica Avila, mother)	1:07-cv-03058-TWT
Andrews	Brown, Shirley Jean	1:07-cv-03058-TWT
Andrews	Brown, William Harris	1:07-cv-03058-TWT
Andrews	Burwell, Allan R. Sr.	1:07-cv-03058-TWT
Andrews	Burwell, Allison Faith	1:07-cv-03058-TWT
Andrews	Burwell, Zachary Eugene	1:07-cv-03058-TWT
Andrews	Butler, Shanetta	1:07-cv-03058-TWT
Andrews	Cain, Jessica Nicole (Georgia Cain, mother)	1:07-cv-03058-TWT
Andrews	Carter, Dorothy Joan	1:07-cv-03058-TWT
Andrews	Carzoo-Fowler, Anna Sophia (Nicole Carzoo, mother)	1:07-cv-03058-TWT
Andrews	Chewning, Angelina Nicole	1:07-cv-03058-TWT
Andrews	Christensen, Brooklyn Faith	1:07-cv-03058-TWT
Andrews	Cline, Rodney David Leigh	1:07-cv-03058-TWT

Andrews	Crawford, Patricia Ann	1:07-cv-03058-TWT
Andrews	Crockett, Mark Anthony	1:07-cv-03058-TWT
Andrews	Cuevas, Sandra Ann	1:07-cv-03058-TWT
Andrews	Daugherty, Karen Elizabeth	1:07-cv-03058-TWT
Andrews	Demske, Tamara Sue	1:07-cv-03058-TWT
Andrews	Di Sipio, Anthony J. Sr.	1:07-cv-03058-TWT
Andrews	Dixie, William Thomas	1:07-cv-03058-TWT
Andrews	Early, Barbara A.	1:07-cv-03058-TWT
Andrews	Elliott, Charlotte	1:07-cv-03058-TWT
Andrews	Faulk, Richard Alan	1:07-cv-03058-TWT
Andrews	Foxworth, Zariyona Alexis	1:07-cv-03058-TWT
Andrews	Franco, Esther H.	1:07-cv-03058-TWT
Andrews	Freedman, Jennifer Michelle	1:07-cv-03058-TWT
Andrews	Gilbert, Theodore William (Peggy A. Gilbert, signator)	1:07-cv-03058-TWT
Andrews	Goddard, Deborah S.	1:07-cv-03058-TWT
Andrews	Goodman, Jessica Dawn	1:07-cv-03058-TWT
Andrews	Goodman, Mona Gayle	1:07-cv-03058-TWT
Andrews	Goodson, George	1:07-cv-03058-TWT
Andrews	Gormley, Richard W. Sr.	1:07-cv-03058-TWT
Andrews	Griesser, Mary Lou	1:07-cv-03058-TWT
Andrews	Griffin, Robert Bryan	1:07-cv-03058-TWT
Andrews	Hendrix, Thelma Lucille	1:07-cv-03058-TWT
Andrews	Herbert-Winston, Marie M.	1:07-cv-03058-TWT

Andrews	Hess, Shawn Taylor	1:07-cv-03058-TWT
Andrews	Hewett, Michael Shawn	1:07-cv-03058-TWT
Andrews	Hodgeson, Adrian Chance (Walter Simmons, guardian)	1:07-cv-03058-TWT
Andrews	Hodgeson, Austin Chase	1:07-cv-03058-TWT
Andrews	Inman, Glenda L.	1:07-cv-03058-TWT
Andrews	Jackson, Dakota (Rhonda Jackson, mother)	1:07-cv-03058-TWT
Andrews	Jackson, Raina Jean	1:07-cv-03058-TWT
Andrews	Jackson, Rhonda A.	1:07-cv-03058-TWT
Andrews	Jenkins, Beverly Ann	1:07-cv-03058-TWT
Andrews	Johnson, Albert	1:07-cv-03058-TWT
Andrews	Johnson, Jackey De Shawn (Edna Torrence, guardian)	1:07-cv-03058-TWT
Andrews	Jones, Marnita Valerie	1:07-cv-03058-TWT
Andrews	Jones-Johnson, Thelma L.	1:07-cv-03058-TWT
Andrews	Keith, Joyce Carol	1:07-cv-03058-TWT
Andrews	Kinser, Margueritte	1:07-cv-03058-TWT
Andrews	Kinser, Myra Jo	1:07-cv-03058-TWT
Andrews	Kinzie, David A.	1:07-cv-03058-TWT
Andrews	Kirby, William M.	1:07-cv-03058-TWT
Andrews	Knight, Terry W.	1:07-cv-03058-TWT
Andrews	Landre, Ghislaine-Laure	1:07-cv-03058-TWT
Andrews	Lewiski, Kathy Leigh	1:07-cv-03058-TWT

Andrews	Linnehan, Aaron Richard	1:07-cv-03058-TWT
Andrews	Logos, George	1:07-cv-03058-TWT
Andrews	Loudenslager, Fredrick S.	1:07-cv-03058-TWT
Andrews	Loudenslager, Marion J.	1:07-cv-03058-TWT
Andrews	Lyles, Phillip Leo	1:07-cv-03058-TWT
Andrews	Martinez, Angelica Rose	1:07-cv-03058-TWT
Andrews	McZeal, Raven Nycole	1:07-cv-03058-TWT
Andrews	Meredith, Philip Lee	1:07-cv-03058-TWT
Andrews	Merriweather, Dynasty D.	1:07-cv-03058-TWT
Andrews	Merriweather, Khyrsten	1:07-cv-03058-TWT
Andrews	Miccio, Adrieana Maria (Tamara Ziegler, mother)	1:07-cv-03058-TWT
Andrews	Miller, Larry I.	1:07-cv-03058-TWT
Andrews	Milo, June Ellen	1:07-cv-03058-TWT
Andrews	Mizell, Ashley Nicole	1:07-cv-03058-TWT
Andrews	Murrah, Laurie Ann	1:07-cv-03058-TWT
Andrews	Nash, Tammie R.	1:07-cv-03058-TWT
Andrews	Nelson, Alvie	1:07-cv-03058-TWT
Andrews	Park, Patsy Lee	1:07-cv-03058-TWT
Andrews	Pullins, Hattie T.	1:07-cv-03058-TWT
Andrews	Radatz, Alicia J.	1:07-cv-03058-TWT
Andrews	Radatz, Steven J.	1:07-cv-03058-TWT
Andrews	Ransopher, Julie	1:07-cv-03058-TWT

Andrews	Richardson, Marlene Sue	1:07-cv-03058-TWT
Andrews	Ringer, Kathleen M.	1:07-cv-03058-TWT
Andrews	Robinson, Paula Marian	1:07-cv-03058-TWT
Andrews	Rogers, Brenda J.	1:07-cv-03058-TWT
Andrews	Rose, Cody A. (Marlene Rose, mother)	1:07-cv-03058-TWT
Andrews	Rose, Marlene Ellen	1:07-cv-03058-TWT
Andrews	Rothgeb, Irene	1:07-cv-03058-TWT
Andrews	Sanchez, Deborah M.	1:07-cv-03058-TWT
Andrews	Schaudt, Leah	1:07-cv-03058-TWT
Andrews	Shoemaker, Chasitie M.	1:07-cv-03058-TWT
Andrews	Sikorski, Paul Arthur	1:07-cv-03058-TWT
Andrews	Simon, Andrea Renee	1:07-cv-03058-TWT
Andrews	Sinyard, Mary Lynn	1:07-cv-03058-TWT
Andrews	Sloan, Clarence C.	1:07-cv-03058-TWT
Andrews	Soutar, Bernol F.	1:07-cv-03058-TWT
Andrews	Sprinkle, Cheryl Lee	1:07-cv-03058-TWT
Andrews	Stanford-Camp, Nancy	1:07-cv-03058-TWT
Andrews	Taylor, Heather L.	1:07-cv-03058-TWT
Andrews	Teller, Brianna L.	1:07-cv-03058-TWT
Andrews	Teller, Matthew J.	1:07-cv-03058-TWT
Andrews	Teller, Michael W.	1:07-cv-03058-TWT
Andrews	Tracy, Joyce Lee	1:07-cv-03058-TWT
Andrews	Voth, Kent G.	1:07-cv-03058-TWT
Andrews	Wedan, Lila B.	1:07-cv-03058-TWT

Andrews	Wilkins, John Edward	1:07-cv-03058-TWT
Ahrens	Ahrens, Wendy Joan	1:08-cv-03693-TWT
Ahrens	Barnes, Albert	1:08-cv-03693-TWT
Ahrens	Benyard, Montena o/b/o C.R.B.	1:08-cv-03693-TWT
Ahrens	Blanton, Dianne Patricia o/b/o Zachary Blanton	1:08-cv-03693-TWT
Ahrens	Briggs, Brian	1:08-cv-03693-TWT
Ahrens	Brittenham, Dave	1:08-cv-03693-TWT
Ahrens	Buchanan, Curtis	1:08-cv-03693-TWT
Ahrens	Buchanan, June	1:08-cv-03693-TWT
Ahrens	Buchanan, June o/b/o Tyler Buchanan	1:08-cv-03693-TWT
Ahrens	Carrington, Larry P.	1:08-cv-03693-TWT
Ahrens	Carritt, Bernard	1:08-cv-03693-TWT
Ahrens	Caruso, Michael J.	1:08-cv-03693-TWT
Ahrens	Ceniceros, Arthur	1:08-cv-03693-TWT
Ahrens	Ceniceros, Laura	1:08-cv-03693-TWT
Ahrens	Ceniceros, Laura o/b/o Alexis Ceniceros	1:08-cv-03693-TWT
Ahrens	Ceniceros, Laura o/b/o Allan Ceniceros	1:08-cv-03693-TWT
Ahrens	Ceniceros, Laura o/b/o Ceniceros, Arthur Julian	1:08-cv-03693-TWT
Ahrens	Ceniceros, Laura o/b/o Ceniceros, Ashley	1:08-cv-03693-TWT
Ahrens	Chancellor, Judith	1:08-cv-03693-TWT

Ahrens	Chapman, Janie Pearl o/b/o Fain H. Chapman	1:08-cv-03693-TWT
Ahrens	Cline, Rodney David	1:08-cv-03693-TWT
Ahrens	Crumbley, Patricia Lynn	1:08-cv-03693-TWT
Ahrens	Di Sipio, Anthony John Sr. o/b/o A.J.D.	1:08-cv-03693-TWT
Ahrens	Dodrer, Lisa Marie	1:08-cv-03693-TWT
Ahrens	Dodrer, Sharon Ann	1:08-cv-03693-TWT
Ahrens	Early, John R.	1:08-cv-03693-TWT
Ahrens	Fudge, Shannon Nicole o/b/o Gabriel Michael Angelo Trego	1:08-cv-03693-TWT
Ahrens	Fudge, Shannon Nicole o/b/o Jillian Shannon Trego	1:08-cv-03693-TWT
Ahrens	Fudge, Shannon Nicole o/b/o Juliet Renee Trego	1:08-cv-03693-TWT
Ahrens	Gamble, Joann S.	1:08-cv-03693-TWT
Ahrens	Gibson, David John	1:08-cv-03693-TWT
Ahrens	Gittings, Rebecca Carlisle	1:08-cv-03693-TWT
Ahrens	Hatcher, Aucion Lamont	1:08-cv-03693-TWT
Ahrens	Hatcher, Dewawn	1:08-cv-03693-TWT
Ahrens	Hippensteil, Cindy	1:08-cv-03693-TWT
Ahrens	Hippensteil, Cindy o/b/o Cynthia Albertson	1:08-cv-03693-TWT
Ahrens	Hippensteil, Cindy o/b/o Felisha Albertson	1:08-cv-03693-TWT
Ahrens	Hurley, Kevin Sean	1:08-cv-03693-TWT
Ahrens	Johnson, Devon	1:08-cv-03693-TWT

Ahrens	Jones, Vivian	1:08-cv-03693-TWT
Ahrens	Kulaga, Arthur	1:08-cv-03693-TWT
Ahrens	Leary, Dedrick C.	1:08-cv-03693-TWT
Ahrens	Lewis, Lena Burroughs	1:08-cv-03693-TWT
Ahrens	Logos, Emilia	1:08-cv-03693-TWT
Ahrens	Long, Carol L.	1:08-cv-03693-TWT
Ahrens	Marano, Helen Kay	1:08-cv-03693-TWT
Ahrens	Martin, Billy Jr.	1:08-cv-03693-TWT
Ahrens	Masek, George o/b/o Jordan Kai Masek	1:08-cv-03693-TWT
Ahrens	McNemar, Rebecca	1:08-cv-03693-TWT
Ahrens	McPherson, Zora Mell	1:08-cv-03693-TWT
Ahrens	Miller, Terri	1:08-cv-03693-TWT
Ahrens	Mohawk, Carolyn Sue	1:08-cv-03693-TWT
Ahrens	Morrow, Wilma	1:08-cv-03693-TWT
Ahrens	Nasser, Juan	1:08-cv-03693-TWT
Ahrens	Nasser, Michael	1:08-cv-03693-TWT
Ahrens	Nasser, Miguel	1:08-cv-03693-TWT
Ahrens	Parker, Tany	1:08-cv-03693-TWT
Ahrens	Parker, Tanya o/b/o Atiya Parker	1:08-cv-03693-TWT
Ahrens	Parker, Tanya o/b/o Spencer Parker	1:08-cv-03693-TWT
Ahrens	Phillips, Anna M.	1:08-cv-03693-TWT
Ahrens	Pruitt, Edward A.	1:08-cv-03693-TWT

Ahrens	Reeves, Kathryn o/b/o Wyatt Matthew Reeves	1:08-cv-03693-TWT
Ahrens	Robinson, Henderson	1:08-cv-03693-TWT
Ahrens	Sanders, Sandra K.	1:08-cv-03693-TWT
Ahrens	Santore, Robert F.	1:08-cv-03693-TWT
Ahrens	Sinyard, Mary L. o/b/o James Luther Pennington	1:08-cv-03693-TWT
Ahrens	Smith, Mike S.	1:08-cv-03693-TWT
Ahrens	Smith, Scott D.	1:08-cv-03693-TWT
Ahrens	Snipes, Sheila	1:08-cv-03693-TWT
Ahrens	Solomon, Barbara Eileen	1:08-cv-03693-TWT
Ahrens	Spearman, Kimson Theodore	1:08-cv-03693-TWT
Ahrens	Staggs, Bobbi Jo	1:08-cv-03693-TWT
Ahrens	Sterling, Cyrus Paul	1:08-cv-03693-TWT
Ahrens	Stone, Dorothy M.	1:08-cv-03693-TWT
Ahrens	Stone, Jimmie O.	1:08-cv-03693-TWT
Ahrens	Streeter, Kay S.	1:08-cv-03693-TWT
Ahrens	Struggs, Jessie	1:08-cv-03693-TWT
Ahrens	Tanguma, Eva	1:08-cv-03693-TWT
Ahrens	Tanguma, Eva o/b/o Albert Lewis Tanguma	1:08-cv-03693-TWT
Ahrens	Tittle, Patsy Leona o/b/o Rocky Lee Tittle	1:08-cv-03693-TWT
Ahrens	Todd, Syrena B.	1:08-cv-03693-TWT
Ahrens	Torrence, Edna L.	1:08-cv-03693-TWT
Ahrens	Turner, Amanda Carrol	1:08-cv-03693-TWT

Ahrens	Van Ness, Randee o/b/o B.J.V.	1:08-cv-03693-TWT
Ahrens	Van Ness, Randee Phyllis	1:08-cv-03693-TWT
Ahrens	Warden, Roberta	1:08-cv-03693-TWT
Ahrens	Warren, Deborah Griswold	1:08-cv-03693-TWT
Ahrens	Weyrowske, Eric Benjamin	1:08-cv-03693-TWT
Ahrens	White, Odell	1:08-cv-03693-TWT
Ahrens	Whitney, Linda Carol	1:08-cv-03693-TWT
Ahrens	Wilds, John Glenn	1:08-cv-03693-TWT
Ahrens	Willis, Dorothy C.	1:08-cv-03693-TWT
Ahrens	Willis, Handy	1:08-cv-03693-TWT
Ahrens	Willis, Handy o/b/o Cameron Willis	1:08-cv-03693-TWT
Ahrens	Willis, Zelia	1:08-cv-03693-TWT
Ahrens	Worland, Jennifer Ann o/b/o Donavin Edward Worland	1:08-cv-03693-TWT
Ahrens	Zacker, Joseph Lloyd	1:08-cv-03693-TWT
Ahrens	Zinnerman, LaDean o/b/o Fabian D. Zinnerman	1:08-cv-03693-TWT
Anderson	Anderson, Lamont	1:09-cv-01545-TWT
Anderson	Casey, Joada	1:09-cv-01545-TWT
Anderson	Garrison, Terry	1:09-cv-01545-TWT
Anderson	McClain, Vicki	1:09-cv-01545-TWT
Anderson	Pearson, John J.	1:09-cv-01545-TWT
Anderson	Swartz, Kathy L.	1:09-cv-01545-TWT
Anderson	Swartz, Ronald D.	1:09-cv-01545-TWT

Anderson	Tripp, Tessa	1:09-cv-01545-TWT
Anderson	Tripp, Tessa o/b/o Christina Tripp	1:09-cv-01545-TWT
Anderson	Tripp, Tessa o/b/o Jeremee Tripp	1:09-cv-01545-TWT
Anderson	Tripp, Tessa o/b/o Willie Benjamin Tripp	1:09-cv-01545-TWT
Anderson	Tripp, Willie Bernard	1:09-cv-01545-TWT
Hoffman	Hoffman, Susan	1:09-cv-02242-TWT
Abraham	Ray, Barbara Ann	1:09-cv-02844-TWT
Abraham	Samuels, Willie Bell	1:09-cv-02844-TWT
Abraham	Simpson, Robert	1:09-cv-02844-TWT
Abraham	Smith, Johnny Z.	1:09-cv-02844-TWT

Accordingly, the following statements, contained in ConAgra's First Requests for Admissions, are deemed admitted by those plaintiffs:

The peanut butter consumed by Plaintiffs has not been tested for Salmonella or Salmonella Tennessee;

Plaintiffs cannot produce any test report indicating that the peanut butter they consumed was contaminated with Salmonella;

Plaintiffs have not undergone any medical or diagnostic testing to determine whether they were actually exposed to Salmonella and cannot produce any test results indicating they were exposed to or infected with Salmonella;

Plaintiffs cannot produce any medical records confirming that they were exposed to or infected with Salmonella;

Plaintiffs have no medical records diagnosing them with food poisoning or foodborne illness; and

Plaintiffs were not diagnosed with salmonellosis by a medical professional.

Def.'s Mot. for Summ. J., Ex. 2.

B. Motion for Summary Judgment

Based on the admissions set forth above, ConAgra moves for summary judgment. It says that the plaintiffs cannot establish causation without either direct evidence that the peanut butter was contaminated or diagnostic tests confirming that they were infected with Salmonella. In some jurisdictions, however, the temporal connection between a plaintiff's consumption of recalled peanut butter and the onset of symptoms may be enough to support causation. Accordingly, the Defendant's Motion for Summary Judgment is denied without prejudice and may be refiled upon remand.

IV. Conclusion

For the reasons stated above, the Defendant's Motion to Deem Admitted Defendant's First Requests for Admissions and Motion for Summary Judgment [Doc. 2139] is GRANTED in part and DENIED in part.

SO ORDERED, this 18 day of February, 2011.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge