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9 Attorneys for Defendant ConAgra Foods, Inc.

10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

15 TROY BACKUS, on behalf of himself
 16 and all others similarly situated

17 Plaintiff,

18 vs.

19 CONAGRA FOODS, INC.,

21 Defendant.

No. 3:16-cv-00454-WHA

**STIPULATION AND ~~PROPOSED~~
 ORDER STAYING CASE PENDING
 APPEALS**

Honorable William H. Alsup

1 Plaintiff Troy Backus (“Plaintiff”) and Defendant ConAgra Foods, Inc. (“ConAgra”)
2 (collectively, “the Parties”), by and through their respective counsel of record, agree and stipulate
3 as follows:

4 WHEREAS Plaintiff filed a Class Action Complaint in the above-captioned action on
5 January 26, 2016;

6 WHEREAS on December 22, 2016, this Court denied class certification on the grounds that
7 Plaintiff is an inadequate class representative (Dkt. No. 75);

8 WHEREAS on January 25, 2017, Marjel McFaddin and Mark Beasley filed in this Court a
9 class action complaint against ConAgra, raising the same claims as Plaintiff based on essentially the
10 same facts (Class Action Compl., *McFaddin v. ConAgra Brands, Inc.*, No. 3:17-cv-00387-WHA
11 (N.D. Cal. Jan. 25, 2017));

12 WHEREAS on February 7, 2017, this Court ordered that *McFaddin v. ConAgra Brands, Inc.*
13 was related to the instant action (Dkt. No. 78);

14 WHEREAS on March 14, 2017, this Court ordered that the pretrial deadlines in this action
15 be modified so as to coincide with the deadlines in *McFaddin* and that a Rule 30(b)(6) deposition
16 could be used equally in *McFaddin* or this action (Dkt. No. 90);

17 WHEREAS on May 24, 2017, this Court ordered that *McFaddin* be stayed pending decisions
18 by the Court of Appeals for the Ninth Circuit in *Hawkins v. The Kroger Co.*, Case No. 16-55532
19 (9th Cir.), and *Hawkins v. AdvancePierre Foods, Inc.*, Case No. 16-56697 (9th Cir.) and ordered
20 that the parties file a joint status report by September 20, 2017, regarding the status of those appeals;

21 WHEREAS on September 20, 2017, the Parties filed their First Joint Status Report and
22 requested a continuance of the stay in *McFaddin*;

23 WHEREAS on September 21, 2017, this Court continued the stay in *McFaddin* and ordered
24 the parties in *McFaddin* to submit a second joint status report on the progress of those pending
25 appeals by January 30, 2018;

26 WHEREAS the Parties request a stay of the proceedings and deadlines in this case to
27 coincide with the stay in *McFaddin* pending the appeals in *The Kroger Co.* and *AdvancePierre*
28 *Foods, Inc.*;

1 WHEREAS the Parties will submit a joint status report on the progress of those pending
2 appeals by January 30, 2018, should the Court grant this stay;

3 WHEREAS the Parties do not seek this stay for any improper purpose;

4 IT IS HEREBY STIPULATED, by and between the Parties through their respective counsel
5 and subject to this Court's approval, that this case, its proceedings, and its deadlines are stayed
6 pending the decision of the United States Court of Appeals for the Ninth Circuit in the above-
7 referenced cases. The Parties agree to file a joint status report on the progress of the pending appeals
8 by January 30, 2018, at noon, and that future case management will be discussed once the stay is
9 lifted.

10 IT IS SO STIPULATED.

11 Dated: October 23, 2017

Respectfully submitted,

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13 By: /s/ Angela M. Spivey
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ATTESTATION

I, Angela M. Spivey, hereby attest, pursuant to N.D. Cal. Local Rule 5.1(i)(3), that the concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Angela M. Spivey
Angela M. Spivey

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.** The case, its proceedings,
2 and its deadlines are stayed pending the decisions of the United States Court of Appeals for the
3 Ninth Circuit in *Hawkins v. The Kroger Co.*, Case No. 16-55532 (9th Cir.), and *Hawkins v.*
4 *AdvancePierre Foods, Inc.*, Case No. 16-56697 (9th Cir.). The Parties shall file a joint status
5 report on the progress of the pending appeals by January 30, 2018, at noon.

6 Dated: October 31, 2017.



United States District Court Judge

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