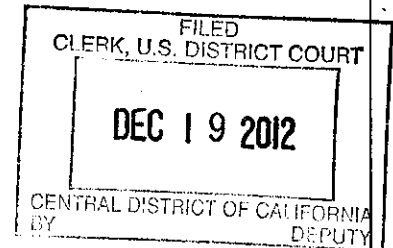


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COPY

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 IN RE CONAGRA FOODS, INC.

Case No. CV 11-05379-MMM (AGRx)

MDL NO. 2291

CLASS ACTION

SECOND CONSOLIDATED
AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

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1 This Second Consolidated Amended Class Action Complaint (the “SAC”)
 2 against Defendant ConAgra Foods, Inc. (“ConAgra” or “Defendant”) is brought by
 3 individual consumers residing in California, Nebraska (where ConAgra is
 4 headquartered), and 13 other states¹—on behalf of themselves and 15 state-law
 5 classes alleging violations of the following types in the states in which the named
 6 Plaintiffs reside: (1) state consumer protection statutes (2) state express warranty
 7 statutes; (3) state implied warranty statutes, and (4) unjust enrichment claims or
 8 rights (collectively, the “Classes”). The allegations in this SAC are based on the
 9 personal knowledge of each of the Plaintiffs as to themselves, and on information
 10 and belief as to all other matters.

11 NATURE OF THE ACTION

12 1. Plaintiffs allege that from at least June 27, 2007 through the present
 13 (the “Class Period”), ConAgra deceptively and misleadingly labeled and marketed
 14 its Wesson brand cooking oils, including Wesson Vegetable Oil, Wesson Canola
 15 Oil, Wesson Corn Oil, and Wesson Best Blend (collectively, “Wesson Oils”), as
 16 “100% Natural” when, in fact, Wesson Oils are made from unnatural, genetically-
 17 modified organisms (“GMO” or “GMOs”).

18 2. Throughout the Class Period, ConAgra has systematically labeled its
 19 Wesson Oils as “100% Natural,” such that any United States consumer who
 20 purchases Wesson Oils is exposed to ConAgra’s “100% Natural” claim, and
 21 marketed and advertised Wesson Oils as “100% Natural” on its Wesson Oils
 22 website, and in print and television advertisements.

23 3. ConAgra deceives and misleads consumers by labeling and marketing
 24 its Wesson Oils as “100% Natural” because Wesson Oils are made with unnatural
 25 ingredients. Specifically, Wesson Oils are made with plants whose genes have
 26

27 ¹ The states are: California, Colorado, Florida, Illinois, Indiana, Massachusetts,
 28 Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, Texas,
 Washington, and Wyoming.

1 been directly altered by scientists in a lab using biotechnology for the express
2 purpose of causing those plants to exhibit traits that are not naturally their own.
3 GMO are not “natural” by design.

4 4. ConAgra’s conduct harms consumers by inducing them to purchase
5 and consume a product with GMO on the false premise that the product (Wesson
6 Oils) is “100% Natural.”

7 5. Plaintiffs bring this lawsuit against ConAgra individually and on
8 behalf of state-wide Classes including all other similarly situated purchasers of
9 Wesson Oils due to ConAgra’s misleading and deceptive labeling and marketing of
10 its Wesson Oils as “100% Natural” under the statutory and common laws of the
11 states in which the named Plaintiffs reside. Specifically, Plaintiffs assert claims or
12 remedies for false and misleading advertising, unfair competition, and/or unfair
13 and deceptive acts and practices (generally described as Consumer Protection
14 claims), for breach of express warranty, for breach of implied warranty, and for
15 unjust enrichment. For each state at issue, the following claims are asserted:

16 (a) California: Consumer Protection (Count I), Express Warranty
17 (Count II), and Implied Warranty (Count III);

18 (b) Colorado: Consumer Protection (Count I), Express Warranty
19 (Count II), Implied Warranty (Count III), and Unjust Enrichment (Count IV);

20 (c) Florida: Consumer Protection (Count I) and Unjust Enrichment
21 (Count IV);

22 (d) Illinois: Consumer Protection (Count I) and Unjust Enrichment
23 (Count IV);

24 (e) Indiana: Express Warranty (Count II), Implied Warranty (Count
25 III), and Unjust Enrichment (Count IV);

26 (f) Massachusetts: Consumer Protection (Count I), Express
27 Warranty (Count II), Implied Warranty (Count III), and Unjust Enrichment (Count
28 IV);

1 (g) Nebraska: Consumer Protection (Count I, for appellate
2 purposes only), Express Warranty (Count II), Implied Warranty (Count III), and
3 Unjust Enrichment (Count IV);

4 (h) New Jersey: Consumer Protection (Count I, for appellate
5 purposes only), Express Warranty (Count II), and Implied Warranty (Count III);

6 (i) New York: Consumer Protection (Count I), Express Warranty
7 (Count II), and Unjust Enrichment (Count IV);

8 (j) Ohio: Consumer Protection (Count I) and Unjust Enrichment
9 (Count IV, for appellate purposed only);

10 (k) Oregon: Consumer Protection (Count I), Express Warranty
11 (Count II), and Unjust Enrichment (Count IV);

12 (l) South Dakota: Consumer Protection (Count I), Express
13 Warranty (Count II), Implied Warranty (Count III), and Unjust Enrichment (Count
14 IV);

15 (m) Texas: Consumer Protection (Count I) and Unjust Enrichment
16 (Count IV);

17 (n) Washington: Consumer Protection (Count I), Express Warranty
18 (Count II), and Unjust Enrichment (Count IV);

19 (o) Wyoming: Express Warranty (Count II), Implied Warranty
20 (Count III), and Unjust Enrichment (Count IV).

21 JURISDICTION AND VENUE

22 6. On October 13, 2011, the Judicial Panel on Multidistrict Litigation
23 ("JPML") ordered all related actions filed outside this District to be transferred
24 here for all pre-trial proceedings under 28 U.S.C. § 1407.

25 7. This Court has subject matter jurisdiction over this consolidated
26 action under the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(a) and
27 1332(d) because (1) there are over 100 members in each of the proposed Classes,
28 (2) the amount in controversy exceeds \$5 million exclusive of interest and costs,

1 and (3) over two-thirds of the members of the proposed Classes hold different state
2 citizenship than ConAgra.

3 8. This Court also has supplemental jurisdiction over Plaintiffs' state law
4 claims under 28 U.S.C. § 1367.

5 9. This Court has personal jurisdiction over ConAgra because a
6 substantial portion of the wrongdoing alleged by Plaintiffs occurred in California,
7 ConAgra has sufficient minimum contacts with and/or otherwise intentionally
8 avails itself of the markets in California, and ConAgra has sufficient contacts with
9 this District such that it is fair and just for ConAgra to adjudicate this dispute here.

10 10. Venue is proper in this District because ConAgra is subject to
11 personal jurisdiction here, a substantial portion of ConAgra's alleged wrongdoing
12 occurred here, and many of the witnesses to ConAgra's alleged wrongdoing are
13 believed to be located here. Additionally, venue is proper here because the parties
14 are subject to the JPML order transferring this litigation here.

15 **PARTIES**

16 **I. Plaintiffs**

17 **California Plaintiffs**

18 **Robert Briseño**

19 11. Plaintiff Robert Briseño is a consumer residing in California. During
20 the Class Period, Mr. Briseño purchased Wesson Canola Oil about once every two
21 months for his and his family's consumption, most recently in April 2011.
22 Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil
23 as "100% Natural." During the Class Period, Mr. Briseño saw "100% Natural" in
24 ConAgra's advertisements approximately once a week on the label of Wesson
25 Canola Oil bottles in stores, several times per year in print and television
26 advertisements, and at least weekly on the packaging of Wesson Canola Oil in his
27 home. Mr. Briseño purchased Wesson Canola Oil because he believed and relied
28 on ConAgra's representations that Wesson Canola Oil was "100% Natural." Mr.

1 Briseño would not have purchased Wesson Canola Oil but for ConAgra's
2 misrepresentation that Wesson Canola Oil is "100% Natural." Mr. Briseño was
3 injured in fact and lost money as a result of ConAgra misrepresenting Wesson
4 Canola Oil as "100% Natural." Mr. Briseño paid for a "100% Natural" product,
5 but did not receive a product that was 100% natural. Instead, Mr. Briseño received
6 a product that was genetically engineered in a laboratory and had its genetic code
7 artificially altered to exhibit not natural qualities.

8 **Christi Toomer**

9 12. Christi Toomer is a consumer residing in California. During the Class
10 Period, Ms. Toomer purchased Wesson Canola Oil at Wal-Mart for her and her
11 family's personal consumption. Throughout the Class Period, ConAgra labeled
12 and advertised Wesson Canola Oil as "100% Natural." During the Class Period,
13 Ms. Toomer saw ConAgra claim Wesson Canola Oil is "100% Natural" in
14 ConAgra's advertisements several times annually in print media, including
15 coupons, and in television advertisements, approximately once a week on the
16 packaging of Wesson Canola Oil bottles in retail stores, and approximately daily
17 on the packaging of Wesson Canola Oil bottles in her home. Ms. Toomer
18 purchased Wesson Canola Oil because she believed and relied on ConAgra's
19 representations that Wesson Canola Oil is "100% Natural." Ms. Toomer would
20 not have purchased Wesson Canola Oil but for ConAgra's misrepresentation that
21 Wesson Canola Oil is "100% Natural." Ms. Toomer was injured in fact and lost
22 money as a result of ConAgra misrepresenting Wesson Canola Oil as "100%
23 Natural." Ms. Toomer paid for a "100% Natural" product, but did not receive a
24 product that was 100% natural. Instead, Ms. Toomer received a product that was
25 genetically engineered in a laboratory and had its genetic code artificially altered to
26 exhibit not natural qualities.

Michele Andrade

13. Plaintiff Michele Andrade is a consumer residing in California. During the Class Period, Ms. Andrade purchased Wesson Canola Oil approximately one or two times per year for her and her family's consumption, most recently in June 2011. Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms. Andrade saw ConAgra market Wesson Canola Oil as "100% Natural" at least once in a magazine advertisement, and repeatedly on Wesson Canola Oil labels she saw in stores and in her home. Ms. Andrade purchased Wesson Canola Oil because she believed and relied on ConAgra's representations that Wesson Canola Oil is "100% Natural." Ms. Andrade would not have purchased Wesson Canola Oil but for ConAgra's misrepresentation that Wesson Canola Oil is "100% Natural." Ms. Andrade was injured in fact and lost money as a result of ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms. Andrade paid for a "100% Natural" product, but did not receive a product that was 100% natural. Instead, Ms. Andrade received a product that was genetically engineered in a laboratory and had its genetic code artificially altered to exhibit not natural qualities.

Lil Marie Birr

14. Plaintiff Lil Marie Birr is a consumer and restaurant general manager residing in California. During the Class Period, Ms. Birr purchased Wesson Oils regularly for her own use and her restaurant's use. Throughout the Class Period, ConAgra labeled and advertised Wesson Oils as "100% Natural." During the Class Period, Ms. Birr saw ConAgra market Wesson Oils as "100% Natural" several times in television advertisements, and repeatedly on Wesson Oil labels she saw in stores, in her home, and in the restaurant she manages. Ms. Birr purchased Wesson Oils because she believed and relied on ConAgra's representations that Wesson Oils are "100% Natural." Ms. Birr would not have purchased Wesson Oils but for ConAgra's misrepresentation that Wesson Oils are "100% Natural."

1 Ms. Birr was injured in fact and lost money as a result of ConAgra misrepresenting
2 Wesson Oils as "100% Natural." Ms. Birr paid for a "100% Natural" product, but
3 did not receive a product that was 100% natural. Instead, Ms. Birr received a
4 product that was genetically engineered in a laboratory and had its genetic code
5 artificially altered to exhibit not natural qualities.

6 **Colorado Plaintiff**

7 **Jill Crouch**

8 15. Plaintiff Jill Crouch is a consumer residing in Colorado. During the
9 Class Period, Ms. Crouch purchased Wesson Canola Oil approximately two times
10 per year for her and her family's consumption, most recently around May or June
11 2011. Throughout the Class Period, ConAgra labeled and advertised Wesson
12 Canola Oil as "100% Natural." During the Class Period, Ms. Crouch saw
13 ConAgra market Wesson Canola Oil as "100% Natural" on Wesson Canola Oil
14 product packaging a few times per month when she went shopping in retail stores,
15 on approximately a weekly basis when she saw the "100% Natural" claim on the
16 packaging of Wesson Canola Oil products in her home, and approximately one or
17 two times annually in print or television advertisements. Ms. Crouch purchased
18 Wesson Canola Oil because she believed and relied on ConAgra's representations
19 that Wesson Canola Oil is "100% Natural." Ms. Crouch would not have purchased
20 Wesson Canola Oil but for ConAgra's misrepresentation that Wesson Canola Oil is
21 "100% Natural." Ms. Crouch was injured in fact and lost money as a result of
22 ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms. Crouch
23 paid for a "100% Natural" product, but did not receive a product that was 100%
24 natural. Instead, Ms. Crouch received a product that was genetically engineered in
25 a laboratory and had its genetic code artificially altered to exhibit not natural
26 qualities.

1 **Florida Plaintiffs**

2 **Julie Palmer**

3 16. Plaintiff Julie Palmer is a consumer residing in Florida. During the
4 Class Period, Ms. Palmer purchased Wesson Canola Oil as her needs arose for her
5 and her family's consumption. Throughout the Class Period, ConAgra labeled and
6 advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms.
7 Palmer saw "100% Natural" in ConAgra's advertisements on Wesson Canola Oil
8 packaging in retail stores approximately on a weekly basis and in print
9 advertisements approximately four or five times per year. Ms. Palmer purchased
10 Wesson Canola Oil because she believed and relied on ConAgra's representations
11 that Wesson Canola Oil is "100% Natural." Ms. Palmer would not have purchased
12 Wesson Canola Oil, but for ConAgra's misrepresentation that it is "100% Natural."
13 Ms. Palmer was injured in fact and lost money as a result of ConAgra
14 misrepresenting Wesson Canola Oil as "100% Natural." Ms. Palmer paid for a
15 "100% Natural" product, but did not receive a product that was 100% natural.
16 Instead, Ms. Palmer received a product that was genetically engineered in a
17 laboratory and had its genetic code artificially altered to exhibit not natural
18 qualities.

19 **Janeth Ruiz**

20 17. Plaintiff Janeth Ruiz is a consumer residing in Florida. During the
21 Class Period, Ms. Ruiz purchased Wesson Oils approximately once per month for
22 her and her family's consumption. Throughout the Class Period, ConAgra labeled
23 and advertised Wesson Oils as "100% Natural." During the Class Period, Ms.
24 Ruiz saw ConAgra represent that Wesson Oils are "100% Natural" several times in
25 television advertisements, at least monthly on the packaging of Wesson Oil bottles
26 in retail stores, and approximately weekly on the packaging of Wesson Oil bottles
27 in her home. Ms. Ruiz purchased Wesson Oils because she believed and relied on
28 ConAgra's representations that Wesson Oils are "100% Natural." Ms. Ruiz would

1 not have purchased Wesson Oils, but for ConAgra's misrepresentation that they
2 are "100% Natural." Ms. Ruiz was injured in fact and lost money as a result of
3 ConAgra misrepresenting Wesson Oils as "100% Natural." Ms. Ruiz paid for a
4 "100% Natural" product, but did not receive a product that was 100% natural.
5 Instead, Ms. Ruiz received a product that was genetically engineered in a
6 laboratory and had its genetic code artificially altered to exhibit not natural
7 qualities.

8 **Illinois Plaintiff**

9 **Pauline Michael**

10 18. Plaintiff Pauline Michael is a consumer residing in Illinois. During
11 the Class Period, Ms. Michael purchased Wesson Vegetable Oil approximately
12 twice per year for her and her family's consumption. Throughout the Class Period,
13 ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural."
14 During the Class Period, Ms. Michael saw Wesson Vegetable Oil marketed as
15 "100% Natural" approximately daily on the packaging of Wesson Vegetable Oil
16 bottles in her home, a couple times per year on the packaging of Wesson Vegetable
17 Oil bottles in retail stores, and several times in coupon advertisements. Ms.
18 Michael purchased Wesson Vegetable Oil because she believed and relied on
19 ConAgra's representations that Wesson Vegetable Oil is "100% Natural." Ms.
20 Michael would not have purchased Wesson Vegetable Oil, but for ConAgra's
21 misrepresentation that it is "100% Natural." Ms. Michael was injured in fact and
22 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oil as
23 "100% Natural." Ms. Michael paid for a "100% Natural" product, but did not
24 receive a product that was 100% natural. Instead, Ms. Michael received a product
25 that was genetically engineered in a laboratory and had its genetic code artificially
26 altered to exhibit not natural qualities.

1 **Indiana Plaintiff**

2 **Cheri Shafstall**

3 19. Plaintiff Cheri Shafstall is a consumer residing in Indiana. During the
4 Class Period, Ms. Shafstall purchased at least one bottle of Wesson Canola Oil for
5 her and her family's consumption. Throughout the Class Period, ConAgra labeled
6 and advertised Wesson Canola Oil as "100% Natural." During the Class Period,
7 Ms. Shafstall saw Wesson Canola Oil marketed as "100% Natural" in print
8 advertisements, including coupons, on the packaging of Wesson Canola Oil bottles
9 in retail stores approximately once a month, and repeatedly on the packaging of
10 Wesson Canola Oil in her home. Ms. Shafstall purchased Wesson Canola Oil
11 because she believed and relied on ConAgra's representations that Wesson Canola
12 Oil is "100% Natural." Ms. Shafstall would not have purchased Wesson Canola
13 Oil, but for ConAgra's misrepresentation that it is "100% Natural." Ms. Shafstall
14 was injured in fact and lost money as a result of ConAgra misrepresenting Wesson
15 Canola Oil as "100% Natural." Ms. Shafstall paid for a "100% Natural" product,
16 but did not receive a product that was 100% natural. Instead, Ms. Shafstall
17 received a product that was genetically engineered in a laboratory and had its
18 genetic code artificially altered to exhibit not natural qualities.

19 **Massachusetts Plaintiff**

20 **Bonnie McDonald**

21 20. Plaintiff Bonnie McDonald is a consumer residing in Massachusetts.
22 During the Class Period, Ms. McDonald purchased Wesson Oils approximately
23 every few months for her and her family's consumption. Throughout the Class
24 Period, ConAgra labeled and advertised Wesson Oils as "100% Natural." During
25 the Class Period, Ms. McDonald saw Wesson Oils marketed as "100% Natural" in
26 television advertisements approximately a couple times per year, in print
27 advertisements every three to four months, on product packaging in retail stores
28 every other month, and on product packaging of Wesson Oils in her home once a

1 week. Ms. McDonald purchased Wesson Oils because she believed and relied on
2 ConAgra's representations that Wesson Oils are "100% Natural." Ms. McDonald
3 would not have purchased Wesson Oils, but for ConAgra's misrepresentation that
4 they are "100% Natural." McDonald was injured in fact and lost money as a result
5 of ConAgra misrepresenting Wesson Oils as "100% Natural." Ms. McDonald paid
6 for a "100% Natural" product, but did not receive a product that was 100% natural.
7 Instead, Ms. McDonald received a product that was genetically engineered in a
8 laboratory and had its genetic code artificially altered to exhibit not natural
9 qualities.

10 **Nebraska Plaintiff**

11 **Dee Hopper-Kercheval**

12 21. Plaintiff Dee Hopper-Kercheval is a consumer residing in Nebraska.
13 During the Class Period, Ms. Hopper-Kercheval purchased Wesson Canola Oil
14 approximately once per month for her and her family's consumption. Throughout
15 the Class Period, ConAgra labeled and advertised Wesson Canola Oil as "100%
16 Natural." During the Class Period, Ms. Hopper-Kercheval saw Wesson Canola Oil
17 marketed as "100% Natural" on the product packaging of Wesson Canola Oil
18 bottles she purchased and kept in her home. Ms. Hopper-Kercheval purchased
19 Wesson Canola Oil because she believed and relied on ConAgra's representations
20 that Wesson Canola Oil is "100% Natural." Ms. Hopper-Kercheval would not
21 have purchased Wesson Canola Oil, but for ConAgra's misrepresentation that it is
22 "100% Natural." Ms. Hopper-Kercheval was injured in fact and lost money as a
23 result of ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms.
24 Hopper-Kercheval paid for a "100% Natural" product, but did not receive a
25 product that was 100% natural. Instead, Ms. Hopper-Kercheval received a product
26 that was genetically engineered in a laboratory and had its genetic code artificially
27 altered to exhibit not natural qualities.

1 **New Jersey Plaintiffs**

2 **Brenda Krein**

3 22. Plaintiff Brenda Krein is a consumer residing in New Jersey. During
4 the Class Period, Ms. Krein purchased a bottle of Wesson Vegetable Oil at a retail
5 store in New Jersey for her and her family's consumption. Throughout the Class
6 Period, ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural."
7 During the Class Period, Ms. Krein repeatedly saw Wesson Vegetable Oils
8 marketed as "100% Natural" on the packaging of Wesson Vegetable Oil bottles.
9 Ms. Krein purchased Wesson Vegetable Oils because she believed and relied on
10 ConAgra's representations that Wesson Vegetable Oils are "100% Natural." Ms.
11 Krein would not have purchased Wesson Vegetable Oils, but for ConAgra's
12 misrepresentation that they are "100% Natural." Ms. Krein was injured in fact and
13 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oils as
14 "100% Natural." Ms. Krein paid for a "100% Natural" product, but did not receive
15 a product that was 100% natural. Instead, Ms. Krein received a product that was
16 genetically engineered in a laboratory and had its genetic code artificially altered to
17 exhibit not natural qualities.

18 **Phyllis Scarpelli**

19 23. Plaintiff Phyllis Scarpelli is a consumer residing in New Jersey.
20 During the Class Period, Ms. Scarpelli purchased Wesson Vegetable Oil
21 approximately once every two months at the ShopRite Supermarket in Carteret,
22 New Jersey, for her and her family's consumption. Throughout the Class Period,
23 ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural."
24 During the Class Period, Ms. Scarpelli saw Wesson Vegetable Oil marketed as
25 "100% Natural" around two times per week on the label of the Wesson Vegetable
26 Oil bottle she owned, approximately once per week in ShopRite weekly circulars,
27 and on the label when purchasing Wesson Vegetable Oil. Ms. Scarpelli purchased
28 Wesson Vegetable Oil because she believed and relied on ConAgra's

1 representations that Wesson Vegetable Oil is “100% Natural.” Ms. Scarpelli
2 would not have purchased Wesson Vegetable Oil, but for ConAgra’s
3 misrepresentation that it is “100% Natural.” Ms. Scarpelli was injured in fact and
4 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oils as
5 “100% Natural.” Ms. Scarpelli paid for a “100% Natural” product, but did not
6 receive a product that was 100% natural. Instead, Ms. Scarpelli received a product
7 that was genetically engineered in a laboratory and had its genetic code artificially
8 altered to exhibit not natural qualities.

9 **New York Plaintiffs**

10 **Kelly McFadden**

11 24. Plaintiff Kelly McFadden is a consumer residing in New York.
12 Throughout the Class Period, Ms. McFadden purchased Wesson Corn Oil
13 approximately two or three times per month for her and her family’s consumption.
14 Throughout the Class Period, ConAgra labeled and advertised Wesson Corn Oil as
15 “100% Natural.” During the Class Period, Ms. McFadden saw Wesson Corn Oils
16 marketed as “100% Natural” on the Wesson Oil website and on Wesson Corn Oil
17 labels. Ms. McFadden purchased Wesson Corn Oil because Ms. McFadden
18 believed and relied on ConAgra’s representations that Wesson Corn Oil is “100%
19 Natural.” Ms. McFadden would not have purchased Wesson Corn Oil, but for
20 ConAgra’s misrepresentation that Wesson Corn Oil was “100% Natural.” Ms.
21 McFadden was injured in fact and lost money as a result of ConAgra
22 misrepresenting Wesson Corn Oil as “100% Natural.” Ms. McFadden paid for a
23 100% natural product, but did not receive a product that was 100% natural.
24 Instead, Ms. McFadden received a product that was genetically engineered in a
25 laboratory and had its genetic code artificially altered to exhibit not natural
26 qualities.

1 **Necla Musat**

2 25. Plaintiff Necla Musat is a consumer residing in New York. During
3 the Class Period, Ms. Musat purchased Wesson Vegetable Oil approximately three
4 times per year for her and her family's consumption. Throughout the Class Period,
5 ConAgra labeled and advertised Wesson Vegetable Oil as "100% Natural."
6 During the Class Period, Ms. Musat saw Wesson Vegetable Oil marketed as
7 "100% Natural" once or twice on the Wesson Oils website, at least thirty times in
8 the last year in online advertisements, two or three times a year in coupons, at least
9 three times per year in television advertisements, and approximately daily on the
10 packaging of Wesson Vegetable Oil bottles in retail stores and/or in her home. Ms.
11 Musat purchased Wesson Vegetable Oil because she believed and relied on
12 ConAgra's representations that Wesson Vegetable Oil is "100% Natural." Ms.
13 Musat would not have purchased Wesson Vegetable Oil, but for ConAgra's
14 misrepresentation that they are "100% Natural." Ms. Musat was injured in fact and
15 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oil as
16 "100% Natural." Ms. Musat paid for a "100% Natural" product, but did not
17 receive a product that was 100% natural. Instead, Ms. Musat received a product
18 that was genetically engineered in a laboratory and had its genetic code artificially
19 altered to exhibit not natural qualities.

20 **Ohio Plaintiff**

21 **Maureen Towey**

22 26. Plaintiff Maureen Towey is a consumer residing in Ohio. During the
23 Class Period, Ms. Towey purchased Wesson Canola Oil approximately one time
24 per year for her and her family's consumption. Throughout the Class Period,
25 ConAgra labeled and advertised Wesson Canola Oil as "100% Natural." During
26 the Class Period, Ms. Towey repeatedly saw Wesson Canola Oil marketed as
27 "100% Natural" on the packaging of Wesson Canola Oil bottles in retail stores and
28 in her home. Ms. Towey purchased Wesson Canola Oil because she believed and

1 relied on ConAgra's representations that it is "100% Natural." Ms. Towey would
2 not have purchased Wesson Canola Oil, but for ConAgra's misrepresentation that
3 it is "100% Natural." Ms. Towey was injured in fact and lost money as a result of
4 ConAgra misrepresenting Wesson Canola Oil as "100% Natural." Ms. Towey paid
5 for a "100% Natural" product, but did not receive a product that was 100% natural.
6 Instead, Ms. Towey received a product that was genetically engineered in a
7 laboratory and had its genetic code artificially altered to exhibit not natural
8 qualities.

9 **Oregon Plaintiff**

10 **Erika Heins**

11 27. Plaintiff Erika Heins is a consumer residing in Oregon. During the
12 Class Period, Ms. Heins purchased Wesson Canola Oil approximately twice per
13 month for her consumption. Throughout the Class Period, ConAgra labeled and
14 advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms.
15 Heins saw Wesson Canola Oil marketed as "100% Natural" in online
16 advertisements once or twice a year, in coupons approximately once a week, on the
17 packaging of Wesson Canola Oil bottles every time she went shopping in retail
18 stores, and on a near daily basis on the packaging of Wesson Canola Oil bottles in
19 her home. Ms. Heins purchased Wesson Canola Oil because she believed and
20 relied on ConAgra's representations that Wesson Canola Oil is "100% Natural."
21 Ms. Heins would not have purchased Wesson Canola Oil, but for ConAgra's
22 misrepresentation that it is "100% Natural." Ms. Heins was injured in fact and lost
23 money as a result of ConAgra misrepresenting Wesson Canola Oil as "100%
24 Natural." Ms. Heins paid for a "100% Natural" product, but did not receive a
25 product that was 100% natural. Instead, Ms. Heins received a product that was
26 genetically engineered in a laboratory and had its genetic code artificially altered to
27 exhibit not natural qualities.

South Dakota Plaintiff

Rona Johnston

28. Plaintiff Rona Johnston is a consumer residing in South Dakota. During the Class Period, Ms. Johnston purchased one bottle each of Wesson Canola Oil and Wesson Corn Oil for her consumption. Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil and Wesson Corn Oil as "100% Natural." During the Class Period, Ms. Johnston saw Wesson Canola Oils marketed as "100% Natural" in television advertisements approximately once or twice a month, on the packaging of Wesson Canola Oil and Wesson Corn Oil bottles in retail stores approximately once every six months, and on the packaging of Wesson Canola Oil and Wesson Corn Oil bottles in her home on a daily basis. Ms. Johnston purchased Wesson Canola Oil and Wesson Corn Oil because she believed and relied on ConAgra's representations that Wesson Canola Oil and Wesson Corn Oil are "100% Natural." Ms. Johnston would not have purchased Wesson Canola Oil and Wesson Corn Oil, but for ConAgra's misrepresentation that they are "100% Natural." Ms. Johnston was injured in fact and lost money as a result of ConAgra misrepresenting Wesson Canola Oil and Wesson Corn Oil as "100% Natural." Ms. Johnston paid for a "100% Natural" product, but did not receive a product that was 100% natural. Instead, Ms. Johnston received a product that was genetically engineered in a laboratory and had its genetic code artificially altered to exhibit not natural qualities.

Texas Plaintiff

Anita Willman

29. Plaintiff Anita Willman is a consumer residing in Texas. During the Class Period, Ms. Willman purchased Wesson Canola Oil approximately once per week for her and her family's consumption. Throughout the Class Period, ConAgra labeled and advertised Wesson Canola Oil as "100% Natural." During the Class Period, Ms. Willman saw Wesson Canola Oil marketed as "100%

1 Natural” on the packaging of Wesson Canola Oil bottles in retail stores
2 approximately once a week and on the packaging of Wesson Canola Oil bottles in
3 her home. Ms. Willman purchased Wesson Canola Oil because she believed and
4 relied on ConAgra’s representations that Wesson Canola Oil is “100% Natural.”
5 Ms. Willman would not have purchased Wesson Canola Oil, but for ConAgra’s
6 misrepresentation that it is “100% Natural.” Ms. Willman was injured in fact and
7 lost money as a result of ConAgra misrepresenting Wesson Canola Oil as “100%
8 Natural.” Ms. Willman paid for a “100% Natural” product, but did not receive a
9 product that was 100% natural. Instead, Ms. Willman received a product that was
10 genetically engineered in a laboratory and had its genetic code artificially altered to
11 exhibit not natural qualities.

12 **Washington Plaintiff**

13 **Anne Cowan**

14 30. Plaintiff Anne Cowan is a consumer residing in Washington. During
15 the Class Period, Ms. Cowan purchased Wesson Vegetable Oil approximately once
16 every two months, and more recently once every couple of months, for her and her
17 family’s consumption. Throughout the Class Period, ConAgra labeled and
18 advertised Wesson Vegetable Oil as “100% Natural.” During the Class Period,
19 Ms. Cowan saw Wesson Vegetable Oil marketed as “100% Natural” in print
20 advertisements approximately two to three times per month, on the packaging of
21 Wesson Vegetable Oil bottles in retail stores a couple times per month, and on the
22 packaging of Wesson Vegetable Oil in her home approximately four times per
23 month. Ms. Cowan purchased Wesson Vegetable Oil because she believed and
24 relied on ConAgra’s representations that Wesson Vegetable Oil is “100% Natural.”
25 Ms. Cowan would not have purchased Wesson Vegetable Oil, but for ConAgra’s
26 misrepresentation that it is “100% Natural.” Ms. Cowan was injured in fact and
27 lost money as a result of ConAgra misrepresenting Wesson Vegetable Oil as
28 “100% Natural.” Ms. Cowan paid for a “100% Natural” product, but did not

1 receive a product that was 100% natural. Instead, Ms. Cowan received a product
2 that was genetically engineered in a laboratory and had its genetic code artificially
3 altered to exhibit not natural qualities.

4 **Wyoming Plaintiff**

5 **Patty Boyer**

6 31. Plaintiff Patty Boyer is a consumer residing in Wyoming. During the
7 Class Period, Ms. Boyer purchased Wesson Oils approximately once per year for
8 her and her family's consumption. Throughout the Class Period, ConAgra labeled
9 and advertised Wesson Oils as "100% Natural." During the Class Period, Ms.
10 Boyer saw Wesson Oils marketed as "100% Natural" on Wesson Oils packaging
11 on an approximately twice monthly basis when she went shopping in retail stores,
12 on approximately a weekly basis when she saw the "100% Natural" claim on the
13 packaging of Wesson Oil products in her home, and also saw the claim in printed
14 coupon advertisements, though she cannot recall how often. Ms. Boyer purchased
15 Wesson Oils because she believed and relied on ConAgra's representations that
16 Wesson Oils are "100% Natural." Ms. Boyer would not have purchased Wesson
17 Oils, but for ConAgra's misrepresentation that they are "100% Natural." Ms.
18 Boyer was injured in fact and lost money as a result of ConAgra misrepresenting
19 Wesson Oils as "100% Natural." Ms. Boyer paid for a "100% Natural" product,
20 but did not receive a product that was 100% natural. Instead, Ms. Boyer received a
21 product that was genetically engineered in a laboratory and had its genetic code
22 artificially altered to exhibit not natural qualities.

23 **II. Defendant**

24 32. ConAgra is a Delaware corporation with its headquarters located in
25 Omaha, Nebraska. Among other activities, ConAgra manufactures, markets,
26 distributes, and sells Wesson Oils. The Wesson brand is part of ConAgra's
27 Consumer Foods segment. ConAgra owns consumer foods manufacturing
28 facilities in thirty-nine states, including California, and is registered as an active

1 corporation with the California Secretary of State. ConAgra claims that its
2 products are in 96 percent of American households and reported over \$13.26
3 billion in net sales for its fiscal year ending May 27, 2012, with a gross profit of
4 \$2.8 billion and an operating profit of \$1.6 billion.

5 FACTUAL ALLEGATIONS

6 ConAgra Labels and Markets its Wesson Oils as “100% Natural”

7 33. Throughout the Class Period, ConAgra systematically labeled and
8 marketed its Wesson Oils as “100% Natural” in product packaging, print
9 advertisements (e.g., coupons or magazine advertisements), both visually and
10 audibly in television commercials, and on the Wesson Oils website
11 (www.wessonoil.com).

12 34. Indeed, ConAgra labels every bottle of its Wesson Oils as “100%
13 Natural” in large, bright green letters on the front of the bottle as illustrated in the
14 representative images of Wesson Oils product packaging reproduced below:





35. In addition to “100% Natural” appearing in vibrant green on the label of every bottle of Wesson Oil sold during the Class Period, “Wesson” is haloed by the image of the sun. Wesson Canola Oil also features a picture of a green heart. The imagery on the Wesson Oils labels reinforces ConAgra’s “100% Natural” claim.

36. ConAgra also prominently features its “100% Natural” claim in numerous locations throughout the Wesson Oils website, including stating:

(a) “Wesson | Pure, 100% Natural Oils” in the title bar for of the Wesson Oils website;

(b) “Pure Wesson 100% Natural Canola Oil is the most versatile type of vegetable oil and it provides the best nutritional balance of all popular cooking oils . . . Pure Wesson 100 percent Natural Canola Oil is good for your heart.” at http://www.wessonoil.com/canola_oil.jsp;

(c) “Pure Wesson 100% Natural Oil is the perfect all-purpose cooking and baking vegetable oil.” at http://www.wessonoil.com/vegetable_oil.jsp;

1 (d) "Pure Wesson 100% Natural Corn Oil is the best oil to ensure a
2 crispy [sic] coating on your fried foods while retaining moistness on the inside." at
3 http://www.wessonoil.com/corn_oil.jsp; and

4 (e) "Pure Wesson 100% Natural Best Blend Oil is highly
5 versatile." at http://www.wessonoil.com/best_blend.jsp.

6 37. By consistently and systematically labeling, marketing, and
7 advertising its Wesson Oils as "100% Natural" throughout the Class Period,
8 ConAgra ensured that all consumers purchasing Wesson Oils would be exposed to
9 ConAgra's "100% Natural" claim.

10 38. A claim that a product is "natural" is material to a reasonable
11 consumer.

12 39. This is evidenced by ConAgra labeling and marketing its Wesson Oils
13 as "100% Natural" throughout the Class Period in nearly every media format, and
14 on the front label of all bottles of Wesson Oils.

15 **Genetically-Modified Organisms Are Not Natural**

16 40. Genetically-modified organisms ("GMO") are not natural, let alone
17 "100% Natural."

18 41. This is evidenced by the statements of the companies that make GMO,
19 such as Monsanto. Monsanto defines GMO as "Plants or animals that *have had*
20 *their genetic makeup altered to exhibit traits that are not naturally theirs*. In
21 general, genes are taken (copied) from one organism that shows a desired trait and
22 transferred into the genetic code of another organism." Monsanto Glossary,
23 <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Jan. 9,
24 2012) (emphasis added). As more fully alleged below, "unnatural" is a defining
25 characteristic of genetically modified foods.

26 42. Romer Labs, a company that provides diagnostic solutions to the
27 agricultural industry, defines GMO as "[a]griculturally important plants [that] are
28 often genetically modified by the insertion of DNA material from outside the

1 organism into the plant's DNA sequence, allowing the plant to *express novel traits*
2 *that normally would not appear in nature*, such as herbicide or insect resistance.
3 Seed harvested from GMO plants will also contain these [sic] modification."
4 Romer Labs, [http://www.romerlabs.com/en/analytes/genetically-modified-](http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html)
5 [organisms.html](http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html) (last visited Jan. 9, 2012) (emphasis added).

6 43. That GMOs are not natural is further evidenced by the explanations of
7 health and environmental organizations, such as the World Health Organization,
8 which defines genetically-modified organisms as "organisms in which the genetic
9 material (DNA) *has been altered in a way that does not occur naturally*. The
10 technology is often called 'modern biotechnology' or 'gene technology',
11 sometimes also 'recombinant DNA technology' or 'genetic engineering'. It allows
12 selected individual genes to be transferred from one organism into another, also
13 between non-related species. Such methods are used to create GM plants – which
14 are then used to grow GM food crops." World Health Organization, *20 Questions*
15 *on Genetically Modified (GM) Foods* at [http://www.who.int/foodsafety/](http://www.who.int/foodsafety/publications/biotech/en/20questions/en/)
16 [publications/biotech/en/20questions/en/](http://www.who.int/foodsafety/publications/biotech/en/20questions/en/) (last visited Dec. 18, 2012) (emphasis
17 added).

18 44. The Environmental Protection Agency has distinguished conventional
19 breeding of plants "through natural methods, such as cross-pollination" from
20 genetic engineering using modern scientific techniques. See United States
21 Environmental Protection Agency, Prevention, Pesticides and Toxic Substances,
22 *Questions & Answers Biotechnology: Final Plant-Pesticide/Plant Incorporated*
23 *Protectants (PIPs) Rules* (Jul. 19, 2001) at [http://www.epa.gov/scipoly/biotech/](http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf)
24 [pubs/qanda.pdf](http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf) ("*Conventional breeding* is a method in which genes for pesticidal
25 traits are introduced into a plant *through natural methods*, such as cross-
26 pollination. . . . Genetically engineered plant-incorporated protectants are created
27 through a process that utilizes several different modern scientific techniques to
28 introduce a specific pesticide-producing gene into a plant's DNA genetic

1 material.”) (emphasis of “through natural methods” added; remaining emphasis in
2 original).

3 45. As indicated by the definitions above, which come from a wide array
4 of sources, including industry, government, and health organizations, GMOs are
5 not “100% Natural.” GMO are “created” artificially in a laboratory through
6 genetic engineering. Thus, by claiming its Wesson Oils are “100% Natural,”
7 ConAgra deceives and misleads reasonable consumers.

8 **Wesson Oils Are Made From GMO**

9 46. Wesson Oils are made from GMO, including genetically modified
10 rapeseed (canola oil), soybeans, and corn.

11 47. In the following statement on “Biotechnology” from ConAgra’s
12 corporate website, ConAgra impliedly admits that it uses genetically-modified
13 plants, referred to by ConAgra as “biotech foods,” to make its food products.
14 ConAgra states that its food products not made from genetically-modified plants
15 are limited to ConAgra’s “Lightlife” brand and ConAgra’s food products
16 specifically labeled “organic”:

17 **Biotechnology**

18 In the past two decades, biotechnology has been used to improve
19 yield, nutrition, resistance to drought and insects, and other desirable
20 qualities of several common food crops, including corn and soy. As
21 consumers grow more conscious about the types of foods they put in
22 their bodies, some have asked about the role of biotechnology in food
23 production and health.

24 *As such, ConAgra Foods only purchases and uses ingredients that*
25 *comply with the U.S. Department of Agriculture and Food and Drug*
26 *Administration (FDA) regulations for food safety and nutrition.*
27 *Both the U.S. Environmental Protection Agency and the FDA have*
28 *concluded that biotech foods that are approved for human*

1 *consumption are as safe and nutritious as other foods that are*
2 *developed through more conventional methods.*

3 However, we understand the field of food biotechnology is constantly
4 shifting as advancements are made in the world of science, and will
5 continue to reevaluate our internal policies, relying heavily on
6 evolving science, consumer and customer expectations, and regulatory
7 decisions.

8 *Ultimately, consumers will decide what is acceptable in the*
9 *marketplace based on the best science and public information*
10 *available. We will continue to listen carefully to our customers and*
11 *consumers on biotechnology and provide alternatives for those who*
12 *demand products without biotechnology ingredients. Two choices*
13 *are our Lightlife brand, which is manufactured using non-GMO soy*
14 *seeds, and our organic foods, which also do not use biotech*
15 *ingredients.*

16 <http://company.conagrafoods.com/phoenix.zhtml?c=202310&p=biotechnology>
17 (emphasis added) (last visited Jan. 9, 2012).

18 48. Although ConAgra says that “consumers will decide what is
19 acceptable in the marketplace,” ConAgra’s Wesson Oils’ labeling and advertising
20 robs consumers of the ability to make an *informed* decision because they are told
21 that Wesson Oils are “100% Natural.” Further, reasonable consumers who observe
22 ConAgra’s claim that Wesson Oils are “100% Natural” have no reason to “demand
23 products *without biotechnology ingredients*”—the “100% Natural” labeling and
24 advertising represents to consumers that they are getting biotech-free food.

25 **ConAgra Deceptively Labels and Markets Wesson Oils as “100% Natural” to**
26 **Boost Sales**

27 49. ConAgra labels and markets its Wesson Oils as “100% Natural” to
28 bolster its sales of Wesson Oils for its own substantial financial gain.

1 50. ConAgra recognizes that consumers rely on “trusted seals, standards
2 and symbols of higher quality” when making food product shopping decisions, and
3 further recognizes that “Natural” is among the top eight trustmarks consumers look
4 for when making purchases. For example, in a News Release dated May 8, 2006,
5 ConAgra states as follows:

6 *To determine what they should consider “better food,” many*
7 *consumers are turning to trusted seals, standards and symbols of*
8 *higher quality—indeed, more than nine in 10 Americans today*
9 *consider trust marks to some degree when shopping.*

10 A new “What’s In Store” survey of consumer shopping habits
11 commissioned by ConAgra Foods confirms this trend:

- 12 • *Fully 95 percent of Americans say they would consider quality*
13 *symbols, seals & trust marks when food shopping.*
- 14 • Four times as many survey respondents said they are more
15 likely to consider buying foods based on trust marks today than
16 they were a year ago, compared to only a quarter as many who
17 said less likely.
- 18 • *While many symbols are present in the market today, the top*
19 *eight trust marks consumers look for are: WHOLE GRAINS,*
20 HEART-HEALTHY, ZERO GRAMS TRANS-FAT, LOW
21 SODIUM, *NATURAL*, DIETARY GUIDELINES, ORGANIC
22 & KOSHER.

23 ConAgra Foods, News Release, ConAgra Foods Survey – Seals & Standards of
24 Quality Give Grocery Shoppers Confidence (May 8, 2006),
25 [http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight)
26 [_pf&ID=1008637&highlight](http://investor.conagrafoods.com/phoenix.zhtml?c=202310&p=irol-newsArticle_pf&ID=1008637&highlight) (emphasis added, footnotes omitted).

27 51. ConAgra labels and markets its Wesson Oils as “100% Natural” to
28 take advantage of consumers relying on trustmarks and to boost its profits.

1 52. As detailed in the allegations above, however, because Wesson Oils
2 are made from GMOs, ConAgra's "100% Natural" representations are false,
3 deceptive, misleading, and unfair to consumers who are injured in fact by
4 purchasing a product that ConAgra claims is "100% Natural" when it is not.

5 **CLASS ACTION ALLEGATIONS**

6 53. The twenty Plaintiffs named in this complaint reside in fifteen
7 different states: California, Colorado, Florida, Illinois, Indiana, Massachusetts,
8 Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, Texas,
9 Washington, and Wyoming. Plaintiffs bring this action on behalf of themselves
10 and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of
11 the Federal Rules of Civil Procedure, on behalf of fifteen separate state-wide
12 classes they respectively seek to represent, defined as:

13 All persons who reside in California, Colorado, Florida, Illinois,
14 Indiana, Massachusetts, Nebraska, New Jersey, New York, Ohio,
15 Oregon, South Dakota, Texas, Washington, or Wyoming who have
16 purchased Wesson Oils from June 27, 2007 through the final
17 disposition of this and any and all related actions (collectively, the
18 "Classes", and separately, the "California Class," "Colorado Class,"
19 "Florida Class," "Illinois Class," "Indiana Class," "Massachusetts
20 Class," "Nebraska Class," "New Jersey Class," "New York Class,"
21 "Ohio Class," "Oregon Class," "South Dakota Class," "Texas Class,"
22 "Washington Class," and "Wyoming Class").

23 54. Excluded from the Classes are ConAgra and its subsidiaries and
24 affiliates; all persons who make a timely election to be excluded from the Classes;
25 governmental entities; and the judges to whom this case is assigned and any
26 immediate family members thereof.

27 55. For ease of reference the SAC occasionally refers to the Classes as the
28 "Class" strictly to facilitate the text. This grammatical construction is not intended

1 to mean Plaintiffs seek anything other than separate statewide classes. Plaintiffs
2 reserve the right to amend the definitions of the Classes at class certification.

3 56. Certification of Plaintiffs' claims for class-wide treatment is
4 appropriate because Plaintiffs can prove the elements of their claims on a class-
5 wide basis using the same evidence as would be used to prove those elements in
6 individual actions alleging the same claims.

7 57. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The
8 members of the Classes are so numerous that individual joinder of all Class
9 members is impracticable. There are millions of individual purchasers of Wesson
10 Oils. The precise number of members of the Classes and their addresses are
11 unknown to Plaintiffs, but may be ascertained from ConAgra's books and records.
12 Members of the Classes may be notified of the pendency of this action by
13 recognized, Court-approved notice dissemination methods, which may include
14 U.S. Mail, electronic mail, Internet postings, and/or published notice.

15 58. **Commonality and Predominance—Federal Rule of Civil**
16 **Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law
17 or fact, which predominate over any questions affecting individual members of the
18 Classes. All members of the Classes were exposed to ConAgra's deceptive and
19 misleading labeling and marketing of its Wesson Oils as "100% Natural" because
20 that claim was on the label of every container of Wesson Oil sold. Furthermore,
21 common questions of law or fact include:

- 22 (a) whether ConAgra engaged in the conduct as alleged herein;
23 (b) whether ConAgra's practices violate applicable law;
24 (c) whether Plaintiffs and the other members of the Classes are
25 entitled to actual, statutory, or other forms of damages, and other monetary relief;
26 and
27
28

1 (d) whether Plaintiffs and the other members of the Classes are
2 entitled to equitable relief, including but not limited to injunctive relief and
3 restitution.

4 59. ConAgra engaged in a common course of conduct giving rise to the
5 legal rights sought to be enforced by Plaintiffs individually and on behalf of the
6 other members of the Classes. Similar or identical statutory and common law
7 violations, business practices, and injuries are involved. Individual questions, if
8 any, pale by comparison, in both quality and quantity, to the numerous common
9 questions that dominate this action.

10 60. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’
11 claims are typical of the claims of the other members of the Classes because,
12 among other things, all members of the Classes were comparably injured through
13 the uniform misconduct described above, were subject to ConAgra’s false,
14 deceptive, misleading, and unfair labeling and marketing practices, including the
15 false claim that Wesson Oils are “100% Natural,” found on every container of
16 Wesson Oil sold. Further, there are no defenses available to ConAgra that are
17 unique to Plaintiffs.

18 61. **Adequacy of Representation—Federal Rule of Civil Procedure**
19 **23(a)(4).** Plaintiffs are adequate representatives of the members of the Classes
20 because their interests do not conflict with the interests of the other members of the
21 Classes they seek to represent; they have retained counsel competent and
22 experienced in complex class action litigation; and Plaintiffs will prosecute this
23 action vigorously. The Classes’ interests will be fairly and adequately protected by
24 Plaintiffs and their counsel.

25 62. **Declaratory and Injunctive Relief—Federal Rule of Civil**
26 **Procedure 23(b)(2).** ConAgra has acted or refused to act on grounds generally
27 applicable to Plaintiffs and the other members of the Classes, thereby making
28

1 appropriate final injunctive relief and declaratory relief, as described below, with
2 respect to the members of the Classes as a whole.

3 63. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class
4 action is superior to any other available means for the fair and efficient
5 adjudication of this controversy, and no unusual difficulties are likely to be
6 encountered in the management of this class action. The damages or other
7 financial detriment suffered by Plaintiffs and the other members of the Classes are
8 relatively small compared to the burden and expense that would be required to
9 individually litigate their claims against ConAgra, so it would be impracticable for
10 members of the Classes to individually seek redress for ConAgra's wrongful
11 conduct. Even if the members of the Classes could afford individual litigation, the
12 court system could not. Individualized litigation creates a potential for inconsistent
13 or contradictory judgments, and increases the delay and expense to all parties and
14 the court system. By contrast, the class action device presents far fewer
15 management difficulties and provides the benefits of single adjudication, economy
16 of scale, and comprehensive supervision by a single court. Given the similar
17 nature of the members of the Classes' claims, the absence of material differences
18 in the statutes and common laws upon which the Class members' claims are based
19 as applicable to the particular facts, claims, and legal theories asserted in this SAC,
20 and the potential ability to conduct this litigation using a bellwether approach if
21 necessary, the Classes will be easily managed by the Court and the parties, and will
22 be managed more efficiently in this integrated class action than through multiple
23 separate actions in the various states, particularly given the JPML Order
24 transferring all such cases to this Court and this Court's consolidation thereof.

CLAIMS FOR RELIEF

COUNT I

**Violation of State Consumer Protection Laws
(Brought on Behalf of the California Class, Colorado Class, Florida Class,
Illinois Class, Massachusetts Class, Nebraska Class, New Jersey Class, New
York Class, Ohio Class, Oregon Class, South Dakota Class, Texas Class, and
Washington Class)**

64. The following Plaintiffs incorporate by reference paragraphs 1-63 of the SAC as though fully stated herein: California Plaintiffs Robert Briseño, Christi Toomer, Michele Andrade, and Lil Marie Birr, Colorado Plaintiff Jill Crouch, Florida Plaintiffs Julie Palmer and Janeth Ruiz, Illinois Plaintiff Pauline Michael, Massachusetts Plaintiff Bonnie McDonald, Nebraska Plaintiff Dee Hopper-Kercheval,² New Jersey Plaintiffs Brenda Krein and Phyllis Scarpelli,³ New York Plaintiffs Kelly McFadden and Necla Musat, Ohio Plaintiff Maureen Towey, Oregon Plaintiff Erika Heins, South Dakota Plaintiff Rona Johnston, Texas Plaintiff Anita Willman, and Washington Plaintiff Anne Cowan.

65. Plaintiffs named in the preceding paragraph bring their claims individually and on behalf of all others who purchased Wesson Oils in and reside in the same states as those Plaintiffs, specifically: the California Class, Colorado Class, Florida Class, Illinois Class, Massachusetts Class, Nebraska Class, New Jersey Class, New York Class, Ohio Class, Oregon Class, South Dakota Class,

² The Court's November 15, 2012 Order Granting in Part and Denying in Part Defendant's Motion to Dismiss dismissed Plaintiffs' Second Cause of Action for Violation of the Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*, with prejudice. Plaintiff Dee Hopper-Kercheval asserts this claim for violation of the Nebraska Consumer Protection Act, individually and on behalf of all Nebraska residents similarly situated, solely to preserve this claim for possible appeal at a future date when such appeal would be timely.

³ The Court's November 15, 2012 Order Granting in Part and Denying in Part Defendant's Motion to Dismiss dismissed Plaintiffs' New Jersey Consumer Protection Claim with leave to amend. Plaintiffs Brenda Krein and Phyllis Scarpelli assert this claim for violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*, solely to preserve this claim for possible appeal at a future date when such appeal would be timely, and reserve the right to seek leave to amend to the extent Plaintiffs obtain information to enable them to more fulsomely plead ascertainable loss under New Jersey law.

1 Texas Class, and Washington Class (referred to below as the “State Classes with
2 Consumer Protection Claims” for ease of reference).

3 66. Each of the Plaintiffs and the other proposed Class members in the
4 Classes they respectively seek to represent is a consumer, purchaser, or other
5 person entitled to the protection of the consumer protection laws of the state in
6 which they reside and purchased Wesson Oils.

7 67. The consumer protection laws of California, Colorado, Florida,
8 Illinois, Massachusetts, Nebraska, New Jersey, New York, Ohio, Oregon, South
9 Dakota, Texas, and Washington (the “Consumer Protection States”) declare that
10 unfair or deceptive acts or practices in the conduct of trade or commerce are
11 unlawful.

12 68. All of the Consumer Protection States have enacted statutes designed
13 to protect consumers against unfair, deceptive, fraudulent, and unconscionable
14 trade and business practices, and/or false advertising. Those statutes further allow
15 consumers to bring private and/or class actions under these facts. These statutes
16 are:

17 (a) California Consumer Legal Remedies Act, Cal. Civ. Code §§
18 1750, *et seq.*; California’s Unfair Competition Law, Cal. Bus. & Prof Code §§
19 17200, *et seq.*; and Cal. Bus. & Prof. Code §§ 17500, *et seq.*;

20 (b) Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-
21 101, *et seq.*;

22 (c) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat.
23 Ann. §§ 501.201, *et seq.*;

24 (d) Illinois Consumer Fraud and Deceptive Business Practices Act,
25 815 ILCS §§ 505/1, *et seq.*;

26 (e) Massachusetts Unfair and Deceptive Practices Act, Mass. Ann.
27 Laws ch. 93A, *et seq.*;

1 (f) Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-
2 1601, *et seq.*;⁴

3 (g) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et*
4 *seq.*;⁵

5 (h) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus.
6 Law §§ 349, *et seq.*;

7 (i) Ohio Consumer Sales Practices Act, Ohio Rev. Code §§
8 1345.01, *et seq.*;

9 (j) Oregon Unfair Trade Practices Act, Or. Rev. Stat §§ 646.605, *et*
10 *seq.*;

11 (k) South Dakota Deceptive Trade Practices and Consumer
12 Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;

13 (l) Texas Deceptive Trade Practices - Consumer Protection Act,
14 Tex. Bus. & Com. Code §§ 17.41, *et seq.*; and

15 (m) Washington Consumer Protection Act, Wash. Rev. Code §§
16 19.86.010, *et seq.*

17 69. Wesson Oils constitute products to which these consumer protection
18 statutes apply.

19 70. The Plaintiffs in the Consumer Protection States provided ConAgra
20 notification that comports or that should be construed to comport with applicable
21 notice requirements under each of the above listed statutes.

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23
24
25 ⁴ As noted above, this claim for violation of the Nebraska Consumer Protection
26 Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*, is asserted solely to preserve this claim
for possible appeal for a future date when such appeal would be timely.

27 ⁵ As noted above, this claim for violation of the New Jersey Consumer Fraud Act,
28 N.J. Stat. Ann. §§ 56:8-1, *et seq.*, is asserted solely to preserve this claim for
possible appeal for a future date when such appeal would be timely.

1 (a) California and Massachusetts: Plaintiffs provided direct
2 notice by pre-suit demand letter of their California and Massachusetts consumer
3 protection claims.

4 (b) Texas: Defendant has already received written notice of the
5 claims of Plaintiff Willman, and the class of Texas residents she seeks to represent,
6 for violation of the Texas Deceptive Trade Practices–Consumer Protection Act
7 statute in that the correspondence between the parties prior to and after filing the
8 Consolidated Amended Class Action Complaint, the Consolidated Amended Class
9 Action Complaint itself, and subsequent pleadings in this action, including in
10 particular Plaintiffs’ Opposition to Defendant’s Motion to Dismiss, provided
11 written notice in reasonable detail of Ms. Willman’s specific complaint and
12 damages. Nonetheless, and in an abundance of caution, and even though the
13 following written notice is redundant and unnecessary, counsel for Plaintiff
14 Willman is sending a letter to counsel for Defendant ConAgra advising ConAgra
15 in reasonable detail of the Texas Class’ claims and the amount of damages and
16 expenses, including attorney’s fees, reasonably incurred by the Texas Class in
17 asserting this claim against ConAgra.

18 (c) Remaining States: The consumer protection statutes of
19 Colorado, Florida, Illinois, Nebraska, New York, Ohio, Oregon, South Dakota, and
20 Washington do not require pre-suit notice to Defendant to assert a claim for
21 violation of their respective consumer protection statutes.

22 (d) Plaintiffs will provide notice to the Attorney Generals of all
23 Consumer Protection States, including a copy of the SAC, after filing.

24 71. In the conduct of trade or commerce regarding the labeling, marketing
25 and sale of its Wesson Oils, ConAgra engaged in unfair and deceptive acts or
26 practices by representing that Wesson Oils are “100% Natural”—including through
27 product labels, television commercials, print advertisements, in-store
28 advertisements and/or Internet based advertisements, as described herein—when,

1 in fact, Wesson Oils are not natural, let alone “100% Natural” because they are
2 made from GMOs.

3 72. ConAgra’s representations and advertisements of its Wesson Oils as
4 “100% Natural” were deceptive and likely to deceive consumers, including the
5 Plaintiffs and members of the State Classes with Consumer Protection Claims.

6 73. ConAgra knew or should have known that its representations and
7 advertisements of Wesson Oils as “100% Natural” were untrue or misleading.

8 74. ConAgra used or employed such deceptive and unlawful acts or
9 practices with the intent that the Plaintiffs and other members of the State Classes
10 with Consumer Protection Claims relied thereon or otherwise be deceived.

11 75. The Plaintiffs and other members of the State Classes with Consumer
12 Protection Claims relied on ConAgra’s “100% Natural” misrepresentation and/or
13 were deceived or likely to be deceived.

14 76. The Plaintiffs and other members of the State Classes with Consumer
15 Protection Claims would not have purchased the Wesson Oils at the prices they
16 paid, or would not have purchased such products at all, had they known the truth
17 and are thus entitled to a full or partial refund as allowed under each of the several
18 state laws alleged herein.

19 77. Further, as a result of ConAgra’s misrepresentations, as alleged
20 herein, the Plaintiffs and other members of the State Classes with Consumer
21 Protection Claims they respectively seek to represent did not receive the benefit of
22 their bargain in purchasing Wesson Oils. As a result of ConAgra’s conduct, the
23 Plaintiffs and other members of the State Classes with Consumer Protection
24 Claims were damaged in an amount to be proven at trial.

25 78. The Plaintiffs and other members of the State Classes with Consumer
26 Protection Claims are entitled to actual compensatory and/or statutory damages, as
27 well as attorneys’ fees and legal expenses under the various state laws implicated
28 by this Claim.

COUNT II

Breach of Express Warranty

(Brought on Behalf of the California Class, Colorado Class, Indiana Class, Massachusetts Class, Nebraska Class, New Jersey Class, New York Class, Oregon Class, South Dakota Class, Washington Class, and Wyoming Class)

79. The following Plaintiffs incorporate by reference paragraphs 1-63 of the SAC as though fully stated herein: California Plaintiffs Robert Briseño, Christi Toomer, Michele Andrade, and Lil Marie Birr, Colorado Plaintiff Jill Crouch, Indiana Plaintiff Cheri Shafstall, Massachusetts Plaintiff Bonnie McDonald, Nebraska Plaintiff Dee Hopper-Kercheval, New Jersey Plaintiffs Brenda Krein and Phyllis Scarpelli, New York Plaintiffs Kelly McFadden and Necla Musat, Oregon Plaintiff Erika Heins, South Dakota Plaintiff Rona Johnston, Washington Plaintiff Anne Cowan, and Wyoming Plaintiff Patty Boyer.

80. Plaintiffs named in the preceding paragraph bring this claim individually and on behalf of all others who purchased Wesson Oils in and reside in the same states as those Plaintiffs: the California Class, Colorado Class, Indiana Class, Massachusetts Class, Nebraska Class, New Jersey Class, New York Class, Oregon Class, South Dakota Class, Washington Class, and Wyoming Class (referred to below as the “State Classes with Breach of Express Warranty Claims” for ease of reference).

81. The Plaintiffs and other members of the State Classes with Breach of Express Warranty Claims formed a contract with ConAgra at the time they purchased Wesson Oils. The terms of that contract include the promises and affirmations of fact ConAgra makes on Wesson Oils’ packaging and through its marketing of its Wesson Oils, including ConAgra’s promise that its Wesson Oils are “100% Natural,” as described above. This marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between each of the Plaintiffs and other members of the State Classes with Breach of Express Warranty Claims, and ConAgra.

1 82. In addition or in the alternative to the formation of an express
2 contract, ConAgra made each of its above-described representations to induce the
3 Plaintiffs and other members of the State Classes with Breach of Express Warranty
4 Claims, to rely on such representations, and they each did so rely (and should be
5 presumed to have relied) on ConAgra's "100% Natural" representations as a
6 material factor in their decision(s) to purchase Wesson Oils.

7 83. All conditions precedent to ConAgra's liability under this contract
8 have been performed by the Plaintiffs and other members of the State Classes with
9 Breach of Express Warranty Claims, when they purchased Wesson Oils for their
10 ordinary purposes.

11 84. At all times relevant to this action, ConAgra has breached its express
12 warranties about its Wesson Oils because Wesson Oils are not "100% Natural" but,
13 rather, are derived from genetically-modified organisms or plants that are not 100
14 percent natural, in violation of state express warranty laws, including:

- 15 (a) Cal. Com. Code § 2313;
- 16 (b) Colo. Rev. Stat. § 4-2-313;
- 17 (c) Ind. Code § 26-1-2-313;
- 18 (d) Mass. Gen. Laws Ann. ch. 106 § 2-313;
- 19 (e) Neb. Rev. Stat. § 2-313;
- 20 (f) N.J. Stat. Ann. § 12A:2-313;
- 21 (g) N.Y. U.C.C. Law § 2-313;
- 22 (h) Or. Rev. Stat. § 72.3130;
- 23 (i) S.D. Codified Laws. § 57A-2-313;
- 24 (j) Wash. Rev. Code Ann. § 62A.2-313; and
- 25 (k) Wyo. Stat. § 34.1-2-313.

26 85. The above-listed states do not require privity of contract to recover for
27 breach of express warranty.

1 Phyllis Scarpelli, South Dakota Plaintiff Rona Johnston, and Wyoming Plaintiff
2 Patty Boyer.

3 90. Plaintiffs named in the preceding paragraph bring this claim
4 individually and on behalf of all others who purchased Wesson Oils in and reside
5 in the same states as those Plaintiffs: the California Class, Colorado Class, Indiana
6 Class, Massachusetts Class, Nebraska Class, New Jersey Class, South Dakota
7 Class, and Wyoming Class (referred to below as the “State Classes with Breach of
8 Implied Warranty Claims” for ease of reference).

9 91. The Plaintiffs and other members of the State Classes with Breach of
10 Implied Warranty Claims purchased Wesson Oils for the ordinary purposes of
11 cooking oils.

12 92. By representing that its Wesson Oils were “100% Natural” in labeling
13 and marketing them as described herein, ConAgra impliedly warranted that such
14 products were of merchantable quality, such that the oils were of the same average
15 grade, quality, and value as similar goods sold under similar circumstances.

16 93. Plaintiffs and other members of the State Classes with Breach of
17 Implied Warranty Claims they respectively seek to represent relied on ConAgra’s
18 representations that Wesson Oils were “100% Natural” when they purchased
19 Wesson Oils.

20 94. ConAgra breached the warranty implied at the time of sale in that the
21 Plaintiffs and other members of the State Classes with Breach of Implied Warranty
22 Claims did not receive goods that were “100% Natural” as represented and thus,
23 the goods were not merchantable as fit for the ordinary purposes for which those
24 goods are used or as promoted, marketed, advertised, packaged, labeled, or sold.

25 95. At all times relevant to this action, ConAgra has breached its implied
26 warranties concerning Wesson Oils because Wesson Oils are not “100% Natural”
27 but are made from GMO. ConAgra’s conduct violates the following state implied
28 warranty laws:

- (a) Cal. Com. Code § 2314;
- (b) Colo. Rev. Stat. § 4-2-314;
- (c) Ind. Code § 26-1-2-314;
- (d) Mass. Gen. Laws Ann. ch. 106 § 2-314;
- (e) Neb. Rev. Stat. § 2-314;
- (f) N.J. Stat. Ann. § 12A:2-314;
- (g) S.D. Cod. Laws. § 57A-2-314; and
- (h) Wyo. Stat. § 34.1-2-314.

96. The above states do not require privity of contract to recover for breach of implied warranty.

97. As a result of the breach of implied warranties, the Plaintiffs and other members of the State Classes with Breach of Implied Warranty Claims have been damaged in the amount of the price they paid for Wesson Oils.

98. Within a reasonable time after they knew or should have known of such breach, the Plaintiffs, on behalf of themselves and other members of the State Classes with Breach of Implied Warranty Claims, placed ConAgra on notice thereof.

99. Section 2-607(3)(a) of the U.C.C., as codified by each of the states listed above, does not explicitly require “pre-suit” notice or notice in any particular form. Rather, this section of the U.C.C. requires notice “within a reasonable time” after the buyer’s discovery of the breach. U.C.C. § 2-607(3)(a). The U.C.C.’s official comments further state that “‘A reasonable time’ for notification from a retail consumer is to be judged by different standards so that in his case it will be extended, for the rule of requiring notification is designed to defeat commercial bad faith, not to deprive a good faith consumer of his remedy.” U.C.C. § 607 cmt. 4. The notice “need only be such as informs the seller that the transaction is claimed to involve a breach, and thus opens the way for normal settlement through negotiation.” *Id.*

COUNT IV
Unjust Enrichment
(Brought on Behalf of the Colorado Class, Florida Class, Illinois Class,
Indiana Class, Massachusetts Class, Nebraska Class, New York Class, Ohio
Class, Oregon Class, South Dakota Class, Texas Class, Washington Class, and
Wyoming Class)

100. The following Plaintiffs incorporate by reference paragraphs 1-63 of the SAC as though fully stated herein: Colorado Plaintiff Jill Crouch, Florida Plaintiffs Julie Palmer and Janeth Ruiz, Illinois Plaintiff Pauline Michael, Massachusetts Plaintiff Bonnie McDonald, Nebraska Plaintiff Dee Hopper-Kercheval, New York Plaintiffs Kelly McFadden and Necla Musat, Ohio Plaintiff Maureen Towey,⁶ Oregon Plaintiff Erika Heins, South Dakota Plaintiff Rona Johnston, Texas Plaintiff Anita Willman, Washington Plaintiff Anne Cowan, and Wyoming Plaintiff Patty Boyer.

101. Plaintiffs named in the preceding paragraph bring this claim individually and on behalf of all others who purchased Wesson Oils in and reside in the same states as those Plaintiffs: the Colorado Class, Florida Class, Illinois Class, Indiana Class, Massachusetts Class, Nebraska Class, New York Class, Ohio Class, Oregon Class, South Dakota Class, Texas Class, Washington Class, and Wyoming Class (referred to below as the “State Classes with Unjust Enrichment Claims or Remedies” for ease of reference).

102. As a result of ConAgra’s deceptive, fraudulent, and misleading labeling, marketing and sales of its Wesson Oils, ConAgra was enriched, at the expense of the Plaintiffs and other members of the State Classes with Unjust Enrichment Claims or Remedies they respectively seek to represent, through the payment of the purchase price for ConAgra’s Wesson Oils.

⁶ The Court’s November 15, 2012 Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss dismissed Plaintiffs’ Ohio unjust enrichment cause of action with prejudice. Plaintiff Maureen Towey asserts this claim for unjust enrichment under Ohio law, individually and on behalf of all Ohio residents similarly situated, solely to preserve this claim for possible appeal at a future date when such appeal would be timely.

1 103. Under the circumstances, it would be against equity and good
2 conscience to permit ConAgra to retain the ill-gotten benefits that it received from
3 Plaintiffs and other members of the State Classes with Unjust Enrichment Claims
4 or Remedies in light of the fact that the Wesson Oils purchased by the Plaintiffs
5 and other members of the State Classes with Unjust Enrichment Claims or
6 Remedies were not "100% Natural," as ConAgra purports them to be. It would
7 thus be unjust or inequitable for ConAgra to retain the benefit without restitution or
8 disgorgement of monies paid to ConAgra for Wesson Oils, or such other
9 appropriate equitable remedy as appropriate, to Plaintiffs and other members of the
10 State Classes with Unjust Enrichment Claims or Remedies.

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually and on behalf other members of the
13 Classes described in this Second Consolidated Amended Class Action Complaint
14 that they respectively seek to represent, respectfully request that:

15 A. the Court certify the Classes pursuant to Federal Rule of Civil
16 Procedure 23(b)(2) and 23(b)(3), and adjudge Plaintiffs and their counsel to be
17 adequate representatives thereof;

18 B. the Court enter an Order requiring ConAgra to pay Plaintiffs' and the
19 other members of the Classes' economic, monetary, actual damages (including
20 multiple damages), consequential, compensatory or statutory damages, whichever
21 is greater; and, if its conduct is proved willful, awarding Plaintiffs and the other
22 members of the Classes exemplary damages to the extent provided by law;

23 C. the Court enter an Order awarding restitution and disgorgement of all
24 monies ConAgra acquired by means of any act or practice declared by this Court to
25 be wrongful, or any other appropriate remedy in equity, to Plaintiffs and the other
26 members of the Classes;

27 D. the Court enter an Order awarding declaratory and injunctive relief as
28 permitted by law or equity, including: enjoining ConAgra from continuing the

1 unlawful practices set forth above; directing ConAgra to cease its deceptive and
2 misleading marketing campaign in which it describes Wesson Oils as "100%
3 Natural"; and directing ConAgra to disgorge all monies ConAgra acquired by
4 means of any act or practice declared by this Court to be wrongful;

5 E. the Court enter an Order awarding Plaintiffs, individually and on
6 behalf of the other members of the Classes, their expenses and costs of suit,
7 including reasonable attorneys' fees and reimbursement of reasonable expenses, to
8 the extent provided by law;

9 F. the Court enter an Order awarding to Plaintiffs individually and on
10 behalf of the other members of the Classes, pre- and post-judgment interest, to the
11 extent allowable; and

12 G. for such other and further relief as may be just and proper.

13 **JURY DEMAND**

14 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial
15 by jury of all claims in this Complaint so triable.

16 DATED: December 19, 2012

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DECLARATION OF SERVICE BY CM/ECF AND/OR MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. Declarant hereby certifies that on December 19, 2012, declarant served the SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT by electronically filing the foregoing document listed above by using the Case Management/ Electronic Case filing system.

3. Declarant further certifies:

☒ All participants in the case are registered CM/ECF users and that service will be accomplished by the court's CM/ECF system

☐ Participants in the case who are registered CM/ECF users will be served by the court's CM/ECF system. Participants in the case that are not registered CM/ECF users will be served by First-Class Mail, postage pre-paid or have dispatched to a third-party commercial carrier for delivery to the non-CM/ECF participants.

4. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 19th day of December, 2012, at Los Angeles, California.


ELIZABETH VILLALOBOS LOPEZ

**IN RE CONAGRA FOODS, INC.
SERVICE LIST**

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