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1 **I. INTRODUCTION**

2 After more than a decade of litigation, the parties have presented a second proposed settlement
3 to the Court, curing the deficiencies in the former agreement, as previously noted by this Court and
4 the Ninth Circuit. The settlement, comprised of a \$3 million common fund with no reverter to
5 Defendant, provides cash relief of \$0.15 per unit of Wesson Oil purchased during the class period to
6 class members who submit a valid and timely claim form, or who had submitted a claim form as part
7 of the previously-proposed settlement—subject to any *pro rata* adjustment. New Settlement
8 Agreement¹ §§ 2.32.5, 4.1.2, 3.1.3. Additionally, \$575,000 of the fund will be allocated to members
9 of the New York and Oregon Classes as compensation for statutory damages under those states’
10 consumer protection laws. New Settlement Agreement § 4.2.1. While the common fund will be used
11 to pay for service awards and expenses, Class Counsel have elected to forego *any* fee for the eleven
12 years this case has been pending, despite having been largely successful in motion practice—
13 including obtaining a favorable ruling on class certification and defending that ruling all of the way
14 up to the Supreme Court. New Settlement Agreement §§ 9.5, 9.6; Joint Declaration of Ariana J.
15 Tadler, Adam Levitt, and David Azar in Support of Plaintiffs’ Motion for Final Approval of New
16 Settlement (“Final Approval Joint Decl.”), attached hereto as Exhibit A ¶ 26.

17 After the Court granted preliminary approval of the New Settlement on November 14, 2022,
18 the Settlement Administrator successfully notified the class pursuant to the Court-approved Notice
19 Plan, and began accepting claims from the class members. *See* Declaration of Gretchen Eoff (“Eoff
20 Claims Admin. Decl.”), attached to the Final Approval Joint Decl. as Exhibit 1 ¶¶ 3-17. Now,
21 Plaintiffs seek final approval of the proposed New Settlement to finally conclude this long-running
22 litigation.

23 _____
24 ¹ Refers to the New Proposed Settlement, ECF No. 807-2, or “New Settlement.”

1 **II. ARGUMENT²**

2 “Rule 23(e) imposes on district courts an independent obligation to ensure that any class
3 settlement is ‘fair, reasonable, and adequate,’ accounting for the interests of absent class members.”
4 *Briseño v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021) (quoting Fed. R. Civ. P. 23(e)(2)). Courts
5 must consider whether: (i) the class representatives and class counsel have adequately represented the
6 class; (ii) the proposal was negotiated at arm’s length; (iii) the relief provided for the class is adequate;
7 and (iv) the proposal treats class members equitably relative to each other. Fed R. Civ. P. 23(e)(2)(A-
8 D). In determining whether the class’s relief is “adequate,” courts must analyze “(i) the costs, risks,
9 and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to
10 the class, including the method of processing class-member claims; (iii) the terms of any proposed
11 award of attorney’s fees, including timing of payment; and (iv) any agreement required to be
12 identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C). The New Settlement demonstrates that
13 the parties’ proposed deal is fair, reasonable, and adequate, taking into account the requirements of
14 Federal Rule of Civil Procedure 23(e).

15 **A. The Class Representatives and Class Counsel have adequately represented the**
16 **Classes.**

17 As the Court noted in its preliminary approval order:

18 Class counsel and the class representatives have ably represented the class
19 in this case. For over a decade, they have shown competent and respectable
20 advocacy in briefing and oral argument before this Court and before the
21 Ninth Circuit, overcoming a motion to dismiss, attaining class certification
22 of eleven state-wide litigation classes and affirmance of that order from the
23 Ninth Circuit, and achieving other victories along the way. With the help
24 of the class representatives, counsel have conducted and responded to
25 significant discovery. And they have managed to reach a significant
26 settlement even after Judge Morrow dismissed their original complaint.

24 ² The Court has already described the history of this long-running case in great detail in its order
25 granting preliminary approval of the New Settlement—including the parties prior attempts to settle
26 the case, as well as the Ninth Circuit’s rulings regarding the previously-proposed settlement. ECF
No. 811 at 3-12.

1 ECF No. 811 at 14. The Court previously certified eleven state-wide litigation classes (California,
2 Colorado, Florida, Illinois, Indiana, Nebraska, New York, Ohio, Oregon, South Dakota, and Texas),
3 finding that Plaintiffs satisfied the numerosity, commonality, typicality, and adequacy requirements
4 of Rule 23(a), as well as the predominance and superiority requirements of Rule 23(b)(3). ECF No.
5 545. The Ninth Circuit affirmed. *See Briseño v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017);
6 *Briseño v. ConAgra Foods, Inc.*, 674 F. App'x 654 (9th Cir. 2017). And on October 10, 2017, the
7 Supreme Court of the United States denied Conagra's petition for writ of *certiorari*. *Conagra Brands,*
8 *Inc. v. Briseño*, 138 S. Ct. 313 (2017).

9
10 As the declaration supporting Plaintiffs' preliminary approval brief makes clear, Class
11 Counsel have dedicated significant time and resources to the litigation—which involved briefing
12 regarding preemption, numerous *ex parte* applications by Conagra to stay the case (including but not
13 limited to pending referral to the Food and Drug Administration), numerous rounds of briefing related
14 to discovery (including motions to compel filed by Plaintiffs), two full rounds of class certification
15 briefing, and Plaintiffs' success on Conagra's attempts to reverse the district court's decision granting
16 class certification—at both the Ninth Circuit and Supreme Court. *See* ECF No. 807-2 ¶¶ 28-32.
17 Plaintiffs' primary objective in this litigation was achieved when—after this litigation began—
18 Conagra decided to remove the “100% Natural” claim from Wesson labels, and stopped its decades-
19 long practice of marketing Wesson Oils as “natural.” *Id.* ¶¶ 34-35.³ Plaintiffs respectfully submit
20 that both they and their counsel have adequately represented the Classes.

21
22 ³ Although disputed by Defendant, Plaintiffs contend that Conagra's decision was due, at least in
23 part, to this litigation, and is further evidence of the merits of Plaintiffs' claims. Conagra denies this
24 litigation contributed in any way to its decision to drop the ‘Natural’ claim from Wesson Oils. Due
25 to the timing of Conagra's decision and the parties' agreement to enter mediation immediately after
26 Conagra had exhausted its appeals of Judge Morrow's class certification ruling, Plaintiffs did not
27 have an opportunity to seek a ruling that this litigation was a “catalyst” in that decision.

1 **B. The New Settlement is the result of an arms'-length negotiation.**

2 As the Court noted in its preliminary approval order, the proposed New Settlement is the
3 product of six months of renewed negotiations between counsel that vigorously litigated the viability
4 of Plaintiffs' claims, the propriety of class action treatment, and numerous other issues, and engaged
5 in contentious discovery. *See* ECF No. 811 at 15. The New Settlement was vigorously negotiated
6 by the parties, and presented to the Court only after Class Counsel were satisfied that the "red flags"
7 previously identified by the Ninth Circuit were eliminated. Final Approval Joint Decl. ¶¶ 14-24.

8 **C. The New Settlement proposes adequate relief for the Classes.**

9 The proposed New Settlement provides a non-reversionary \$3 million common fund from
10 which all claims, expenses, and service awards will be paid. In determining whether this relief is
11 "adequate," courts consider "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of
12 any proposed method of distributing relief to the class, including the method of processing class-
13 member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment;
14 and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C).
15 The Court previously noted in its preliminary approval order that the proposed relief was adequate at
16 that stage of the approval process. ECF No. 811 at 15. Plaintiffs respectfully submit that the Court
17 should also find the relief adequate at the final approval phase.

- 18 • **There were significant costs, risks, and delay associated with moving**
19 **forward.**

20 Plaintiffs assert there is abundant evidence that the "100% Natural" claim, which appeared on
21 every bottle of Wesson Oil sold during the applicable class periods, was material to consumers, that
22 consumers interpreted the claim to mean that the products did not contain GMOs, and that every class
23 member paid a premium price for Wesson Oils due to the presence of the "100% Natural" claim on
24 the label. While Plaintiffs believe that there is sufficient evidence for their claims, the risks of
25 proceeding forward, especially considering the strength of the proposed settlement recovery, supports
26 Plaintiffs' renewed request for final approval.

1 Regardless of the parties' evaluations of the strength of Plaintiffs' case, the potential, non-
2 adjusted relief for individual class members is approximately 36% higher than they could have
3 obtained at trial. *See* ECF No. 652 ¶¶ 18-19. Indeed, the Court has since cast doubt on the likelihood
4 of success on Plaintiffs' claims, especially considering the recent, changing legal landscape, which
5 seemed to be favoring Conagra. *See* ECF No. 700 (July 19, 2021 Hrg. Tr. at 14:18-22). Based on
6 the foregoing considerations, "it is plainly reasonable for the parties at this stage to agree that the
7 actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more
8 favorable results through full adjudication." *Dennis v. Kellogg Co.*, 09-CV-1786-L (WMc), 2013
9 WL 6055326, at *3 (S.D. Cal. Nov. 14, 2013).

10 While Plaintiffs believe their case is a strong one, the complexity and risk of further litigation
11 are substantial, and it is unclear whether there would be any recovery at all for the class members in
12 the eleven certified state classes. Should litigation continue, more expense and complexity could
13 result, because Plaintiffs would request information regarding Conagra's label and marketing change
14 in 2017, for Conagra to update past document productions, and for the parties to resolve issues
15 surrounding Conagra's productions of documents just preceding the close of fact discovery in 2015.
16 Final Approval Joint Decl. ¶ 24. With the case at the eve of trial, as with all other phases in this
17 litigation, Conagra would have mounted a vigorous defense to Plaintiffs' claims, likely would have
18 moved to decertify the state-wide classes, and would have continued to challenge Plaintiffs' price
19 premium damages methodology. *See* ECF No. 700 (Oct. 7, 2019 Hrg. Tr. at 16:25-17:7 (Conagra's
20 counsel explaining that, had litigation continued, Conagra would have filed a motion to decertify the
21 classes, a motion for summary judgment, and then a motion to sever the different state classes and
22 transferring them to their original states, requiring separate trials)). Additional risks of continuing
23 this litigation include further motion practice and a possible adverse outcome at trial. The relief
24 obtained through this settlement, balanced against the length, expense, and uncertainty of further
25 litigation, weighs in favor of approval. *See Briseño v. Henderson*, 998 F.3d at 1031 (noting the

1 “strong judicial policy favor[ing] settlements, particularly where complex class action litigation is
2 concerned”) (quotations omitted).

- 3 • **The relief provided for the class is adequate, taking into account the**
4 **effectiveness of any proposed method of distributing relief to the class,**
5 **including the method of processing class-member claims.**

6 The Court previously determined that “the relief distribution is straightforward,” noting that
7 “Class members will be able to easily complete and submit a claim form by mail or online.” ECF
8 No. 811 at 17. Indeed, many Class Members already have done so. Eoff Claims Admin. Decl. ¶ 22.
9 There is no reason to depart from the Court’s prior reasoning scrutinizing the method for claims
10 processing, and finding that it is adequate.

- 11 • **Class Counsel are seeking no attorneys’ fees, and there are no other**
12 **“side agreements” which must be scrutinized by the Court.**

13 The Court need not perform an analysis regarding the terms of any proposed award of
14 attorney’s fees, including timing of payment or any agreement required to be identified under Rule
15 23(e)(3) because none exist. Class Counsel are not seeking fees, and there is no other agreement.
16 While Class Counsel are seeking to be compensated for their expenses incurred up until July 23, 2019
17 related to their success over the course of this eleven-year litigation, those exact same expenses were
18 not previously objected to, nor did the Ninth Circuit find any issue with them. *See* ECF Nos. 666,
19 685, 751-52, 759, 786, 791; No. 19-56297, 9th Cir., ECF No. 67.

20 **D. Class Members are treated equitably relative to one another.**

21 The final Rule 23(e) factor examines whether the proposed settlement “treats class members
22 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2). As previously explained, the settlement
23 does not grant preferential treatment to any segment of the class. All class members may claim
24 monetary benefits on a per-unit basis based upon the number of bottles of Wesson Oil they purchased.
25 The settlement provides compensation to New York and Oregon class members due to the statutory

1 damage provisions in their state consumer protection statutes that Plaintiffs contend they may
2 recover.⁴ Fed. R. Civ. P. 23(e)(2)(D).

3 **E. Plaintiffs’ service awards were not disturbed by the Ninth Circuit.**

4 As is true of the last settlement proposed to the Court, Plaintiffs request service awards of
5 \$3,000 for each of the six Plaintiffs who were deposed, and \$1,000 for each of the seven Plaintiffs
6 who were not deposed, for a total aggregate service award amount of \$25,000.⁵ All of the Plaintiffs
7 have been supportive and involved in this lengthy litigation, including reviewing pleadings,
8 responding to discovery requests, preparing for and testifying at depositions, communicating with
9 counsel, and approving the terms of the settlement agreement. See ECF No. 663 ¶¶ 23-25; Final
10 Approval Joint Decl. ¶ 39. This Court already found that the requested service awards “are within
11 the range of incentive awards typically approved by district courts” and that “the request for incentive
12 awards is reasonable.” See ECF No. 654 at 7; *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59
13 (9th Cir. 2009); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 499 (E.D. Cal. 2010).
14 Incentive awards in this district typically range from \$3,000 to \$5,000. See *In re Toys R Us-Del.,*
15 *Inc.-Fair & Accurate Credit Transactions Act Litig.*, 295 F.R.D. 438, 470 (C.D. Cal. 2014) (collecting
16 cases). The service awards here are more than reasonable considering the twelve years this case has
17 been litigated.

18 **III. CONCLUSION**

19 For the foregoing reasons, the Parties respectfully request that the Court grant this Motion and
20 enter an order finally approving the settlement, and granting Plaintiffs’ request for expenses and
21 service awards.

22
23
24 ⁴ This portion of the New Settlement is largely the same as the prior settlement, and the Ninth Circuit
took no issue with whether Class Members were treated equitably relative to one another.

25 ⁵ The Ninth Circuit did not disturb Plaintiffs’ previously-proposed service awards.

1 Dated: March 3, 2023

Respectfully submitted,

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/s/ David E. Azar

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CERTIFICATE OF SERVICE

The undersigned certifies that, on March 3, 2023, he caused this document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of filing to registered counsel of record for each party.

Dated: March 3, 2023

/s/ David E. Azar
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